

United States  
Securities and Exchange Commission  
Washington, D.C. 20549

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FORM 10-K

(Mark One)

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

For the fiscal year ended September 30, 1998

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number  
0-16439

FAIR, ISAAC AND COMPANY, INCORPORATED  
(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of  
incorporation or organization)

94-1499887

(I.R.S. Employer  
Identification No.)

120 North Redwood Drive, San Rafael, California 94903  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (415) 472-2211

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Securities registered pursuant to Section 12(b) of the Act:

Common Stock, \$0.01 par  
value per share  
(Title of Class)

New York Stock Exchange, Inc.  
(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:  
None

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

Indicate by check mark if disclosure of delinquent filers pursuant to  
Item 405 of Regulation S-K is not contained herein, and will not be contained,  
to the best of registrant's knowledge, in definitive proxy or information  
statements incorporated by reference in Part III of this Form 10-K or any  
amendment to this Form 10-K.

As of December 7, 1998, the aggregate market value of the Registrant's  
common stock held by nonaffiliates of the Registrant was \$382,136,797 based on  
the last transaction price as reported on the New York Stock Exchange. This  
calculation does not reflect a determination that certain persons are affiliates  
of the Registrant for any other purposes.

The number of shares of common stock outstanding on December 7, 1998  
was 14,047,284 (excluding 10,690 shares held by the Company as treasury stock).

Items 10, 11, 12 and 13 of Part III incorporate information by  
reference from the definitive proxy statement for the Annual Meeting of  
Stockholders to be held on February 2, 1999.

TABLE OF CONTENTS

	Page
PART I	----
ITEM 1. Business.....	3
ITEM 2. Properties.....	13
ITEM 3. Legal Proceedings.....	13
ITEM 4. Submission of Matters to a Vote of Security Holders.....	13
EXECUTIVE OFFICERS OF THE REGISTRANT.....	14
PART II	
ITEM 5. Market for Registrant's Common Equity and Related Stockholder Matters.....	15
ITEM 6. Selected Financial Data.....	16

ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	17
ITEM 7A. Quantitative and Qualitative Disclosures About Market Risks.....	24
ITEM 8. Financial Statements and Supplementary Data.....	25
ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.....	44
PART III	
ITEM 10. Directors and Executive Officers of the Registrant.....	45
ITEM 11. Executive Compensation.....	45
ITEM 12. Security Ownership of Certain Beneficial Owners and Management.....	45
ITEM 13. Certain Relationships and Related Transactions .....	45
PART IV	
ITEM 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-K....	46
SIGNATURES .....	51
Supplemental Information.....	52

PART I

ITEM 1. BUSINESS

Development Of The Business

Fair, Isaac and Company, Incorporated (NYSE: FIC)("Fair, Isaac" or the "Company") is a leading developer of data management systems and services for the financial services, direct marketing and personal lines insurance industries. The Company employs various tools, such as database enhancement software, predictive modeling, adaptive control and systems automation to help its customers make "better decisions through data."

Established in 1956, Fair, Isaac pioneered the credit risk scoring technologies now employed by most major U.S. consumer credit grantors. Its rule-based decision management systems, originally developed to screen consumer credit applicants, are now routinely employed in all phases of the credit account cycle: direct mail solicitation (credit cards, lines of credit, etc.), application processing, card reissuance, on-line credit authorization and collection. Although direct comparisons are difficult, management believes Fair, Isaac ranks first or second in sales of every type of credit management product or service it markets, and that its total sales to the consumer credit market exceed those for similar products by any direct competitor.

Approximately 48 percent of fiscal 1998 revenues were derived from usage-priced products and services marketed through alliances with major credit bureaus and third-party credit card processors. Sales of decision management products and services directly to credit industry end-users accounted for approximately 25 percent of revenues.

In more recent years Fair, Isaac has expanded its product and service offerings, applying its proven risk/reward modeling capabilities to automobile and home insurance underwriting, small business and mortgage lending, telecommunications and most recently, healthcare. With the acquisition of DynaMark in December 1992, the Company made its first foray into marketing data processing and database management, an area it considers a prime target for diversification. Its strategy in this area is to develop and market an array of services combining DynaMark's strengths in warehousing and manipulating complex consumer databases with Fair, Isaac's expertise in predictive modeling and decision systems. DynaMark contributed \$49.2 million or 20 percent of Fair, Isaac's fiscal 1998 revenues. The Company's Insurance business unit generated revenues in fiscal 1998 of \$9.2 million or 4 percent of revenues. In fiscal 1997, the Company recorded its first revenues from its new Healthcare Information business unit, and during fiscal 1998 derived revenues from providing analytical marketing services to a large pharmaceuticals manufacturer to help improve customer relationships and management of prescription compliance (i.e., a patient's fulfillment of prescriptions and taking them to completion).

In July 1997 the Company acquired Risk Management Technologies (RMT), a leading provider of enterprise-wide risk management and performance measurement solutions to major financial institutions around the world. This acquisition enables the Company to extend its franchise in providing data-driven decision support to the financial services industries beyond its current focus on individual customers. With RMT's products and services, the Company has positioned itself to support an institution's entire financial risk management operation, encompassing both the consumer and enterprise levels. RMT's revenues in fiscal 1998 were \$6.2 million, or 3 percent of the Company's revenues. The Company's historical financial statements for prior fiscal year periods have been restated to account for the Company's merger with RMT on a pooling-of-interests basis.

Fair, Isaac numbers hundreds of the world's leading credit card and travel card issuers, retail establishments and consumer lenders among its regular customers. It has enjoyed continuous client relationships with some of these companies for nearly 30 years. Through alliances with all three major U.S. credit bureaus, the Company also serves a large and growing number of middle-market credit grantors, primarily by providing direct mail solicitation screening, application scoring and account management services on a usage-fee basis. In addition, some of its newer end-user products, such as CreditDesk(R) application processing software and CrediTable(R) pooled-data scoring systems, are designed to meet the needs of relatively small users of scoring systems.

Approximately 17 percent of Fair, Isaac's fiscal 1998 revenues came from sales outside the United States. With its long-standing presence in Western Europe and Canada and the more recent establishment of operating bases in Great Britain, France, Germany, Japan, Mexico and South Africa, the Company is well positioned to benefit from the expected growth in global credit card issuance and usage through the balance of the 1990s. In September 1997 the Company signed an agreement with Serasa Centralizaco de Servicos dos Banco, Brazil's largest credit reporting agency, which will result in the first bureau-based score delivery service in Brazil.

Since 1993, Fair, Isaac's revenues and diluted earnings per share have increased at a compound rate of 30 percent and 35 percent, respectively. The Company attributes this growth to rising market demand for credit scoring and account management services; success in increasing its share of the market; and a gradual shift in marketing and pricing strategy, from primary reliance on direct, end-user sales of customized analytical and software products to ongoing usage revenues from services provided through credit bureaus and bankcard processing agencies.

During the period since 1990, while the rate of account growth in the U.S. bankcard industry has been slowing and many of the Company's largest institutional clients have merged and consolidated, the Company has generated above-average growth in revenues--even after adjusting for the effect of acquisitions--from its bankcard-related scoring and account management businesses by deepening its penetration of large banks and other credit issuers. The Company believes much of its future growth prospects will rest on its ability to: (1) develop new, high-value products, (2) increase its penetration of established or emerging credit markets outside the U.S. and Canada and (3) expand--either directly or through further acquisitions--into relatively undeveloped or underdeveloped markets for its products and services, such as direct marketing, insurance, small business lending and healthcare information management.

#### Products and Services

The Company's principal products are statistically derived, rule-based analytic tools designed to help businesses make better decisions on their customers and prospective customers, and software systems and components to implement these analytic tools. In addition to sales of these products directly to end-users, the Company also makes these products available in service mode through arrangements with credit bureaus and third-party credit card processors. The Company's DynaMark subsidiary provides data processing and database management services to businesses engaged in direct marketing. Its RMT subsidiary provides management tools to larger, more sophisticated financial institutions for enterprise-wide, integrated financial risk and profitability management.

Products and services sold to the consumer credit industry have traditionally accounted for most of the Company's revenues. However, the Company is actively promoting its products and services to other segments of the credit industry, including mortgage and small business lending; and to non-credit industries, particularly personal lines insurance, direct marketing, telecommunications and healthcare. Consumer credit accounted for over 73 percent of the Company's revenues in each of the three years in the period ended September 30, 1998. Sales to customers in the direct marketing business, including the marketing arms of financial service businesses, accounted for 13 to 20 percent of revenues in each of the three years in the period ended September 30, 1998. Revenues from sales to the insurance industry accounted for 3 to 4 percent of revenues in each of the three years in the period ended September 30, 1998. In fiscal 1997 the Company's recorded the first revenues from its new Healthcare Information business unit, and during fiscal 1998 derived revenues from providing analytical marketing services to a large pharmaceuticals manufacturer to help improve customer relationships and management of prescription compliance (i.e., a patient's fulfillment of prescriptions and taking them to completion).

#### Analytic Products

The Company's primary analytic products are scoring algorithms (also called "scorecards") which can be used in screening lists of prospective customers, evaluating applicants for credit or insurance and managing existing credit accounts. Some of the most common types of scoring algorithms developed by the Company are described below. Scoring algorithms are developed by correlating information available at the time a particular decision is made with known performance at a later date. Scoring algorithms can be developed to predict the likelihood of

different kinds of performance (e.g., credit delinquency, response to a solicitation, and insurance claims frequency); they can be developed from different data sources (e.g., credit applications and credit bureau files); and they can be developed either for a particular user ("custom" scorecards) or for many users in a particular industry ("pooled data" or "generic" scorecards).

**Credit Application Scoring Algorithms.** First introduced in 1958, Credit Application Scoring Algorithms are tools that permit credit grantors to calculate the risk of lending to individual applicants. They are delivered in the form of a table of numbers, one for each possible answer to each of about ten to twelve selected predictive questions that are found on the form filled in by the applicant or on a credit report purchased by the credit grantor. The user "scores" an applicant by looking in the table for the number associated with the answers provided about the applicant and calculating their sum. The "score" thus obtained is compared to a "cutoff score" previously established by the credit grantor's management to determine whether or not to extend the requested credit. A significant proportion of revenues from Credit Application Scoring Algorithms is derived from sales of new or replacement algorithms to existing users.

**Behavior Scoring Algorithms.** The Company pioneered Behavior Scoring Algorithms with a research program in 1969. The first commercially successful products were introduced in 1978. In contrast to Credit Application Scoring Algorithms which deal with credit applicants, Behavior Scoring Algorithms permit management to define rules for the treatment of existing credit customers on an ongoing basis.

Although similar in statistical principle and manner of construction, Behavior Scoring Algorithms differ in several important respects from Credit Application Scoring Algorithms. First, rather than using an applicant's answers on a credit application or a credit report, the data used to determine a behavior score come from the customer's purchase and payment history with that credit grantor. Second, each customer is scored monthly, rather than only at application time, and an action is selected each time in response to the score. Third, the available actions are much more varied than simply granting or denying credit to an applicant. For example, if an account is delinquent, the actions available to a credit manager can include a simple message on a customer's bill calling attention to the delinquency, a dunning letter, a phone call, or a referral to a collection agency, with the action to be taken in any given case to be determined by the customer's behavior score.

Scores produced by specially designed Behavior Scoring Algorithms can be used to select actions for mailing promotional materials to customers, for changing the credit limits allowed, for authorizing individual credit card transactions, for taking various actions on delinquent accounts and for reissuing credit cards which are about to expire. Behavior Scoring Algorithms are also components of the Adaptive Control Systems described below.

**Credit Bureau Scoring Services.** The Company also provides scoring algorithms to each of the three major automated credit bureaus in the United States based solely on the information in their files. Customers of the credit bureau can use the scores derived from these algorithms to prescreen solicitation candidates, to evaluate applicants for new credit and to review existing accounts. Credit grantors using these services pay based on usage and the Company and the credit bureau share these usage revenues. The PreScore(R) service offered by the Company combines a license to use such algorithms for prescreening solicitation candidates along with tracking and consulting services provided by the Company and is priced on a time or usage basis.

**ScoreNet(SM) Service.** The ScoreNet Service, introduced in August 1991, allows credit grantors to obtain Fair, Isaac's credit bureau scores and related data on a regular basis and in a format convenient for use in their account management programs. In most cases the account management program is a Fair, Isaac Adaptive Control System or Adaptive Control service at a credit card processor. The Company obtains the data from the credit bureau(s) selected by each subscriber and delivers it to the subscriber in a format compatible with the subscriber's account management system.

**Insurance Scoring Algorithms.** The Company has also delivered scoring systems for insurance underwriters and marketers. Such systems use the same underlying statistical technology as credit scoring systems, but are designed to predict claim frequency or profitability of applicants for personal insurance such as automobile or homeowners'.

coverage. During fiscal 1993, the Company introduced a Property Loss Score ("PLS") service in conjunction with Equifax, Inc., a leading provider of data to insurance underwriters. In 1994, the Company introduced a similar service in conjunction with Trans Union Corporation called "ASSIST" which is designed to predict automobile insurance risk. In 1995, with Equifax Inc., the Company introduced a risk prediction score for automobile insurance called Casualty Loss Score ("CLS") service. Equifax subsequently spun off its Insurance Unit, which is now Choicepoint. In 1996, with Acxiom, the Company introduced a risk prediction score for homeowners' and automobile insurance called InfoScore. PLS, ASSIST, CLS and InfoScore are similar to the credit bureau scoring services in that a purchaser of data from Choicepoint, Trans Union or Acxiom can use the scores to evaluate the risk posed by applicants for homeowners' or automobile insurance. The Company and Choicepoint, Trans Union or Acxiom, as the case may be, share the usage revenue produced by these services. Aspects of automated application processing systems and Adaptive Control Systems are also applicable to insurance underwriting decisions. The Company is actively marketing its products and services to the insurance industry.

**Other Scoring Algorithms.** The Company has developed scoring algorithms for other users, which include public utilities that require deposits from selected applicants before starting service, tax authorities that select returns to be audited, and mortgage lenders. The Company has also developed scoring algorithms for use in selecting life insurance salesmen, finance company managers, and prisoners suitable for early release, although to date these algorithms have not generated significant revenues.

#### Automated Strategic Application Processing Systems (ASAP)

The Company's Automated Strategic Application Processing systems (ASAP) automate the processing of credit applications, including the implementation of the Company's Credit Application Scoring Algorithms. The Company offers Mid-Range ASAPs which are stand-alone assemblies of hardware and software; Mainframe ASAP, SEARCH, StrategyWare,(R) and ScoreWare consisting of software for IBM and IBM-compatible mainframe computers; and CreditDesk which consists of software for personal computers. The Company does not expect significant sales of new Mid-Range ASAP systems but still derives maintenance and enhancement revenues from existing systems.

The tasks performed by ASAPs include: (i) checking for the completeness of the data initially given and printing an inquiry letter in the case of insufficient information; (ii) checking whether an applicant is a known perpetrator of fraud; (iii) electronically requesting, receiving, and interpreting a credit report when it is economic to do so; (iv) assigning a credit limit to the account, if acceptable, and printing a denial letter if not; and (v) forwarding the data necessary to originate billing records for accepted applicants.

Mid-Range ASAP is a minicomputer-based system which carries out the tasks listed above in a manner extensively "tailored" to each user's unique requirements. Mainframe ASAP is a software-only package designed to be executed on IBM or IBM-compatible mainframe computers. It is most useful for very large volume credit grantors who elect to enter application information from a number of separate locations. CreditDesk is designed for use on stand-alone or networked personal computers. Although its software functions are not tailored as extensively as the other versions of ASAP, CreditDesk features an easy-to-use graphics interface. The Company also sells software components for IBM or IBM-compatible mainframe computers under the tradenames "SEARCH" and "ScoreWare." SEARCH acquires and interprets credit bureau reports as a separate package. ScoreWare provides for easy installation of credit application scorecards and computes scores from such scorecards as part of the application processing sequence. StrategyWare combines the application processing features described "above with the "Champion/Challenger" strategy concept described below under "Adaptive Control Systems."

The Company's Mid-Range and Mainframe ASAP systems are currently being used in the United States, Canada, and Europe by banks, retailers, and other financial institutions. CreditDesk is being used by over 600 credit grantors in more than a dozen countries. To support these installations, the Company provides complete hardware and software maintenance, general software support in the form of consulting, and specific software support by producing enhancements, as well as other modifications at a user's request.

## Adaptive Control Systems

The Company's most advanced product is the Adaptive Control System, now generally marketed under the tradename "TRIAD". An Adaptive Control System is a complex of behavior scoring algorithms, computer software, and account management strategy addressed to one or more aspects of the management of a consumer credit or similar portfolio. For example, the Company has developed an Adaptive Control System for use by an electric utility in the management of its customer accounts.

A principal feature of an Adaptive Control System is software for testing and evaluation of alternative management strategies, designated the "Champion and Challenger Strategy Software." The "Champion" strategy applied to any aspect of controlling a portfolio of accounts (such as determining collection messages or setting credit limits) is that set of rules considered by management to be the most effective at the time. A "Challenger" strategy is a different set of rules which is considered a viable candidate to outperform the Champion. The Company's Champion and Challenger Strategy software is tailored to the customer's billing system and is designed to permit the operation of both strategies at the same time and also to permit varying fractions of the accounts to go to each of the competing strategies. For example, if a Challenger is very different from the Champion, management may wish to test it on a very small fraction of the accounts, rather than to risk a large loss. Alternatively, if a Challenger appears to be outperforming a Champion, management can direct more and more of the account flow to it. There need not, in fact, be a limitation on the number of Challengers in place at any one time beyond the limits imposed by the ability of the Company and the user management to study the results.

A Champion/Challenger structure is based on one or more of the Company's component products, usually Behavior Scoring Algorithms, as well as Company-developed software that permits convenient allocation of accounts to strategies and convenient modification of the strategies themselves. Adaptive Control Systems can also consider information external to the particular creditor, particularly scores and other information obtained from credit bureaus, in the design of strategies. A specific goal of the Company's Adaptive Control System product is to make the account management functions of the user as independent as possible of the user's overall data processing systems development department.

For a Champion/Challenger structure to function effectively, new Challenger strategies must be developed continually as insight is gained, as external conditions change, and as management goals are modified. The Company often participates in the design and development of new Challenger strategies and in the evaluation of the results of Champion/Challenger competitions as they develop.

Contracts for Adaptive Control Systems for end-users generally include multi-year software maintenance, strategy design and evaluation, and consulting components. The Company also provides Adaptive Control services through First Data Resources, Inc. and Total System Services, Inc., the two largest third-party credit card processors in the United States. The Adaptive Control service is also available in the United Kingdom through First Data Resources, Ltd. and Bank of Scotland; in Buenos Aires, through Argencard S.A.; and in Frankfurt, through B+S Card Service GmbH. Credit card issuers subscribing to these services pay monthly fees based on the number of accounts processed. During fiscal 1996, the Company introduced StrategyWare(R), which is an Adaptive Control System designed to apply Champion/Challenger principles to the processing of new credit accounts, rather than the management of existing accounts. The Company also believes that Adaptive Control Systems can operate in areas other than consumer credit; and, as noted above, has provided an Adaptive Control System to an electric utility company.

## DynaMark

DynaMark provides a variety of data processing and database management services to companies and organizations in direct marketing. DynaMark offers several proprietary tools in connection with such services including "DynaLink" and "DynaMatch." DynaLink gives financial institutions and other users remote computer access to their "warehoused" customer account files or marketing databases. It allows them to perform on-line analyses ranging from profiling the history of a single customer purchase or credit usage to calling up print-outs of all files

having certain defined characteristics in common. DynaMatch uses a unique scoring system to identify matching or duplicate records that most standard "merge-purge" systems would overlook. Credit managers and direct marketers can use it to identify household relationships (accounts registered in different names, but sharing a common address and surname) and to eliminate costly duplicate mailings. Credit card issuers can use it to spot potentially fraudulent or overlimit credit card charges by individuals using two or more cards issued under slightly different names or addresses.

#### Risk Management Technologies

Risk Management Technologies (RMT) provides management tools to larger, more sophisticated financial institutions around the world for enterprise-wide, integrated financial risk and profitability management. Financial institutions must constantly evaluate the effect of interest rate changes and other factors on their entire operation including their loan, credit card and investment portfolios, to determine bottom line exposure and potential revenues. RMT's financial decision support software, the RADAR System, is a comprehensive enterprise management system that performs asset-liability management, transfer pricing, and performance measurement modeling. RMT's Genesis product is a graphical data integration management tool used to integrate data rapidly from multiple legacy systems and other sources into a consolidated, client/server data warehouse. Within this warehouse, data remain readily available for use in multiple decision-support applications.

#### Healthcare

The Company is currently providing analytical marketing services to a large pharmaceuticals manufacturer to help improve customer relationship and "compliance" management using a variety of techniques including internet communications. "Compliance" in this instance refers to whether prescriptions are actually filled and taken to completion. The Company has also introduced a receivables management system for hospitals and other healthcare providers. The first revenue-generating contract for this product was signed in October 1998.

#### Customer Service and Support

The Company provides service and support to its customers in a variety of ways. They include: (i) education of liaison teams appointed by buyers of scoring algorithms and software; (ii) maintenance of an answering service that responds to inquiries on minor technical questions; (iii) proactive Company-initiated follow-up with purchasers of the Company's products and services; (iv) conducting seminars held several times a year in various parts of the United States and, less often, in other countries; (v) conducting annual conferences for clients in which user experience is exchanged and new products are introduced; (vi) delivery of special studies which are related to the use of the Company's products and services; and (vii) consulting and training services provided by the Company's subsidiary, Credit & Risk Management Associates, Inc. ("CRMA").

Scoring algorithms can diminish in effectiveness over time as the population of applicants or customers changes. Such changes take place for a variety of reasons, many of which are unknown or poorly understood, but some are a result of marketing strategy changes or shifts in the national or the local economy. It is to the user's advantage, therefore, to monitor the performance of its algorithms so that they can be replaced when it is economic to do so. In response to this need as well as the requirement of the Equal Credit Opportunity Act that scoring algorithms be periodically validated, the Company provides tracking services and software products which measure the continuing performance of its scoring algorithms while in use by customers.

#### Technology

The Company's personnel have a high degree of expertise in several separate disciplines: operations research, mathematical statistics, computer-based systems design, programming and data processing.

The fundamental principle of operations research is to direct attention to a class of management decisions, to make a mathematical model of the situation surrounding that class of decisions and to find rules for making the decisions which maximize achievement of the manager's goal. The Company's analytic products are classic



examples of this doctrine reduced to practice. The entire focus is on decision making using the best mathematical and computational techniques available.

The fundamental goal of mathematical statistics is to provide the method for deriving the maximum amount of useful information from an undigested body of data. The objective of the design of computer-based systems is to provide a mechanism for efficiently accepting input data from a source, storing that data in a cost-effective medium, operating on the data with reliable algorithms and decision rules and reporting results in readily comprehensible forms.

The Company's analytic products have a clear distinguishing characteristic in that they make management by rule possible in situations where the only alternative is reliance on a group of people whose actions can never be entirely consistent. Rules for selecting actions require computation of probabilities of results. But computing the probability of a particular result in the traditional mode, that is, by counting the number of occurrences of each possible result in all possible combinations of circumstances, clearly breaks down when the number of combinations becomes very large. When only a few thousand cases of results are available, more subtle mathematical methods must be used. The Company has been actively developing and using techniques of this kind for 42 years, as indicated by the development and continual enhancement of its proprietary suite of algorithms and computer programs used to develop scoring algorithms.

The Company's products must also interface successfully with systems already in place. For example, they must accept data in various forms and in various media such as handwritten applications, video display terminal input, and telecommunications messages from credit bureaus. They must also provide output in diverse forms and media, such as video displays, printed reports, transactions on magnetic tape and printed letters. The Company's response to this interface requirement has been to develop a staff which is expert in both logical design of information systems and the various computer languages used for coding.

#### Markets and Customers

The Company's products for use in the area of consumer credit are marketed to banks, retailers, finance companies, oil companies, credit unions and credit card companies. The Company has over 600 users of products sold directly by the Company to end-users. These include about 75 of the 100 largest banks in the United States; several of the largest banks in Canada; approximately 40 banks in the United Kingdom; more than 70 retailers; 7 oil companies; major travel and entertainment card companies; and more than 40 finance companies. Custom algorithms and systems have generally been sold to larger credit grantors. The scoring, application processing and adaptive control services offered through credit bureaus and third-party processors are intended, in part, to extend usage of the Company's technology to smaller credit issuers and the Company believes that users of its products and services distributed through third-parties number in the thousands. As noted above, the Company also sells its products to utilities, tax authorities, and telecommunications and insurance companies.

DynaMark markets its services to a wide variety of businesses engaged in direct marketing. These include banks and insurance companies, catalog merchandisers, fund-raisers and others. Most of DynaMark's revenues come from direct sales to the end user of its services, but in some cases DynaMark acts as a subcontractor to advertising agencies or others managing a particular project for the end user. RMT markets to large financial institutions throughout the world. Its clients are typically large financial institutions with a wide range of products, investments and operational units and a sophisticated balance sheet.

No single end-user customer accounted for more than 10% of the Company's revenues in fiscal 1998. Revenues generated through the Company's alliances with the three major credit bureaus in the United States, Equifax, Experian Information Solutions, Inc. (formerly known as TRW Information Systems & Services) and Trans Union, each accounted for approximately seven to ten percent of the Company's total revenues in fiscal 1998.

The percentage of revenues derived from customers outside the United States was approximately 17 percent in each of fiscal 1998, 1997, and 1996. RMT derives more than half of its revenues from clients outside the United States. DynaMark had virtually no non-U.S. revenues prior to fiscal 1997. The United Kingdom, Japan and Canada

are the largest international market segments. Mexico, South Africa, a number of countries in South America and almost all of the Western European countries are represented in the user base. The Company has delivered products to users in approximately 60 countries. The information set forth under the caption "Segment Information" in Note 12 to the Consolidated Financial Statements is incorporated herein by reference. The Company's foreign offices are primarily sales and customer service offices acting as agents on behalf of the U.S. production operations. Net identifiable assets, capital expenditures and depreciation associated with foreign offices are not material.

The Company has enjoyed good relations with the majority of its customers over extended periods of time, and a substantial portion of its revenue is derived from repeat customers. As noted above, the Company is actively pursuing new users, particularly in the marketing, insurance and healthcare fields as well as those potential users in the consumer credit area not yet using the Company's products.

#### Contracts and Backlog

The Company's practice is to enter into contracts with several different kinds of payment terms. Scoring algorithms have historically been sold through one-time, fixed-price contracts. The Company will continue to sell scoring algorithms on this basis but has also entered into longer term contractual arrangements with some of its largest customers for the delivery of multiple algorithms. PC-ASAP ("CreditDesk") customers have the option to enter into contracts that provide for a one-time license fee or volume-sensitive monthly lease payments. The one-time and usage-based contracts contain a provision requiring monthly maintenance payments. Mainframe ASAP contracts include a one-time fee for the basic software license, plus monthly fees for maintenance and enhancement services. The Company also realizes maintenance and enhancement revenues from users of its line of Mid-Range ASAP systems. PreScore contracts call for usage or periodic license fees and there is generally a minimum charge. Contracts for the delivery of complete Adaptive Control Systems typically contain both fixed and variable elements in recognition of the fact that they extend over multiple years and must be negotiated in the face of substantial uncertainties. As noted above, the Company is also providing scoring algorithms and application processing on a service basis through credit bureaus, and credit account management services through third-party bankcard processors. Subscribers pay for these services and for the ScoreNet service based on usage. DynaMark and RMT employ a combination of fixed fee and volume-or usage-based pricing for their services.

As of September 30, 1998, the Company's backlog, which includes only firm contracts, was approximately \$68,517,000, as compared with approximately \$70,168,000 as of September 30, 1997. Most usage-based revenues do not appear as part of the backlog. The Company believes that approximately 25 percent of the September 30, 1998 backlog will be delivered after the end of the current fiscal year ending September 30, 1999. Most DynaMark contracts include unit or usage charges, the total amount of which cannot be determined until the work is completed. DynaMark's and CRMA's backlog are not significant in amount, are not considered a significant indicator of future revenues, and are not included in the foregoing figures. RMT's backlog is included in the foregoing backlog figures.

#### Competition

The Company believes that its typical product development cycle, which in the past has extended as long as ten years, has tended to moderate the Company's growth rate. It also believes, however, that this long product development lead time provides a barrier to entry of competitive products. As credit scoring, automated application processing, and behavioral scoring algorithms, all of which were pioneered by the Company, have become standard tools for credit providers, competition has emerged from five sectors: scoring algorithm builders, providers of automated application processing services, data vendors, neural network developers and artificial intelligence system builders. It is likely that a number of new entrants will be attracted to the market, including both large and small companies. Many of the Company's present and potential competitors have substantially greater financial, managerial, marketing, and technological resources than the Company. The Company believes that none of its competitors offer the same mix of products as the Company. However certain competitors may have larger shares of particular geographic or product markets. In-house analytic and systems developers are also a significant source of competition for the Company.

The Company believes that the principal factors affecting competition for scoring algorithms are product performance and reliability; expertise and knowledge of the credit industry; ability to deliver algorithms in a timely manner; customer support, training and documentation; ongoing enhancement of products; and comprehensiveness of product applications. It competes with both outside suppliers and in-house groups for this business. The Company's primary competitor among outside suppliers of scoring algorithms is Experian, formerly known as, C.C.N. Systems Limited ("CCN") of Nottingham, England, a subsidiary of Great Universal Stores plc, a large British retailer. Scores sold by credit bureaus in conjunction with credit reports, including scores computed by algorithms developed by the Company, provide potential customers with the alternative of purchasing scores on a usage-priced basis.

The Company believes that the principal factors affecting competition in the market for automated application processing systems (such as ASAP) are the same as those affecting scoring algorithms, together with experience in developing computer software products. Competitors in this area include outside computer service providers and in-house computer systems departments. The Company believes that its primary competitor in this area is American Management Systems, Incorporated ("AMS"). AMS also offers credit scoring algorithms.

The Company competes with data vendors in the market for its credit bureau scoring services including PreScore and ScoreNet. In the past several years, data vendors have expanded their services to include evaluation of the raw data they provide. All of the major credit bureaus offer competing prescreening and credit bureau scoring services developed, in some cases, in conjunction with the Company's primary scoring algorithm competitor, CCN. In November 1996 it was announced that CCN had agreed to acquire Experian Information Solutions, Inc. (formerly known as TRW Information Systems & Services). CCN has since been renamed "Experian".

Both AMS and Experian offer products intended to perform some of the same functions as the Company's Adaptive Control Systems. The Company believes that customers using its Adaptive Control Systems, in both custom end-user form and through third-party processors, significantly outnumber users of the competing AMS and Experian products.

Another source of emerging competition comes from companies developing artificial intelligence systems including those known as "expert systems" and "neural networks." An expert system is computer software that replicates the decision-making process of the best available human "experts" in solving a particular class of problem, such as credit approval, charge card authorization, or insurance underwriting. Scoring technology differs from expert systems in that scoring technology is based upon a large database of results, from which rules and algorithms are developed, as compared to expert systems, which are typically based primarily on the "expert's" judgment and less so upon a significant database. The Company believes its technology is superior to expert system technology where sufficient performance data are available. Neural networks, on the other hand, are an alternative method of developing scoring algorithms from a database but using mathematical techniques quite different from those used by the Company. For example, HNC Software, Inc. has developed systems using neural network technology which compete with some of the Company's products and services. The Company believes that analytical skill and knowledge of the business environment in which an algorithm will be used are generally more important than the choice of techniques used to develop the algorithm; and, further, that the Company has an advantage in these areas with respect to its primary markets as compared with neural network developers.

There are a large number of companies providing data processing and database management services in competition with DynaMark, some of which are considerably larger than DynaMark. The Company believes the market for such services will continue to expand rapidly for the foreseeable future. Competition in this area is based on price, service, and, in some cases, ability of the processor to perform specialized tasks. DynaMark has concentrated on providing specialized types of data processing and database management services using proprietary tools which, it believes, give it an edge over its competition in these areas. RMT is a leading provider of enterprise-wide risk management and performance-measurement solutions to major financial institutions. There are a number of companies offering enterprise-wide "solutions", or serving sub-segments of this market (such as trading operations of financial institutions), in competition with RMT. The Company believes that no direct competitor currently offers the depth and scope of analytical functionality in products and services for financial risk management that RMT provides, which gives RMT an advantage in this market.

## Product Protection

The Company relies upon the laws protecting trade secrets and upon contractual non-disclosure safeguards, including its employee non-disclosure agreements and restrictions on transferability that are incorporated into its customer agreements, to protect its software and proprietary interests in its product methodology and know-how. The Company currently has one patent application pending but does not otherwise have patent protection for any of its programs or algorithms, nor does it believe that the law of copyrights affords any significant protection for its proprietary software. The Company instead relies principally upon such factors as the knowledge, ability, and experience of its personnel, new products, frequent product enhancements, and name recognition for its success and growth. The Company retains title to and protects the suite of algorithms and software used to develop scoring algorithms as a trade secret and has never distributed its source code.

In spite of these precautions, it may be possible for competitors or users to copy or reproduce aspects of the Company's software or to obtain information that the Company regards as trade secrets. In addition, the laws of some foreign countries do not protect the Company's proprietary rights to the same extent as do the laws of the United States. Due to recent changes in the case law and Patent and Trademark Office Guidelines with respect to the patentability of software, algorithms and "methods of doing business," the Company is currently reevaluating the possibility of obtaining patent protection for certain aspects of its technology.

## Research and Development

Technological innovation and excellence have been goals of the Company since its founding. The Company has devoted, and intends to continue to devote, significant funds to research and development. The Company has ongoing projects for improving its fundamental knowledge in the area of algorithm design, its capabilities to produce algorithms efficiently, and its ability to specify and code algorithm executing software. The information set forth in the line entitled "Research and development" in the Consolidated Statement of Income and the information set forth under the caption "Software costs" in Note 1 to the Consolidated Financial Statements is incorporated herein by reference.

In addition to the projects formally designated as Research and Development, many of the Company's activities contain a component that produces new knowledge. For example, an Adaptive Control System, by its nature and purpose, must be designed to match its environment and learn as it operates. In the areas in which the Company's products are useful, the "laboratory" is necessarily the site of the user's operations.

## Hardware Manufacturing

Hardware for the Company's Mid-Range ASAP systems consists primarily of a Motorola MC 68030-based central processing unit, one or more video display terminals, a disk storage unit, and various other input-output and peripheral devices. The Company's manufacturing process at its San Rafael, California facility involves assembly, testing, and quality assurance functions. Components and parts used in the Company's Mid-Range ASAP systems are purchased from outside vendors, and the Company generally seeks to use components and parts that are available in quantity from a number of distributors. The Company believes that, should any of these components become unavailable from current sources, alternative sources could be developed. Hardware manufacturing and enhancements account for less than one percent of total revenue.

## Personnel

As of September 30, 1998, the Company employed approximately 1,487 persons. None of its employees is covered by a collective bargaining agreement and no work stoppages have been experienced.

## ITEM 2. PROPERTIES

The Company's principal office is located in San Rafael, California, approximately 15 miles north of San Francisco. The Company leases approximately 270,000 square feet of office space in four buildings at that location under leases expiring in 2000 or later. It also leases approximately 5,884 square feet of warehouse space in San Rafael for its hardware operations and for storage under month-to-month leases. In May 1998 the Company entered into a synthetic lease agreement for an office complex with approximately 406,000 square feet in San Rafael, California with an expected initial occupancy date in the year 2001. DynaMark leases approximately 109,000 square feet of office and data processing space in three buildings in Arden Hills, Minnesota under leases which expire in 2012. DynaMark has entered into a lease for a fourth building with approximately 50,407 square feet at the same location, with an anticipated occupancy date of July 1999 and expiring in 2012. DynaMark also leases approximately 25,000 square feet of office and data processing space in New York City under a lease expiring in 2004 and approximately 14,800 square feet for offices in Brookings and Madison, South Dakota and Shoreview, Minnesota. RMT leases approximately 14,740 square feet of office space in Berkeley, California. The Company also leases a total of approximately 47,147 square feet of office space for offices in Baltimore, Maryland; New Castle, Delaware; Atlanta, Georgia; Chicago, Illinois; Toronto, Ontario; Birmingham, England; Tokyo, Japan; Paris, France; Mexico City, Mexico; Sao Paulo, Brazil; Milan, Italy; Johannesburg, South Africa; and Wiesbaden, Germany. See Notes 5 and 11 in the Consolidated Financial Statements for information regarding the Company's obligations under leases. The Company believes that suitable additional space will be available to accommodate future needs.

## ITEM 3. LEGAL PROCEEDINGS

No material legal proceedings are pending.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Not applicable.

EXECUTIVE OFFICERS OF THE REGISTRANT

Name -----	Positions Held -----	Age ---
Larry E. Rosenberger	President and Chief Executive Officer since March, 1991, Executive Vice President 1985-1991, Senior Vice President 1983-1985, Vice President 1977-1983. A Director since 1983. Joined the Company in 1974.	52
John D. Woldrich	Appointed Chief Operating Officer effective August 1, 1995. Executive Vice President since 1985, Senior Vice President 1983-1985, Vice President 1977-1983. A Director since 1983. Joined the Company in 1972.	55
Barrett B. Roach	Executive Vice President since joining the Company in August 1992. Chief Administrative and Financial Officer of Network Equipment Technologies, Inc. from 1986 to July 1990. Owned and operated a vineyard from July 1990 to August 1992.	58
Patrick G. Culhane	Executive Vice President since August 1995; Senior Vice President 1992-1995; Vice President 1990-1992; joined the Company in 1985.	44
H. Robert Heller	Executive Vice President since September 1996 and a Director since February 1994. President of International Payments Institute from December 1994 to September 1996; President and Chief Executive Officer of Visa U.S.A., Inc. 1991-1993, Executive Vice President of Visa International 1989-1991.	58
Jeffrey F. Robinson	Senior Vice President since 1986, Vice President 1980-1986. Treasurer 1981-1983. Joined the Company in 1975.	49
Kenneth M. Rapp	Senior Vice President since August 1994, and President and Chief Operating Officer of DynaMark, Inc. since it was founded in 1985.	52
Peter L. McCorkell	Senior Vice President since August 1995; Vice President, Secretary and General Counsel since joining the Company in 1987.	52
Patricia Cole	Senior Vice President, Chief Financial Officer and Treasurer since November 1996; Controller since joining the Company in September 1995. Vice President and Controller of Qwest Communications International Inc. 1993-1995; Controller of Los Angeles Cellular Telephone Company 1990-1992.	49
David M. LaCross	President, Chief Executive Officer of Risk Management Technologies since it was founded in 1989.	46

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The term of office for all officers is at the pleasure of the Board of Directors.

PART II

ITEM 5. Market for Registrant's Common Equity and Related Stockholder Matters

As of May 6, 1996, the Company's common stock began trading on the New York Stock Exchange under the symbol: FIC. Prior to that date, it was traded over-the-counter on the NASDAQ Stock Market under the symbol: FICI. At December 7, 1998, Fair, Isaac had 340 holders of record of its common stock. The following table lists the high and low last transaction prices for the periods shown, as reported by the New York Stock Exchange and the NASDAQ Stock Market.

Stock Prices	High	Low
October 1 - December 31, 1996	39 3/8	33 5/8
January 1 - March 31, 1997	43 1/8	35
April 1 - June 30, 1997	44 7/8	30 1/4
July 1 - September 30, 1997	47 1/2	40 3/4
October 1 - December 31, 1997	46	30 1/4
January 1 - March 31, 1998	38 5/8	28 3/16
April 1 - June 30, 1998	40 9/16	31 1/2
July 1 - September 30, 1998	41 1/2	29 1/4

Dividends

On May 24, 1995, Fair, Isaac announced a 100 percent stock dividend (equivalent to a two-for-one stock split) and its intention to pay quarterly dividends of 2 cents per share or 8 cents per year subsequent to issuance of the stock dividend. Quarterly dividends of that amount were paid throughout the 1997 and 1998 fiscal years. There are no current plans to change the cash dividend or to issue any further stock dividend.

Recent Sales of Unregistered Securities

On July 21, 1997, the Company acquired all the outstanding stock of RMT, a privately held California corporation, pursuant to a merger of a wholly owned subsidiary of the Company and RMT in which RMT became a wholly-owned subsidiary of the Company (the "Merger"). The number of shares of the Company's common stock and option equivalents issued by the Company in connection with the Merger was 1,252,655.

At the time of the transaction, the issuance of the shares of the Company's common stock and the options to purchase the Company common stock to the former RMT security holders in the Merger was not registered under the Securities Act of 1933, as amended (the "1933 Act"), because the transaction involved a non-public offering exempt from registration under Section 4(2) of the 1933 Act and Regulation D promulgated thereunder.

In July 1996, the Company purchased certain assets and liabilities of Printronic Corporation of America, Inc. (Printronic), a privately held direct mail computer processing company, and effective at the close of September 30, 1996, the Company acquired 100% of the stock of Credit & Risk Management Associates, Inc. (CRMA), a privately held consulting services company. Part of the consideration paid for Printronic and CRMA consisted of 84,735 Company shares of common stock. At the time of each of these transactions, the issuance of the shares of the Company's common stock was not registered under the 1933 Act, because the transaction involved a non-public offering exempt from registration under Section 4(2) of the 1933 Act and Regulation D promulgated thereunder.

ITEM 6. Selected Financial Data

Fiscal year ended September 30,	(dollars in thousands, except per share data)				
	1998	1997	1996	1995	1994
Revenues	\$245,545	\$199,009	\$155,913	\$117,089	\$92,046
Income from operations	40,432	37,756	29,518	19,828	16,420
Income before income taxes	42,105	35,546	28,704	21,390	17,178
Net income	24,327	20,686	17,423	12,753	10,559
Earnings per share:					
Diluted	\$ 1.68	\$ 1.46	\$ 1.25	\$ .93	\$ .79
Basic	\$ 1.77	\$ 1.55	\$ 1.32	\$ .99	\$ .85
Dividends per share*	\$ .08	\$ .08	\$ .08	\$ .055	\$ .07
At September 30,	1998	1997	1996	1995	1994
Working capital	\$ 54,852	\$ 47,727	\$ 34,699	\$ 23,448	\$ 17,436
Total assets	189,614	145,228	118,023	91,009	72,056
Long-term obligations	789	1,183	1,552	1,930	2,333
Stockholders' equity	133,451	103,189	79,654	56,176	42,929

\* Because the change to quarterly dividends was initiated in September 1995, the rate of dividends paid in fiscal 1995 does not reflect the current annual rate of 8 cents per share.

The financial data for the fiscal years ended September 30, 1994 through 1996 have been restated to reflect the merger, effective July 1997, between Fair, Isaac and Company, Incorporated and Risk Management Technologies which has been accounted for under the pooling-of-interests method.



## ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Fair, Isaac and Company, Incorporated, provides products and services designed to help a variety of businesses use data to make better decisions on their customers, prospective customers and existing portfolios. The Company's products include statistically derived, rule-based analytical tools, software designed to implement those analytical tools and consulting services to help clients use and track the performance of those tools. The Company also provides a range of credit scoring and credit account management services in conjunction with credit bureaus and credit card processing agencies. Its DynaMark subsidiary provides data processing and database management services to businesses engaged in direct marketing activities, many of which are in the credit and insurance industries. The Company's Risk Management Technologies subsidiary provides enterprise-wide risk management and performance measurement solutions to major financial institutions.

The Company is organized into business units that correspond to its principal markets: consumer credit, insurance, direct marketing (DynaMark), enterprise-wide financial risk management (RMT) and a new unit, Healthcare. Sales to the consumer credit industry have traditionally accounted for the bulk of the Company's revenues. Products developed specifically for a single user in this market are generally sold on a fixed-price basis. Such products include application and behavior scoring algorithms (also known as "analytic products" or "scorecards"), credit application processing systems (ASAP(TM) and CreditDesk(R)) and custom credit account management systems, including those marketed under the name TRIAD. Software systems usually also have a component of ongoing maintenance revenue, and CreditDesk systems have also been sold under time- or volume-based price arrangements. Credit scoring and credit account management services sold through credit bureaus and third-party credit card processors are generally priced based on usage. Products sold to the insurance industry are generally priced based on the number of policies in force, subject to contract minimums. DynaMark and RMT employ a combination of fixed-fee and usage-based pricing, and the Healthcare unit intends to employ a combination of fixed-fee and usage-based pricing for its products.

This discussion and analysis should be read in conjunction with the Company's Consolidated Financial Statements and Notes. In addition to historical information, this report includes certain forward-looking statements regarding events and trends that may affect the Company's future results. Such statements are subject to risks and uncertainties that could cause the Company's actual results to differ materially. Such factors include, but are not limited to, those described in this discussion and analysis.

### RESULTS OF OPERATIONS

#### Revenues

The following table sets forth for the fiscal periods indicated (a) the percentage of revenues represented by fixed-price and usage-priced revenues from the Credit business unit, and the percentage of revenues contributed by the DynaMark, RMT, Insurance and Healthcare business units; and (b) the percentage change in revenues within each category from the prior fiscal year. Credit fixed-price revenues include all revenues from custom scorecard, software and consulting projects. Most credit usage revenues are generated through third-party alliances such as those with credit bureaus and third-party credit card processors. In addition, some credit scorecards and software products are licensed under volume-based fee arrangements and these are included in credit usage-priced revenues.

	Percentage of revenue			Period-to-period percentage changes	
	1998	1997	1996	1997 to 1998	1996 to 1997
Credit:					
Fixed-price	25	29	29	9	28
Usage-priced	48	48	50	21	23
DynaMark	20	15	13	65	41
RMT	3	4	5	(26)	18
Insurance	4	3	3	58	27
Healthcare	Less than 1	1	--	(4)	NM*
Total revenues	100	100	100	23	28

\*Not meaningful

Revenues from credit application scoring products increased by 22 percent in fiscal 1997 compared with fiscal 1996, and decreased by 12 percent in fiscal 1998 compared with fiscal 1997. The increase in fiscal 1997 was due primarily to the Company's sales of new products and increased sales of small business loan scoring products. The decrease in revenues in fiscal 1998 reflected the impact of bank consolidations. ASAP revenues increased by 47 percent in fiscal 1997 compared with fiscal 1996, and by 14 percent in fiscal 1998 compared with fiscal 1997, primarily due to increased sales of PC-based ASAP products (CreditDesk) and sales of the StrategyWare(R) decision support system.

Revenues from sales of credit account management systems (TRIAD) sold to end-users decreased by 5 percent from fiscal 1996 to fiscal 1997, and increased by 18 percent from fiscal 1997 to fiscal 1998. The major factor in the decline in revenues in fiscal 1997 was a delay in the completion of the next major release of the software. The increase in fiscal 1998 was due primarily to the release of the next version of TRIAD (TRIAD 5.0) in November 1997. The Company's high degree of success in penetrating the U.S. bankcard industry with these products has limited, and may continue to limit, the revenue growth in that market. However, the Company has added functionality for the existing base of TRIAD users and is actively marketing TRIAD for other types of credit products and in overseas markets.

The Company provides credit risk management consulting services primarily through CRMA, which it acquired in September 1996. CRMA completed its second year as part of the Credit business unit on September 30, 1998. CRMA's revenues increased by 62 percent in fiscal 1998 compared with fiscal 1997 and comprised approximately 4 percent of the Company's Credit revenues in fiscal 1998 as compared to 3 percent in fiscal 1997.

Usage revenues are generated primarily by credit scoring services distributed through major credit bureaus and credit account management services distributed through third-party bankcard processors. Revenues from credit bureau-related services increased 22 percent in both fiscal 1997 and fiscal 1998 and accounted for approximately 35 percent of revenues in fiscal 1997 and 1998. Revenues from services provided through bankcard processors also increased in each of these years, primarily due to increases in the number of accounts at each of the major processors.

Revenues derived from alliances with credit bureaus and credit card processors have accounted for much of the Company's revenue growth in the last three years. While the Company has been very successful in extending or renewing such agreements in the past, and believes it will generally be able to do so in the future, the loss of one or more such alliances or an adverse change in terms could have a significant impact on revenues and operating margin. Revenues generated through the Company's alliances with Equifax, Inc., Experian Information Solutions, Inc., (formerly TRW Information Systems & Services) and Trans Union Corporation each accounted for approximately 8 to 10 percent of the Company's total revenues in fiscal 1996 and 1997, and approximately 7 to 10 percent of the Company's total revenues in fiscal 1998.

In 1996 Experian was acquired by CCN Group Ltd., a subsidiary of Great Universal Stores, PLC. CCN is the Company's largest competitor, worldwide, in the area of credit scoring. TRW/Experian has offered scoring products developed by CCN in competition with those of the Company for several years. The acquisition had no apparent impact on the Company's revenues from Experian in fiscal 1997 and 1998.

On September 30, 1997, amendments to the federal Fair Credit Reporting Act became effective. The Company believes these changes to the federal law regulating credit reporting will be favorable to the Company and its clients. Among other things, the new law expressly permits the use of credit bureau data to prescreen consumers for offers of credit and insurance and allows affiliated companies to share consumer information with each other subject to certain conditions. There is also a seven-year moratorium on new state legislation on certain issues. However, the states remain free to regulate the use of credit bureau data in connection with insurance underwriting.

The Company believes enacted or proposed state regulation of the insurance industry has had a negative impact on its efforts to sell insurance risk scores through credit reporting agencies.

DynaMark's revenues increased from \$21.2 million in fiscal 1996 to \$29.8 million in fiscal 1997 and to \$49.2 million in fiscal 1998. The increases in DynaMark's revenues (excluding intercompany revenues) were due primarily to increased revenues from customers in the financial services industry. Gross margins for fiscal 1996, 1997 and 1998 were approximately 39, 42 and 51 percent, respectively. Since its acquisition, DynaMark has taken on an increasing share of the mainframe batch processing requirements of the Company's other business units. During each of fiscal 1996 and 1997, such intercompany revenue represented approximately 14 percent of DynaMark's total revenues, and in fiscal 1998 such revenue represented approximately 8 percent of DynaMark's total revenues. Accordingly, DynaMark's externally reported revenues may tend to understate DynaMark's growth and contribution to the Company as a whole.

RMT's revenues for fiscal 1997 increased by 18 percent compared with fiscal 1996, and in fiscal 1998 decreased by 26 percent compared with fiscal 1997, due primarily to the impact of bank consolidations.

Increases in insurance revenues for fiscal 1998, compared with fiscal 1997, were due to strong growth in both insurance products sold to end-users and in the insurance scoring services offered through consumer reporting agencies. In fiscal 1997, the Company recorded its first revenues from its Healthcare business unit, and during fiscal 1998 derived revenues from providing analytical marketing services to a large pharmaceuticals manufacturer to help improve customer relationships and management of prescription compliance (i.e., a patient's fulfillment of prescriptions and taking them to completion).

The Company's revenues derived from clients outside the United States increased from \$26.1 million in 1996 to \$33.9 million in fiscal 1997 and to \$42.9 million in fiscal 1998. RMT contributed \$4.3 million, \$4.6 million and \$3.7 million to the Company's non-U.S. revenues for fiscal years 1996, 1997 and 1998, respectively. DynaMark has not had significant non-U.S. revenues. Sales of software products, including TRIAD and CreditDesk, increased usage of credit bureau scores in Canada, and an increase in the number of accounts using the Company's account management services at credit card processors in Europe and Latin America accounted for most of the increase in international revenues in fiscal 1997 and 1998. Gains or losses due to fluctuations in currency exchange rates have not been significant to date but may become more important if, as expected, the proportion of the Company's revenues denominated in foreign currencies increases in the future.

Revenues from software maintenance and consulting services each accounted for less than 10 percent of revenues in each of the three years in the period ended September 30, 1998, and the Company does not expect revenues from either of these sources to exceed 10 percent of revenues in the foreseeable future.

During the period since 1990, while the rate of account growth in the U.S. bankcard industry has been slowing and many of the Company's largest institutional clients have merged and consolidated, the Company has generated above-average growth in revenues--even after adjusting for the effect of acquisitions--from its bankcard-related scoring and account management business by deepening its penetration of large banks and other credit issuers. The Company believes much of its future growth prospects will rest on its ability to: (a) develop new, high-value products, (b) increase its penetration of established or emerging credit markets outside the U.S. and Canada and (c) expand--either directly or through further acquisitions--into relatively undeveloped or underdeveloped markets for its products and services, such as direct marketing, insurance, small business lending and healthcare information

management. During fiscal 1998, the Company's backlog of orders for fixed-priced products declined slightly. This indicates that revenue growth in fiscal 1999 and later years may depend to a large extent on sales of newly developed products.

Over the long term, in addition to the factors discussed above, the Company's rate of revenue growth--excluding growth due to acquisitions--is limited by the rate at which it can recruit and absorb additional professional staff. Management believes this constraint will continue to exist indefinitely. On the other hand, despite the high penetration the Company has already achieved in certain markets, the opportunities for application of its core competencies are much greater than it can pursue. Thus, the Company believes it can continue to grow revenues, within the personnel constraint, for the foreseeable future. At times management may forego short-term revenue growth in order to devote limited resources to opportunities that it believes have exceptional long-term potential. This occurred in the period from 1988 through 1990, when the Company devoted significant resources to developing the usage-priced services distributed through credit bureaus and third-party processors.

#### Expenses

The following table sets forth for the fiscal periods indicated: (a) the percentage of net revenues represented by certain line items in the Company's Consolidated Statements of Income and (b) the percentage change in the amount of each such line item from the prior fiscal year.

	Percentage of revenue			Period-to-period percentage changes	
	1998	Years ended September 30, 1997	1996	1997 to 1998	1996 to 1997
Total revenues	100	100	100	23	28
Costs and expenses:					
Cost of revenues	35	36	37	17	26
Sales and marketing	15	15	17	28	13
Research and development	12	9	6	66	90
General and administrative	21	20	21	28	23
Amortization of intangibles	1	1	--	9	74
Total costs and expenses	84	81	81	27	28
Income from operations	16	19	19	7	28
Other income (expense)	1	(1)	(1)	NM*	NM*
Income before income taxes	17	18	18	18	24
Provision for income taxes	7	8	7	20	32
Net income	10	10	11	18	19

\*Not meaningful

#### Cost of revenues

Cost of revenues consists primarily of personnel, travel and related overhead costs; costs of computer service bureaus; and the amounts paid by the Company to credit bureaus for scores and related information in connection with the ScoreNet(R) Service.

Cost of revenues, as a percentage of revenues, declined slightly in the periods from fiscal 1996 to fiscal 1997 and from fiscal 1997 to fiscal 1998. The decrease in both fiscal 1997 and fiscal 1998 was due primarily to the reassignment to research and development activities of certain personnel whose primary assignment had been production and delivery.

## Sales and marketing

Sales and marketing expenses consist principally of personnel, travel, overhead, advertising and other promotional expenses. As a percentage of revenues, sales and marketing expenses decreased in fiscal 1997 compared with fiscal 1996 due primarily to a reduction in media advertising and remained essentially unchanged from fiscal 1997 to fiscal 1998.

## Research and development

Research and development expenses include the personnel and related overhead costs incurred in product development, researching mathematical and statistical algorithms and developing software tools that are aimed at improving productivity and management control. Research and development increased sharply from fiscal 1996 to fiscal 1997 and from fiscal 1997 to fiscal 1998. After several years of concentrating on developing new markets--either geographically or by industry--for its existing technologies, in fiscal 1996 and fiscal 1997 the Company renewed its historical emphasis on developing new technologies, especially in the area of software development.

In fiscal 1998, the Company continued to emphasize development of new technologies. Research and development expenditures in fiscal 1998 were primarily related to new bankruptcy scoring products for Visa (Integrated Solutions Concepts) and Trans Union, new fraud-detection software products, joint product development projects with Deluxe Financial Services, Inc., healthcare receivables management and Year 2000 compliance work.

## General and administrative

General and administrative expenses consist mainly of compensation expenses for certain senior management, corporate facilities expenses, the costs of administering certain benefit plans, legal expenses, expenses associated with the exploration of new business opportunities and the costs of operating administrative functions, such as finance and computer information systems. As a percentage of revenues, general and administrative expenses were essentially unchanged for fiscal 1996, 1997 and 1998.

## Amortization of intangibles

The Company is amortizing the intangible assets arising from various acquisitions over periods ranging from 2 to 15 years. The level of amortization expense in future years will depend, in part, on the amount of additional payments to the former shareholders of CRMA, a privately held company acquired at the end of fiscal 1996. See below, under "Capital Resources and Liquidity."

## Other income (expense)

The table in Note 13 to the Consolidated Financial Statements presents the detail of other income and expenses. Interest income is derived from the investment of funds surplus to the Company's immediate operating requirements. At September 30, 1998, the Company had approximately \$46.5 million invested in U.S. treasury securities and other interest-bearing instruments. Interest income increased in both fiscal 1997 and 1998 due to higher average cash balances in interest-bearing accounts and instruments.

The Company's share of operating losses in certain early-stage development companies that are accounted for using the equity method is charged to other expense. During the fiscal year ended September 30, 1997, the Company wrote off non-marketable investments with an equity basis of \$773,000, primarily related to an Italian start-up venture that was adversely affected by a new privacy law. In fiscal year ended September 30, 1998, the Company liquidated its share of this non-marketable security resulting in a gain of \$165,000 and has no further financial commitments in connection with this investment. Note 4 to the Consolidated Financial Statements describes the Company's investment in such companies.

In fiscal 1998, the difference between the increase in operating income (7 percent) and the increase in net income (18 percent) was primarily due to the interest income derived from investments in U.S. treasury securities and other interest-bearing instruments, and the absence of losses from investments in start-ups.

## Provision for income taxes

The Company's effective tax rate was 39.3, 41.8 and 42.2 percent in fiscal 1996, 1997 and 1998, respectively. The increase to 42.2 percent in fiscal 1998 was due primarily to the nondeductible nature of goodwill, deferred compensation and an increase in the effective state tax rate. The Company expects its effective tax rate in fiscal 1999 to be approximately 42 percent, barring any change in the tax laws.

## Capital Resources and Liquidity

Working capital increased from \$34,699,000 at September 30, 1996, to \$47,727,000 at September 30, 1997, and to \$54,852,000 at September 30, 1998. The increase in fiscal 1997 was due primarily to increases in accounts receivable and unbilled work in progress, which more than offset the increase in accrued compensation and employee benefits and the decrease in prepaid expenses and other assets.

The increase in fiscal 1998 was due primarily to increases in short-term investments, unbilled work in progress and accounts receivable, which more than offset the increase in accounts payable and other accrued liabilities and accrued compensation and employee benefits.

The Company's exposure to collection risks is comprised of the sum of accounts receivable plus unbilled work in progress, less billings in excess of earned revenues. Changes in contract terms and product mix, along with variations in timing, may cause fluctuations in any or all of these items. During fiscal 1997, the increases in accounts receivable and billings in excess of earned revenues were proportional to the increase in revenues. The greater increase in unbilled work in progress was due primarily to changes in product mix and contract terms. During fiscal 1998, the increase in accounts receivable was proportionally much less than the increase in revenues due to improved collection efforts by the Company, and the increases in unbilled work in progress and billings in excess of earned revenues were proportional to the increase in revenues.

The Company capitalized \$45,000 as goodwill relating to amounts due to the former stockholders of CRMA under the CRMA purchase agreement based upon its financial results in fiscal 1997, and has capitalized \$263,000 based upon CRMA's financial results in fiscal 1998. An additional payment to the former stockholders of CRMA based upon CRMA's financial results in fiscal 1999 may also be required. That amount, which will be paid 55 percent in Company stock and 45 percent in cash, will not exceed \$1,833,000.

In fiscal 1997, cash provided by operations resulted primarily from net income before depreciation and amortization, decreases in prepaid expenses and other assets and increases in accrued compensation and employee benefits, partially offset by the increase in accounts receivable and unbilled work in progress. Cash was used in investing activities primarily for additions to property and equipment and the purchase of interest-bearing investments, partially offset by the maturities of interest-bearing investments. Cash was used in financing activities for the payment of dividends, reduction of capital lease obligations and repurchase of Company stock, partially offset by cash generated by the exercise of stock options.

In fiscal 1998, cash provided by operations resulted primarily from net income before depreciation and amortization, and increases in accounts payable and other accrued liabilities and accrued compensation and employee benefits, partially offset by the increases in accounts receivable, other assets and unbilled work in progress. Cash was used in investing activities primarily for additions to property and equipment, and purchases of interest-bearing investments, partially offset by the maturities of interest-bearing investments. Cash was provided by financing activities primarily from the exercise of stock options, partially offset by cash used for the payment of dividends and the reduction of capital lease obligations.

Future cash flows will continue to be affected by operating results, contractual billing terms and collections, investment decisions and dividend payments, if any. At September 30, 1998, the Company had no significant capital commitments other than those obligations described in Notes 2, 5 and 11 of the Consolidated Financial Statements.

On December 1, 1997, the Company purchased undeveloped land in San Rafael, California, with the intention of constructing an office complex to accommodate future growth. Development has commenced, and on May 15, 1998, the Company entered into a synthetic lease arrangement, which will materially increase the Company's future operating lease expenses. Rental payments will commence upon completion of construction, which is expected to

occur in the second quarter of fiscal 2001. With this external financing, the Company believes that the cash and marketable securities on hand, along with cash expected to be generated by operations, will be adequate to meet its capital and liquidity needs for both the current year and the foreseeable future.

#### Year 2000

The Company is performing Year 2000 remediation work and compliance testing on its software products marketed to customers. The updated versions of most of its software products currently being shipped to customers are Year 2000 compliant. Certain international versions of the Company's software products are not yet Year 2000 compliant, but the Company expects to be prepared to ship upgrade "patches" for these products by the end of calendar 1998. Year 2000 remediation work, including compliance testing, for most earlier versions of the Company's software installed at customer sites will be performed as part of the Company's normal upgrade and maintenance process. Prior to the end of calendar 1999, the Company will discontinue support for some software products that have been replaced by other products, and Year 2000 upgrades for these products will not be available. Revenues from such products are not significant. There are no assurances that the Company's current products do not contain undetected errors or defects associated with Year 2000 date functions that may result in material costs to the Company. However, the Company currently does not expect significant disruption of its revenues or operations from the Year 2000 issues associated with its products. The Company has not made an assessment of the potential impact of failing to complete its own Year 2000 remediation work nor has it developed any contingency plans for such an event.

Additionally, the Company has substantially completed its Year 2000 inventory and assessment of internal information technology (IT) and non-IT systems and applications and expects all major internal systems to be fully compliant by the end of December 1998. The Company has determined that the majority of its internally developed systems are Year 2000 compliant. All applications supplied to Company by third parties are either Year 2000 compliant today or have "patches" currently available to bring them into compliance. Extensive compliance testing has commenced and will continue through most of the calendar year 1999. The most reasonably likely worst-case scenarios would include: (a) corruption of data contained in the Company's internal information systems, and (b) hardware/operating system failure. The Company is in the process of completing its contingency plans for business-critical IT and non-IT internal systems as an extension of its existing disaster recovery plan and expects to complete such planning by June 30, 1999.

The Company estimates that the costs of Year 2000 remediation (including compliance testing) for its products and internal systems will be in the range of \$4 million to \$5 million. Approximately two-thirds of these estimated costs have been expended as of September 30, 1998. These costs principally consist of both internal staff costs and expenses for external consultants, software and hardware, which have been or will be expended by the Company during the period they are incurred. Expected costs for the Year 2000 remediation work (including compliance testing) and projected completion dates are based on the Company's management's estimates and assumptions and actual results may vary materially from those anticipated.

The Company has also initiated communications with third parties on which it is dependent for essential services and for the distribution of its significant services to determine how they are addressing Year 2000 issues and to evaluate any impact on the Company's operations. The Company is working with these third parties to resolve Year 2000 issues and information received to date indicates that these parties are in the process of implementing and/or testing remediation strategies to ensure Year 2000 compliance of systems, services and/or products. However, the lack of resolution of Year 2000 issues by these parties--especially the credit bureaus and credit card processors through which the Company distributes credit scoring and account management services--could have a material adverse impact on the Company's future business operations, financial condition and results of operations.

The Company anticipates that the most reasonably likely worst-case scenarios involving third-party Year 2000 issues would include: (a) failure of infrastructure services provided by government agencies and third parties (e.g., transportation, electricity, telephone, Internet services, etc.) and (b) failure of one or more of the credit bureaus or credit card processors through which the Company distributes its credit scoring and account management services to achieve timely and successful Year 2000 compliance. Contingency plans to address these most reasonably likely

worst-case scenarios are under development and are expected to be completed by June 30, 1999. At this time the Company cannot quantify the potential impact of third-party Year 2000 issues.

The foregoing information and statements regarding the Company's Year 2000 capabilities and readiness are "Year 2000 Information and Readiness Disclosures" in conformance with the Year 2000 Information and Readiness Disclosure Act of 1998 enacted on October 19, 1998.

#### European Economic and Monetary Union (EMU)

Under the European Union's plan for Economic and Monetary Union (EMU), the euro becomes the sole accounting currency of EMU countries on January 1, 2002. Its initial phase goes into effect on January 1, 1999, in 11 participating countries: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. In this initial phase the EMU mandates that key financial systems be able to triangulate conversion rates so that any amount booked will be logged and processed simultaneously in both the local currency and euros. The Company believes that its computer systems and programs are euro-compliant. Costs associated with compliance were not material and were expensed by the Company as they were incurred.

#### Quarterly Results

The table in Note 15 to the Consolidated Financial Statements presents unaudited quarterly operating results for the last eight fiscal quarters. Management believes that all the necessary adjustments have been included in the amounts stated to present fairly the selected quarterly information, when read in conjunction with the financial statements included elsewhere in this report. This information includes all normal recurring adjustments that the Company considers necessary for a fair presentation thereof, in accordance with generally accepted accounting principles.

Quarterly results may be affected by fluctuations in revenue associated with credit card solicitations, by the timing of orders for and deliveries of certain ASAP and TRIAD systems and by the seasonality of ScoreNet purchases. With the exception of the cost of ScoreNet data purchased by the Company, most of its operating expenses are not affected by short-term fluctuations in revenues; thus, short-term fluctuations in revenues may have a significant impact on operating results. However, in recent years these fluctuations were generally offset by the strong growth in revenues from services delivered through credit bureaus and third-party bankcard processors.

Management believes that neither the quarterly variations in net revenues and net income nor the results of operations for any particular quarter are necessarily indicative of results of operations for full fiscal years. Accordingly, management believes that the Company's results should be evaluated on an annual basis.

#### ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk

Market Risk Disclosures. The following discussion about the Company's market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. The Company is exposed to market risk related to changes in interest rates, foreign currency exchange rates and equity security price risk. The Company does not use derivative financial instruments for speculative or trading purposes.

Interest Rate Sensitivity. The Company maintains a short-term investment portfolio consisting mainly of income securities with an average maturity of less than one year. These available-for-sale securities are subject to interest rate risk and will fall in value if market interest rates increase. If market interest rates were to increase immediately and uniformly by 10 percent from levels at September 30, 1998, the fair value of the portfolio would decline by an immaterial amount. The Company has the ability to hold its fixed income investments until maturity, and therefore the Company would not expect its operating results or cash flows to be affected to any significant degree by the effect of a sudden change in market interest rates on its securities portfolio. The Company believes foreign currency and equity risk is not material.



ITEM 8. Financial Statements and Supplementary Data

REPORT OF INDEPENDENT AUDITORS

The Board of Directors  
Fair, Isaac and Company, Incorporated:

We have audited the accompanying consolidated balance sheets of Fair, Isaac and Company, Incorporated, and subsidiaries as of September 30, 1998 and 1997, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the years in the three-year period ended September 30, 1998. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fair, Isaac and Company, Incorporated, and subsidiaries as of September 30, 1998 and 1997, and the results of their operations and their cash flows for each of the years in the three-year period ended September 30, 1998, in conformity with generally accepted accounting principles.

San Francisco, California  
October 29, 1998

CONSOLIDATED STATEMENTS OF INCOME

Years ended September 30,	(in thousands, except per share data)		
	1998	1997	1996
Revenues	\$ 245,545	\$ 199,009	\$ 155,913
Costs and expenses:			
Cost of revenues	84,980	72,566	57,732
Sales and marketing	37,470	29,162	25,722
Research and development	29,136	17,572	9,265
General and administrative	52,132	40,679	32,942
Amortization of intangibles	1,395	1,274	734
Total costs and expenses	205,113	161,253	126,395
Income from operations	40,432	37,756	29,518
Other income (expense), net	1,673	(2,210)	(814)
Income before income taxes	42,105	35,546	28,704
Provision for income taxes	17,778	14,860	11,281
Net income	\$ 24,327	\$ 20,686	\$ 17,423
Earnings per share:			
Diluted	\$ 1.68	\$ 1.46	\$ 1.25
Basic	\$ 1.77	\$ 1.55	\$ 1.32
Shares used in computing earnings per share:			
Diluted	14,463,000	14,202,000	13,922,000
Basic	13,763,000	13,386,000	13,161,000

See accompanying notes to the consolidated financial statements.

CONSOLIDATED BALANCE SHEETS

September 30,	(dollars in thousands)	
-----	1998	1997
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 14,242	\$ 13,209
Short-term investments	18,283	6,108
Accounts receivable, net of allowance (1998: \$1,163; 1997: \$758)	39,028	36,147
Unbilled work in progress	22,004	18,176
Prepaid expenses and other current assets	4,040	3,673
Deferred income taxes	5,016	4,517
	-----	-----
Total current assets	102,613	81,830
Long-term investments	24,368	13,261
Property and equipment, net	36,893	34,486
Intangibles, net	10,458	8,361
Deferred income taxes	6,398	3,369
Other assets	8,884	3,921
	-----	-----
	\$ 189,614	\$ 145,228
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable and other accrued liabilities	\$ 17,418	\$ 8,228
Accrued compensation and employee benefits	22,065	19,160
Billings in excess of earned revenues	7,862	6,346
Capital lease obligations	416	369
	-----	-----
Total current liabilities	47,761	34,103
Other liabilities	7,613	6,753
Capital lease obligations	789	1,183
	-----	-----
Total liabilities	56,163	42,039
	-----	-----
Stockholders' equity:		
Preferred stock	--	--
Common stock	140	135
Paid in capital in excess of par value	32,454	26,025
Retained earnings	100,678	77,453
Less treasury stock	(351)	(433)
Cumulative translation adjustments	(170)	(308)
Unrealized gains on investments	700	317
	-----	-----
Total stockholders' equity	133,451	103,189
	-----	-----
	\$ 189,614	\$ 145,228

See accompanying notes to the consolidated financial statements.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

Period from September 30, 1995, to September 30, 1998

(in thousands)

	Common stock	Par value	Paid in capital in excess of par value	Retained earnings	Treasury stock	Pension adjustments	Cumulative translation adjustments	Unrealized gains on investments	Total stockholders' equity
Balances at September 30, 1995	12,909	\$ 130	\$ 14,947	\$ 41,577	\$ (228)	\$ (406)	\$ --	\$ 156	\$ 56,176
Issuance of common stock	101	1	3,586	--	--	--	--	--	3,587
Issuance/vesting of restricted stock	1	--	115	--	--	--	--	--	115
Exercise of stock options	221	2	911	--	--	--	--	--	913
Tax benefit of exercised stock options	--	--	1,124	--	--	--	--	--	1,124
Contribution/sale to ESOP	38	--	945	--	160	--	--	--	1,105
Net income	--	--	--	17,423	--	--	--	--	17,423
Dividends declared	--	--	--	(991)	--	--	--	--	(991)
Pension adjustment	--	--	--	--	--	406	--	--	406
Unrealized losses on investments	--	--	--	--	--	--	--	(59)	(59)
Cumulative translation adjustments	--	--	--	--	--	--	(145)	--	(145)
Balances at September 30, 1996	13,270	133	21,628	58,009	(68)	--	(145)	97	79,654
Issuance of common stock	47	--	1,044	--	--	--	--	--	1,044
Vesting of restricted stock	--	--	289	--	--	--	--	--	289
Exercise of stock options	141	2	1,018	--	--	--	--	--	1,020
Tax benefit of exercised stock options	--	--	1,474	--	--	--	--	--	1,474
Contribution/sale to ESOP	41	--	504	--	105	--	--	--	609
Deferred compensation	--	--	68	--	--	--	--	--	68
Repurchase of company stock	(37)	--	--	--	(470)	--	--	--	(470)
Net income	--	--	--	20,686	--	--	--	--	20,686
Dividends declared	--	--	--	(1,028)	--	--	--	--	(1,028)
Charge to reflect change in RMT's fiscal year	--	--	--	(214)	--	--	--	--	(214)
Unrealized gains on investments	--	--	--	--	--	--	--	220	220
Cumulative translation adjustments	--	--	--	--	--	--	(163)	--	(163)
Balances at September 30, 1997	13,462	135	26,025	77,453	(433)	--	(308)	317	103,189
Issuance of common stock	33	--	1,468	--	--	--	--	--	1,468
Vesting of restricted stock	--	--	185	--	--	--	--	--	185
Exercise of stock options	487	5	2,726	--	--	--	--	--	2,731
Tax benefit of exercised stock options	--	--	1,660	--	--	--	--	--	1,660
Deferred compensation	--	--	472	--	--	--	--	--	472
Repurchase of company stock	(3)	--	(82)	--	(28)	--	--	--	(110)
Issuance of treasury stock	3	--	--	--	110	--	--	--	110
Net income	--	--	--	24,327	--	--	--	--	24,327
Dividends declared	--	--	--	(1,102)	--	--	--	--	(1,102)
Unrealized gains on investments	--	--	--	--	--	--	--	383	383
Cumulative translation adjustments	--	--	--	--	--	--	138	--	138
Balances at September 30, 1998	13,982	\$ 140	\$ 32,454	\$ 100,678	\$ (351)	\$ --	\$ (170)	\$ 700	\$133,451

See accompanying notes to the consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS

Years ended September 30,	(dollars in thousands)		
	1998	1997	1996
<hr/>			
Cash flows from operating activities			
Net income	\$ 24,327	\$ 20,686	\$ 17,423
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	14,948	11,753	7,928
Deferred compensation	472	--	--
Deferred income taxes	(3,809)	(2,824)	84
Equity loss in investments	--	2,082	821
Investment write-off	--	773	1,535
Charge to reflect change in RMT's fiscal year	--	(214)	--
Changes in operating assets and liabilities:			
(Increase) in accounts receivable	(2,743)	(8,104)	(7,824)
Decrease (increase) in unbilled work in progress	(3,828)	(7,611)	1,425
Decrease (increase) in prepaid expenses and other assets	473	2,945	(3,180)
Decrease (increase) in other assets	(4,963)	515	(40)
Increase in accounts payable and other accrued liabilities	10,226	329	2,894
Increase in accrued compensation and employee benefits	4,413	3,659	5,105
Increase (decrease) in billings in excess of earned revenues	1,516	1,406	(1,244)
Increase (decrease) in other liabilities	236	664	(1,002)
	-----	-----	-----
Net cash provided by operating activities	41,268	26,059	23,925
	-----	-----	-----
Cash flows from investing activities			
Purchases of property and equipment	(15,669)	(21,653)	(13,472)
Proceeds from sale of property and equipment	--	340	--
Payments for acquisition of subsidiaries	(3,347)	(78)	(2,811)
Purchases of investments	(33,491)	(9,658)	(10,781)
Proceeds from maturities of investments	11,030	7,568	5,913
	-----	-----	-----
Net cash used in investing activities	(41,477)	(23,481)	(21,151)
	-----	-----	-----
Cash flows from financing activities			
Principal payments of capital lease obligations	(387)	(378)	(391)
Proceeds from the exercise of stock options and issuance of treasury stock	2,841	1,020	928
Dividends paid	(1,102)	(1,028)	(991)
Repurchase of company stock	(110)	(470)	--
	-----	-----	-----
Net cash provided by (used in) financing activities	1,242	(856)	(454)
	-----	-----	-----
Increase in cash and cash equivalents	1,033	1,722	2,320
Cash and cash equivalents, beginning of year	13,209	11,487	9,167
	-----	-----	-----
Cash and cash equivalents, end of year	\$ 14,242	\$ 13,209	\$ 11,487
	=====	=====	=====

See accompanying notes to the consolidated financial statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### 1. Nature of Business and Summary of Significant Accounting Policies

#### Nature of business

Fair, Isaac and Company, Incorporated, (the "Company") is incorporated under the laws of the State of Delaware. The Company offers a variety of technological tools to enable users to make better decisions through data. The Company is a world leader in developing predictive and risk assessment models for the financial services industry, including credit and insurance scoring algorithms. The Company also offers direct marketing and database management services, and enterprise-wide risk management and performance measurement solutions to major financial institutions through its wholly owned subsidiaries, DynaMark, Inc. (DynaMark) and Risk Management Technologies (RMT), respectively.

#### Basis of consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated from the consolidated financial statements.

#### Use of estimates

The preparation of financial statements in accordance with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

#### Cash and cash equivalents

Cash and cash equivalents consist of cash in banks and investments with an original maturity of 90 days or less at time of purchase.

#### Investments

Investments in U.S. government obligations and marketable equity securities are classified as "available-for-sale" and carried at market. Investments in 50% or less owned companies in which the Company has the ability to exercise significant influence are accounted for using the equity method and are classified as non-marketable securities. Other investments are carried at the lower of cost or net realizable method and are classified as non-marketable securities.

Investments classified as available-for-sale securities with remaining maturities over one year and non-marketable securities are classified as long-term investments.

#### Credit and market risk

The Company invests a portion of its excess cash in U.S. government obligations and has established guidelines relative to diversification and maturities that maintain safety and liquidity. In addition, an allowance for doubtful accounts is maintained at a level which management believes is sufficient to cover potential credit losses for accounts receivable. Actual losses have been within management's expectations.

#### Depreciation and amortization

Depreciation and amortization on property and equipment including leasehold improvements and capitalized leases are provided using the straight-line method over estimated useful lives ranging from three to ten years or the term of the respective leases.

## Revenue recognition

Revenues from contracts for the development of credit scoring systems and custom software are recognized using the percentage-of-completion method of accounting based upon milestones that are defined using management's estimates of costs incurred at various stages of the project as compared to total estimated project costs. Revenues determined by the percentage-of-completion method in excess of contract billings are recorded as unbilled work in progress. Such amounts are generally billable upon reaching certain performance milestones that are defined by the individual contracts. Deposits billed and received in advance of performance under contracts are recorded as billings in excess of earned revenues.

Revenues from usage-priced products and services are recognized on receipt of usage reports from the third parties through which such products and services are delivered. Amounts due under such arrangements are recorded as unbilled work in progress until collected. Revenues from non-customized software licenses and shrink-wrapped products are recognized upon delivery of product and services, or license renewal. Revenues from products and services sold on time-based pricing, including maintenance of computer and software systems, are recognized ratably over the contract period.

## Software costs

The Company follows one of two paths to develop software. One involves a detailed program design, which is used when introducing new technology; the other involves the creation of a working model for modification to existing technologies that has been supported by adequate testing. All costs incurred prior to the resolution of unproven functionality and features, including new technologies, are expensed as research and development. After the uncertainties have been tested and the development issues have been resolved, technological feasibility is achieved and subsequent costs such as coding, debugging and testing are capitalized.

When developing software using existing technology, the costs incurred prior to the completion of a working model are expensed. Once the product design is met, this typically concludes the software development process and is usually the point at which technological feasibility is established. Subsequent expenses, including coding and testing, if any, are capitalized. For the three-year period ending September 30, 1998, technological feasibility coincided with the completion process; thus, all design and development costs were expensed as research and development costs.

Purchased software costs are amortized over three to five years. For the years ended September 30, 1998, 1997 and 1996, amortization of capitalized software was \$528,000, \$808,000 and \$248,000, respectively. At September 30, 1998 and 1997, unamortized purchased computer software costs were \$6,508,000 and \$1,221,000, respectively.

## Intangibles

The intangible assets consisting of goodwill and non-compete agreements arose principally from business acquisitions and are amortized on a straight-line basis over the period of expected benefit, which ranges from 2 to 15 years. The Company assesses the recoverability of goodwill by evaluating the undiscounted projected results of operations over the remaining amortization period.

## Income taxes

Income taxes are recognized during the year in which transactions enter into the determination of financial statement income, with deferred taxes being provided for temporary differences between amounts of assets and liabilities for financial reporting purposes and such amounts as measured by tax laws.

## Foreign currency

The Company has determined that the functional currency of each foreign operation is the local currency. Assets and liabilities denominated in foreign currencies are translated into U.S. dollars at the exchange rate on the balance sheet date, while revenues and expenses are translated at average rates of exchange prevailing during the period. Translation adjustments are accumulated as a separate component of stockholders' equity.

## Earnings per share

Diluted earnings per share are based on the weighted-average number of common shares outstanding and common stock equivalent shares. Common stock equivalent shares result from the assumed exercise of outstanding stock options that have a dilutive effect when applying the treasury stock method. Basic earnings per share is computed on the basis of the weighted average number of common stock shares outstanding.

## Accounting pronouncements

In June 1997, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard (SFAS) No. 130, "Reporting Comprehensive Income." SFAS No. 130 established standards for reporting comprehensive income and its components in financial statements. This statement requires that all items which are required to be recognized under accounting standards as components of comprehensive income be reported in a financial statement that is displayed with the same prominence as other financial statements. Comprehensive income is equal to net income plus the change in "other comprehensive income." SFAS No. 130 requires that an entity: (a) classify items of other comprehensive income by their nature in a financial statement, and (b) report the accumulated balance of other comprehensive income separately from common stock and retained earnings in the equity section of the balance sheet. This statement is effective for financial statements issued for fiscal years beginning after December 15, 1997. Beginning with the first quarter of 1999, management intends to conform its consolidated financial statements to this pronouncement.

In June 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information." This statement establishes standards for publicly held entities to follow in reporting information about operating segments in annual financial statements and requires that those entities report selected information about operating segments in interim financial statements. This statement also establishes standards for related disclosures about products and services, geographic areas and major customers. This statement is effective for financial statements issued for fiscal years beginning after December 15, 1997. Beginning with fiscal year 1999, management intends to conform its annual consolidated financial statements to this pronouncement.

In October 1997, the American Institute of Certified Public Accountants (AICPA) issued Statement of Position (SOP) No. 97-2, "Software Revenue Recognition," which supersedes SOP 91-1. The Company will be required to adopt SOP 97-2 for software transactions entered into beginning October 1, 1998, and retroactive application to years prior to adoption is prohibited. SOP 97-2 generally requires revenue earned on software arrangements involving multiple elements (e.g., software products, upgrades/enhancements, postcontract customer support, installation, training, etc.) to be allocated to each element based on the relative fair values of the elements. The fair value of an element must be based on evidence, which is specific to the vendor. The revenue allocated to software products (including specified upgrades/enhancements) generally is recognized upon delivery of the products. The revenue allocated to postcontract customer support generally is recognized ratably over the term of the support and revenue allocated to service elements (such as training and installation) generally is recognized as the services are performed. If a vendor does not have evidence of the fair value for all elements in a multiple-element arrangement, all revenue from the arrangement is deferred until such evidence exists or until all elements are delivered. The Company's management believes that the adoption of SOP 97-2 will not have a material impact on the Company's results of operations. Beginning with fiscal year 1999, management intends to conform its consolidated financial statements to this pronouncement.

In February 1998, the FASB issued SFAS No. 132, "Employers' Disclosure about Pensions and Other Postretirement Benefits." The statement standardizes the disclosure requirements for pension and other



postretirement benefits. This statement is effective for financial statements issued for fiscal years beginning after December 15, 1997. The Company is currently evaluating the impact of the disclosure. Beginning with fiscal year 1999, management intends to conform its consolidated financial statements to this pronouncement.

In March 1998, the AICPA issued SOP No. 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use." The SOP requires that certain costs related to the development or purchase of internal-use software be capitalized and amortized over the estimated useful life of the software. The SOP also requires that costs related to the preliminary project stage and the post-implementation/operations stage of an internal-use computer software development project be expensed as incurred. This statement is effective for financial statements issued for fiscal years beginning after December 15, 1998. Beginning with fiscal year 2000, management intends to conform its consolidated financial statements to this pronouncement.

Fair value of financial instruments

The fair values of cash and cash equivalents, accounts receivable and accounts payable are approximately equal to their carrying amounts because of the short-term maturity of these instruments. The fair values of the Company's investment securities are disclosed in Note 4.

2. Mergers and Acquisitions

In July 1997, the Company issued 1,252,665 shares of its common stock (including 544,218 shares underlying options assumed by the Company) in connection with the merger with RMT. The acquisition has been accounted for under the pooling-of-interests method. Accordingly, the consolidated financial statements have been restated for all prior periods to include RMT. Further, all common share and per share data have been restated for prior periods.

For the pre-merger periods indicated, revenues and net income of the Company and RMT are as follows:

(dollars in thousands)	Nine-months ended June 30, 1997 Unaudited	Year ended September 30, 1996
-----		
Revenues		
Fair, Isaac and Company, Incorporated	\$137,031	\$148,749
Risk Management Technologies	5,746	7,164
	-----	-----
	\$142,777	\$155,913
	=====	=====
Net Income		
Fair, Isaac and Company, Incorporated	\$ 13,732	\$ 16,179
Risk Management Technologies	630	1,244
	-----	-----
	\$ 14,362	\$ 17,423
	=====	=====

RMT previously used the fiscal year ended December 31 for its financial reporting. RMT's operating results for the year ended December 31, 1996, are included in the accompanying statement of income in the column headed September 30, 1996. The statement of income's comparative 1997 results reflect the operations of the Company and RMT for the year ended September 30, 1997. Accordingly, the duplication of RMT's net income, for the three months ended December 31, 1996, has been adjusted by a \$214,000 charge to retained earnings in fiscal 1997.

In July 1996, the Company purchased certain assets and liabilities of Printronic Corporation of America, Inc. (Printronic), a privately held direct mail computer processing company, and effective at the close of September 30, 1996, the Company acquired 100% of the stock of Credit & Risk Management Associates, Inc. (CRMA), a privately held consulting services company.

The consideration paid for Printronic and CRMA consisted of 84,735 Company shares valued at \$3,572,000 plus \$1,697,000 in cash. Both acquisitions have been accounted for as purchases. The results of operations of Printronic have been included in the consolidated financial statements since the acquisition date; no results of operations for CRMA are included in the consolidated financial statements for the year ended September 30, 1996. The purchase price for each acquisition was allocated based on estimated fair values at the dates of acquisition. The excess of the purchase prices over the fair value of net assets or liabilities was \$5,547,000 and has been recorded as goodwill, which will be amortized on a straight-line basis over 7 or 15 years.

The CRMA purchase agreement provides for additional contingent cash and Company stock payments to the former CRMA shareholders not to exceed \$5,499,000 based on specified financial performance of CRMA through September 1999. For the years ended September 30, 1998 and 1997, an additional \$265,000 and \$45,000, respectively, were capitalized as goodwill relating to the additional contingent cash and Company stock payments.

Pro forma unaudited consolidated operating results of the Company, Printronic and CRMA for the years ended September 30, 1996, assuming the acquisitions had been made as of October 1, 1995, are summarized below.

Pro forma summary (unaudited) (dollars in thousands except per share data)	Year ended September 30, 1996
-----	
Revenue	\$ 162,491
Net income	\$ 17,495
Earnings per share:	
Diluted	\$ 1.25
Basic	\$ 1.32

These pro forma results have been prepared for comparative purposes only and include certain adjustments such as additional amortization expense as a result of goodwill and other intangible assets. They do not purport to be indicative of the results of operations that actually would have resulted had the combinations been in effect on October 1, 1995, or of future results of operations of the consolidated entities.

### 3. Cash Flow Statement

Supplemental disclosure of cash flow information:

(dollars in thousands)	1998	Years ended September 30, 1997      1996	
-----			
Income tax payments	\$17,174	\$14,278	\$13,785
Interest paid	\$ 803	\$ 336	\$ 223
Non-cash investing and financing activities:			
Tax benefit of exercised stock options	\$ 1,660	\$ 1,474	\$ 1,124
Issuance of common stock to ESOP	\$ 1,323	\$ 969	\$ --
Vesting of restricted stock	\$ 185	\$ 289	\$ 115
Purchase of Printronic and CRMA with common stock	\$ 145	\$ --	\$ 3,572
Contributions of treasury stock to ESOP	\$ --	\$ 609	\$ 1,105

#### 4. Investments

The following is a summary of available-for-sale securities and other investments at September 30, 1998 and 1997:

(dollars in thousands)	1998				1997			
	Amortized cost	Gross unrealized gains	Gross unrealized losses	Fair value	Amortized Cost	Gross unrealized gains	Gross unrealized losses	Fair value
Short-term investments:								
U.S. government obligations	\$ 18,049	\$ 234	\$ --	\$ 18,283	\$ 6,069	\$ 39	\$ --	\$ 6,108
Long-term investments:								
U.S. government obligations	\$ 20,051	\$ 676	\$ --	\$ 20,727	\$ 10,480	\$ 93	\$ --	\$ 10,573
Non-marketable securities	382	--	--	382	306	--	--	306
Marketable equity securities	2,978	281	--	3,259	1,987	716	(321)	2,382
	\$ 23,411	\$ 957	\$ --	\$ 24,368	\$ 12,773	\$ 809	\$ (321)	\$ 13,261

The long-term U.S. government obligations mature in one to five years.

For the year ended September 30, 1997, a non-marketable investment with an equity basis of \$773,000 in an overseas start-up venture, principally an Italian credit reporting agency, was written off due to the potential negative impact on the agency's operations from a new Italian privacy law. During the year ended September 30, 1998, the Company liquidated its share of this non-marketable security for a gain of \$165,000. The Company does not have any further financial commitments with respect to this investment. The Company also recognized its equity share of losses from this Italian venture of \$2,082,000 and \$821,000 for the years ended September 30, 1997 and 1996, respectively.

For the year ended September 30, 1996, an investment of \$1,535,000 in the non-marketable preferred stock of an early-stage enterprise was written off due to the deteriorating financial condition of the entity. The Company does not have any further financial commitments with respect to the investment.

#### 5. Property and Equipment

Property and equipment at September 30, 1998 and 1997 valued at cost, consist of the following:

(dollars in thousands)	1998	1997
Data processing equipment	\$ 42,995	\$ 34,248
Office furniture, vehicles and equipment	16,156	14,383
Leasehold improvements	13,777	12,003
Capitalized leases	2,841	2,841
Less accumulated depreciation and amortization	(38,876)	(28,989)
Net property and equipment	\$ 36,893	\$ 34,486

Depreciation and amortization charged to operations were \$13,553,000, \$10,479,000 and \$7,194,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

Capitalized leases consist primarily of one lease bearing an interest rate of 7% that matures in the year 2001. The following is a schedule, by years, of future minimum lease payments under capitalized leases, together with the present value of the net minimum lease payments, at September 30, 1998:

Years ended September 30,	(dollars in thousands)
1999	\$ 487
2000	467
2001	375
	-----
	1,329
Less: Amount representing interest	(124)
	-----
Present value of net minimum lease payments	\$ 1,205
	=====

#### 6. Intangibles

Intangibles at September 30, 1998 and 1997, consist of the following:

(dollars in thousands)	1998	1997
Goodwill	\$ 13,430	\$ 10,138
Other	2,470	2,270
Less accumulated amortization	(5,442)	(4,047)
	-----	-----
	\$ 10,458	\$ 8,361
	=====	=====

Amortization charged to operations was \$1,395,000, \$1,274,000 and \$734,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

#### 7. Income Taxes

The provision for income taxes consists of the following:

(dollars in thousands)	Years ended September 30,		
	1998	1997	1996
Current:			
Federal	\$ 17,380	\$ 14,685	\$ 9,026
State	3,967	2,863	1,901
Foreign	240	136	270
	-----	-----	-----
	21,587	17,684	11,197
Deferred:			
Federal	(3,152)	(2,400)	183
State	(657)	(424)	(99)
	-----	-----	-----
	(3,809)	(2,824)	84
	-----	-----	-----
	\$ 17,778	\$ 14,860	\$ 11,281
	=====	=====	=====

Amounts for the current year are based upon estimates and assumptions as of the date of this report and could vary significantly from amounts shown on the tax returns as filed.

The tax effect of significant temporary differences resulting in deferred tax assets at September 30, 1998 and 1997, are as follows:

(dollars in thousands)	1998	1997
-----		
Deferred tax assets:		
Depreciation and amortization	\$ 2,350	\$ 2,637
Customer advances	2,198	--
Employee benefit plans	1,594	280
Deferred compensation	1,489	2,042
Compensated absences	1,455	1,070
State taxes	1,388	1,007
Capital loss carryforward	1,245	1,530
Bad debt provision	464	283
Capital lease obligations	197	201
Warranty reserves	140	26
Other	630	103
	-----	-----
	13,150	9,179
Less valuation allowance	(1,245)	(1,083)
	-----	-----
	11,905	8,096
Deferred tax liabilities:		
Tax on net unrealized gains on available-for-sale securities	(491)	(210)
	-----	-----
Deferred tax assets, net	\$ 11,414	\$ 7,886
	=====	=====

The valuation allowance for deferred tax assets at September 30, 1998 and 1997, was \$1,245,000 and \$1,083,000, respectively. The valuation allowance was needed to reduce the deferred tax assets since the Company does not meet the more-likely-than-not requirement for utilization of the capital loss carry forward.

A reconciliation between the federal statutory income tax rate and the Company's effective tax rate is shown below:

(dollars in thousands)	1998	Years ended September 30,	
		1997	1996
-----			
Income tax provision at federal statutory rates in 1998, 1997 and 1996	\$ 14,737	\$ 12,441	\$ 10,031
State income taxes, net of federal benefit	2,152	1,586	1,190
Increase in valuation allowance	162	480	603
Other	727	353	(543)
	-----	-----	-----
	\$ 17,778	\$ 14,860	\$ 11,281
	=====	=====	=====

8. Employee Benefit Plans

Pension plan

The Company has a defined benefit pension plan that covers eligible full-time employees. The benefits are based on years of service and the employee's compensation during employment. Contributions are intended to provide not only for benefits attributed to service to date but also for those expected to be earned in the future. The following table sets forth the plan's funding status at September 30, 1998 and 1997:

(dollars in thousands)	1998	1997
Vested benefit obligation	\$ 9,524	\$ 7,578
Nonvested benefit obligation	1,457	479
Effect of projected future earnings	5,877	3,710
Projected benefit obligation	16,858	11,767
Fair value of plan assets	(10,413)	(10,266)
Projected benefit obligation in excess of plan assets	6,445	1,501
Unrecognized prior service cost	59	68
Unrecognized net loss	(5,895)	(2,692)
Unrecognized net obligation remaining to be amortized	(138)	(158)
Additional minimum liability	97	--
(Prepaid) accrued pension cost	\$ 568	\$ (1,281)

The plan assets consist primarily of U.S. government and marketable equity securities.

The projected benefit obligation includes an accumulated benefit obligation of \$10,981,000 and \$8,057,000 at September 30, 1998 and 1997, respectively. The projected benefit obligation exceeded the fair value of the pension plan assets for the years ended September 30, 1998 and 1997, respectively.

The weighted average discount rate and rate of increase in future compensation levels used in determining the actuarial present value of the projected benefit obligation were 6.5% and 4.0%, respectively, at September 30, 1998, and 7.5% and 5.0%, respectively, at September 30, 1997. The expected long-term rate of return on assets was 8.5% at September 30, 1998 and 1997.

The net pension cost for the fiscal years ended September 30, 1998 and 1997, included the following components:

(dollars in thousands)	1998	1997
Service costs	\$ 1,516	\$ 1,011
Interest cost on projected benefit obligation	943	745
Actual return on plan assets	(840)	(2,050)
Net amortization and deferral	132	1,502
Net periodic pension plan cost	\$ 1,751	\$ 1,208

#### Employee stock ownership plan

The Company has an Employee Stock Ownership Plan (ESOP) that covers eligible full-time employees. Contributions to the ESOP are determined annually by the Company's Board of Directors. In addition, the ESOP may purchase stock from the Company or its stockholders. Provisions for contributions to the ESOP were \$1,803,000, \$1,534,000 and \$1,445,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

At September 30, 1998 and 1997, the ESOP held 835,693 and 970,566 shares of Company stock, respectively. The amount of dividends on ESOP shares were \$75,212, \$81,000 and \$94,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

Company stock held and paid for by the ESOP is allocated annually to participants based on employee compensation levels. While employed by the Company, participants vest in the allocated shares at rates ranging from 0% to 30% over a period of 1 to 7 years until fully vested, depending on the plan.

#### Defined contribution plans

The Company offers 401(k) plans for eligible employees. Eligible employees may contribute up to 15% of compensation. The Company provides a matching contribution, which either vests immediately or over five years, depending on the plan. The Company contributions to 401(k) plans were \$790,000, \$673,000 and \$470,000 for the years ended September 30, 1998, 1997 and 1996, respectively. In addition, the Company maintains a supplemental retirement and savings plan for certain officers and senior management employees. Company contributions to that plan were \$247,000, \$132,000 and \$104,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

#### Officers' incentive plan

The Company has an executive compensation plan for the benefit of officers. Benefits are payable based on the achievement of financial and performance objectives, which are set annually by the Board of Directors, and the market value of the Company's stock. Total expenses under the plan were \$3,273,000, \$3,842,000 and \$3,560,000 for the years ended September 30, 1998, 1997 and 1996, respectively. The incentive earned each year is paid 50% currently, and the balance is payable over a four-year period, subject to certain adjustments, as defined in the plan, based on employment status and the market value of the Company's common stock. At September 30, 1998 and 1997, the long-term officers' incentive plan payable was \$3,066,000 and \$3,475,000, respectively.

#### Employee incentive plans

The Company has incentive plans for eligible employees not covered under the executive compensation plan. Awards under these plans are paid annually and are based on the achievement of certain financial and performance objectives. Total expenses under these plans were \$5,537,000, \$5,211,000 and \$4,426,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

### 9. Stock

#### Common

A total of 35,000,000 shares of common stock, \$.01 par value, are authorized, of which 13,992,126 shares (including 9,787 shares of treasury stock) were outstanding at September 30, 1998, and 13,474,382 shares (including 12,114 shares of treasury stock) were outstanding at September 30, 1997.

#### Preferred

A total of 1,000,000 shares of preferred stock, \$.01 par value, are authorized; no preferred stock has been issued.

10. Stock Option Plans

The Company has two stock option plans, one of which is for the granting of stock options, stock appreciation rights, restricted stock and common stock that reserve shares of common stock for issuance to officers, key employees and non-employee directors. The Company has elected to continue to apply the provisions of APB No. 25, and provide the pro forma disclosures of SFAS No. 123, "Accounting for Stock-Based Compensation." Granted awards generally have a maximum term of ten years and vest over one to five years. Under this plan approved by the stockholders, a number of shares equal to 4% of the number of shares of the Company's common stock outstanding on the last day of the preceding fiscal year is added to the shares available under the plan each fiscal year, provided that the number of shares suitable for grants of incentive stock options for the remaining term of the plan shall not exceed 1,500,000 shares. The other plan is limited to the former employees of RMT, who, as of the merger date, held unexpired and unexercised stock option grants under the RMT stock option plans. Granted awards have a maximum term of ten years and vest over three years. The total number of issuable options under the plan is 650,800.

The fair value of options at the date of grant was estimated using the Black-Scholes model with the following weighted-average assumptions for the years ended September 30:

	1998	1997	1996
Expected life (years)	5	5	5
Interest rate	5.5%	6.5%	6.2%
Volatility	43%	45%	45%
Dividend yield	0%	0%	0%

The following information regarding these option plans for the years ended September 30 is as follows:

	1998		1997		1996	
	Options	Weighted-average exercise price	Options	Weighted-average exercise price	Options	Weighted-average exercise price
Outstanding at beginning of year	1,843,000	\$20.63	1,388,000	\$12.21	1,324,000	\$ 6.72
Granted	526,000	\$38.02	613,000	\$36.82	286,000	\$ 32.57
Exercised	(487,000)	\$ 5.61	(141,000)	\$ 7.19	(222,000)	\$ 5.62
Forfeited	(86,000)	\$34.43	(17,000)	\$28.96	--	\$ --
Outstanding at end of year	1,796,000	\$29.11	1,843,000	\$20.63	1,388,000	\$ 12.21
Options exercisable at year end	541,000	\$11.80	782,000	\$ 5.33	694,000	\$ 3.73

The weighted-average fair value of options granted for the years ended September 30, 1998, 1997 and 1996, was \$17.30, \$17.47 and \$15.35, respectively.



The following table summarizes information about significant fixed-price stock option groups outstanding September 30, 1998:

Range of exercise prices	Options outstanding			Options exercisable	
	Number outstanding	Weighted average remaining contractual life	Weighted average exercise price	Number outstanding	Weighted average exercise price
\$ .92 to \$ 3.50	238,000	1.27	\$ 2.09	238,000	\$ 2.09
\$ 3.84 to \$ 19.31	226,000	5.00	\$ 11.95	209,000	\$ 12.41
\$20.75 to \$ 36.94	430,000	6.22	\$ 31.91	45,000	\$ 27.11
\$38.25 to \$ 45.63	902,000	7.84	\$ 39.22	49,000	\$ 42.33
	-----			-----	
\$ .92 to \$ 45.63	1,796,000	6.22	\$ 29.11	541,000	\$ 11.80
	=====			=====	

Stock-based compensation under SFAS No. 123 would have had the following pro forma effects for the years ended September 30:

(in thousands, except per share data)	1998	1997	1996
Net income, as reported	\$ 24,327	\$ 20,686	\$ 17,423
	=====	=====	=====
Pro forma net income	\$ 20,655	\$ 18,091	\$ 17,002
	=====	=====	=====
Earnings per share, as reported:			
Diluted	\$ 1.68	\$ 1.46	\$ 1.25
	=====	=====	=====
Basic	\$ 1.77	\$ 1.55	\$ 1.32
	=====	=====	=====
Pro forma earnings per share:			
Diluted	\$ 1.43	\$ 1.27	\$ 1.22
	=====	=====	=====
Basic	\$ 1.50	\$ 1.35	\$ 1.29
	=====	=====	=====

The pro forma effect on net income for each of the years ended September 30, 1998, 1997 and 1996, may not be representative of the effects on reported net income in future years.

#### 11. Commitments and Contingencies

The Company conducts certain of its operations in facilities occupied under non-cancelable operating leases with lease terms in excess of one year. The leases generally provide for annual increases based upon the Consumer Price Index or fixed increments.

In May 1998, the Company entered into a synthetic lease agreement to lease land in San Rafael, California, and improvements comprising the first phase of an office complex facility to be constructed on the land. A synthetic lease is asset-based financing structured to be treated as a lease for accounting purposes but as a loan for tax purposes. The office complex facility is intended to accommodate the future growth of the Company.

The Company had an option (the "Option") to purchase the undeveloped land in December 1997, and the Option was assigned to the lessor in connection with the synthetic lease transaction. The lessor under the synthetic lease has committed to spend up to \$55 million for the purchase of the land and construction of this first phase of the facility, and the Company will act as construction agent for the lessor. At September 30, 1998, the lessor's total accumulated cost for land and construction of the facility was \$15.1 million. The lease term began in May 1998 and continues thereafter for five years for the land and, when they are constructed, will incorporate the buildings and other improvements that will comprise the first phase of the facility. Rental payments will commence on completion of construction, and at that time the rental payments will be based on the total construction costs for the facility and the one month LIBOR rate plus 0.75% or 1.00%. The completion of construction is expected to occur in January 2001.

With the approval of lessor, the Company may extend the lease term for up to three one-year periods or one three-year period. The Company has the option either to purchase the entire facility at a purchase price approximating lessor's then-accumulated total costs or only certain portions of the facility, at a pre-set price, at any time during the term or, at the expiration of the lease term to cause the facility to be sold to a third party.

The synthetic lease requires the Company to maintain specified financial covenants, all of which the Company was in compliance with at September 30, 1998. Future minimum lease payments under the synthetic lease are not included in the schedule below.

Minimum future rental commitments under operating leases are as follows:

Year ending September 30,	(dollars in thousands)
-----	-----
1999	\$ 7,954
2000	8,198
2001	7,779
2002	7,544
2003	5,075
Thereafter	33,270
	-----
	\$ 69,820
	=====

Rent expense under operating leases, including month-to-month leases, was \$8,298,000, \$6,413,000 and \$4,821,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

The Company is involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company's consolidated financial condition.

#### 12. Segment Information

The Company operates principally in the financial services industry. Operations in other industries are less than 10% of consolidated revenues. The Company's international operations consist primarily of sales, production and service offices. Foreign sales are primarily exports. The Company's revenues from customers outside the United States were \$42,894,000, \$33,879,000 and \$26,142,000 for the years ended September 30, 1998, 1997 and 1996, respectively.

#### 13. Other Income (Expense)

Other income (expense) consists of the following:

(dollars in thousands)	Years ended September 30,		
	1998	1997	1996
-----	-----	-----	-----
Interest income	\$ 2,403	\$ 2,040	\$ 1,748
Interest expense	(803)	(336)	(223)
Foreign currency loss	(278)	(677)	(97)
Equity loss in investments	--	(2,082)	(821)
Investment write-off	--	(773)	(1,535)
Acquisition expenses	--	(558)	--
Other	351	176	114
	-----	-----	-----
	\$ 1,673	\$(2,210)	\$ (814)
	=====	=====	=====

## Earnings Per Share

The following reconciles the numerators and denominators of diluted and basic earnings per share (EPS):

(dollars in thousands, except per share data)	1998	Years ended September 30,	
		1997	1996
Numerator - Net income	\$ 24,327 =====	\$ 20,686 =====	\$ 17,423 =====
Denominator - Shares:			
Diluted weighted-average shares and assumed conversions of stock options	14,463	14,202	13,922
Effect of dilutive securities - employee stock options	(700)	(816)	(761)
Basic weighted-average shares	13,763 =====	13,386 =====	13,161 =====
Earnings per share:			
Diluted	\$ 1.68 =====	\$ 1.46 =====	\$ 1.25 =====
Basic	\$ 1.77 =====	\$ 1.55 =====	\$ 1.32 =====

Total options outstanding included 930,000, 474,000 and 59,000 options to purchase shares of common stock at prices ranging from \$36.50 to \$45.63, \$38.25 to \$45.63 and \$40.00 to \$41.88 at September 30, 1998, 1997 and 1996, respectively. These options were not included in the computation of diluted EPS because the exercise price for such options was greater than the average market price of the common shares for the years ended September 30, 1998, 1997 and 1996, respectively.

### 15. Supplementary Financial Data (Unaudited)

The following table presents selected unaudited consolidated financial results for each of the eight quarters in the two-year period ended September 30, 1998. In the Company's opinion, this unaudited information has been prepared on the same basis as the audited information and includes all adjustments (consisting of only normal recurring adjustments) necessary for a fair statement of the consolidated financial information for the period presented.

(in thousands, except per share data)	Dec. 31, 1996	Mar. 31, 1997	June 30, 1997	Sept. 30, 1997
Revenues	\$ 43,337	\$ 48,366	\$ 51,074	\$ 56,232
Cost of revenues	16,372	17,825	18,715	19,654
Gross profit	\$ 26,965 =====	\$ 30,541 =====	\$ 32,359 =====	\$ 36,578 =====
Net income	\$ 4,698 =====	\$ 5,370 =====	\$ 4,294 =====	\$ 6,324 =====
Earnings per share:				
Diluted	\$ .33 =====	\$ .38 =====	\$ .30 =====	\$ .44 =====
Basic	\$ .35 =====	\$ .40 =====	\$ .32 =====	\$ .47 =====
Shares used in computing earnings per share:				
Diluted	14,155,000 =====	14,228,000 =====	14,325,000 =====	14,452,000 =====
Basic	13,291,000 =====	13,361,000 =====	13,395,000 =====	13,449,000 =====

(in thousands, except per share data)	Dec. 31, 1997	Mar. 31, 1998	June 30, 1998	Sept. 30, 1998
Revenues	\$ 53,511	\$ 59,655	\$ 64,642	\$ 67,737
Cost of revenues	19,865	21,206	21,946	21,963
Gross profit	\$ 33,646	\$ 38,449	\$ 42,696	\$ 45,774
Net income	\$ 3,967	\$ 5,488	\$ 6,399	\$ 8,473
Earnings per share:				
Diluted	\$ .28	\$ .38	\$ .45	\$ .59
Basic	\$ .29	\$ .40	\$ .46	\$ .61
Shares used in computing earnings per share:				
Diluted	14,346,000	14,304,000	14,359,000	14,449,000
Basic	13,489,000	13,707,000	13,894,000	13,964,000

The financial data for the above quarterly information has been restated to reflect the merger, effective July 1997, between Fair, Isaac and Company, Incorporated, and Risk Management Technologies, which has been accounted for under the pooling-of-interests method.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The required information regarding Directors of the registrant is incorporated by reference from the information under the caption "Election of Directors - Nominees" in the Company's definitive proxy statement for the Annual Meeting of Stockholders to be held on February 2, 1999.

The required information regarding Executive Officers of the registrant is contained in Part I of this Form 10-K.

The required information regarding compliance with Section 16(a) of the Securities Exchange Act is incorporated by reference from the information under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in the Company's definitive proxy statement for the Annual Meeting of Stockholders to be held on February 2, 1999.

ITEM 11. EXECUTIVE COMPENSATION

Incorporated by reference from the information under the captions "Compensation of Directors and Executive Officers," "Compensation Committee Interlocks and Insider Participation," and "Director Consulting Arrangements" in the Company's definitive proxy statement for the Annual Meeting of Stockholders to be held on February 2, 1999.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Incorporated by reference from the information under the caption "Stock Ownership" in the Company's definitive proxy statement for the Annual Meeting of Stockholders to be held on February 2, 1999.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Incorporated by reference from the information under the captions "Director Consulting Arrangements" and "Compensation Committee Interlocks and Insider Participation" in the Company's definitive proxy statement for the Annual Meeting of Stockholders to be held on February 2, 1999.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

	Reference Page Form 10-K
(a) 1. Consolidated financial statements:	
Report of Independent Auditors.....	25
Consolidated statements of income for each of the years in the three-year period ended September 30, 1998.....	26
Consolidated balance sheets at September 30, 1998 and September 30, 1997.....	27
Consolidated statements of stockholders' equity for each of the years in the three-year period ended September 30, 1998.....	28
Consolidated statements of cash flows for each of the years in the three-year period ended September 30, 1998..	29
Notes to consolidated financial statements.....	30
2. Financial statement schedule:	
Independent Auditor's Report on Financial Statement Schedule....	52
II Valuation and qualifying accounts at September 30, 1998, 1997 and 1996.....	53
3. Exhibits:	
2.1 Lease dated December 2, 1998, by and between DynaMark, Inc., and CSM Corporation.	
2.2 Agreement and Plan of Reorganization, dated June 12, 1997, among the Company, FIC Acquisition Corporation, Risk Management Technologies ("RMT"), and the shareholders and optionholders of RMT, filed as Exhibit 2.2 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference. Pursuant to Item 601(b)(2) of Regulation S-K, certain schedules were omitted but will be furnished supplementally to the Commission on request.	
2.3 Employment Agreement, dated July 21, 1997, by and between the Company and David LaCross, filed as Exhibit 2.3 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.*	
2.4 Amendment To Lease, dated December 2, 1998, by and between CSM Corporation (assignee) and DynaMark, Inc. amending lease dated May 1, 1995 between DynaMark, Inc. and Control Data Systems Inc.	
3.1 Restated Certificate of Incorporation of the Company, filed as Exhibit 3.1 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.	

- 3.2 Restated By-laws of the Company, filed as Exhibit 3.2 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.
- 4.1 Registration Rights Agreement, dated June 23, 1997, among the Company, David LaCross and Kathleen O. LaCross, Trustees U/D/T dated April 2, 1997, Jefferson Braswell, Software Alliance LLC, Robert Ferguson, James T. Fan and Leland Prussia, filed as Exhibit 4.1 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.\*
- 4.2 Registration Rights Agreement, dated September 30, 1996, among the Company, Donald J. Sanders, Paul A. Makowski and Lawrence E. Dukes, filed as Exhibit 4.2 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.
- 10.1 Certificate of Resolution Changing Officers' Incentive Plan, Exempt Employees Bonus Plan and other Company Plan Parameters.\*
- 10.2 Company's 1987 Stock Option Plan, originally filed as Exhibit 10.2 to the Company's Registration Statement on Form S-1 (Commission File No. 33-14491) (the "Registration Statement").\*
- 10.3 Lease dated April 28, 1995, between CSM Investors, Inc., and DynaMark, Inc. filed as Exhibit 10.3 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.
- 10.4 Fair, Isaac and Company, Inc. Officers' Incentive Plan (effective October 1, 1992), originally filed as Exhibit 10.4 to the Company's report on Form 10-K for the fiscal year ended September 30, 1994.\*
- 10.5 Lease, dated October 30, 1983, between S.R.P. Limited Partnership and the Company, as amended, originally filed as Exhibit 10.7 to the Registration Statement.
- 10.6 Stock Option Plan for Non-Employee Directors, originally filed as Exhibit 10.8 to the Company's report on Form 10-K for the fiscal year ended September 30, 1988.\*
- 10.7 Lease dated July 1, 1993, between The Joseph and Eda Pell Revocable Trust and the Company and the First through Fifth Addenda thereto filed as Exhibit 10.7 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.
- 10.8 First Amendment to the Company's 1987 Stock Option Plan, originally filed as Exhibit 10.11 to the Company's report on Form 10-K for the fiscal year ended September 30, 1989.\*
- 10.9 First Amendment to the Company's Stock Option Plan for Non-Employee Directors, originally filed as Exhibit 10.12 to the Company's report on Form 10-K for the fiscal year ended September 30, 1989.\*
- 10.10 Amendment No.1 to the Company's 1992 Long-Term Incentive Plan (as amended and restated effective November 21, 1995), filed as Exhibit 10.10 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997 and incorporated herein by reference.\*
- 10.11 Addendum Number Seven to lease between S.R.P. Limited Partnership and the Company, originally filed as Exhibit 10.15 to the Company's report on Form 10-K for the fiscal year ended September 30, 1990.
- 10.12 Addenda Numbers Eight and Nine to lease between SRP Limited Partnership and the Company filed as Exhibit 10.12 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.

- 10.13 Lease, dated September 5, 1991, between 111 Partners, a California general partnership, and the Company originally filed as Exhibit 10.20 to the Company's report on Form 10-K for the fiscal year ended September 30, 1991.
- 10.14 Construction Loan Agreement, dated September 5, 1991, between 111 Partners and the Company originally filed as Exhibit 10.21 to the Company's report on Form 10-K for the fiscal year ended September 30, 1991.
- 10.15 Amendment No.2 to the Company's 1992 Long-Term Incentive Plan (as amended and restated effective November 21, 1995) filed as exhibit 10.15 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.\*
- 10.16 The Company's 1992 Long-Term Incentive Plan as amended and restated effective November 21, 1995, filed as Exhibit 10.16 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.\*
- 10.17 Amendment No.3 to the Company's Stock Option Plan for Non-Employee Directors, filed as Exhibit 10.17 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.\*
- 10.18 Lease dated May 1, 1995, between Control Data Corporation and DynaMark, Inc. filed as Exhibit 10.18 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.
- 10.19 Lease dated April 10, 1994, between Leed Properties and DynaMark, Inc., filed as Exhibit 10.19 to the Company's report on Form 10-K for the fiscal year ended September 30, 1994, and incorporated herein by reference.
- 10.20 Fair, Isaac Supplemental Retirement and Savings Plan and Trust Agreement effective November 1, 1994, filed as Exhibit 10.20 to the Company's report on Form 10-K for the fiscal year ended September 30, 1994, and incorporated herein by reference.\*
- 10.21 Lease dated July 10, 1993, between the Joseph and Eda Pell Revocable Trust and the Company filed as Exhibit 10.21 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.
- 10.22 Lease dated October 11, 1993, between the Joseph and Eda Pell Revocable Trust and the Company and the First through Fourth Addenda thereto filed as Exhibit 10.22 to the Company's report on Form 10-K for the fiscal year ended September 30, 1995, and incorporated herein by reference.
- 10.23 Second Amendment to Lease dated December 2, 1998, between CSM Corporation and DynaMark, Inc. amending lease between the parties dated March 11, 1997.
- 10.24 Exchange Agreement and Plan of Reorganization, dated July 19, 1996, among DynaMark, Inc., Printronic Corporation of America, Inc., Leo R. Yochim, and Susan Keenan, filed as Exhibit 10.24 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.
- 10.25 Agreement and Plan of Merger and Reorganization, dated September 30, 1996, among the Company, FIC Acquisition Corporation, Credit & Risk Management Associates, Inc., Donald J. Sanders, Paul A. Makowski and Lawrence E. Dukes, filed as Exhibit 10.25 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.



- 10.26 Contract between the Company and Dr. Robert M. Oliver, dated April 2, 1996, filed as Exhibit 10.26 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.\*
- 10.27 Letter of Intent dated July 15, 1996, between the Company and Village Properties, and the First Amendment thereto dated July 18, 1996, filed as Exhibit 10.27 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.
- 10.28 Office Building Lease, dated November 14, 1996, between the Company and Regency Center, filed as Exhibit 10.28 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.
- 10.29 Sixth and Seventh Addenda to the Lease, dated July 1, 1993, between the Company and the Joseph and Eda Pell Revocable Trust, filed as Exhibit 10.29 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.
- 10.30 First and Second Addenda to the Lease dated July 10, 1993, between the Company and the Joseph and Eda Pell Revocable Trust, filed as Exhibit 10.30 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.
- 10.31 Fifth Addendum to the Lease, dated October 11, 1993, between the Company and the Joseph and Eda Pell Revocable Trust, filed as Exhibit 10.31 to the Company's report on Form 10-K for the fiscal year ended September 30, 1996, and incorporated herein by reference.
- 10.32 First Addendum to Lease, dated August 13, 1997, by and between the Company and Regency Center, filed as Exhibit 10.32 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.
- 10.33 Option Agreement, dated November 26, 1997, by and between the Company and Village Builders, L.P., filed as Exhibit 10.33 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.
- 10.34 Leasehold Improvements Agreement, dated November 26, 1997, by and between the Company and Village Builders, L.P., filed as Exhibit 10.34 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.
- 10.35 Lease, dated March 11, 1997, by and between DynaMark, Inc. and CSM, filed as Exhibit 10.35 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.
- 10.36 First Amendment to Lease, dated September 24, 1997, by and between DynaMark, Inc. and CSM, filed as Exhibit 10.36 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference.
- 10.37 Chase Database Agreement, dated October 29, 1997, by and among DynaMark, Inc. and Chase Manhattan Bank USA, National Association, filed as Exhibit 10.37 to the Company's report on Form 10-K for the fiscal year ended September 30, 1997, and incorporated herein by reference. Confidential treatment has been requested for certain portions of this document. Such portions have been omitted from the filing and have been filed separately with the Commission.
- 10.38 Participation Agreement, dated May 15, 1998, between Company, Lease Plan North America, Inc., ABN Amro Bank N.V. and other participants named therein.

- 10.39 Lease Agreement, Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated May 15, 1998, between Company and Lease Plan North America, Inc.
- 10.40 Purchase Agreement dated May 15, 1998, between Company and Lease Plan North America, Inc.
- 10.41 Third Amendment to Lease Dated December 2, 1998, by and between CSM Corporation and DynaMark, Inc. amending lease between the parties dated April 28, 1995.
- 21.1 Subsidiaries of the Company.
- 23.1 Consent of KPMG Peat Marwick LLP (see page 54 of this Form 10-K).
- 24.1 Power of Attorney (see page 51 of this Form 10-K).
- 27 Financial Data Schedule.

\* Management contract or compensatory plan or arrangement.

(b) Reports on Form 8-K:

No reports on Form 8-K were filed with the Securities and Exchange Commission during the fiscal quarter ended September 30, 1998.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FAIR, ISAAC AND COMPANY, INCORPORATED

DATE: December 28, 1998

By /s/ Peter L. McCorkell  
 -----  
 Peter L. McCorkell  
 Senior Vice President,  
 Secretary and General Counsel

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints PETER L. McCORKELL his attorney-in-fact, with full power of substitution, for him in any and all capacities, to sign any amendments to this Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ Larry E. Rosenberger ----- Larry E. Rosenberger	President, Chief Executive Officer (Principal Executive Officer) and Director	December 28, 1998
/s/ Patricia Cole ----- Patricia Cole	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	December 28, 1998
/s/ A. George Battle ----- A. George Battle	Director	December 28, 1998
/s/ Bryant J. Brooks ----- Bryant J. Brooks	Director	December 28, 1998
/s/ H. Robert Heller ----- H. Robert Heller	Director	December 28, 1998
/s/ Guy R. Henshaw ----- Guy R. Henshaw	Director	December 28, 1998
/s/ David S. P. Hopkins ----- David S. P. Hopkins	Director	December 28, 1998
/s/ Robert M. Oliver ----- Robert M. Oliver	Director	December 28, 1998
/s/ Robert D. Sanderson ----- Robert D. Sanderson	Director	December 28, 1998
/s/ John D. Woldrich ----- John D. Woldrich	Director	December 28, 1998

The Board of Directors  
Fair, Isaac and Company, Incorporated:

Under date of October 29, 1998, we reported on the consolidated balance sheets of Fair, Isaac and Company, Incorporated and subsidiaries as of September 30, 1998 and 1997, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the years in the three-year period ended September 30, 1998, which are included in the 1998 annual report on Form 10-K. In connection with our audits of the aforementioned consolidated financial statements, we also audited the related financial statement schedule in the 1998 annual report on Form 10-K. This financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement schedule based on our audits.

In our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

San Francisco, California  
October 29, 1998

Schedule II

Fair, Isaac and Company, Incorporated  
 VALUATION AND QUALIFYING ACCOUNTS  
 Rule 12-09  
 September 30, 1998, 1997 and 1996

Description -----	Balance at Beginning of Period -----	Additions -----		Write-offs -----	Balance at End of Period -----
		Charged to Expense -----	Other(1) -----		
September 30, 1998:					
Allowance for Doubtful Accounts	\$ 758,000	\$ 677,000	\$ --	\$ (272,000)	\$1,163,000
September 30, 1997:					
Allowance for Doubtful Accounts	\$ 485,000	\$ 438,000	\$ --	\$ (165,000)	\$ 758,000
September 30, 1996:					
Allowance for Doubtful Accounts	\$ 332,000	\$ 600,000	\$ 11,000	\$ (458,000)	\$ 485,000

(1) Amount represents the allowance recorded due to the acquisition of Credit & Risk Management Associates, Inc.

Consent of Independent Auditors

The Board of Directors  
Fair, Isaac and Company, Incorporated:

We consent to incorporation by reference in the registration statement (No. 33-20349) on Form S-8, the registration statement (No. 33-26659) on Form S-8, the registration statement (No. 33-63428) on Form S-8, the registration statement (No. 333-02121) on Form S-8, the registration statement (No. 333-32309) on Form S-8, the registration statement (No. 333-20537) on Form S-3, the registration statement (No. 333-42473) on Form S-3 of Fair, Isaac and Company, Incorporated and subsidiaries of our reports dated October 29, 1998, relating to the consolidated balance sheets of Fair, Isaac and Company, Incorporated and subsidiaries as of September 30, 1998 and 1997, and the related consolidated statements of income, stockholders' equity, and cash flows and related financial statement schedule for each of the years in the three-year period ended September 30, 1998, which reports appear in the September 30, 1998 annual report on Form 10-K of Fair, Isaac and Company, Incorporated, and subsidiaries.

San Francisco, California  
December 28, 1998

EXHIBIT INDEX  
TO FAIR, ISAAC AND COMPANY, INCORPORATED  
REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1998

Exhibit No.	Exhibit
2.1	Lease dated December 2, 1998, by and between DynaMark, Inc. and CSM Corporation.
2.4	Amendment To Lease, dated December 2, 1998, by and between CSM Corporation (assignee) and DynaMark, Inc. amending lease dated May 1, 1995 between DynaMark, Inc. and Control Data Systems Inc.
10.1	Certificate of Resolution Changing Officers' Incentive Plan, Exempt Employees Bonus Plan and other Company Plan Parameters.
10.2	Company's 1987 Stock Option Plan, originally filed as Exhibit 10.2 to the Registration Statement.
10.5	Lease, dated October 30, 1983, between S.R.P. Limited Partnership and the Company, as amended, originally filed as Exhibit 10.7 to the Registration Statement.
10.6	Stock Option Plan for Non-Employee Directors, originally filed as Exhibit 10.8 to the Company's report on Form 10-K for the fiscal year ended September 30, 1988.
10.8	First Amendment to the Company's 1987 Stock Option Plan, originally filed as Exhibit 10.11 to the Company's report on Form 10-K for the fiscal year ended September 30, 1989.
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10.14	Construction Loan Agreement, dated September 5, 1991, between 111 Partners and the Company originally filed as Exhibit 10.21 to the Company's report on Form 10-K for the fiscal year ended September 30, 1991.
10.23	Second Amendment to Lease dated December 2, 1998 between CSM Corporation and DynaMark, Inc. amending lease between the parties dated March 11, 1997.
10.38	Participation Agreement, dated May 15, 1998, between Company, Lease Plan North America, Inc., ABN Amro Bank N.V. and other participants named therein.

- 10.39 Lease Agreement, Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated May 15, 1998, between Company and Lease Plan North America, Inc.
- 10.40 Purchase Agreement dated May 15, 1998, between Company and Lease Plan North America, Inc.
- 10.41 Third Amendment To Lease, dated December 2, 1998, by and between CSM Corporation and DynaMark, Inc. amending lease between the parties dated April 28, 1995.
- 21.1 Subsidiaries of the Company.
- 23.1 Consent of KPMG Peat Marwick LLP (see page 54 of this Form 10-K).
- 24.1 Power of Attorney (see page 51 of this Form 10-K).
- 27 Financial Data Schedule.



L E A S E

ARTICLE 1. LEASE TERMS

1.1 LANDLORD AND TENANT. This lease ("Lease") is entered into this 2nd day of December, 1998 by and between CSM CORPORATION, a Minnesota corporation, ("Landlord") and DYNAMARK, INC., a Minnesota corporation, ("Tenant").

1.2 PREMISES. Landlord hereby rents, leases, lets and demises to Tenant the premises and building (sometimes hereinafter referred to as the "Premises" and "Building", or collectively as the "Premises") illustrated on the site plan attached hereto as EXHIBIT A, together with a nonexclusive right of ingress, egress and access over and across the private drives shown on EXHIBIT A. The Premises and Building are located on the real property legally described on attached EXHIBIT B. The parties acknowledge that the Tenant is leasing the entire Building, and that the Building and Premises consist of approximately 50,407 square feet.

The Tenant acknowledges that the Premises are a part of a development which, with the addition of the Premises, will include four buildings and associated appurtenant improvements, all as shown on the site plan attached as EXHIBIT A. The Tenant acknowledges and agrees that the Premises will be subject to and benefited by various non-exclusive easements for ingress, egress and access over the private drives serving the Project, and certain exclusive easements for utilities, and other purposes provided that the same shall not interfere with the use and enjoyment of the Premises, as contemplated herein.

1.3 IMPROVEMENTS. Landlord shall diligently pursue the construction of the Building, improvements to the Premises, and site improvements pursuant to plans and specifications agreed to by Landlord and Tenant pursuant to Section 6.1 of this Lease. Architectural plans and specifications describing the improvements to be constructed are attached hereto as EXHIBITS C and D.

1.4 LEASE TERM.

- A. Term. The term of this Lease shall be for a period of one hundred fifty-six (156) months ("Lease Term"), commencing on the commencement date hereinafter specified
- B. Commencement Date. The Lease Term shall commence (the "Commencement Date") on the date that Landlord delivers the Premises to Tenant substantially complete and ready for occupancy by Tenant. The parties anticipate that the Premises will be delivered to Tenant on or about July 1, 1999. If Landlord, despite its diligent efforts, is unable to deliver the Premises to Tenant on or before such date this Lease shall nevertheless remain in full force and effect, and Landlord shall exercise diligent and reasonable efforts to deliver the Premises to Tenant as soon thereafter as is reasonably possible. If the Landlord's failure to deliver possession of the Premises on July 1, 1999 results in the Tenant paying holdover rent at its "Churchill" facility, the Landlord shall reimburse the Tenant for its actual holdover costs, provided that the Landlord's

1

Exhibit 2.1

reimbursement shall in no case exceed \$5,000.00. In addition, the Landlord shall also reimburse the Tenant for "overlap" of any rent that the Tenant pays at the Churchill facility due to Landlord's failure to deliver the Premises by the first of the month. For example, if the Tenant must pay the Churchill landlord \$15,000.00 for July rental, which includes \$5,000.00 of holdover rent, due to the Landlord's failure to complete the Premises, and the Tenant ultimately vacates the Churchill facility on July 15th, but is not entitled to a refund for the balance of the July rent, the Landlord's penalty would be \$10,161.00, which represents a \$5,000.00 holdover penalty and \$5,161.00 for 16/31 of the month for which the Tenant is obligated to pay rent at two facilities. Any penalty owed by the Landlord may be paid by crediting the Tenant's next rent obligation. When the Commencement Date has been established as above provided, the parties shall execute an Addendum to Lease in the form attached hereto as EXHIBIT E, which Addendum shall, among other things, confirm the Commencement Date. If the Commencement Date is other than the first day of a calendar month, this Lease shall continue in force and effect for the full Lease Term from and after the first day of the calendar month next succeeding the Commencement Date.

- C. Subject to the terms and conditions hereinafter set forth, Tenant shall have the option to extend the term of this Lease for one (1) additional sixty (60) month term ("Option Term") upon and pursuant to the same conditions contained herein. This option may be exercised by written notice of exercise from Tenant to Landlord given not less than one (1) year prior to the expiration of the Lease Term. Tenant may exercise this option only if: (i) no condition of default exists with respect to Tenant's performance of its obligations under the Lease; and (ii) Tenant simultaneously exercises its options to extend under the New Lease and under the Existing Lease covering the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota (as defined in Section 14.12 of the

New Lease). Base Rent for the Option Term shall be at the fair market rate for comparable space in the north suburban geographic area. The fair market rent shall be agreed upon by Tenant and Landlord within sixty (60) days of Tenant's notice to Landlord of its irrevocable intent to exercise its option to extend set forth herein. The fair market rental rate shall be determined in accordance with the definition set forth in Section 7 of the Existing Lease dated May 1, 1995 and amended December 30, 1996 for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. In the event that Landlord and Tenant fail to agree to the fair market rental rate in the time period set forth herein, then the fair market rent shall be established in accordance with the arbitration procedures set forth in Section 8 of the Existing Lease for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. If Tenant fails to exercise this option as aforesaid, this option shall be null and void and of no further force and effect.

- D. Miscellaneous. In the event that Tenant does not vacate the Premises upon the expiration or termination of this Lease, Tenant shall be a tenant at will for the holdover period and all of the terms and provisions of this Lease shall be applicable during that period, except that Tenant shall pay Landlord as base rental for the period of such holdover an amount equal to one and one-quarter

(1.25) times the base rent which would have been payable by Tenant had the holdover period been a part of the original term of this Lease, together with all additional rent as provided in this Lease. During any such holdover period, Tenant agrees to vacate and deliver the Premises to Landlord upon Tenant's receipt of notice from Landlord to vacate. The rental payable during the holdover period shall be payable to Landlord on demand. No holding over by Tenant, whether with or without the consent of Landlord, shall operate to extend the term of this Lease.

1.5 BASE RENT.

A. Initial Base Rent.

	Months -----	Monthly Base Rent* -----	Per Sq. Ft.* -----
Initial Term:			
	1-60	\$64,899.01	\$15.45
	61-120	\$66,789.28	\$15.90
	121-156	\$68,679.54	\$16.35
Option Term:			
	157-216	market	market

\*Base Rent is subject to adjustment as provided in Sections 1.5.B., 6.1, and 14.14 of this Lease

B. Adjustment of Base Rent. The Initial Base Rent set forth above has been computed at the per square foot rates set forth above, assuming that the Premises consist of 50,407 square feet. The actual number of square feet in the Premises shall be determined by Landlord from "As Built" measurements of the Building and Premises, and shall be accomplished by measuring from the exterior face of the exterior walls of the Building. Once such measurements are accomplished, Landlord and Tenant shall execute an addendum to lease to confirm the actual square footage of the Premises and to establish the monthly base rent for the Premises by multiplying the actual square footage of the Premises times the per square foot rent set forth above. The Initial Base Rent shall also be adjusted based upon the actual construction costs as set forth in Section 6.1.

1.6 PERMITTED USE: General office.

1.7 PRO-RATA SHARE: One hundred and no/100 percent (100%), subject to adjustment as provided in Section 2.2 hereof.

1.8 ADDRESSES.

LANDLORD'S ADDRESS:	TENANT'S ADDRESS:
CSM CORPORATION	DYNAMARK, INC.

2575 UNIVERSITY AVE. W., #150  
ST. PAUL, MN 55114-1024  
(651) 646-1717

4255 LEXINGTON AVE. N.  
ARDEN HILLS, MN 55112  
ATTN: JIM SCHOELLER, SR. V.P.

## ARTICLE 2. RENT, OPERATING EXPENSES AND SECURITY DEPOSIT

2.1 BASE RENT. Tenant agrees to pay monthly as Base Rent during the term of this Lease the sum of money set forth in Section 1.5 of this Lease, which amount will be payable to Landlord at the address shown above. Monthly installments of Base Rent shall be due and payable, in advance, on or before the first day of each calendar month during the term of this Lease; provided that if the Commencement Date should be a date other than the first day of a calendar month, the monthly Base Rent shall be prorated on a daily basis to the end of that calendar month, and shall be payable on or before the Commencement Date of this Lease. Tenant shall pay, as additional rent, all other sums due under this Lease. Landlord will promptly commence construction of the Building and Premises and shall diligently pursue construction thereof in order to have the Building and the Premises substantially complete on the Commencement Date. For the purposes of this provision, "substantially complete" shall mean that the Building and Premises are substantially completed in accordance with the approved construction documents and the requirements of the City of Arden Hills, subject only to punchlist and minor completion items that will not prevent Tenant from occupying and commencing operations within the Premises, which punchlist and minor completion items Landlord agrees to promptly complete.

If, prior to June 15, 1999, Landlord determines that it will not be able to deliver the Building and Premises to Tenant in the condition required by the anticipated Commencement Date, Landlord shall notify Tenant, in writing, on or before July 1, 1999, and the Commencement Date shall be extended to the actual substantial completion date. In such event, Landlord shall provide Tenant with not less than forty-five (45) days prior written notice of the anticipated substantial completion date.

If, subject to force majeure or Tenant caused delays, the Building and Premises are not substantially complete and ready for Tenant's occupancy by August 1, 1999, Landlord shall pay to Tenant, as a credit against the first installment of Base Rent and additional rent payable hereunder, an amount equal to \$500.00 for each day thereafter until the Building and the Premises are substantially complete and ready for Tenant's occupancy. If, subject to force majeure or Tenant caused delays, the Building and Premises are not substantially complete and ready for Tenant's occupancy by September 1, 1999, Tenant shall have the option to terminate this Lease by written notice to Landlord after September 1, 1999 and prior to substantial completion of the Building and Premises.

2.2 OPERATING EXPENSES. Tenant shall also pay as additional rent Tenant's pro rata share of the operating expenses of Landlord for the Building. Landlord may invoice Tenant monthly for Tenant's pro rata share of the estimated operating expenses for each calendar year, which amount shall be adjusted from time-to-time by Landlord based upon reasonably anticipated operating expenses. Within six (6) months following the close of each calendar year, Landlord shall provide Tenant an accounting showing in reasonable detail the computations of additional rent due under this Section. In the event the accounting shows

that the total of the monthly payments made by Tenant exceeds the amount of additional rent due by Tenant under this Section, the accounting shall be accompanied by evidence of a credit to Tenant's account. In any event the accounting shows that the total of the monthly payments made by Tenant is less than the amount of additional rent due by Tenant under this Section, the accounting shall be accompanied by an invoice for the additional rent. If this Lease shall terminate on a day other than the last day of a calendar year, the amount of any additional rent payable by Tenant applicable to the year in which the termination shall occur shall be prorated on the ratio that the number of days from the commencement of the calendar year to and including such termination date bears to 365. Tenant agrees to pay any additional rent due under this Section within ten (10) days following receipt of the invoice or accounting showing additional rent due. Tenant's pro rata share set forth in Section 1.8 shall, subject to reasonable adjustment by Landlord, be equal to a percentage based upon a fraction, the numerator of which is the total area of the Premises as set forth in Article 1 and the denominator of which shall be the net rentable area of the Building, as the same may change from time to time.

2.3 DEFINITION OF OPERATING EXPENSES. The term "operating expenses" includes all expenses incurred by Landlord with respect to the maintenance and operation of the Building, including, but not limited to, the following: maintenance, repair and replacement costs; electricity, fuel, water, sewer, gas and other common Building utility charges; equipment used for maintenance and operation of the Building; operational expenses; exterior window washing and janitorial services; trash and snow removal; landscaping and pest control; management fees, wages and benefits payable to employees of Landlord whose duties are directly connected with the operation and maintenance of the Building; all services, supplies, repairs, replacements or other expenses for maintaining and operating the Building or project including parking and common areas; improvements made to the Building which are required under any governmental law or regulation that was not applicable to the Building at the time it was constructed; installation of any device or other equipment which improves the operating efficiency of any system within the Premises and thereby reduces operating expenses; all other expenses which would generally be regarded as operating, repair, replacement and maintenance expenses; all real property taxes and installments of special assessments, including dues and assessments by means of deed restrictions and/or owners' associations which accrue against the Building during the term of this Lease and legal fees incurred in connection with actions to reduce the same; and all insurance premiums Landlord is required to pay or deems necessary to pay, including fire and extended coverage, and rent loss and public liability insurance, with respect to the Building.

Notwithstanding the foregoing, operating expenses shall not include any expenditure which must be capitalized for federal income tax purposes, except that operating expenses shall include the amortization of any such capital expenditures (except capital expenditures for improvements made to the Building without the consent of Tenant, or for restoration or repair of damage to the Building caused by casualty) on a straight-line basis over the reasonably estimated useful life, at an amortization rate equal to the rate of Treasury Securities of comparable term, plus two percent (2%).

Further, operating expenses shall not include:

- A. Taxes payable by reason of any "minimum assessment": or similar agreement to the extent exceeding the taxes which otherwise would be payable with respect to the property of which the Premises are a part; or
- B. Special assessments levied or pending on the date of this Lease or levied for public improvements constructed in connection with the initial construction of the Building or any additional building; or
- C. Expenses of contesting taxes or the assessed value of the property of which the Premises are a part in excess of the savings achieved in such contest; or
- D. Management fees exceeding fifteen percent (15%) of other operating expenses except taxes and special assessments; or
- E. Expenses incurred by Landlord in satisfying its obligations under Section 14.13 hereof.

2.4 INCREASE IN INSURANCE PREMIUMS. If an increase in any insurance premiums paid by Landlord for the Building is caused by Tenant's use of the Premises or if Tenant vacates the Premises and causes an increase in such premiums, then Tenant shall pay as additional rent the amount of such increase to Landlord.

### ARTICLE 3. OCCUPANCY AND USE

3.1 USE. Tenant warrants and represents to Landlord that the Premises shall be used and occupied only for the purpose as set forth in Section 1.6. Tenant shall occupy the Premises, conduct its business and control its agents, employees, invitees and visitors in such a manner as is lawful, reputable and will not create a nuisance. Tenant shall not permit any operation which emits any odor or matter which intrudes into other portions of the Building or otherwise interfere with, annoy or disturb any other lessee in its normal business operations or Landlord in its management of the Building. Tenant shall not permit any waste on the Premises to be used in any way which would, in the opinion of Landlord, be extra hazardous on account of fire or which would, in any way, increase or render void the fire insurance on the Building.

3.2 SIGNS. No sign of any type or description shall be erected, placed or painted in or about the Premises or Building which are visible from the exterior of the Premises, except those signs submitted to Landlord in writing, and which signs are in conformance with Landlord's sign criteria, if any, established for the Building.

3.3 COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Tenant, at Tenant's sole cost and expense, shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction over the use, condition or occupancy of the Premises, provided that Tenant shall not be obligated to make any material capital improvements required by such laws, ordinances, orders, rules and regulations, (nor shall Landlord have such obligation). For purposes of this clause, a "material capital improvement" shall mean any capital improvement or series of capital improvements within any calendar year, costing in excess of \$1,500.00. Tenant will comply with the

reasonable rules and regulations of the Building adopted by Landlord. Landlord shall have the right at all times to change and amend the rules and regulations in any reasonable manner as may be deemed advisable for the safety, care, cleanliness, preservation of good order and operation or use of the Building or the Premises. All rules and regulations of the Building will be sent by Landlord to Tenant in writing and shall thereafter be carried out and observed by Tenant.

3.4 WARRANTY OF POSSESSION. Landlord warrants that it has the right and authority to execute this Lease, and Tenant, upon payment of the required rents and subject to the terms, conditions, covenants and agreements contained in this Lease, shall have possession of the Premises during the full term of this Lease as well as any extension or renewal thereof. Landlord shall not be responsible for the acts or omissions of any other lessee or third party that may interfere with Tenant's use and enjoyment of the Premises.

3.5 RIGHT OF ACCESS. Landlord or its authorized agents shall, at any and all reasonable times and upon reasonable notice, have the right to enter the Premises to inspect the same, to show the Premises to prospective purchasers, lessees, mortgagees, insurers or other interested parties, and to alter, improve or repair the Premises or any other portion of the Building. Tenant hereby waives any claim for damages for injury or inconvenience to or interference with Tenant's business, any loss of occupancy or use of the Premises, and any other loss occasioned thereby, except as may result from the negligent or willful misconduct of Landlord. Tenant shall not change Landlord's lock system or in any other manner prohibit Landlord from entering the Premises. Landlord shall have the right to use any and all means which Landlord may deem proper to open any door in an emergency without liability therefor. Tenant shall permit Landlord to erect, use, maintain and repair pipes, cables, conduits, plumbing, vents and wires in, to and through the Premises as often and to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper use, operation and maintenance of the Building; provided that Landlord does not thereby materially interfere with the use and enjoyment of the Premises by Tenant for general office purposes.

#### ARTICLE 4. UTILITIES AND ACTS OF OTHERS

4.1 BUILDING SERVICES. Tenant shall pay when due, all charges for utilities furnished to or for the use or benefit of Tenant or the Premises. Tenant shall have no claim for rebate of rent on account of any interruption in service.

4.2 THEFT OR BURGLARY. Landlord shall not be liable to Tenant for losses to Tenant's property or personal injury caused by criminal acts or entry by unauthorized persons into the Premises or the Building.

4.3 UNDERGROUND CHILLED WATER LINE. In the event that the general contractor or one of its subcontractors damages the underground chilled water line serving the 4295 building, and the damage necessitates the Tenant shutting down its chilled water computers, the Landlord shall pay a penalty of \$5,000.00 per day for every day that the computers are inoperable due to the unavailability of chilled water. Any penalty owed by the Landlord may be paid by crediting the Tenant's next rent obligation.

#### ARTICLE 5. REPAIRS AND MAINTENANCE

5.1. LANDLORD REPAIRS. Landlord shall not be required to make any improvements, replacements or repairs of any kind or character to the Premises or the Building during the term of this Lease except as are set forth in this Section. Landlord shall maintain only the roof, foundation, parking and common areas, the structural soundness of the exterior walls, doors, corridors, and other structures serving the Premises in good order and repair, provided, that Landlord's cost of maintaining, replacing and repairing the items set forth in this Section are operating expenses subject to the additional rent provisions in Section 2.2 and 2.3. Landlord shall correct any deficiencies in maintenance within thirty (30) days after written notice from Tenant; provided that for work that cannot be completed within thirty (30) days, Landlord shall not be in default hereunder if Landlord commences the work within such thirty (30) day period and diligently proceeds to complete such work; and provided that in the case of an emergency, Landlord shall take action to correct deficiencies as promptly as practicable. Landlord shall not be liable to Tenant, except as expressly provided in this Lease, for any damage or inconvenience, and Tenant shall not be entitled to any abatement or reduction of rent by reason of any repairs, alterations or additions made by Landlord under this Lease; provided that Landlord does not thereby materially interfere with the use and enjoyment of the Premises by Tenant for general office purposes.

5.2 TENANT REPAIRS. Tenant shall, at all times throughout the term of this Lease, including renewals and extensions, and at its sole expense, keep and maintain the Premises in a clean, safe, sanitary and first class condition and in compliance with all applicable laws, codes, ordinances, rules and regulations, provided that Tenant shall not be obligated to make any material capital improvements required by such laws, ordinances, orders, rules and regulations, (nor shall Landlord have such obligation). For purposes of this clause, a "material capital improvement" shall mean any capital improvement or series of capital improvements within any calendar year, costing in excess of \$1,500.00. Tenant's obligations hereunder shall include, but not be limited to, the maintenance, repair and replacement, if necessary, of all heating, ventilation, air conditioning, lighting and plumbing fixtures and equipment, fixtures, motors and machinery, all interior walls, partitions, doors and windows, including the regular painting thereof, all exterior entrances, windows, doors and docks and the replacement of all broken glass. When used in this provision, the term "repairs" shall include replacements or renewals when necessary, and all such repairs made by the Tenant shall be equal in quality and class to the original work. Notwithstanding the foregoing, Tenant shall not be responsible for major non-recurring repairs of or replacements to the HVAC system, except where caused by Tenant's failure to properly utilize, maintain and secure said system; Tenant, however, shall pay the amortization (utilizing the amortization method for capital expenditures described in Section 2.3) of the costs of such major repairs or replacements performed after the five (5) year anniversary of the Commencement Date. For purposes of this paragraph, "major repairs or replacement of the HVAC system" shall mean expenditures for major repairs to or replacement of compressors or exchangers. The Tenant shall keep and maintain all portions of the Premises and the sidewalk and areas adjoining the same in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice. If Tenant fails, refuses or neglects to maintain or repair the Premises as required in this Lease after notice shall have been given Tenant, in accordance with this Lease, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay to Landlord all costs plus fifteen percent (15%) for overhead incurred by Landlord in making such repairs upon presentation to Tenant of bill therefor.



5.3. TENANT DAMAGES. Tenant shall not allow any damage to be committed on any portion of the Premises or Building or common areas, and at the termination of this lease, by lapse of time or otherwise, Tenant shall deliver the Premises to Landlord in as good condition as existed at the Commencement Date of this Lease, ordinary wear and tear and damage by casualty excepted. The cost and expense of repairs necessary to restore the condition of the Premises shall be borne by Tenant.

ARTICLE 6. ALTERATIONS AND IMPROVEMENTS

6.1 LANDLORD IMPROVEMENTS. Landlord will complete construction of the improvements to the Premises in accordance with the architectural plans and specifications attached hereto as EXHIBITS C and D. Any changes or modifications to the said plans and specifications shall be accomplished by written change order executed by both Landlord and Tenant. The parties agree that the Initial Base Rent is based on the development cost estimates set forth in the preliminary project budget attached hereto as EXHIBIT F, and that upon Project completion the Base Rent will be increased or decreased to reflect actual project costs. Specifically, upon completion of the construction of the Premises, the Initial Base Rent shall be adjusted so that Landlord's gross annual yield is thirteen and thirty-five/100 percent (13.35%) of the total cost of the Project (i.e. annual Base Rent equals Total Project Costs multiplied by 13.35%), provided, however that the "Soft Costs" as set forth in EXHIBIT F shall be fixed at \$616,809.00. Tenant shall be entitled to participate in the construction management process and will have the right to initiate and approve plan modifications and all construction subcontracts. Landlord shall provide Tenant with construction cost information on an "open book" basis and will allow Tenant to audit Landlord's accounting records with respect to the construction of the Premises. Upon completion of construction and reconciliation of Total Project Costs, the Landlord and Tenant shall execute an Addendum in the form of attached EXHIBIT E, which Addendum shall, among other things, confirm the Base Rent for the Premises. In the event the Total Project Costs incurred by Landlord (exclusive of Soft Costs) exceed Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000), then any such excess costs shall be paid to Landlord by Tenant, in cash, within fifteen (15) days following completion of construction, reconciliation of Project Costs, and Landlord's submission of an invoice to Tenant for such excess costs.

6.2 TENANT IMPROVEMENTS. Tenant shall not make or allow to be made any alterations or physical additions in or to the Premises without first obtaining the written consent of Landlord, which consent may not be unreasonably withheld. Any alterations, physical additions or improvements to the Premises made by Tenant shall at once become the property of Landlord and shall be surrendered to Landlord upon the termination of this Lease; provided, however, Landlord, as a condition to its consent to any proposed alteration or addition, may require Tenant to remove any physical additions and/or repair any alterations in order to restore the Premises to the conditions existing at the time Tenant took possession, all costs of removal and/or alterations to be borne by Tenant. This clause shall not apply to moveable equipment or furniture owned by Tenant, which Tenant shall have the right to mortgage, and which may be removed by Tenant at any time and from time to time. Landlord agrees to cooperate with Tenant in connection with any financing Tenant elects to place on its equipment and personal property, including execution of such certificates and documents as Tenant's lender may reasonably request.

## ARTICLE 7. CASUALTY AND INSURANCE

7.1 SUBSTANTIAL DESTRUCTION. If all or a substantial portion of the Premises or the Building should be totally destroyed by fire or other casualty, or if the Premises or the Building should be damaged so that rebuilding cannot reasonably be completed within two hundred (200) working days after the date of written notification by Tenant to Landlord of the destruction, or if insurance proceeds are not made available to Landlord, or are inadequate, for restoration, this Lease shall terminate at the option of Landlord or Tenant by written notice within sixty (60) days following the occurrence, and the rent shall be abated for the unexpired portion of the Lease effective as of the date of the occurrence.

7.2 PARTIAL DESTRUCTION. If the Premises should be partially damaged by fire or other casualty, and rebuilding or repairs can reasonably be completed within two hundred (200) working days from the date of written notification by Tenant to Landlord of the destruction, and insurance proceeds are adequate and available to Landlord for restoration, this Lease shall not terminate, and Landlord shall at its sole risk and expense proceed with reasonable diligence to rebuild or repair the Building or other improvements to substantially the same condition in which they existed prior to the damage. If the Premises are to be rebuilt or repaired and are untenable in whole or in part following the damage, the rent payable under this Lease during the period for which the Premises are untenable shall be adjusted to such an extent as may be fair and reasonable under the circumstances. Tenant shall not be obligated to pay rent for any portion of the Premises which it does not actually occupy during restoration, if such portion is not suitable for Tenant's business operations as reasonably determined by Tenant. In the event that Landlord fails to complete the necessary repairs or rebuilding within two hundred (200) working days from the date of written notification by Tenant to Landlord of the destruction, Tenant may at its option terminate this Lease by delivering written notice of termination to Landlord, whereupon all rights and obligations under this Lease shall cease to exist.

7.3 PROPERTY INSURANCE. Landlord shall not be obligated in any way or manner to insure any personal property (including, but not limited to, any furniture, machinery, goods or supplies) of Tenant upon or within the Premises, any fixtures installed or paid for by Tenant upon or within the Premises, or any improvements which Tenant may construct on the Premises. Tenant shall maintain property insurance on its personal property and shall also maintain plate glass insurance. Tenant shall have no right in or claim to the proceeds of any policy of insurance maintained by Landlord even if the cost of such insurance is borne by Tenant as set forth in Article 2.

7.4 WAIVER OF SUBROGATION. Anything in this Lease to the contrary withstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, the improvements of the Building or personal property within the Building, by reason of fire, other casualty insurable under an "all risk insurance policy", or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees. Landlord and Tenant agree immediately to give their respective insurance companies which have issued

policies of insurance covering all risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section.

7.5 HOLD HARMLESS. Landlord shall not be liable to Tenant's employees, agents, invitees, licensees or visitors, or to any other person, for an injury to person or damage to property on or about the Premises caused by any act or omission of Tenant, its agents, servants or employees, or of any other person entering upon the Premises under express or implied invitation by Tenant, or caused by the improvements located on the Premises becoming out of repair, the failure or cessation of any service provided by Landlord (including security service and devices), or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, provided that Landlord shall be responsible for loss resulting from its negligence or willful misconduct or from Landlord's failure to perform repairs within the time required by Section 5.1 hereof. Tenant agrees to indemnify and hold harmless Landlord of and from any loss, attorney's fees, expenses or claims arising out of any such damage or injury, for which Landlord is not liable pursuant to the foregoing provisions.

7.6 PUBLIC LIABILITY INSURANCE. Tenant shall during the term hereof keep in full force and effect at its expense a policy or policies of public liability insurance with respect to the Premises and the business of Tenant, on terms and with companies approved in writing by Landlord, in which both Tenant and Landlord shall be covered by being named as insured parties under reasonable limits of liability not less than \$1,000,000, or such greater coverage as Landlord may reasonably require, combined single limit coverage for injury or death. Such policy or policies shall provide that thirty (30) days' written notice must be given to Landlord prior to cancellation thereof. Tenant shall furnish evidence satisfactory to Landlord at the time this Lease is executed that such coverage is in full force and effect.

#### ARTICLE 8. CONDEMNATION

8.1 SUBSTANTIAL TAKING. If all or a substantial part of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Premises for the purpose for which it is then being used, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease effective on the date physical possession is taken by the condemning authority. Tenant shall have no claim to the condemnation award or proceeds in lieu thereof, except that Tenant shall be entitled to a separate award for the cost of removing and moving its personal property.

8.2 PARTIAL TAKING. If all or a substantial part of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and this Lease is not terminated as provided in Section 8.1 above, the rent payable under this Lease during the unexpired portion of the term shall be adjusted to such an extent as may be fair and reasonable under the circumstances. Tenant shall not be obligated to pay rent for any portion of the Premises which it does not actually occupy after such taking, if such portion is not suitable for Tenant's business operations as reasonably determined by Tenant, and Tenant shall have the option to terminate this Lease by written notice to Landlord given within sixty (60) days after

possession is taken if the remaining portion of the Premises is not suitable for Tenant's business operation as reasonably determined by Tenant. Tenant shall have no claim to the condemnation award or proceeds in lieu thereof, except that Tenant shall be entitled to a separate award for the cost of removing and moving its personal property.

#### ARTICLE 9. ASSIGNMENT OR SUBLEASE

9.1 LANDLORD ASSIGNMENT. Landlord shall have the right to sell, transfer or assign, in whole or in part, its rights and obligations under this Lease and in the Building. Any such sale, transfer or assignment shall operate to release Landlord from any and all liabilities under this Lease arising after the date of such sale, assignment or transfer, provided that the transferee or assignee assumes such liabilities.

9.2 TENANT ASSIGNMENT. Tenant shall not assign, in whole or in part, this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise, or mortgage or pledge the same, or sublet the Premises, in whole or in part, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. In no event shall any such assignment or sublease ever release Tenant or any guarantor from any obligation or liability hereunder. Notwithstanding anything in this Lease to the contrary, in the event of any assignment or sublease, any option or right of first refusal granted to Tenant shall not be assignable by Tenant to any assignee or sublessee. No assignee or sublessee of the Premises or any portion thereof may assign or sublet the Premises or any portion thereof.

9.3 CONDITIONS OF ASSIGNMENT. If Tenant desires to assign or sublet all or any part of the Premises, it shall so notify Landlord at least thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. Tenant shall provide Landlord with a copy of the proposed assignment or sublease and such information as Landlord might request concerning the proposed sublessee or assignee to allow Landlord to make informed judgments as to the financial condition, reputation, operations and general desirability of the proposed sublessee or assignee. Within seven (7) business days after Landlord's receipt of Tenant's proposed assignment or sublease and all required information concerning the proposed sublease or assignee, Landlord shall have the following options: (1) consent to the proposed assignment or sublease, and, if the rent due and payable by any assignee or sublessee under any such permitted assignment or sublease (or a combination of the rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the rent payable under this Lease for such space, Tenant shall pay to Landlord one-half (1/2) of such excess rent and other excess consideration within ten (10) days following receipt thereof by Tenant; or (2) refuse, subject to the limitations set forth in Section 9.2 above, to consent to the proposed assignment or sublease, which refusal shall be deemed to have been exercised unless Landlord gives Tenant written notice providing otherwise. Landlord shall, upon Tenant's request, provide the reasons for any refusal. Upon the occurrence of an event of default, if all or any part of the Premises are then assigned or sublet, Landlord, in addition to any other remedies provided by this Lease or provided by law, may, at its option, collect directly from the assignee or sublessee all rents becoming due to Tenant by reason of the assignment or sublease. Any collection directly by Landlord from the assignee or sublessee shall not be construed to constitute a novation or a release of Tenant or any guarantor from the further performance of its obligations under this Lease.

9.4 RIGHTS OF MORTGAGE. Tenant accepts this Lease subject and subordinate to any recorded mortgage presently existing or hereafter created upon the Building and to all existing recorded restrictions, covenants, easements and agreements with respect to the Building. Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest under this Lease to any first mortgage lien hereafter placed on the Premises, and Tenant agrees upon demand to execute additional instruments subordinating this Lease as Landlord may require. If the interests of Landlord under this Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of any first mortgage or deed of trust on the Premises, Tenant shall be bound to the transferee (sometimes called the "Purchaser") at the option of the Purchaser, under the terms, covenants and conditions of this Lease for the balance of the term remaining, including any extensions or renewals, with the same force and effect as if the Purchaser were Landlord under this Lease, and, if requested by the Purchaser, Tenant agrees to attorn to the Purchaser, including the first mortgagee under any such mortgage if it be the Purchaser, as its Landlord. Notwithstanding the foregoing, Tenant shall not be disturbed in its possession of the Premises so long as Tenant is not in default hereunder.

9.5 TENANT'S STATEMENT. Tenant agrees to furnish, from time to time, within ten (10) days after receipt of a request from Landlord or Landlord's mortgagee, a statement certifying, if applicable, the following: Tenant is in possession of the Premises; the Premises are acceptable; the Lease is in full force and effect; the Lease is unmodified; Tenant claims no present charge, lien, or claim or offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; there is no existing default by reason of some act or omission by Landlord; and such other matters as may be reasonably required by Landlord or Landlord's mortgagee; or specifying any exceptions to such matters. Tenant's failure to deliver such statement, in addition to being a default under this Lease, shall be deemed to establish conclusively that this Lease is in full force and effect except as declared by Landlord, that Landlord is not in default of any of its obligations under this Lease, and that Landlord has not received more than one month's rent in advance. Tenant agrees to furnish, from time to time, within ten (10) days after receipt of a request from Landlord, the most recent financial statement of Tenant, certified as true and correct by Tenant.

ARTICLE 10. LANDLORD'S LIEN AND SECURITY AGREEMENT (Intentionally omitted)

ARTICLE 11. DEFAULT AND REMEDIES

11.1 DEFAULT BY TENANT. The following shall be deemed to be events of default ("Default") by Tenant under this Lease: (1) Tenant shall fail to pay when due any installment of rent or any other payment required pursuant to this Lease and such failure shall continue for a period of five (5) days after written notice to Tenant; (2) Tenant shall abandon any substantial portion of the Premises; (3) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and the failure is not cured within thirty (30) days after written notice to Tenant; (4) Tenant shall file a petition or if an involuntary petition is filed against Tenant, or becomes insolvent, under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as

they become due; or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant; or Tenant shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or (5) Tenant shall do or permit to be done any act which results in a lien being filed against the Premises or the Building and/or project of which the Premises are a part; and Tenant shall not cause such lien to be released or bonded off within thirty (30) days after written notice to Tenant.

In the event that an order for relief is entered in any case under Title 11, U.S.C. (the "Bankruptcy Code") in which Tenant is the debtor and: (A) Tenant as debtor-in-possession, or any trustee who may be appointed in the case (the "Trustee") seeks to assume the lease, then Tenant, or Trustee if applicable, in addition to providing adequate assurance described in applicable provisions of the Bankruptcy Code, shall provide adequate assurance to Landlord of Tenant's future performance under the Lease by depositing with Landlord a sum equal to the lesser of twenty-five percent (25%) of the rental and other charges due for the balance of the Lease term or six (6) months' rent ("Security"), to be held (without any allowance for interest thereon) to secure Tenant's obligation under the Lease, and (B) Tenant, or Trustee if applicable, seeks to assign the Lease after assumption of the same, then Tenant, in addition to providing adequate assurance described in applicable provisions of the Bankruptcy Code, shall provide adequate assurance to Landlord of the proposed assignee's future performance under the Lease by depositing with Landlord a sum equal to the Security to be held (without any allowance or interest thereon) to secure performance under the Lease. Nothing contained herein expresses or implies, or shall be construed to express or imply, that Landlord is consenting to assumption and/or assignment of the Lease by Tenant, and Landlord expressly reserves all of its rights to object to any assumption and/or assignment of the Lease. Neither Tenant nor any Trustee shall conduct or permit the conduct of any "fire", "bankruptcy", "going out of business" or auction sale in or from the Premises.

11.2 REMEDIES FOR TENANT'S DEFAULT. Upon the occurrence of a Default as defined above, Landlord may elect either (i) to cancel and terminate this Lease and this Lease shall not be treated as an asset of Tenant's bankruptcy estate, or (ii) to terminate Tenant's right to possession only without canceling and terminating Tenant's continued liability under this Lease. Notwithstanding the fact that initially Landlord elects under (ii) to terminate Tenant's right to possession only, Landlord shall have the continuing right to cancel and terminate this Lease by giving three (3) days' written notice to Tenant of such further election, and shall have the right to pursue any remedy at law or in equity that may be available to Landlord.

In the event of election under (ii) to terminate Tenant's right to possession only, Landlord may, at Landlord's option, enter the Premises and take and hold possession thereof, without such entry into possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay all amounts hereunder for the full stated term. Upon such reentry, Landlord may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, without becoming liable for any loss or damage which may be occasioned thereby. Such reentry shall be conducted in the following manner: without resort to judicial process or notice of any kind if Tenant has abandoned or voluntarily surrendered possession of the Premises; and, otherwise, by resort to judicial process. Upon and after entry into possession without termination of the Lease, Landlord may, but is not obligated to, relet the Premises, or any part thereof, to any one other than the Tenant, for such time and upon such terms as Landlord, in Landlord's sole discretion, shall determine. Landlord may make alterations and

repairs to the Premises to the extent deemed by Landlord necessary or desirable to relet the Premises.

Upon such reentry, Tenant shall be liable to Landlord as follows:

- A. For all reasonable attorneys' fees incurred by Landlord in connection with exercising any remedy hereunder;
- B. For the unpaid installments of base rent, additional rent or other unpaid sums which were due prior to such reentry, including interest and late payment fees, which sums shall be payable immediately.
- C. For the installments of base rent, additional rent, and other sums falling due pursuant to the provisions of this Lease for the period after reentry during which the Premises remain vacant, including late payment charges and interest, which sums shall be payable as they become due hereunder.
- D. For all expenses incurred in releasing the Premises, including leasing commissions, reasonable attorneys' fees, and costs of alteration or repairs, which shall be payable by Tenant as they are incurred by Landlord; and
- E. While the Premises are subject to any new lease or leases made pursuant to this Section, for the amount by which the monthly installments payable under such new lease or leases is less than the monthly installment for all charges payable pursuant to this Lease, which deficiencies shall be payable monthly.

Notwithstanding Landlord's election to terminate Tenant's right to possession only, and notwithstanding any reletting without termination, Landlord, at any time thereafter, may elect to terminate this Lease, and to recover (in lieu of the amounts which would thereafter be payable pursuant to the foregoing, but not in diminution of the amounts payable as provided above before termination), as damages for loss of bargain and not as a penalty, an aggregate sum equal to the present value of the amount by which the rental value of the portion of the term unexpired at the time of such election is less than an amount equal to the unpaid base rent and additional rent, and all other charges which would have been payable by Tenant for the unexpired portion of the term of this Lease, which deficiency and all expenses incident thereto, including commissions, attorneys' fees, expenses of alterations and repairs, shall be due to Landlord as of the time Landlord exercises said election, notwithstanding that the term had not expired. If Landlord, after such reentry, leases the Premises, then the rent payable under such new lease shall be conclusive evidence of the rental value of the unexpired portion of the term of this Lease.

If this Lease shall be terminated by reason of bankruptcy or insolvency of Tenant, Landlord shall be entitled to recover from Tenant or Tenant's estate, as liquidated damages for loss of bargain and not as a penalty, the amount determined by the immediately preceding paragraph.

11.3 LANDLORD'S RIGHT TO PERFORM FOR ACCOUNT OF TENANT. If Tenant shall be in Default under this Lease, Landlord may cure the Default at any time for the account and at the expense of Tenant. If Landlord cures a Default on the part of Tenant, Tenant shall

reimburse Landlord upon demand for any amount expended by Landlord in connection with the cure, including, without limitation, attorneys' fees and interest.

11.6 INTEREST, ATTORNEY'S FEES AND LATE CHARGE. In the event of a Default by Tenant: (1) if a monetary default, interest shall accrue on any sum due and unpaid at the rate of the lesser of fifteen percent (15%) per annum or the highest rate permitted by law and, if Landlord places in the hands of an attorney the enforcement of all or any part of this Lease, the collection of any rent due or to become due or recovery of the possession of the Premises, Tenant agrees to pay Landlord's costs of collection, including reasonable attorney's fees for the services of the attorney, whether suit is actually filed or not. Other remedies for nonpayment of rent notwithstanding, if the monthly rental payment or any other payment due from Tenant to Landlord is not received by Landlord on or before the tenth (10th) day of the month for which the rent is due, a late payment charge of five percent (5%) of such past due amount shall become due and payable in addition to such amounts owed under this Lease.

11.5 ADDITIONAL REMEDIES, WAIVERS, ETC.

- A. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. Landlord may exercise its rights and remedies at any times, in any order, to any extent, and as often as Landlord deems advisable without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another.
- B. A single or partial exercise of a right or remedy shall not preclude a further exercise thereof, or the exercise of another right or remedy from time to time.
- C. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiesce to, a Default.
- D. No waiver of Default shall extend to or affect any other Default or impair any right or remedy with respect thereto.
- E. No action or inaction by Landlord shall constitute a waiver of Default.
- F. No waiver of a Default shall be effective unless it is in writing and signed by Landlord.

ARTICLE 12. RELOCATION (Intentionally Omitted)

ARTICLE 13. AMENDMENT AND LIMITATION OF WARRANTIES

13.1 ENTIRE AGREEMENT. IT IS EXPRESSLY AGREED BY TENANT, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THAT THIS LEASE, WITH THE SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; AND THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS,



WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE.

13.2 AMENDMENT. THIS LEASE MAY NOT BE ALTERED, WAIVED, AMENDED OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY LANDLORD AND TENANT.

13.3 LIMITATION OF WARRANTIES. LANDLORD AND TENANT EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OR MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE.

#### ARTICLE 14. MISCELLANEOUS

14.1 SUCCESSORS AND ASSIGNS. This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and assigns. It is hereby covenanted and agreed that should Landlord's interest in the Premises cease to exist for any reason during this Lease, then notwithstanding the happening of such event this Lease nevertheless shall remain unimpaired and in full force and effect, and Tenant hereunder agrees to attorn to the then owner of the Premises.

14.2 USE OR RENT TAX. If applicable in the jurisdiction where the Premises are issued, Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord under the terms of this Lease. Any such payment shall be paid concurrently with the payment of the rent, additional rent, operating expenses or other charge upon which the tax is based as set forth above.

14.3 ACT OF GOD. Landlord shall not be required to perform any covenant or obligation in this Lease, or be liable in damages to Tenant, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by Tenant.

14.4 HEADINGS. The section headings appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any Section.

14.5 NOTICE. All rent and other payments required to be made by Tenant shall be payable to Landlord at the address set forth in Section 1.8. All payments required to be made by Landlord to Tenant shall be payable at the address set forth in Section 1.8, or at any other address within the United States as Tenant may specify from time to time by written notice. Any notice or document required or permitted to be delivered by the terms of this Lease shall be deemed to be delivered (whether or not actually received) upon actual delivery or 48 hours after deposit in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth in Section 1.8.

14.6 TENANT'S AUTHORITY. If Tenant executes this Lease as a corporation, each of the persons executing this Lease on behalf of Tenant does hereby personally represent and warrant that each such person signing on behalf of the corporation is authorized to do so.

14.7 HAZARDOUS SUBSTANCES. Tenant, its agents or employees, shall not bring or permit to remain on the Premises or Building any asbestos, petroleum or petroleum products, explosives, toxic materials, or substances defined as hazardous wastes, hazardous materials, or hazardous substances under any federal, state, or local law or regulation ("Hazardous Materials"), except in compliance with applicable environmental and other laws. Tenant's violation of the foregoing prohibition shall constitute a material breach and default hereunder and Tenant shall indemnify, hold harmless and defend Landlord from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorney fees and court costs) caused by or arising out of (i) a violation of the foregoing prohibition by Tenant or (ii) the presence of any Hazardous Materials on, under, or about the Premises or the Building during the term of the Lease caused by or arising, in whole or in part, out of the actions of Tenant, its agents or employees. Tenant shall clean up, remove, remediate and repair any soil or ground water contamination and damage caused by the presence and any release of any Hazardous Materials in, on, under or about the Premises or the Building during the term of the Lease caused by or arising, in whole or in part, out of the actions of Tenant, its agents or employees, in conformance with the requirements of applicable law. Tenant shall immediately give Landlord written notice of any suspected breach of this paragraph; upon learning of the presence of any release of any Hazardous Materials, and upon receiving any notices from governmental agencies pertaining to Hazardous Materials which may affect the Premises or the Building. The obligations of Tenant hereunder shall survive the expiration of earlier termination, for any reason, of this Lease.

14.8 SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14.9 LANDLORD'S LIABILITY. If Landlord shall be in default under this Lease and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Building, as the same may then be encumbered, or by offset against rents, and neither Landlord nor any person or entity comprising Landlord shall be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord nor any person or entity comprising Landlord other than the rents and its interest in the Building as herein expressly provided.

14.10 BROKERAGE. Landlord and Tenant each represents and warrants to the other that there is no obligation to pay any brokerage fee, commission, finder's fee or other similar charge in connection with this Lease, other than fees due to PHIL SIMONET OF PARAMOUNT REAL ESTATE CORPORATION which are the responsibility of Landlord. Each party covenants that it will defend, indemnify and hold harmless the other party from and against any loss or liability by reason of brokerage or similar services alleged to have been rendered to, at the instance of, or agreed upon by said indemnifying party. Notwithstanding anything herein to the contrary, Landlord and Tenant agree that there shall be no brokerage fee or commission due on expansions, options or renewals by Tenant.

14.11 MANAGEMENT AGENT. Landlord hereby notifies Tenant that the person authorized to execute this Lease and manage the Premises is CSM Corporation, a Minnesota corporation, which has been appointed to act as the agent in leasing management and operation of the Building for owner and is authorized to accept service of process and receive or give receipts for notices and demands on behalf of Landlord. Landlord reserves the right to change the identity and status of its duly authorized agent upon written notice to Tenant.

14.12 EXISTING LEASES. The Landlord and Tenant are parties to leases covering premises located at 4255, 4265 and 4295 Lexington Avenue North, Arden Hills, Minnesota (the "Existing Leases"). The parties acknowledge and agree that a material condition for Landlord's agreement to enter into this Lease, and to enable Landlord to perform its obligations hereunder, is the Amendment of the Existing Leases. Attached hereto and incorporated herein by this reference as EXHIBITS G-1, G-2 and G-3, are the proposed amendments of the Existing Leases (the "Amendments"). This Lease shall only be effective upon full execution and delivery of this Lease and each of the Amendments, by both Landlord and Tenant.

14.13 CONSTRUCTION PROVISIONS. All of the work to be performed by Landlord pursuant to Section 1.3 hereof shall be performed in accordance with the plans and specifications described in Section 6.1 hereof, shall be completed in a good and workmanlike manner, utilizing new and first-grade materials; shall be in conformity with all applicable federal, state and local laws, ordinances, regulations, building codes and fire regulations; shall comply with all insurance requirements of Landlord and Tenant; and shall be free of any liens for labor and materials. Landlord shall use all reasonable efforts to complete such construction on or before the Commencement Date.

For the period commencing as of the Commencement Date and ending on the day one (1) year thereafter, Landlord will correct and/or repair, or cause to be corrected and/or repaired, any latent or non-obvious defect, malfunction or failure in or of construction, workmanship, material or operation of the Premises, provided any such defect, malfunction or failure is not the result of any work performed by Tenant, and is not caused by any act or negligence of Tenant, its employees or contractors. At the expiration of the one (1) year period, Landlord shall assign to Tenant all guaranties and warranties made by any contractor, subcontractor or materialmen with respect to the Premises and thereafter Tenant shall have the right, at its option, to enforce all such guaranties and warranties in its name directly against the warrantor. Landlord agrees to exercise good faith efforts to obtain contractor/subcontractor warranties longer than one (1) year, to the extent the same are available without additional cost.

As to items which Tenant has notified Landlord are defective and which are covered by referenced Landlord warranty, Landlord shall proceed expeditiously and in good faith to complete and repair any such items. As a condition thereof, Tenant shall allow Landlord, its employees or contractors, to enter upon the Premises to perform any remedial work required to be performed, and will cooperate with Landlord, its employees or contractors, so that such remedial work can be accomplished as quickly as is reasonable under the circumstances, and with the least amount of interruption to the business of the Tenant.

Occupancy of the Premises by Tenant for conducting its business shall constitute an acknowledgement by Tenant, and shall be presumptive evidence, that the Premises are in the condition called for by this Lease and that Landlord has performed all of the construction work it is obligated to perform pursuant to Section 1.3 hereof, except for such items which are not completed and as to which Tenant shall have given notice to Landlord within thirty (30) days after Tenant takes possession of the Premises (the "Punchlist"), and subject to any latent or non-obvious defects, malfunctions or failures covered by the foregoing warranty by Landlord. Landlord shall proceed expeditiously and in good faith to complete and repair all items set forth on the Punchlist.

In the event of any dispute between Landlord and Tenant as to whether the Premises are substantially complete and ready for occupancy by Tenant for the conduct of Tenant's business, or as to any other claim by Tenant based upon Landlord's warranties and construction obligations contained herein, such dispute shall be resolved by arbitration in accordance with the rules of the American Arbitration Association, or in accordance with such other procedures as shall be mutually approved by the parties. In no event shall the Premises be deemed substantially complete and ready for occupancy by Tenant until a certificate of occupancy (temporary or permanent) (or, if certificates of occupancy are not issued by the municipality, an equivalent final inspection report authorizing Tenant's occupancy and use of the property) has been issued by the city in which the Premises are located. Landlord agrees to exercise every reasonable effort to obtain a final certificate of occupancy as soon as possible following completion of the Premises.

14.14 ADDITIONAL PARKING. As of the Commencement Date, the Parking Plan for the Premises will be as depicted in EXHIBIT A. Upon written request from Tenant, Landlord will install additional parking on the Premises, and on the premises covered by the Existing Leases, generally in accordance with the parking layout shown on attached EXHIBIT A-1, subject to the following conditions:

- (i) Landlord's application for and acquisition of all governmental permits and appraisals necessary to permit Landlord to proceed with construction and installation of such additional parking;
- (ii) Landlord shall, following acquisition of necessary permits and approvals, immediately proceed with construction of such additional parking and shall complete the same within ninety (90) days, subject to force majeure delays, including adverse weather conditions (Note: the normal paving season is May 15th through October 15th of each year);
- (iii) From and after the date of completion of the construction and installation of such parking, the Base Rent payable by Tenant under this Lease shall be increased, annually, by an amount equal to 13.35% of the costs incurred by Landlord in connection with the construction of such additional parking, which increased rent shall be payable monthly, as a part of Tenant's Monthly Base Rent.

At any time following the expiration of the fifth lease year, Landlord may, at its option, proceed with the additional parking, or a portion thereof, and from and after the date of

completion thereof, the Base Rent payable by Tenant hereunder shall be increased in accordance with Subsection (iii) above.

14.15 GUARANTY. The Landlord has required, as a condition to its execution of this Lease, that Fair, Isaac and Company, Incorporated unconditionally guarantee the full performance of the Tenants obligations hereunder. The Tenant agrees to deliver such guaranty, in the form of EXHIBIT H attached hereto and incorporated herein by reference, within ten (10) days following the full execution of this Lease by Landlord and Tenant. In the event Tenant fails to deliver such guaranty, Landlord may, at its option terminate this Lease upon five (5) days written notice to Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease effective the day and year first above written.

LANDLORD:  
CSM CORPORATION

TENANT:  
DYNAMARK, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE is made and entered into effective as of the 2nd day of December, 1998, between CSM CORPORATION, a Minnesota corporation, ("Landlord") and DYNAMARK, INC., a Minnesota corporation, ("Tenant").

RECITALS

- First: Tenant entered into a lease agreement with Control Data Systems, Inc. ("CDSI") dated May 1, 1995, (the "Lease") covering certain premises located at 4295 Lexington Avenue North, Arden Hills, Minnesota (the "Premises").
Second: Landlord purchased the real property upon which the Premises is located under the terms of the Purchase Agreement dated November 8, 1996.
Third: As a part of Landlord's purchase of the real property, CDSI assigned its interest in the Lease to Landlord.
Fourth: The parties have executed a First Amendment to Lease Agreement ("First Amendment") dated December 30, 1996.
Fifth: The parties wish to execute this Second Amendment to Lease to further extend the term of the Lease, establish the rents payable thereunder, adjust the site plan to reflect the reduction in the area of other improvements to the Premises, and nullify the future development agreement contained in the First Amendment:

AGREEMENT

In consideration of the above stated premises and the mutual covenants hereinafter contained, the parties hereby agree that the Lease is modified, amended and/or supplemented as follows:

- 1. Premises. The Premises and certain improvements thereupon shall be and are hereby modified as shown on the site plan attached hereto as REVISED EXHIBIT A-1. REVISED EXHIBIT A-1 replaces and is hereby substituted for Exhibit A-1 attached to the First Amendment to Lease. Tenant acknowledges that the Premises are a part of a development which will include four buildings and associated appurtenant improvements, all as shown on REVISED EXHIBIT A-1. Tenant acknowledges and agrees that the Premises will be subject to and benefitted by various non-exclusive easements for ingress, egress and access over the private drives serving the project, and certain exclusive easements for utilities and other purposes, provided that the same shall not interfere with the use and enjoyment of the Premises, as contemplated herein.
2. Lease Term. Landlord and Tenant are parties to a lease agreement dated December 2, 1998 (the "New Lease"), covering certain premises and a new building to be constructed thereon located adjacent to the Premises, all as shown on REVISED EXHIBIT A-1. The parties agree that the term of the Lease shall be adjusted such that the term of the Lease shall be coterminous with the term of the New Lease. More particularly, upon the commencement date of the New Lease, the term of the Lease shall be extended and shall run for a period of one hundred fifty-six (156) months commencing on the commencement date of the New Lease. If the commencement date of the New Lease is other than the first day of a calendar month, then the term of the Lease shall continue in full force and effect for a period of one hundred fifty-six (156) months from and after the first day of the month next succeeding the commencement date of the New Lease. When the commencement date of the New Lease has been established, the parties shall execute an addendum to this Second Amendment to Lease, confirming the term and expiration date of the Lease.

- 3. Subsection 4(b) of the Lease and Section 3 of the First Amendment to Lease are hereby deleted in their entirety and replaced with the following:

"Base Rent. The Base Rental for the Premises during the remaining term of this Lease shall be as follows:

Table with 3 columns: Period, Monthly Base Rent, Per Square Foot. Rows include 11/1/98 - 07/31/00, 08/1/00 - 07/31/03, 08/1/03 - 12/31/06, and 01/1/07 - New Lease expiration date.

Option Term:
60 months following the
New Lease expiration date market market

Landlord and Tenant agree that the as built area of the Premises is 48,804 square feet."

4. Future Development. Upon the execution of this Second Amendment to Lease by both parties, Tenant's and Landlord's obligations under Section 5 of the First Amendment to Lease are satisfied, and said section is null and void and shall be of no further force and effect.

5. Remodeling Allowance. Landlord agrees to provide Tenant with a one time allowance for remodeling the Premises. Landlord's maximum contribution towards the costs of remodeling will be based upon the time that such remodeling occurs, in accordance with the following schedule:

Period of Remodeling Expenditure	Maximum Allowance Amount Per Square Foot
1/1/01 - 12/31/02	\$3.00
1/1/03 - 12/31/04	\$3.75
1/1/05 - 12/31/06	\$4.50
1/1/07 - 12/31/08	\$5.25

The allowance shall apply towards Tenant's actual remodeling costs and shall be payable to Tenant upon completion of remodeling and receipt by Landlord of evidence of payment under normal and customary construction lending procedures. Landlord shall not be required to provide any allowance on costs submitted for reimbursement after December 31, 2010.

6. Guaranty. Landlord has required, as a condition to its execution of this Second Amendment to Lease, that Fair, Isaac and Company, Incorporated unconditionally guarantee the full performance of Tenant's obligations under the Lease, as amended. Tenant agrees to deliver such guaranty, in the form of EXHIBIT E attached hereto and incorporated herein by reference, within ten (10) days following the full execution of this Second Amendment to Lease by Landlord and Tenant. In the event Tenant fails to deliver such guaranty, Landlord may, at its option, terminate this Second Amendment to Lease upon five (5) days written notice to Tenant.

7. Sections 6, 7 and 8 of the Lease are deleted in their entirety and are replaced with the following:

"Option to Extend. Subject to the terms and conditions hereinafter set forth, Tenant shall have the option to extend the term of this Lease for one (1) additional sixty (60) month term ("Option Term") upon and pursuant to the same conditions contained herein. This option may be exercised by written notice of exercise from Tenant to Landlord given not less than one (1) year prior to the expiration of the Lease Term. Tenant may exercise this option only if: (i) no condition of default exists with respect to Tenant's performance of its obligations under the Lease; and (ii) Tenant

simultaneously exercises its options to extend under the New Lease and under the Existing Lease covering the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota (as defined in Section 14.12 of the New Lease). Base Rent for the Option Term shall be at the fair market rate for comparable space in the north suburban geographic area. The fair market rent shall be agreed upon by Tenant and Landlord within sixty (60) days of Tenant's notice to Landlord of its irrevocable intent to exercise its option to extend set forth herein. The fair market rental rate shall be determined in accordance with the definition set forth in Section 7 of the Existing Lease dated May 1, 1995 and amended December 30, 1996 for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. In the event that Landlord and Tenant fail to agree to the fair market rental rate in the time period set forth herein, then the fair market rent shall be established in accordance with the arbitration procedures set forth in Section 8 of the Existing Lease for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. If Tenant fails to exercise this option as aforesaid, this option shall be null and void and of no further force and effect."

8. Miscellaneous. Except as expressly stated herein, the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to Lease to be executed the day and year first above written.

LANDLORD:  
CSM CORPORATION

TENANT:  
DYNAMARK, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_



CERTIFICATE

I, Peter L. McCorkell, the duly elected and acting Secretary of Fair, Isaac and Company, Incorporated, a Delaware corporation ("the Company"), do hereby certify that the following resolutions are true and correct copies of resolutions which were duly adopted by the Board of Directors of the Company at a meeting held on September 29, 1998:

RESOLVED, for fiscal 1999, the revenue and profit factors for the Company's Officers' Incentive Plan, the Exempt Employees' Bonus Plan and other plans using said factors shall be as follows:

[ ] Incentive Plan Profit Margin results:

- o 9% margin minimum tolerable (P = -0.5)
- o 14% margin acceptable ("on target"; P = 0.0)
- o 19% margin excellent (P = 0.5)
- o 24% margin outstanding (P = 1.0)

[ ] Incentive Plan Revenue Growth results:

- o 9% growth minimum tolerable (P = -0.5)
- o 17% growth acceptable ("on target"; P = 0.0)
- o 25% growth excellent (P = 0.5)
- o 33% growth outstanding (P = 1.0)

The multiplier formula shall remain:

$$\text{Multiplier} = 1 + 1.5 \times P + 0.5 \times R$$

I further certify that the foregoing resolutions have not been rescinded, modified or amended since their adoption and are currently in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company this 16th day of December, 1998.

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Peter L. McCorkell  
Secretary

FAIR, ISAAC AND COMPANY, INCORPORATED

1987 STOCK OPTION PLAN

1. PURPOSE.

The Plan is intended to provide incentive to the employees of the Corporation and its Subsidiaries, to encourage such individuals' proprietary interest in the Corporation, to encourage such individuals to remain in the service of the Corporation or its Subsidiaries and to attract new employees with outstanding qualifications.

2. DEFINITIONS.

(a) "Board" shall mean the Board of Directors of The Corporation, as constituted from time to time.

(b) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(c) "Committee" shall mean the committee appointed by the Board in accordance with Section 4.

(d) "Corporation" shall mean Fair, Isaac and Company, Incorporated, a California corporation.

(e) "Employee" shall mean an individual who is an employee (within the meaning of section 3401(c) of the Code and the regulations thereunder) of the Corporation or of a Subsidiary.

(f) "Exercise Price" shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Committee in the applicable stock option agreement.

(g) "Fair Market Value" shall mean the market price of Stock, determined by the Committee as follows:

(i) If Stock was traded over-the-counter on the date in question but was not classified as a national market issue, then the Fair Market Value shall be equal to the mean between the last reported representative bid and asked prices quoted by the NASDAQ system for such date;

1

Exhibit 10.2

(ii) If Stock was traded over-the-counter on the date in question and was classified as a national market issue, then the Fair Market Value shall be equal to the last-transaction price quoted by the NASDAQ system for such date;

(iii) If Stock was traded on a stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported by the applicable composite-transactions report for such date; and

(iv) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Committee shall be conclusive and binding on all persons.

(h) "Incentive Stock Option" shall mean an option described in section 422A(b) of the Code.

(i) "Nonstatutory Stock Option" shall mean an option not described in sections 422 (b), 422A(b), 423(b) or 424(b) of the Code.

(j) "Option" shall mean an Incentive Stock Option or Nonstatutory Stock Option granted pursuant to the Plan and entitling the holder to purchase Shares.

(k) "Optionee" shall mean an individual who holds an Option.

(l) "Plan" shall mean this Fair, Isaac and Company, Incorporated 1987 Stock Option Plan, as it may be amended from time to time.

(m) "Purchase Price" shall mean the Exercise Price multiplied by the number of Shares with respect to which an option is exercised.

(n) "Share" shall mean one share of Stock, as adjusted in accordance with Section 10 (if applicable).

(o) "Stock" shall mean the Common Stock of the Corporation.

(p) "Subsidiary" shall mean any corporation, if the Corporation and/or one or more other Subsidiaries own at least 50% of the total combined voting power of all classes of outstanding stock in such corporation. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

2

(q) "Test Rate" shall mean the lowest annual rate of interest which will not result in the imputation of additional interest under the applicable provision of the Code.

(r) "Total and Permanent Disability" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months.

3. EFFECTIVE DATE.

The Plan was adopted by the Board on May 13, 1987. The Plan remains subject to the approval of the Corporation's stockholders pursuant to Section 14.

4. ADMINISTRATION.

(a) Committee Membership.

The Plan shall be administered by the Committee. The Committee shall be appointed by the Board and shall consist only of disinterested directors. The Board may from time to time remove members from, or add members to, the Committee. Vacancies on the Committee, however caused, shall be filled by the Board. The Board shall appoint one of the members of the Committee as chairman. The Committee shall hold meetings at such times and places as it may determine. Acts of a majority of the Committee at which a quorum is present, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be the valid acts of the Committee.

(b) Committee Responsibilities.

The Committee shall from time to time at its discretion select the Employees to whom Options are to be granted, determine the number of Shares to be optioned to each Optionee, determine the Exercise Price thereof, designate such Options as Incentive Stock Options or Nonstatutory Stock Options, and determine the other terms and conditions of such Options. The interpretation and construction by the Committee of any provision of the Plan or of any Option granted thereunder shall be final. No member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any Option granted thereunder.

(c) Disinterested Directors.

A member of the Board shall be deemed to be "disinterested" only if he or she, at the time of his or her appointment to the Committee and within the 12 preceding months, was not eligible, under this Plan or under any other plan of the Corporation or an affiliate of the Corporation, for the purchase of stock, for the grant of rights or options to purchase stock, or for the grant of stock appreciation rights.

5. ELIGIBILITY.

(a) Eligible Classes.

The Optionees shall be such Employees (who may be officers or employee directors) as the Committee may select, subject to the terms and conditions set forth below.

(b) Ten-Percent Shareholders.

An Employee who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Corporation or any of its Subsidiaries shall not be eligible to receive an Incentive Stock Option, unless (i) the Exercise Price of the Shares subject to such Option is at least 110% of the Fair Market Value of such Shares on the date of grant and (ii) the term of such Option does not exceed five years from the date of grant.

(c) Attribution Rules.

For purposes of (b) above, in determining stockownership, an Employee shall be deemed to own the stock owned, directly or indirectly, by or for his or her brothers, sisters, spouse, ancestors and lineal descendants. Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be deemed to be owned proportionately by or for its shareholders, partners or beneficiaries. Stock with respect to which such Employee holds an option shall not be counted.

(d) Outstanding Stock.

For purposes of (b) above, "outstanding stock" shall include all stock actually issued and outstanding immediately after the grant of the Incentive Stock Option to the Optionee. "Outstanding stock" shall not include shares authorized for issuance under outstanding options held by the Optionee or by any other person.

6. STOCK.

The aggregate number of Shares which may be issued upon exercise of Options under the Plan shall not exceed 350,000. The number of Shares subject to Options outstanding at any time shall not exceed the number of Shares then remaining available for issuance under the Plan. In the event that any outstanding Option for any reason expires or is terminated, the Shares allocable to the unexercised portion of such Option may again be made subject to Options. The limitation established by this Section 6 shall be subject to adjustment in the manner provided in Section 10 upon the occurrence of an event specified therein.

7. TERMS AND CONDITIONS OF OPTIONS.

(a) Stock Option Agreements.

Options shall be evidenced by written stock option agreements in such form as the Committee shall from time to time determine. Such agreements shall comply with and be subject to the terms and conditions set forth below. However, the provisions of all stock option agreements executed under the Plan need not be identical.

(b) Number of Shares.

Each Option shall specify the number of Shares to which it pertains and shall provide for the adjustment of such number in accordance with Section 10. The Option shall also specify whether it is an Incentive Stock Option or a Nonstatutory Stock Option.

(c) Exercise Price.

Each Option shall specify the Exercise Price. The Exercise Price under a Nonstatutory Stock Option shall not be less than 85% of the Fair Market Value on the date of grant. The Exercise Price under any Incentive Stock Option shall not be less than 100% of the Fair Market Value on the date of grant and, in the case of an Incentive Stock Option granted to an Optionee described in Section 5(b), shall not be less than 110% of the Fair Market Value on the date of grant.

(d) Medium and Time of Payment.

The Purchase Price shall be payable in full in United States dollars upon the exercise of the Option, except that the Committee may determine that all or part of the Purchase Price can be paid (i) by the surrender of Shares in good form for transfer, owned for 12 months or more by the person exercising the Option and having a Fair Market Value on the date of exercise equal to that portion of the Purchase Price which is being paid with Shares, or (ii) with a full-recourse promissory note executed by the Optionee. The interest rate and other terms and conditions of such note shall be as specified by the Committee; provided, however, that such note shall have a term of not more than five years, shall be payable in full within 90 days after the Optionee ceases to be an Employee and shall bear interest at a rate not less than the Test Rate. The Committee may require that the Optionee pledge his or her Shares to the Corporation for the purpose of securing the repayment of such note. Payment in the form of a promissory note shall be permissible only if the person executing such note then is an Employee.

(e) Withholding Taxes.

As a condition to the exercise of an Option or the disposition of Shares acquired under the Plan, the Optionee shall make such arrangements as the Committee may require for the satisfaction of any Federal, state or local withholding tax obligations that may arise in connection with such exercise or disposition.

(f) Term and Nontransferability of Options.

Each option shall specify the date when all or any installment thereof is to become exercisable. The Option shall also specify its term, which shall not exceed 10 years from the date of grant and, in the case of an Incentive Stock Option granted to an Optionee described in Section 5(b), shall not exceed five years from the date of grant.

During the lifetime of the Optionee, the Option shall be exercisable only by the Optionee and shall not be assignable or transferable. In the event of the Optionee's death, the Option shall not be transferable other than by will or by the laws of descent and distribution.

(g) Termination of Service (Except by Death).

If an Optionee ceases to be an Employee for any reason other than his or her death, then the Optionee shall have the right to exercise an Option (to the extent not previously exercised and not expired) at any time within 90 days after the date when he or she ceases to be an Employee, but only to the extent that, on such date, the Optionee's right to exercise then such Option has accrued pursuant to the terms of the applicable stock option agreement. The Committee, in the applicable stock option agreement,

may replace such period of 90 days with any other period.

For purposes of this Subsection (g), the Employee relationship shall be deemed to continue while the Optionee is on military leave, sick leave or other bona fide leave of absence (to be determined in the sole discretion of the Committee). The foregoing notwithstanding, in the case of an Incentive Stock Option, the Employee relationship shall not be deemed to continue beyond the 90th day after the Optionee ceased active employment as a common-law employee, unless the Optionee's reemployment rights are guaranteed by statute or by contract.

(h) Death of Optionee.

If an Optionee dies while an Employee and has not fully exercised an Option, then such Option (to the extent not previously exercised and not expired) may be exercised at any time within 12 months after the Optionee's death by the executors or administrators of his or her estate or by any person or persons who have acquired such Option directly from the Optionee by bequest or inheritance, but only to the extent that, at the date of the Optionee's death, the Optionee's right to exercise such Option had accrued pursuant to the terms of the applicable stock option agreement.

If an Optionee dies after the Employee relationship terminated, but within the period during which an Option could have been exercised under (g) above, and has not fully exercised such Option, then such Option (to the extent not previously exercised and not expired) may be exercised at any time within 12 months after the Optionee's death by the executors or administrators of his or her estate or by any person or persons who have acquired such Option directly from the Optionee by bequest or inheritance, but only to the extent that, at the date of termination of the Employee relationship, the Optionee's right to exercise such Option had accrued pursuant to the terms of the applicable stock option agreement.

(i) Rights as a Shareholder.

An Optionee, or a transferee of an Optionee, shall have no rights as a shareholder with respect to any Shares covered by his or her Option until the date of the issuance of a stock certificate for such Shares. No adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property), distributions or other rights for which the record date is prior to the date when such stock certificate is issued, except as provided in Section 10.

(j) Modification, Extension and Renewal of Options.

Within the limitations of the Plan, the Committee may modify, extend or renew outstanding Options or accept the cancellation of outstanding Options (to the extent not previously exercised) for the granting of new Options in substitution therefor. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, alter or impair any rights or obligations under such Option.

(k) Other Provisions.

The stock option agreements authorized under the Plan may contain such other provisions not inconsistent with the terms of the Plan (including, without limitation, restrictions upon the exercise of the Option or the transferability of Shares) as the Committee may deem advisable.

8. LIMITATION ON ISO AWARDS.

No Incentive Stock Options shall be granted to an Optionee under the Plan if the aggregate Fair Market Value of the Stock subject to his or her Incentive Stock Options which become exercisable for the first time during any one calendar year (under all plans of the Corporation, any parent corporation or a Subsidiary) would exceed \$100,000. For purposes of this Section 8, the Fair Market Value of a Share shall be determined as of the date when the Incentive Stock Option covering such Share is granted.

9. TERM OF PLAN.

Options may be granted pursuant to the Plan until May 12, 1997, or until such earlier date as the Board may determine at its sole discretion.

10. RECAPITALIZATIONS.

Subject to any required action by stockholders, the number of Shares covered by the Plan as provided in Section 6, the number of Shares covered by each outstanding Option and the Exercise Price thereof shall be adjusted proportionately for any increase or decrease in the number of issued Shares resulting from a subdivision or consolidation of Shares or the payment of a stock dividend or any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Corporation.

Subject to any required action by stockholders, if the Corporation is the surviving corporation in any merger or consolidation, each outstanding Option shall pertain to the securities to which a holder of the number of Shares subject to the Option would have been entitled. A dissolution or liquidation of the Corporation or a merger or



consolidation in which the Corporation is not the surviving corporation shall cause each outstanding Option to terminate, unless the agreement of merger or consolidation provides for the assumption thereof by the surviving corporation; provided, however, that each Optionee shall have the right to exercise his or her Options in full immediately prior to the date of such dissolution, liquidation, merger or consolidation, but only to the extent that such Options have not previously been exercised, have not expired and are not assumed by the surviving corporation.

To the extent that the foregoing adjustments relate to securities of the Corporation, such adjustments shall be made by the Committee, whose determination shall be conclusive and binding on all persons.

Except as expressly provided in this Section 10, the Optionee shall have no rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class or by reason of any dissolution, liquidation, merger or consolidation or spin-off of assets or stock of another corporation, and any issue by the Corporation of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option.

The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Corporation to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

#### 11. SECURITIES LAW REQUIREMENTS.

##### (a) Legality of Issuance.

No Shares shall be issued upon the exercise of any Option unless and until the Corporation has determined that (i) it and the Optionee have taken all actions required to register the Shares under the Securities Act of 1933, as amended (the "Act"), or to perfect an exemption from the registration requirements thereof; (ii) any applicable listing requirement of any stock exchange on which Stock is listed has been satisfied; and (iii) any other applicable provision of state or Federal law has been satisfied.

##### (b) Restrictions on Transfer; Representations of Optionee.

Regardless of whether the offering and sale of Shares under the Plan have been registered under the Act or have been registered or qualified under the securities laws of any state, the Corporation may impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates) if, in the judgment of the Corporation and its counsel, such restrictions are necessary or desirable in order to achieve compliance with the provisions of the Act, the

securities laws of any state or any other law. In the event that the sale of Shares under the Plan is not registered under the Act but an exemption is available which requires an investment representation or other representation, each Optionee shall be required to represent that such Shares are being acquired for investment, and not with a view to the sale or distribution thereof, and to make such other representations as are deemed necessary or appropriate by the Corporation and its counsel. Stock certificates evidencing Shares acquired under the Plan pursuant to an unregistered transaction shall bear an appropriate restrictive legend.

Any determination by the Corporation and its counsel in connection with any of the matters set forth in this Section 11 shall be conclusive and binding on all persons.

(c) Registration or Qualification of Securities.

The Corporation may, but shall not be obligated to, register or qualify the sale of Shares under the Act or any other applicable law. The Corporation shall not be obligated to take any affirmative action in order to cause the sale of Shares under the Plan to comply with any law.

(d) Removal of Legends.

If, in the opinion of the Corporation and its counsel, any legend placed on a stock certificate representing Shares issued under the Plan is no longer required, the holder of such certificate shall be entitled to exchange such certificate for a certificate representing the same number of Shares but lacking such legend.

12. AMENDMENT OF THE PLAN.

The Board may from time to time, with respect to any Shares at the time not subject to Options, suspend or discontinue the Plan or revise or amend it in any respect whatsoever except that, without the approval of the Corporation's shareholders, no such revision or amendment shall:

- (a) Increase the number of Shares subject to the Plan, except as provided in Section 10;
- (b) Materially change the designation in Section 5 with respect to the class of Employees eligible to receive Incentive Stock Options; or
- (c) Amend this Section 12 to defeat its purpose.

13. APPLICATION OF FUNDS.

The proceeds received by the Corporation from the sale of Stock pursuant to the exercise of an Option will be used for general corporate purposes.

14. APPROVAL OF SHAREHOLDERS.

The adoption of the Plan and any amendment described in Section 12 shall be subject to approval by the affirmative vote of the holders of a majority of the outstanding shares of the Corporation entitled to vote or by the unanimous written consent of all holders of the outstanding shares of the Corporation entitled to vote. In the event that the Plan is not approved by stockholders within 12 months after adoption by the Board, any Option theretofore granted shall be null and void.

15. EXECUTION.

To record the adoption of the Plan by the Board, effective as of May 13, 1987, the Corporation has caused its authorized officers to affix the corporate name hereto.

FAIR, ISAAC AND COMPANY,  
INCORPORATED

By \_\_\_\_\_

By \_\_\_\_\_

SMITH RANCH PLAZA

OFFICE BUILDING LEASE

1. PARTIES. This Lease, dated, for reference purposes only, October 20, 1983, is made by and between S.R.P. Limited Partnership, a California Limited Partnership (herein called "Landlord") and Fair, Isaac & Company, Incorporated, (herein called "Tenant").

2. PREMISES. Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord those certain premises (herein called "Premises") consisting of 25,994 rentable square feet including corridation and restrooms, as outlined in red on Exhibit A-1 attached hereto, being situated on the first, second and third floors of that certain building known as 120 North Redwood Drive, Suite 300, San Rafael, California 94903.

Said Lease is subject to the terms, covenants and conditions herein set forth and the Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed and that this Lease is made upon condition of said performance.

3. TERM. The term of this Lease shall be for five (5) years, commencing on the 1st day of May, 1984, and terminating on the 30th day of April, 1989.

4. POSSESSION. If the Landlord, for any reason whatsoever, cannot deliver possession of the said Premises to the Tenant at the commencement of the term hereof, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, nor shall the expiration date of the above term be in any way extended, but in that event, all rent shall be abated during the period between the commencement of said term and the time when Landlord delivers possession; except that, should Landlord fail to deliver possession two or more months beyond any date agreed herein or subsequently as the date of possession, Tenant may declare this Lease to be terminated and all sums paid to Landlord by Tenant shall be promptly refunded and Tenant shall have no further obligations to Landlord under this Lease. Failure of Tenant to exercise this option at the end of the first two months delay or at any later time, shall not be deemed a waiver of the right to exercise the option at any other date should possession not be delivered.

In the event that Landlord shall permit Tenant to occupy the Premises prior to the commencement date of the term, such occupancy shall be subject to all the provisions of this Lease. Said early possession shall not advance the termination date hereinabove provided.

5. BASIC RENT. Tenant agrees to pay to Landlord, as rental, without prior notice or demand, for the Premises the sum of: Thirty-Seven Thousand, Four Hundred Thirty-One and no/100 (\$37,431.00) Dollars (hereinafter called "Basic Rent"), on or before the first day of the first full calendar month of the term hereof and a like sum as adjusted in the manner specified in Article 6 (hereinafter called "Adjusted Basic Rent"), on or before the first day of each and every successive calendar month thereafter during the term hereof, except that the first month's rent shall be paid upon the execution hereof. The Basic Rent shall be paid until adjusted in the

1

EXHIBIT 10.5

manner specified in Paragraph 6. Thereafter, the prevailing Adjusted Basic Rent shall be the amount paid. Rent for any period during the term hereof which is for less than one (1) month shall be a prorated portion of the monthly installment herein, based upon a thirty (30) day month. Said rental shall be paid to Landlord, without deduction or offset in lawful money of the United States of America, which shall be legal tender at the time of payment at the Office of the Building, or to such other person or at such other place as Landlord may from time to time designate in writing.

6. ADJUSTED BASIC RENT. On each annual anniversary date following the commencement of the lease term, the rent specified in Paragraph 5 for the ensuing twelve (12) months shall be increased by the use of the Consumer Price Index (All Urban Consumers Component) for San Francisco-Oakland (1967=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. The indices used will be the latest published index prior to the commencement of the lease term and, in subsequent years the latest published index prior to the commencement of each such subsequent year of the lease term. The Adjusted Basic Rent will be increased by the percentage increase, if any, between the index used at the commencement of the lease term and that used for each subsequent year. In no event shall the combination of increases under this Section and Section 7 exceed a 10% increase over the combined rental under said Sections for the immediately preceding lease year.

In case the U.S. Department of Labor shall discontinue the computation and publication of said Consumers Price Index or the publication thereof should be delayed so as to prevent its use hereunder at the times required, there shall be substituted therefor by Landlord such other index or method of ascertaining changes in the price level as, in the opinion of Landlord, most closely resembles the Consumer Price Index and method of arriving at the index figure by said Bureau.

7. ADDITIONAL RENT. Tenant agrees to pay to Landlord as additional rental (hereinafter "Additional Rent") a sum equal to Tenant's Proportional share (hereinafter defined) of Direct Costs (hereinafter defined).

For the purposes of this Article, Tenant's Proportional Share shall be a sum equal to 61.14% of the total rentable area of the Building.

For the purposes of this Article, the term "Direct Costs" shall include: (i) property taxes paid or incurred by Landlord consisting of all real or personal property taxes (and any tax levied wholly or partly in lieu thereof) imposed against the Building and all related improvements, including the adjacent walks, parking lots, and the land upon which they are situated, but shall not include any net income or franchise taxes; (ii) operating costs paid or incurred by Landlord in maintaining, managing, and operating Building, its equipment, and the adjacent walks, parking lots, landscaped areas, and the land upon which they are located, including without limiting the generality of the foregoing, the costs of services of both independent contractors and employees (inclusive of employment taxes, and fringe benefits) who perform duties connected with the day to day management, operation, maintenance, and repair of the Building, and the costs incurred by reason of any changes in any regulations, rules, requirements, laws, codes, directives, or similar pronouncements of any Federal, state, county, city, or other governmental or regulatory agency which require changes in or to the physical construction of or related equipment of or used in the Building or the adjacent walks, parking lots, landscaped areas, and/or items used in the operation and maintenance thereof.

For the purposes of this Lease the term "Base Year" shall refer to and mean the calendar year in which this Lease term commences.

For the purposes of this Article, the term "Comparison Year" shall refer to and mean each successive calendar year of the term of this Lease after the Base Year.

For the purposes of this Article, the term "Current Year" shall refer to and mean each successive calendar year as it becomes the current calendar year, beginning with the first calendar year next following the Base Year.

Each year during the term of this Lease other than the Base Year, Landlord shall furnish to Tenant a written statement showing in reasonable detail Landlord's Direct Costs for the applicable Comparison Year and for the Base Year, and showing the amount, if any, of Additional Rent due from Tenant.

During the Base Year, Tenant shall pay Landlord, on or before the first day of each month during which a payment of Additional Rent is due, a sum equal to the total of the following two components: (a) the product of Fifteen Cents (\$.15) times the number of square feet of the Premises for which separate electrical metering is provided, and (b) the product of Twenty-five Cents (\$.25) times the number of square feet of the Premises for which separate electrical metering is not provided.

To compute the Additional Rent for all years other than the Base year, if the Direct Costs paid or incurred by the Landlord for the Comparison Year are in excess of the Annualized Additional Rent paid by Tenant for the Base Year, then the Tenant shall pay, as Additional Rent, Tenant's Proportional Share thereof. Upon Tenant's receipt of Landlord's statement for the first Comparison Year, Tenant shall pay in full the total amount of Additional Rent for the first Comparison Year, and, in addition, for the Current Year the amount of such Additional Rent shall be used as an estimate for the Current Year. The amount of the Additional Rent shall be divided in twelve (12) equal monthly installments and Tenant shall pay to Landlord, concurrently with the Basic Rent or the prevailing Adjusted Basic Rent, as the case may be, which is next due following the receipt of said statement from Landlord, an amount equal to one (1) such monthly installment multiplied by the number of months from January in the Current Year in which Landlord's said statement is submitted to the month of such statement, both months inclusive. Subsequent installments of Additional Rent shall be payable concurrently with the Basic Rent or the prevailing Adjusted Basic Rent, as the case may be, for the balance for that Current Year and shall continue until the statement for the next Comparison Year is rendered. If the next or any succeeding Comparison Year results in an increase in Direct Costs over the immediately preceding Comparison Year, then, upon receipt of said statement from Landlord, Tenant shall pay a lump sum equal to Tenant's Proportional Share of the Direct Costs less the total of the monthly installments paid during the immediately preceding Comparison Year, and the estimated monthly installments of Additional Rent to then be paid for the Current Year shall be adjusted to reflect such increased Direct Costs. If the next or any succeeding Comparison Year results in a decrease in Direct Costs over the immediately preceding Comparison Year, then, upon receipt of said statement from Landlord, the estimated monthly installments of Additional Rent to then be paid for Current Year shall be adjusted to reflect such decreased Direct Costs, and the difference between Tenant's Proportional Share of the decreased Direct Costs and the total of the monthly installments paid during the immediately preceding

Comparison Year shall be credited to the first (and succeeding, if applicable) installments of Additional Rent to be paid for the Current Year.

If the term of this Lease has expired and/or Tenant has vacated the Premises, when the final determination is made of Tenant's share of Direct Costs for the year in which this Lease terminated, Tenant shall immediately pay any increase due over the estimated amounts paid and, conversely, any overpayment made in the event said costs decrease shall be immediately rebated by Landlord to Tenant.

8. SECURITY DEPOSIT. Tenant, has deposited with Landlord the sum of Thirty-Seven Thousand, Four Hundred Thirty-One Dollars (\$37,431.00). Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term hereof. Said sum shall accrue interest at the rate of eight percent (8%) per annum, to be compounded annually, or, at Landlord's election, to be paid to Tenant. All references in this lease, including references in this Paragraph 8, to the security deposit shall be deemed to refer to said above-mentioned sum together with any accrued interest not paid by Landlord to Tenant. If Tenant defaults with respect to any provision of this Lease, including, but not limited to the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a material breach of this Lease. If Landlord does so apply all or a portion of the security deposit, interest shall be abated until such time as the applied portion is restored to its original amount. Landlord shall not be required to keep this security deposit, or the interest accrued thereon, separate from its general funds. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit together with said interest thereon, or any balance thereof shall be returned and paid to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) at the expiration of the Lease term or at any earlier date at which Tenant or Landlord shall terminate this Lease at their election as may be provided herein. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said deposit and the accrued interest thereon to Landlord's successor in interest, to hold under the same conditions as did Landlord.

9. USE. Tenant shall use the premises for general office purposes of the Fair, Isaac Companies, which purposes are known and approved by Landlord, and shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord.

Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Building or any of its contents, or cause cancellation of any insurance policy covering said Building or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall

Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

10. COMPLIANCE WITH THE LAW. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the Landlord and Tenant.

11. CONSTRUCTION. Prior to the commencement of the term hereof, Landlord shall furnish and install within the premises the tenant improvements shown on Exhibit "A" and as shown on Exhibit "B" to be dated October 31, 1983, to be attached hereto and made a part hereof.

All work not within the normal scope of the construction trades employed in the building construction, such as the furnishing and installing of telephone equipment and wiring, furniture, furnishings, office equipment, trade fixtures, carpeting (unless installed by Landlord under the first part of this paragraph), special draperies (in addition to Building Standard horizontal slat blinds for which no substitution is permitted), and other items of personal property, shall be furnished and installed by the Tenant at Tenant's expense. Tenant shall adopt a schedule in conformance with the schedule of Landlord's contractors and conduct its work in such a manner as to maintain harmonious labor relations and so as not to unreasonably interfere with or delay the work of the Landlord's contractors. Tenant's contractors, subcontractors, and labor shall be acceptable to and approved by Landlord and shall be subject to the administrative supervision of the Landlord's general contractor. Contractors or subcontractors engaged by Tenant shall insure, as far as may be reasonably possible, the progress of the work without interruption on account of strikes, work stoppage or other causes for delay. Landlord shall give reasonable access and entry to the Premises to Tenant and its contractors and subcontractors to enable Tenant to adapt the Premises for Tenant's use.

12. ALTERATIONS AND ADDITIONS. Tenant shall not make or suffer to be made any alterations, additions or improvements to or of the Premises or any part thereof without the written consent of Landlord first had and obtained and any alterations, additions or improvements to or of said Premises including, but not limited to, wall covering, paneling and built-in cabinet work, but excepting movable or modular furniture and trade fixtures, shall on the expiration of the term become a part of the realty and belong to the Landlord and shall be surrendered with the Premises. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense, and any contractor or person selected by Tenant to make the same must first be approved of in writing by the Landlord which approval will not be unreasonably withheld. Upon the expiration or sooner termination of the term hereof, Tenant shall, upon written demand by Landlord, given at least thirty (30) days prior to the end of the term, at Tenant's sole cost and expense, promptly and with all due diligence remove any



alterations, additions, or improvements made by Tenant which are designated by Landlord to be removed, and Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

13. REPAIRS. (a) By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair except as may be noted in writing and delivered to Landlord within seven (7) days of possession. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair, damage thereto from causes beyond the reasonable control of Tenant and from ordinary wear and tear excepted. Tenant shall upon the expiration or sooner termination of the Lease hereof surrender the Premises to the Landlord in good condition, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Except as specifically provided in an addendum, if any, to this Lease, Landlord shall have no obligation whatsoever to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof and the parties hereto affirm that Landlord has made no representations to Tenant respecting the condition of the Premises or the Building except as specifically herein set forth.

(b) Notwithstanding the provisions of Article 13(a) hereinabove, Landlord shall repair and maintain the structural portions of the Building, including, without limitation, the basic plumbing, air conditioning, heating, and electrical systems and all other improvements to the real property upon which the Building is situated installed or furnished by Landlord, unless such maintenance and repairs are caused in part or in whole by the act, neglect, fault or omission of any duty by the Tenant, its agents, servants, employees or invitees, in which case Tenant shall pay to Landlord the reasonable cost of such maintenance and repairs. Landlord shall not be liable for any failure to make any such repairs or to perform any maintenance unless Landlord shall fail within five (5) days (or such shorter period as the importance or the crucial nature of the repair may reasonably require) after notice of the need of such repairs or maintenance is given to Landlord by Tenant, to commence and diligently prosecute such maintenance and repair. Further notwithstanding the provisions of Article 13(a) hereinabove, Landlord shall maintain the overall appearances of the Premises and the public areas of the building and its appurtenant property at a high standard, specifically including, but in no way limited to, repainting or replacing carpeting in cases where fair wear and tear have impaired their appearance to a level inconsistent with the quality of the property. Should Landlord fail to thus commence or diligently prosecute any maintenance or repair hereby required by Landlord to be performed, then Tenant may cause such maintenance or repair to be performed and deduct the cost thereof from the next rent payable by Tenant to Landlord. Except as provided in Article 24 hereof, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances and equipment therein.

14. HOLD HARMLESS. Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises for the conduct of its business or from any activity, work, or other thing done, permitted or suffered by the Tenant in or about the Building, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all and against all costs, attorneys' fees, expenses and liabilities incurred in or about any such claim or any action or

proceeding brought thereon, and, in any case, action or proceeding to be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises, from any cause other than Landlord's negligence, and Tenant hereby waives all claims in respect thereof against Landlord.

Landlord or its agents shall not be liable for any damage to property entrusted to employees of the Building, nor for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence of landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light or other incorporeal hereditaments, loss of business by tenant, nor shall landlord be liable for any latent defect in the premises or in the building. Tenant shall give prompt notice to landlord in case of fire or accidents in the premises or in the building or of defects therein or in the fixtures or equipment.

15. ASSIGNMENT AND SUBLETTING. Neither Tenant nor its heirs or assigns shall either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any person (Tenant, its employees, servants, invitees, subsidiaries, affiliates, successors, or their employees, agents, servants and invitees excepted) to occupy or use the said Premises, or any portion thereof, without the prior written consent of Landlord had and obtained, which consent shall not be unreasonably withheld. Neither any change in the ownership of Tenant's stock nor any merger, corporate reorganization or corporate acquisition involving Tenant shall be construed to constitute an assignment within the meaning of this Article. A consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment and any purported assignment in violation of the provisions of this Article without Landlord's consent shall be void, and shall, at the option of the Landlord, constitute a default under this Lease.

16. LIENS. Tenant shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Landlord may require, at Landlord's sole option, that Tenant shall provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1 1/2) times any and all estimated costs of any improvements, additions, or alterations in the Premises, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

17. SUBROGATION. As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

18. LIABILITY INSURANCE. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring

Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance at all times shall be a combined single aggregate policy in an amount of not less than One Million Dollars (\$1,000,000). The limit of said insurance shall not, however, limit the liability of the Tenant hereunder. Tenant may carry said insurance under a blanket policy, providing, however, said insurance by Tenant shall have a Landlord's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain same, but at the expense of Tenant. Insurance required hereunder, shall be in companies rated A+ AAA or better in "Best's Insurance Guide." Tenant shall deliver the Landlord prior to occupancy of the Premises copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancellable or subject to reduction of coverage except after ten (10) days prior written notice to Landlord. Landlord will keep the Premises insured for fire and extended coverage equivalent to 90% or more of full replacement cost at all times during the term of this Lease. Landlord will also maintain comprehensive general public liability insurance. Tenant's liability insurance shall be primary coverage and Landlord's liability insurance shall be secondary.

19. SERVICES AND UTILITIES. Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises during reasonable hours of generally recognized business days, to be determined by Landlord at his sole discretion, and subject to the rules and regulations of the Building of which the premises are a part, electricity for normal lighting and fractional horsepower office machines, heat and air conditioning required in Landlord's judgment for the comfortable use and occupation of the Premises, and janitorial service. Landlord shall also maintain and keep lighted the common stairs, common entries and toilet rooms in the Building. Landlord shall not be liable for, and Tenant shall not be entitled to, any reduction of rental by reason of Landlord's failure to furnish any of the foregoing when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord. Landlord shall not be liable under any circumstances for a loss of or injury to property, however occurring, through or in connection with or incidental to, failure to furnish any of the foregoing. Supplementary air conditioning units will be installed in the premises with the cost of installation and the cost of operation and maintenance thereof to be paid by Tenant to Landlord or public utility upon demand by Landlord or utility.

The nature of the business of Tenant is such that the use of electronic and electrical equipment is central to the organization. As a result, Tenant will use an amount of electrical power greater than would be used by some other tenant not engaged in a similar business. Tenant shall not connect with electric current except through existing electrical outlets in the Premises. If Tenant shall require water or electric current in excess of that usually furnished or supplied for the use of the Premises in Tenant's normal business operations, Tenant shall first procure the written consent of Landlord, which Landlord shall not unreasonably refuse, to the use thereof and Landlord may cause a water meter or electrical current meter to be installed in the Premises, so as to measure the amount of water and electric current consumed for any such use. The cost of any such meters and of installation, maintenance and repair thereof shall be paid for by the Tenant and Tenant agrees to pay to Landlord promptly upon demand therefore by Landlord for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not

installed, such excess cost for such water and electric current will be established by an estimate made by a utility company or electrical engineer.

Notwithstanding anything to the contrary contained in this Section 19, Landlord shall install, as a portion of Exhibit A, "Work Agreement," excess air conditioning and electrical distribution equipment for Tenant's heat-generating equipment. In addition, Landlord shall provide separate metering, to the extent feasible, of electrical consumption in Tenant's Premises, with the intent that Tenant shall determine its own hours and methods of operation and pay for such consumption direct to the utility.

20. PROPERTY TAXES. Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures and personal property located in the Premises; except that which has been paid for by Landlord, or is the standard of the Building. In the event any or all of the Tenant's leasehold improvements, except that which has been paid for by Landlord, or is the standard of the Building, equipment, furniture, fixtures and personal property shall be assessed and taxed with the Building, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

21. RULES AND REGULATIONS. Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate. Landlord reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be binding upon Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any said rules and regulations by any other tenants or occupants. Landlord agrees diligently to enforce the Rules and Regulations with regard to all Tenants in the Building.

22. HOLDING OVER. If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof, with the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly installment of Basic Rent or the prevailing Adjusted Basic Rent, as the case may be, plus the last monthly installment of Additional Rent, and all other charges payable hereunder, and upon all the terms hereof applicable to a month to month tenancy.

23. ENTRY BY LANDLORD. Landlord reserves and shall at any and all times have the right to enter the Premises for the purposes of inspection, and for that purpose shall at all times have and retain the necessary keys with which to unlock all doors in, upon, and about the Premises, excluding Tenant's vaults, safes, files, and such areas as Tenant shall designate as "secure areas." Tenant shall have the right to place Tenant's own locks on any such designated "secure areas." Landlord shall have the right to inspect the physical status of any areas designated as "secure areas" upon notice to Tenant and in company with a representative of Tenant. Landlord shall have right of access to the Premises necessary to provide janitorial and other services to be provided hereunder but the times of such access shall be those that shall be agreed on from time to time between Landlord and Tenant, and neither party shall withhold its agreement unreasonably. Landlord shall have the right, upon reasonable notice, to submit Premises to inspection by prospective purchasers or tenants. Landlord shall have the right to enter the Premises during normal business hours of 9:00 a.m. and 5:00 p.m. during working days in order to post notices of non-responsibility. Landlord shall have the right to enter the Premises, other

than the secure areas, at any time Landlord deems it necessary or desirable, in order to alter, improve, or repair the premises and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that access by Tenant to the Premises or freedom of movement within the Premises are not unreasonably restricted. Landlord shall have the right to use the keys in his possession for the purpose of entering the Premises for the purposes of alteration, improvement, or repair. Landlord undertakes, in those cases where alteration, improvement, or repair can be planned in advance, to notify Tenant as far in advance as is possible, and in those cases where an alteration, improvement, or repair is of an emergency or other nature such that advance planning is not possible, to notify Tenant promptly that the Premises have been entered. Landlord shall have no liability to Tenant for any such proper entrance except for any failure to exercise due care for Tenant's property. Tenant shall be responsible to report to landlord any circumstance requiring action by Landlord in any secure area.

As regards any proper entry governed by this Paragraph, Tenant hereby waives any claim for damages or for injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, other than a loss resulting from negligence by Landlord. Any such proper entry shall not be cause for any abatement of rent.

Any proper entry to the Premises as governed by this Paragraph obtained by Landlord by any of these said means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

24. RECONSTRUCTION. In the event the Premises or the Building are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair the same; and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of all rent payable hereunder while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and/or the making of such repairs shall materially interfere with the business carried on by the Tenant in the Premises. If the damage is due to the fault and neglect of Tenant or his employees, there shall be no abatement of rent.

In the event the Premises or the Building are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall forthwith repair the same, provided the extent of the destruction be less than ten percent (10%) of the then full replacement cost of the building in which the Premises are located. In the event the destruction of the Premises or the Building by a peril not covered by fire and extended coverage insurance is to an extent greater than ten percent (10%) of the full replacement cost, then Landlord shall have the option; (1) to repair or restore such damage, this Lease continuing in full force and effect; or (2) give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no less than thirty (30) and no more than sixty (60) days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate on the date so specified in such notice. If the Premises of the Building are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, and whether or not Landlord elects to repair or restore such damage or to terminate this Lease as herein provided, Tenant shall be entitled to a proportionate reduction of all rent payable hereunder to be based

upon the extent to which the damage and the making of such repairs, if any, shall materially interfere with the business carried on by the Tenant in the Premises.

Notwithstanding anything to the contrary contained in this Article, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises (1) when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the extended term of this Lease, if any extended term there is; or (2) when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the original term of this Lease unless Tenant, within ten (10) days following Landlord's notice to Tenant of Landlord's election not to repair such damage, exercises Tenant's option to renew.

Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any panels, decoration,, office fixtures, railings, floor covering, partitions, or any other property which is installed in the Premises by Tenant.

Except as otherwise provided in this Article, Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration, except as caused by Landlord, Landlord's agents or employees.

25. DEFAULT. In addition to any other act or event elsewhere stated in this Lease which will cause a default hereunder, the occurrence of any one or more of the following acts or events shall constitute a default and breach of this Lease by Tenant.

(a) The vacating or abandonment of the Premises by Tenant.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof by Landlord to Tenant.

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Tenant, other than described in subparagraph (b) of this Article, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant, provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within one hundred twenty (120) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

26. REMEDIES IN DEFAULT. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises; reasonable attorney's fees and costs; any real estate commissions and costs actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord and applicable to the unexpired term of this Lease. Unpaid installments of rent or other sums shall bear interest from the date due at the rate of ten (10%) percent per annum. In the event Tenant shall have abandoned the Premises, Landlord shall have the option of (a) taking possession of the Premises and recovering from Tenant the amount specified in this paragraph, or (b) proceeding under the provisions of the following Article 26(b).

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decision of the State in which the Premises are located.

27. EMINENT DOMAIN. If more than twenty-five percent (25%) of the floor area of the building of which the Premises are a part shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, Landlord shall have the right, at its election, to terminate this Lease. If more than twenty-five percent (25%) of the parking area appurtenant to the building is so taken or appropriated, then either party hereto shall have the right to terminate this lease. If any portion of the Premises is so taken or appropriated, then Tenant shall have the right, at its election, to terminate this Lease. In the event that there is any taking or appropriation of any portion of the Building, or of the real property on which it is situated, and this Lease is not terminated pursuant to the provisions hereof, any sums thereafter due as rental under this Lease shall be equitably reduced.

Any award paid in connection with any such taking shall belong to and be paid to Landlord, except that Tenant shall receive from the award the following:

a. A sum attributable to Tenant's improvements or alterations made to the Premises by Tenant in accordance with this Lease, which Tenant's improvements or alterations Tenant has the right to remove from the Premises pursuant to the provisions of this Lease but elects not to remove; or, if Tenant elects to remove any such Tenant's improvements or alterations, a sum for reasonable removal or relocation costs not to exceed the market value of such improvements or alterations.

b. A sum paid to Tenant from the condemnor for loss of goodwill.

c. A sum attributable to that portion of the award constituting severance damages for the restoration of the Premises, unless this Lease has been terminated pursuant to the provisions hereof.

28. OFFSET STATEMENT. Tenant shall at any time and from time to time upon not less than ten (10) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing, (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect), and the date to which the rentals and other charges are paid, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part.

29. PARKING. Tenant shall have the right to use in common with other tenants or occupants of the Building the parking facilities of the Building. Tenant agrees that Tenant's employees and agents will not park in any area designated by Landlord for visitor parking or no parking. In the event of violation of this provision, Tenant agrees that the offending vehicle may be towed away at the expense of Tenant. Ninety-four (94) parking spaces will be assigned to Tenant at Tenant's or Landlord's request at such time as general parking is regularly inadequate, which assignment shall not be unreasonably withheld.

30. AUTHORITY OF TENANT. Tenant and each individual executing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease.

31. GENERAL PROVISIONS.

(a) Plats and Riders. Clauses, plats and riders, if any, signed by the Landlord and the Tenant and endorsed on or fixed to this Lease are a part hereof.

(b) Waiver. The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rentals hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of the acceptance of such rent.

(c) Notices. All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands by the Landlord to the Tenant shall be sent by United States Mail, postage prepaid, addressed to the Tenant at the Premises, or to such other place as Tenant may from time to time designate in a notice to the Landlord. All notices and demands by the Tenant to the Landlord shall be sent by United States Mail, postage prepaid, addressed to the Landlord at the Office of the Building, or to such other person or place as the Landlord may from time to time designate in a notice to the Tenant.



(d) Joint Obligation. If there be more than one Tenant the obligations hereunder imposed upon Tenants shall be joint and several.

(e) Marginal Headings. The marginal headings and titles to the Articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(f) Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

(g) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

(h) Recordation. Neither Landlord nor Tenant shall record this Lease or a short form memorandum hereof without the prior written consent of the other party.

(i) Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.

(j) Late Charge. Tenant hereby acknowledges that late payment by Tenant to Landlord or rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises or the Building accordingly. Accordingly, if any amounts due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after written notice that said amount is past due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

(k) Prior Agreements. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

(l) Inability to Perform. Except as provided in Paragraph 4 or Exhibit A to this Lease, this Lease and the obligations of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor disputes, civil disobedience, acts of God, or any other cause beyond the reasonable control of the Landlord.

(m) Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover all costs and expenses including the fees of its attorneys in such action or proceeding in such amount as the court may adjudge reasonable.

(n) Sale of Building by Landlord. In the event of any sale of the Building, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Building shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. In connection with any such sale, Landlord agrees to obtain Purchaser's express written assumption of this Lease.

(o) This lease shall be prior to any encumbrance recorded after the date of this Lease affecting the Building, other improvements, and land of which the Premises are a part. If, however, a lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance, if Landlord first obtains from the lender, in favor of tenant, a written agreement that provides substantially the following:

"As long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease."

Tenant shall attorn to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed given in lieu of foreclosure. Tenant shall execute the written agreement and any other documents required by the lender to accomplish the purposes of this paragraph.

(p) Name. Tenant shall not use the name of the Building for any purpose other than as an address of the business to be conducted by the Tenant in the Premises.

(q) Separability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(r) Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

(s) Choice of Law. This Lease shall be governed by the laws of the State of California.

(t) Signs and Auctions. Tenant shall not place any sign upon the Premises or Building or conduct any auction thereon without Landlord's prior written consent.

32. OPTION TO RENEW. If Tenant is not in default under this lease as of one hundred twenty (120) days prior to the expiration of the initial term hereof, then Tenant shall have an option to extend the term of this lease for one additional period of five (5) years. Such option must be exercised by Tenant by written notice to Landlord, which notice must be given not less than one hundred twenty (120) days prior to the expiration of the initial lease term.

If Tenant is then in default under the terms of this Lease, or fails to exercise said option in the manner and within the time above set forth, then this Lease shall expire at the end of the initial five-year (5) term.

If Tenant is entitled to, and in fact does exercise this option in the manner and within the time limits herein set forth, and if Tenant is not in default under the terms of this lease as of the expiration of the initial five-year (5) term, then this Lease shall automatically be extended for an additional five (5) years, commencing at the expiration of the initial five-year (5) term, and each and every term, provision and covenant of this Lease, except as to rental, shall be applicable during such five-year extended term.

During such extended term, rental shall be that which would have obtained had the original term contained the renewal period.

33. OPTION TO LEASE ADDITIONAL SPACE. Landlord shall provide Tenant notice of any available space on the second level of the East Wing of the Building, whereupon Tenant shall have ten days to exercise its option to lease said space at rates and on terms equivalent to that contained in this Lease, but in no event shall the term be less than one (1) year. Landlord further agrees to restrict Lease terms to other Tenants on the second level of the East Wing to a maximum of three years.

34. OPTION TO PURCHASE. If Tenant is not in default under the terms of this Lease as of one hundred eighty (180) days prior to the expiration of the initial five-year (5) term hereof, then Tenant shall have an option to purchase the Building of which the leased premises are a part, on the following terms and conditions:

(a) The option must be exercised by written notice from Tenant to Landlord, which notice must be given not later than one hundred eighty (180) days prior to the expiration of the initial five-year lease term. If such written notice is not given, this option shall terminate.

(b) If Tenant exercises this option, then the purchase price, which shall be payable in cash at the time of escrow close (unless Landlord is willing to negotiate and accept payment terms other than cash), shall be the fair market value of the Building. Fair market value shall be established by the agreement of Landlord and Tenant. Provided that if they are unable to agree on or before one hundred twenty (120) days before the expiration of the initial five-year lease term, then Landlord and Tenant shall each appoint an appraiser, the two appraisers shall appoint a third appraiser, and a mutual decision of any two of said three appraisers shall establish fair market value, and thus the purchase price for the Building.

Each party shall pay the costs and fees of their respective appraiser, and they shall share equally in the costs and fees of the third or neutral appraiser.

(c) Escrow shall close, and the sale shall be consummated, at any time during the last five (5) calendar days of the initial five-year (5) lease term.

(d) Landlord reserves the right to enter into a tax deferred exchange under IRC Section 1031. In such event, Tenant agrees to cooperate with Landlord in consummating such tax

deferred exchange, provided that Tenant shall not incur any costs or expenses in connection with such tax deferred exchange.

(e) If Tenant exercises this purchase option, Tenant agrees that it will not receive any equitable interest in the Building by reason of such exercise of option, and that Tenant shall not thereby be entitled to any rights as a purchaser in possession. Rather, all rights, liabilities and responsibilities of Landlord and Tenant between the date of option exercise and the date of escrow close shall be those of Landlord and Tenant, and shall be determined exclusively under the provisions of this Lease, and Tenant shall have no rights as a purchaser in possession.

(f) Time, as set forth in the various provisions of this purchase option, is expressly declared to be of the essence of this option, and of the purchase contract that will result from any exercise thereof.

35. BROKERS. Tenant warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease excepting only James C. Westenbroek and James J. Williams and it knows of no other real estate broker or agent who is entitled to a commission in connection with this Lease.

The parties hereto have executed this Lease at the place and on the dates specified immediately adjacent to their respective signatures.

If this Lease has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Lease or the transactions relating thereto.

SRP Limited Partnership

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By: -----

Address 120 N. Redwood Drive  
-----  
San Rafael, California  
-----

By: -----  
"Landlord"

Fair, Isaac & Company, Inc.

-----

By: -----

Address 55 Mitchell Boulevard  
-----  
San Rafael, California  
-----

By: -----  
"Tenant"

SMITH RANCH PLAZA

WORK AGREEMENT

EXHIBIT "A" TO LEASE

FAIR, ISAAC COMPANY, INC. (hereinafter called "Tenant") and S.R.P. LIMITED PARTNERSHIP (hereinafter called "Landlord") are executing simultaneously with this Work Agreement, the written Lease to which this Work Agreement is attached covering the premises described in said Lease (hereinafter called "the premises").

To induce Tenant to enter into said Lease (which is hereby incorporated by reference to the extent that the provisions of this agreement may apply thereto) and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant mutually agree as follows:

1. TENANT'S PLANS AND SPECIFICATIONS

(a) Except to the extent otherwise provided in subparagraphs (b) and (c) of this paragraph, Landlord agrees to furnish at its sole cost and expense, all architectural, mechanical, and electrical engineering plans required for the performance of the work (hereinafter referred to as "Building Standard Work") hereinbelow described, including complete detailed plans and specifications for Tenant's partition layout, reflected ceiling, heating and air conditioning, electrical outlets and switches and telephone outlets. Design services are limited to one schematic design plus one set of revisions based on a review of the schematic design. Further revisions will be at the expense of the Tenant. The layout shall be approved by each of the parties hereto and attached to this Lease and shall become a part thereof and shall be described as Exhibit "B".

(b) It is understood and agreed that Tenant will require work (hereinafter referred to as "Building Non-Standard Work") different from or in addition to said Building Standard Work. In such event, any architectural, mechanical, and electrical plans and specifications required shall be furnished, at Tenant's sole cost and expense to Landlord's office for approval.

(c) It is understood and agreed that any interior decorating services, such as selection of special wall coverings, fixtures, non-building standard carpet, and any or all other decorator items required by Tenant in the performance of said work referred to hereinabove in subparagraphs (a) and (b) shall be at the Tenant's sole cost and expense.

(d) It is understood and agreed that all plans and specifications referred to hereinabove in subparagraphs (a) and (b) are subject to the Landlord's approval, which approval shall not be unreasonably withheld. Tenant also agrees that, when requested by Landlord's office, Tenant will furnish complete information respecting Tenant's requirements. Schematic plans will be approved by Tenant on or before October 27, 1983, with complete plans and specifications approved by Tenant on or before October 31, 1983.

## 2. BUILDING STANDARD WORK AT LANDLORD'S COST AND EXPENSE

Landlord will, at its sole cost and expense, furnish and install Four Hundred, Four Thousand, One Hundred, Forty-three (\$404,143.00) in value of the work as indicated on Tenant's final approved plans, which portion is defined as "Building Standard Work".

The following categories are an indication of normal building standard. Because of agreement on an improvement budget, these descriptions are only to indicate type and quality of materials, and are not to be utilized as quantity allowances.

(a) Building standard interior partitions, ceiling high, 5/8" vinyl clad gypsum board, with rubber base on both sides of 2 1/2 " metal stud, in an amount equal to one lineal foot per fifteen square feet of office area. Demising partitions between tenants to be full height (floor to suspended ceiling) and sound-insulated.

(b) Building standard full height interior doors, 3" X 9" X 1 3/4", solid core, stain grade oak veneer face with K.D. metal frame, Baldwin Lever latchset design, in an amount equal to one per 350 square feet of office area, and a maximum of one building standard full height suite entrance door with hardware including Baldwin Lever lockset design, closer and deadbolt. (All hardware to have oil rubbed bronze finish.)

(c) Building standard two foot by four foot fluorescent fixture at a maximum rate of one per eighty square feet of area, including switches for said fixtures, but not to exceed one switch for each private office or room.

(d) Building standard electrical duplex wall outlets, with cover plate in an amount equal to one duplex per one-hundred square feet of office area.

(e) Building standard telephone wall outlets, with cover plate, in an amount equal to one per two-hundred square feet of office area.

(f) Building standard blinds on all exterior office windows.

(g) Building standard ceiling, exposed grid, mechanically suspended white 2 X 2 tegular acoustic panels.

(h) Building standard heating, ventilating, and air conditioning, with duct work, supply grilles, return, and thermostats, served by a water source heat pump system to provide air conditioning suited to normal general office occupancy, with a minimum area for each zone of seven hundred fifty square feet. Tenant will be required to pay additional charges if its application of the space necessitates excess zoning or capacity.

(i) Building standard carpet in colors uniform for each floor.

(j) Automatic sprinkler system with building standard recessed-type head, chrome plated.

### 3. BUILDING NON-STANDARD WORK AT TENANT'S COST AND EXPENSE

Provided Tenant's plans and specifications are furnished by the date provided hereinabove in Paragraph 1(d) and approved by Landlord, the Landlord shall cause Tenant's "Building Non-Standard Work" to be installed by Landlord's contractor, but at Tenant's sole cost and expense for any amount in excess of Ninety-Five Thousand, Eight Hundred Fifty-Seven Dollars (\$95,857). Prior to commencing any such work, Landlord, its contractor, or its architects and engineers, shall submit to Tenant a written estimate of the cost thereof. If Tenant shall fail to approve any such estimate within ten (10) days after submission thereof, such failure shall be deemed a disapproval thereof, and Landlord's contractor shall not proceed with such work. Tenant agrees to pay Landlord promptly upon being billed therefore, the cost to Landlord of all such excess Building Non-Standard Work. Such bills may be rendered during the progress of the performance of the work and the furnishings and installation of the materials to which such bills relate. Landlord may require Tenant to deposit the estimated cost of such work with Landlord prior to the commencement of such work.

Within the demised premises Tenant may select different new materials (except exterior window coverings) in place of "Building Standard Work" materials which would otherwise be initially furnished and installed by Landlord for or in the interior of the Premises under the provisions of this Work Agreement, provided such selection is indicated on said Tenant's final plans. No such different new materials shall be furnished and installed in replacement for any of Landlord's "Building Standard Work" materials until Landlord, or its contractor and/or its architects shall have advised Tenant in writing of, and Landlord or its contractor and/or its office planning architects have agreed in writing on, the work of such different new material and the Landlord's cost of such replaced Landlord's "Building Standard Work" materials.

All amounts payable by Tenant to Landlord pursuant to preceding paragraphs shall be paid by Tenant promptly after the rendering of bills therefore by Landlord or its contractors to Tenant, it being understood that such bills may be rendered during the progress of the performance of the work and/or the furnishings and installation of the materials to which such bills relate. Any such different new materials shall be surrendered by the Tenant to the Landlord at the end of the initial or other expiration of the term of the Lease.

### 4. COMPLETION AND RENTAL COMMENCEMENT DATE

If the occupancy date of the Premises is delayed by:

- (a) Tenant's failure to furnish the information specified in Paragraph 1 hereof in a timely fashion; or
- (b) Tenant's request for substitution or additional improvements or changes in materials, finisher, or installations other than those which are not Building Standard; or
- (c) Tenant's changes in the final drawings and specifications; or

(d) A delay in performance of building standard work as a result of Tenant's failure to approve written estimates of the cost of non-building standard work in accordance with Paragraph 3 hereof,

then the commencement of the term of the Office Lease and the payment of rent shall be unchanged.

LANDLORD:  
S.R.P. LIMITED PARTNERSHIP  
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Dated -----

TENANT:  
FAIR, ISAAC AND COMPANY, INC.  
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FAIR, ISAAC AND COMPANY, INCORPORATED  
STOCK OPTION PLAN FOR NON-EMPLOYEE DIRECTORS

1. PURPOSE.

The Plan is intended to provide incentive to the Non-Employee Directors of the Corporation, to align such individuals' interests with those of the Corporation's stockholders, to encourage such individuals to remain in the service of the Corporation and to attract new Non-Employee Directors with outstanding qualifications.

2. DEFINITIONS.

(a) "Board" shall mean the Board of Directors of the Corporation, as constituted from time to time.

(b) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(c) "Committee" shall mean the committee appointed by the Board in accordance with Section 4.

(d) "Corporation" shall mean Fair, Isaac and Company, Incorporated, a Delaware corporation.

(e) "Exercise Price" shall mean the amount for which one Share may be purchased upon exercise of an Option, as determined by the Committee in accordance with the Plan.

(f) "Fair Market Value" shall mean the market price of Stock, determined by the Committee as follows:

(i) If Stock was traded over-the-counter on the date in question but was not classified as a national market issue, then the Fair Market Value shall be equal to the mean between the last reported representative bid and asked prices quoted by the NASDAQ system for such date;

(ii) If Stock was traded over-the-counter on the date in question and was classified as a national market issue, then the Fair Market Value shall be equal to the last-transaction price quoted by the NASDAQ system for such date;

(iii) If Stock was traded on a stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported by the applicable composite-transactions report for such date; and

1

Exhibit 10.6

(iv) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Committee shall be conclusive and binding on all persons.

(g) "Non-Employee Director" shall mean a member of the Board who is not a common-law employee of the Corporation or of a Subsidiary.

(h) "Nonstatutory Stock Option" shall mean an option not described in sections 422(b), 422A(b), 423(b) or 424(b) of the Code.

(i) "Option" shall mean a Nonstatutory Stock Option granted pursuant to the Plan and entitling the holder to purchase Shares.

(j) "Optionee" shall mean an individual who holds an Option.

(k) "Plan" shall mean this Fair, Isaac and Company, Incorporated Stock Option Plan for Non-Employee Directors, as it may be amended from time to time.

(l) "Purchase Price" shall mean the Exercise Price multiplied by the number of Shares with respect to which an Option is exercised.

(m) "Share" shall mean one share of Stock, as adjusted in accordance with Section 9 (if applicable).

(n) "Stock" shall mean the Common Stock of the Corporation.

(o) "Subsidiary" shall mean any corporation, if the Corporation and/or one or more other Subsidiaries own at least 50% of the total combined voting power of all classes of outstanding stock in such corporation. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

3. EFFECTIVE DATE.

The Plan was adopted by the Board on February 1, 1988. The Plan remains subject to the approval of the Corporation's stockholders pursuant to Section 13.

4. ADMINISTRATION.



The Plan shall be administered by the Committee. The Committee shall be appointed by the Board and shall consist only of three or more disinterested directors. The Board may from time to time remove members from, or add members to, the Committee. Vacancies on the Committee, however caused, shall be filled by the Board. The Committee shall hold meetings at such times and places as it may determine. Acts of a majority of the Committee at which a quorum is present, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be the valid acts of the Committee.

(b) Committee Responsibilities.

The Committee shall construe the Plan and carry out its provisions. However, the Committee shall have no discretion in selecting the Optionees or in awarding Options. The interpretation and construction by the Committee of any provision of the Plan or of any Option granted thereunder shall be final. No member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any Option granted thereunder.

(c) Disinterested Directors.

A member of the Board shall be deemed to be "disinterested" for the purposes of this Plan only if he or she, at all times required for purposes of Rule 16b-3 of the Securities and Exchange Commission or any successor rule, was not eligible for the grant of rights or options to purchase stock under this Plan. A Non-Employee Director shall not fail to qualify as "disinterested" for the purpose of administering any other stock option plan of the Company solely because he or she is eligible for the grant of Options under this Plan.

5. STOCK.

The aggregate number of Shares which may be issued upon exercise of Options under the Plan shall not exceed 40,000. The number of Shares subject to Options outstanding at any time shall not exceed the number of Shares then remaining available for issuance under the Plan. In the event that any outstanding Option for any reason expires or is terminated, the Shares allocable to the unexercised portion of such Option may again be made subject to Options. The limitation established by this Section 5 shall be subject to adjustment in the manner provided in Section 9 upon the occurrence of an event specified therein.

6. ELIGIBILITY AND GRANT OF OPTIONS.

Each Non-Employee Director shall receive a single Option covering 8,000 Shares (subject to adjustment under Section 9). Such Option shall be considered a Nonstatutory Stock Option for tax purposes. Such Option shall automatically be granted as of the later of (a) February 1, 1988, or (b) the date on which the Non-Employee Director completes

his or her sixth month of continuous service as a Non-Employee Director. No individuals other than Non-Employee Directors shall be eligible to participate in the Plan.

7. TERMS AND CONDITIONS OF OPTIONS.

(a) Stock Option Agreements.

Options shall be evidenced by written stock option agreements in such form as the Committee shall from time to time determine. Such agreements shall comply with, and be subject to, the terms and conditions set forth in the Plan.

(b) Exercise Price.

Each Option shall specify the Exercise Price, which shall be equal to 100% of the Fair Market Value on the date of grant.

(c) Medium and Time of Payment.

The Purchase Price shall be payable in full in United States dollars upon the exercise of the Option, except that all or part of the Purchase Price may be paid by the surrender of Shares in good form for transfer, owned for 12 months or more by the person exercising the Option and having a Fair Market Value on the date of exercise equal to that portion of the Purchase Price which is being paid with Shares.

(d) Withholding Taxes.

As a condition to the exercise of an Option or the disposition of Shares acquired under the Plan, the Optionee shall make such arrangements as applicable law may require for the satisfaction of any federal, state or local withholding tax obligations that may arise in connection with such exercise or disposition.

(e) Exercisability, Term and Nontransferability.

Each Option shall become exercisable six months after the date of grant, subject to Section 13. The Option shall terminate on the day before the 10th anniversary of the date of grant, except as otherwise provided in (f) or (g) below.

During the lifetime of the Optionee, the Option shall be exercisable only by the Optionee and shall not be assignable or transferable. In the event of the Optionee's death, the Option shall not be transferable other than by will or by the laws of descent and distribution.

(f) Termination of Board Membership

If an Optionee ceases to be a member of the Board for any reason other than his or her death, then the Optionee shall have the right to exercise an Option (to the extent exercisable but not previously exercised and not expired) at any time within 90 days after the date when he or she ceases to be a member of the Board.

For purposes of this Subsection (f), status as a member of the Board shall be deemed to continue while the Optionee is on military leave, sick leave or other bona fide leave of absence.

Options already granted pursuant to this Plan to a Non-Employee Director shall not be affected by reason of the Optionee thereafter becoming an employee of the Corporation or a Subsidiary so long as he or she remains a member of the Board.

(g) Death of Optionee.

If an Optionee dies while he or she is a member of the Board and has not fully exercised an Option, then such Option (to the extent not previously exercised and not expired) may be exercised in full at any time within 12 months after the Optionee's death by the executors or administrators of his or her estate or by any person or persons who have acquired such Option directly from the Optionee by bequest or inheritance.

(h) Rights as a Stockholder.

An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by his or her Option until the date of the issuance of a stock certificate for such Shares. No adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property), distributions or other rights for which the record date is prior to the date when such stock certificate is issued, except as provided in Section 9.

8. TERM OF PLAN.

Options may be granted pursuant to the Plan until January 31, 1998, or until such earlier date as the Board may determine at its sole discretion.

9. RECAPITALIZATIONS.

Subject to any required action by stockholders, the number of Shares covered by the Plan as provided in Section 5, the number of Shares covered by each outstanding Option and the Exercise Price thereof shall be adjusted proportionately for any increase or decrease in the number of issued Shares resulting from a subdivision or consolidation of Shares or the payment of a stock dividend or any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Corporation.

Subject to any required action by stockholders, if the Corporation is the surviving corporation in any merger or consolidation, each outstanding Option shall pertain to the securities to which a holder of the number of Shares subject to the Option would have been entitled. A dissolution or liquidation of the Corporation or a merger or consolidation in which the Corporation is not the surviving corporation shall cause each outstanding Option to terminate, unless the agreement or merger or consolidation provides for the assumption thereof by the surviving corporation.

To the extent that the foregoing adjustments relate to securities of the Corporation, such adjustments shall be made by the Committee, whose determination shall be conclusive and binding on all persons.

Except as expressly provided in this Section 9, the Optionee shall have no rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class or by reason of any dissolution, liquidation, merger or consolidation or spin-off of assets or stock of another corporation, and any issue by the Corporation of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option.

The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Corporation to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

#### 10. SECURITIES LAW REQUIREMENTS.

##### (a) Legality of Issuance.

No Shares shall be issued upon the exercise of any Option unless and until the Corporation has determined that (i) it and the Optionee have taken all actions required to register the Shares under the Securities Act of 1933, as amended (the "Act"), or to perfect an exemption from the registration requirements thereof; (ii) any applicable listing requirement of any stock exchange on which Stock is listed has been satisfied; and (iii) any other applicable provision of state or federal law has been satisfied.

##### (b) Restrictions on Transfer; Representations of Optionee.

Regardless of whether the offering and sale of Shares under the Plan have been registered under the Act or have been registered or qualified under the securities laws of any state, the Corporation may impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates) if, in the judgment of the Corporation and its counsel, such restrictions are necessary or desirable in order to achieve compliance with the provisions of the Act, the securities

laws of any state or any other law. In the event that the sale of Shares under the Plan is not registered under the Act but an exemption is available which requires an investment representation or other representation, each Optionee shall be required to represent that such Shares are being acquired for investment, and not with a view to the sale or distribution thereof, and to make such other representations as are deemed necessary or appropriate by the Corporation and its counsel. Stock certificates evidencing Shares acquired under the Plan pursuant to an unregistered transaction shall bear an appropriate restrictive legend.

Any determination by the Corporation and its counsel in connection with any of the matters set forth in this Section 10 shall be conclusive and binding on all persons.

(c) Registration or Qualification of Securities.

The Corporation may, but shall not be obligated to, register or qualify the sale of Shares under the Act or any other applicable law. The Corporation shall not be obligated to take any affirmative action in order to cause the sale of Shares under the Plan to comply with any law.

(d) Removal of Legends.

If, in the opinion of the Corporation and its counsel, any legend placed on a stock certificate representing Shares issued under the Plan is no longer required, the holder of such certificate shall be entitled to exchange such certificate for a certificate representing the same number of Shares but lacking such legend.

11. AMENDMENT OF THE PLAN.

The Board may from time to time, with respect to any Shares at the time not subject to Options, suspend or discontinue the Plan or revise or amend it in any respect whatsoever except that, without the approval of the Corporation's stockholders, no such revision or amendment shall:

(a) Materially increase the benefits accruing to Optionees under the Plan;

(b) Materially increase the number of Shares subject to the Plan, except as provided in Section 9;

(c) Materially change the designation in Section 6 with respect to the class of individuals eligible to receive Options; or

(d) Amend this Section 11 to defeat its purpose.

12. APPLICATION OF FUNDS.

The proceeds received by the Corporation from the sale of Stock pursuant to the exercise of an Option will be used for general corporate purposes.

13. APPROVAL OF STOCKHOLDERS.

The adoption of the Plan and any amendment described in Section 11 shall be subject to approval by the affirmative vote of the holders of a majority of the outstanding shares of the Corporation entitled to vote or by the unanimous written consent of all holders of the outstanding shares of the Corporation entitled to vote. In the event that the Plan is not approved by stockholders at or before the first annual meeting of stockholders held after its adoption by the Board, any Option theretofore granted shall be null and void. Any other provision of the Plan notwithstanding, no Option shall be exercisable until the Corporation's stockholders have approved the Plan.

14. EXECUTION.

To record the adoption of the Plan by the Board, effective as of February 1, 1988, the Corporation has caused its authorized officers to affix the corporate name hereto.

FAIR, ISAAC AND COMPANY, INCORPORATED

By \_\_\_\_\_  
President and CEO

By \_\_\_\_\_  
Vice President and Secretary



AMENDMENT NO. 1

TO THE FAIR, ISAAC AND COMPANY, INCORPORATED  
1987 STOCK OPTION PLAN

Effective as of March 1, 1988, the Fair, Isaac and Company, Incorporated 1987 Stock Option Plan is hereby amended as follows:

Section 2(g) is amended to read as follows:

"Fair Market Value" shall mean the market price of Stock, determined by the Committee as follows:

(i) If Stock was traded over-the-counter on the date in question, whether or not classified as a national market issue, then the Fair Market Value shall be equal to the mean between the last reported representative bid and asked prices quoted by the NASDAQ system for such date;

(ii) If Stock was traded on a stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported by the applicable composite-transactions report for such date; and

(iii) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith on such basis as it deems appropriate.

To record the adoption of this amendment to the Fair, Isaac and Company, Incorporated 1987 Stock Option Plan by the Board on August 18, 1988, the Corporation has caused its authorized officers to affix the corporate name hereto.

Fair, Isaac and Company, Incorporated

By \_\_\_\_\_  
Peter L. McCorkell  
Vice President & Secretary

EXHIBIT 10.8

AMENDMENT NO. 1

TO THE FAIR, ISAAC AND COMPANY, INCORPORATED  
STOCK OPTION PLAN FOR NON-EMPLOYEE DIRECTORS

Effective as of March 1, 1988, the Fair, Isaac and Company, Incorporated Stock Option Plan for Non-Employee Directors is hereby amended as follows:

Section 2(f) is amended to read as follows:

"Fair Market Value" shall mean the market price of Stock, determined by the Committee as follows:

(i) If Stock was traded over-the-counter on the date in question, whether or not classified as a national market issue, then the Fair Market Value shall be equal to the mean between the last reported representative bid and asked prices quoted by the NASDAQ system for such date;

(ii) If Stock was traded on a stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported by the applicable composite-transactions report for such date; and

(iii) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Committee shall be conclusive and binding on all persons.

To record the adoption of this amendment to the Fair, Isaac and Company, Incorporated Stock Option Plan for Non-Employee Directors by the Board on August 18, 1988, the Corporation has caused its authorized officers to affix the corporate name hereto.

Fair, Isaac and Company, Incorporated

By \_\_\_\_\_  
Peter L. McCorkell  
Vice President & Secretary

EXHIBIT 10.9

ADDENDUM NUMBER SEVEN TO LEASE

THIS ADDENDUM NUMBER SEVEN TO LEASE is made and entered into this 1st day of March 1990, by and between S.R.P. Limited Partnership, (Landlord) and Fair, Isaac and Company, Incorporated (Tenant), and shall constitute a modification of that Lease between the parties dated October 20, 1983 (Base Lease) and as amended on May 1, 1984, September 21, 1984, February 8, 1985, September 3, 1985, November 21, 1985, and October 1, 1986, relating to the premises occupied by Tenant in the building commonly known as 120 North Redwood Drive, San Rafael, California 94903. This action constitutes both the extension of the term of the Lease, and the expansion of Tenant into future available space.

The parties hereto agree that:

1. The leased premises shall be increased by 3,488 rentable square feet, to include the space commonly known as Suite 350, effective upon ninety days notice to Tenant, for possession no earlier than July 1, 1990, and no later than October 1, 1990.
2. Tenant agrees to lease Suite 375, comprised of 2,472 rentable square feet, at such time as that space is first available for lease, upon the same terms and conditions as is then existing under the Lease.
3. The expiration date of the Lease for both existing and future expansion Tenant space shall be changed to December 31, 2001.
4. The Option to Renew, contained in Paragraph 32 of the Base Lease shall be changed such that the first option period, if exercised, shall now commence on January 1, 2002. The Option to Renew is only available on all of the space contained in the Lease, at the time of option exercise. This Option is personal to Tenant and is not available to sublessee or sublessees of Tenant's leasehold.
5. The combination of Basic Rent and Additional Rent for the period of March 1, 1990, to December 31, 1990, shall be computed at the monthly rate of \$1.90 per rentable square foot, prior to a monthly credit in the amount of \$2,150 for west wing utility expense and first floor west wing janitorial expense. Therefore, until expansion space is included in the leased premises, the monthly rent on the existing 36,554 rentable square feet shall be \$67,303.
6. Additional Rent as defined and administered by Paragraph 7 of the Lease shall be unchanged except that Base Year shall now refer to and mean the calendar year 1990. During the revised Base Year 1990, the portion of total rent attributable to Additional Rent shall be equal to the actual Tenant Proportional Share as retroactively determined at the end of the Base Year.

Example: Considering only Tenant's present space, if at the end of 1990, it is determined that Tenant's proportional share of 1990 operating expenses on a monthly basis equaled \$16,500, then that amount shall be subtracted from the \$67,303 total monthly rent,

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Exhibit 10.11

therefore providing a remainder of \$50,803 as the Base Year Basic Monthly Rent.

Then, during 1991, the \$16,500 Monthly Additional Rent will be used as an estimate of monthly operating expenses, with an adjustment at the end of the year to reflect actual operating expenses, creating a resultant rebate or recapture as is then determined to be appropriate, per the terms of Paragraph 7 of the Lease.

7. Paragraph 6 "Adjusted Basic Rent," of the Base Lease shall be modified such that the combination of increases in rent under Paragraphs 6 and 7 shall in no event exceed a 7.5% increase over the combined rental under said Paragraphs for the immediately preceding lease year.
8. Paragraph 9 "Use," of the Base Lease shall be modified such that "use" is defined as "general office purposes," instead of "general office purposes of the Fair, Isaac Companies."
9. Paragraph 24 "Reconstruction," of the Base Lease shall be modified such that if the time period required to complete restoration of the Premises or Building is greater than twelve months from the date of the damage, either Landlord or Tenant shall have the right to terminate the Lease within thirty (30) days after the date of the determination that such reconstruction will require more than twelve months. Landlord will make such determination and notify Tenant of such determination within sixty (60) days of the event of damage.
10. Paragraph 13.b. of the Base Lease is modified so that Landlord's obligations with respect to repair and maintenance of the structural portions of the building shall explicitly include any modifications required of the structural portions of the building under then current building and fire codes.
11. All other terms and conditions of the Base Lease shall remain unchanged.

Landlord: S.R.P. Limited  
Partnership

Tenant: Fair, Isaac and Company, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_



LEASE

111 SMITH RANCH ROAD  
San Rafael, California

THIS LEASE, dated for reference purposes only, the fifth day of September, 1991, between

111 PARTNERS, (hereafter "Landlord")  
and whose address is:  
50 Bon Air Center, Suite 140  
Greenbrae, California 94904

and FAIR, ISAAC AND COMPANY, INCORPORATED,  
(hereafter "Tenant")  
and whose address is:  
120 North Redwood Drive  
San Rafael, California 94903-1996

(a) Demise. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises (the "Premises") described as follows:

The real property described in Exhibit "A" and the office building to be known as 111 Smith Ranch Road in San Rafael, California (the "Building"), and shown on the site plan marked Exhibit "B," comprising approximately 26,678 square feet ("Tenant's Leasable Area") to be constructed by Landlord in accordance with paragraph 8 below.

(b) Terms, Covenants and Conditions. The parties agree that this lease is made upon the following terms, covenants and conditions:

1. TERM:

(a) The term of this Lease shall commence on the later of (i) delivery by Landlord of the Final Completion Notice described in paragraph 9 of the Leasehold Improvements Agreement (Exhibit "D") or (ii) ninety (90) days following the Delivery Date described in paragraph 4(e) of the Leasehold Improvements Agreement (subject to extensions to which tenant may be entitled under paragraph 4(b) of the Leasehold Improvements Agreement) (the "Construction Period"). The commencement date is hereinafter referred to as the "Commencement Date." The term of this Lease shall expire at midnight June 30, 2001 unless Tenant shall exercise the option to renew provided for herein.

(b) Landlord shall use reasonable efforts to substantially complete those improvements referred to in the Leasehold Improvements Agreement as "Landlord's Work" and to deliver possession of the Premises to Tenant by April 1, 1992 ("Delivery Date").

The Delivery Date may be extended on account of delays as set forth in Article 11 of the Leasehold Improvements Agreement

1

Exhibit 10.13

2. MINIMUM RENT:

a) Tenant and Landlord have entered into a loan agreement concurrently with the execution of this Lease whereby Tenant has agreed to loan Landlord funds to be used for the construction of the Building. Said loan will be represented by a note ("Note") secured by a deed of trust encumbering the Premises. Tenant agrees to pay Landlord monthly rent equal to the monthly payments payable under the Note including both principal and interest, commencing upon the Commencement Date and continuing throughout the term of this Lease. In the event the loan is not fully funded upon commencement of the lease term and monthly installments are increased to provide for repayment of additional advances, concurrently with the increase in monthly note installments the monthly rent shall be increased. Monthly rent payments shall continue in the manner provided for in the Note notwithstanding any prepayment by Landlord of the Note. Such monthly rent is herein referred to as the "Note Rent."

(b) In addition to the Note Rent Tenant promises to pay monthly rent as set forth below for the use of the land ("Land Rent") as follows:

First twelve months of the term:	\$3,750.00 per month
Second twelve months of the term:	\$5,417.00 per month
Third twelve months of the term:	\$7,500.00 per month
Fourth twelve months of the term:	\$7,917.00 per month
Fifth twelve months of the term:	\$8,333.00 per month
Sixth twelve months of the term:	\$9,167.00 per month

During the Seventh twelve months of the term, the land rent shall be the greater of \$9,167,00 per month or \$9,167 per month multiplied by a fraction the numerator of which is the Index (as hereinafter defined) published nearest but prior to the 73rd month of the term and the denominator of which is the Index published for the month of June 1991.

Commencing with the 85th month of the term and at the end of each twelfth (12th) month thereafter during the term of this Lease, the Land Rent for the ensuing twelve (12) month period (the "Adjustment Period") shall be an amount equal to the greater of (i) the Land Rent in effect immediately prior to the commencement of such Adjustment Period (without regard to any temporary abatement of rental then in effect pursuant to the provisions of this Lease), or (ii) the product obtained by multiplying the Land Rent in effect immediately prior to the commencement of such Adjustment Period (without regard to any temporary abatement of rental then in effect pursuant to the provisions of this

Lease) by a fraction, the numerator of which is the Index published nearest but prior to the commencement date of such Adjustment Period and the denominator of which is the Index published for the month which is twelve (12) months earlier.

The term "Index" as used herein shall mean the Consumer Price Index For All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84 = 100, published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the Bureau of Labor Statistics revises the above Consumer Price Index, the parties agree that the Bureau of Labor Statistics will be the sole judge of the comparability of successive indexes.

(c) The total of the Note Rent and the Land Rent is referred to herein as the Minimum Rent. Tenant agrees to pay the Minimum Rent to Landlord without offset or deduction (except as

provided herein), prior notice or demand in advance at Landlord's address on the first day of each month commencing upon the commencement of the lease term and continuing upon the first day of each calendar month thereafter throughout the lease term. If Tenant's obligation to pay rent commences other than on the first day of a calendar month, the first month's Minimum Rent shall be prorated accordingly and paid at the commencement of the obligation to pay rent. Landlord's address shall be as set forth above, or as from time to time designated by Landlord to Tenant in writing. Upon Landlord's request, Tenant will co-sign Landlord's written confirmation of the lease commencement date and the Note Rent.

(d) Tenant shall make payment of Minimum Rent and other payments to Landlord in lawful money of the United States; provided, if any such payment made by a check, draft or money order is returned to Landlord due to insufficient funds, or otherwise, Landlord shall have the right, at any time thereafter, upon written notice to Tenant, to require Tenant to make all subsequent payments in cash, by cashier's certified check, wire transfer or by money order.

(e) It is expressly understood and agreed that Tenant's timely payment of Minimum Rent and all other rents, charges and amounts of any kind provided in this Lease is an unconditional obligation of Tenant, and one on which Landlord is relying in order to meet the financial obligations of the Building. Tenant's obligation to pay shall be continuous throughout the term of the Lease, even during the pendency of any dispute resolution process which may arise during the term hereof.

3. ADDITIONAL RENT, LATE CHARGE AND DEFAULT INTEREST:

(a) All taxes, insurance premiums, maintenance charges, and other costs and expenses payable hereunder by Tenant (together with any late charge or interest that may accrue thereon in the event of Tenant's failure to pay the same) and all damages, costs and expenses which Landlord may incur by reason of Tenant's default hereunder shall be deemed to be "Additional Rent". In the event of non-payment by Tenant of any Additional Rent, Landlord shall have all of the rights and remedies with respect thereto as Landlord has for the non-payment of Minimum Rent. The term "rentals" or "rental" as used in this Lease shall mean Minimum Rent, and Additional Rent.

(b) Tenant acknowledges that the late payment by Tenant of any rentals due hereunder will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which will be extremely difficult or impractical to ascertain. Such costs and expenses include, without limitation, administrative and collection costs and processing and accounting expenses. Accordingly, if any rental payable hereunder is not received by Landlord from Tenant within ten (10) days after notice that the same is overdue, Tenant shall immediately pay to Landlord, without prior notice or demand, a late charge equal to four percent (4%) of the amount then delinquent. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to landlord for its losses sustained by reason of Tenant's failure to make timely payment. In no event shall this provision for the payment of a late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rental due hereunder or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay such rental when due, including the right to terminate this Lease.

(c) If any rental remains delinquent for a period in excess of thirty (30) days, in addition to

the late charge provided hereinabove, Tenant shall pay to Landlord interest on any rental that is not paid when due at the lesser of twelve percent (12%) per annum or the maximum interest rate permitted by law, from the 30th day following the date such amount became due, until paid.

(d) If Tenant shall fail to pay Minimum Rent within ten (10) days following the due date thereof on any three (3) or more occasions during any twelve (12) month period during the lease term, Landlord shall have the right, in addition to any other rights or remedies it may have hereunder, to require Tenant thereafter to pay Minimum Rent in quarterly installments in advance.

4. RESERVE FOR RE-LEASING AND SECURITY DEPOSIT:

(a) Tenant shall pay to Landlord a monthly amount upon the first anniversary of the Commencement Date and continuing upon the first day of each calendar month thereafter, an amount which with accrued interest shall be sufficient to create the Re-leasing Reserve at the end of the lease term. The monthly payments shall be deposited into a separate federally insured interest bearing trust account or accounts. Such accounts shall remain Tenant's funds subject to Landlord's rights under this paragraph 4.

(b) The Re-leasing Reserve shall be equal to the sum of the following:

1. Twelve monthly payments due under the Note payable to Tenant (whether or not the Note shall have been prepaid.)

2. Real property taxes, personal property taxes, and any assessments payable for the 12-month period commencing at the expiration of the lease term ("Reserve Term").

3. Insurance premiums for fire and extended coverage and public liability insurance payable for the Reserve Term.

4. Estimated costs of maintenance and repair of the Premises during the Reserve Term.

(c) Landlord may pay from the Re-leasing Reserve after termination of this lease all of the costs and expenses included in the Releasing Reserve until the Re-leasing Reserve is fully expended or eighty-five (85) percent of the Tenant's Leasable Area has been re-leased. Landlord shall deliver to Tenant a monthly accounting of all amounts paid from the Re-leasing Reserve. Any balance remaining shall be returned to Tenant. Said payments of costs may extend for more than one (1) year following the expiration of this lease, but shall not include any costs or expenses payable by new tenants in the Premises.

(d) This paragraph sets forth the calculation of the monthly amount paid by Tenant to Landlord to create the Re-leasing Reserve and Security Deposit defined above. The monthly payment shall be determined by Landlord as provided herein during the first full calendar month of the term, and then recalculated every twelve (12) months thereafter throughout the term of this Lease. Upon Landlord's determination of the monthly amount, Landlord shall promptly notify Tenant, who shall commence payment of said monthly amount beginning with the first day of the immediately following calendar month.



The Re-leasing Reserve ("RLR") amount at the end of the initial lease term shall be:

$$LP + (OM \times (1 + C/100) n) = RLR$$

Where LP is the total of the monthly loan payments under the note payable to Tenant during the previous twelve (12) months, OM is the total of average annual operation and maintenance costs as defined in paragraphs 4(b)2 through 4(b)4 based on known and estimated costs for the previous twelve months, C is the percentage change in the Consumer Price Index For All Urban Consumers, San Francisco-Oakland Area-San Jose (1982-1984 = 100) ("Index") during the last twelve months, and N is the number of months remaining until expiration of the initial term of this Lease divided by twelve.

The payment (MPRLR) into the reserve shall be:

$$(RLR - (CB \times (1 + 1/100) n) \frac{100}{((1 + 1/100) n - 1) \times 12} = MPRLR$$

where I is the average annual percentage interest rate earned on the Re-leasing Reserve in all accounts during the previous twelve months, CB is the current balance including accrued interest in the Re-leasing Reserve account, and the other figures are as defined in paragraph (2) above. For the first calculation, the parties agree that I shall be equal to the three-month Treasury Bill rate (10) days prior to the Commencement Date.

Notwithstanding paragraphs (b) through (d), MPRLR shall not be less than zero and shall be rounded up to the nearest whole dollar.

For example purposes only, assume CB is \$50,000, LP is \$228,000, OM is \$80,000, C is 5%, N is 8 and I is 7%. RLR is \$346,196. MPRLR rounded up to the nearest whole dollar is \$2,115.00.

(e) The Re-leasing Reserve shall also constitute a Security Deposit for the payment of all amounts payable by Tenant to Landlord hereunder. If Tenant shall fail to pay any sum due to Landlord, Landlord may, but shall not be required to, pay such amount from the Re-leasing Reserve. Tenant shall promptly repay to Landlord for deposit into the Re-leasing Reserve any such amount paid to Landlord.

5. COMMON AREAS AND LANDLORD'S COST OF MAINTENANCE:

(a) Areas within the outer property lines of the demised Premises, exclusive of the interior building areas which are exclusively leased to Tenant, and including such other areas that are the responsibility of Landlord to maintain as required by the City of San Rafael, shall be known as "Common Areas". The Common Areas shall be available for the use of by Landlord, its employees, and invitees. Notwithstanding any other provision in this Lease, Landlord shall have the right from time to time to make changes in additions to, and deletions from the Common Areas, and to alter the purposes to which any of them may be devoted, all without consent from Tenant, provided any such change, addition, deletion or alteration of purpose would not materially and adversely affect Tenant's continued ability to operate its business from the Premises in accordance with its rights

under this Lease (except for temporary disruption to Tenant's business caused by construction activity). The use of the Common Areas shall at all times be subject to such reasonable rules and regulations as Landlord may establish in accordance with paragraph 15 below.

(b) Beginning concurrently with the date of commencement of Tenant's obligation to pay Minimum Rent, Tenant shall pay the total cost of maintaining the Common Areas and all portions of the Building which Landlord is required to maintain in accordance with paragraph 9. For purposes of this paragraph 5, maintenance costs (collectively "Common Area Charges") shall include all reasonable general maintenance, upkeep, lighting, cleaning, repairs to and replacements of improvements in the Common Areas, including, but not limited to, operation, maintenance and repair of the underground utility systems, roof, canopies, awnings, and building exterior painting and maintenance, building roof repairs, fire sprinkler maintenance and inspection, repairs to the electrical system, pavement repairs and striping, central heating, ventilation and air conditioning (HVAC) maintenance, planting and landscaping, parking lot striping, pavement repairs, sealing and replacement, lighting repairs and rubbish removal, security services and police protection, including traffic control, if necessary, public liability and property damage insurance premiums for the Building, improvements required by law for the operation of the Building, insurance premiums as set forth in paragraph 26 below, personal property taxes, depreciation (if owned) or rental payments (if rented) on maintenance and operating machinery and equipment, and a Management Fee to be paid to Landlord to compensate it for the supervision of such maintenance, billing and collection of Tenant's charges. Landlord's Management Fee shall be \$958 per month. Such Management Fee shall be increased in the same manner as the Land Rent as provided in paragraph 3(b) except that the adjustment shall be made annually commencing with the thirteenth month of the lease term. Expenditures for any of the foregoing which are of a capital nature, as determined in accordance with generally accepted accounting principles, such as but not limited to major parking lot rehabilitation or replacement, shall be prorated over the useful life of the improvement or facility so replaced, and there shall be included in Common Area Charges only that pro rata portion of such expenditure as is properly allocable to the lease term. Tenant shall pay Landlord the sum of \$222 per month, increased annually in the same manner as Landlord's management fee, to establish a maintenance reserve. Expenditures of a capital nature shall first be paid from the maintenance reserve and only Tenant's pro rata share of the excess shall be included in Tenant's Common Area charges. Any Common Area Charges paid by Tenant which are subsequently reimbursed to Landlord by insurance or condemnation proceeds shall be reimbursed to Tenant within thirty (30) days following Landlord's receipt of such proceeds. Any Common Area charges which relate to offsite maintenance, such as expenses relating to the adjacent pond in the open space area, shall be prorated between Landlord's Retail Center and the Premises on the basis of the rentable square footage contained in each parcel. Landlord agrees that the manner and method of operation, maintenance, upkeep and repair of the Building and Common Areas shall be in a first class manner consistent with other first class office buildings located in Marin County. All expenses shall be characterized and accounted for in accordance with generally accepted accounting principles. All reasonable costs incurred by Landlord in good faith shall be conclusive and finally binding upon Tenant.

(c) Notwithstanding any contrary provisions of the preceding paragraph, the following costs and expenses are to be excluded from Operating Expenses:

1) Repairs of capital nature occasioned by fire, earthquake, windstorm, or other casualty;

2) Leasing commissions, accountants' or attorneys' fees and other costs and expenses incurred in connection with proposals and negotiations to lease space in the Building or legal fees or costs in connection with any particular dispute or litigation with a tenant in the Building;

3) Fees paid to Landlord or to subsidiaries or affiliates of Landlord for services for the Building to the extent the same exceeds the cost of such services if rendered by unaffiliated third parties on a competitive basis;

4) Landlord's general corporate overhead and general administrative expenses;

5) Rentals and other related expenses incurred in the capital leasing of air conditioning systems, elevators or other Building equipment ordinarily considered to be of a capital nature, where such capital leasing is in lieu of other forms of financing the acquisitions of such systems, elevators or equipment;

6) Advertising and promotional expenditures;

7) Penalties or fines assessed against Landlord or the Building for violations of any governmental order, law, rule or regulation applicable thereto, not caused by Tenant;

8) Costs of correcting material construction defects in the Building.

Tenant's obligation for Common Area Charges shall be determined and billed monthly by Landlord and shall be payable by Tenant within ten (10) days from the receipt of the bill.

6. TAXES:

Tenant shall pay at the times and in the manner set forth below, all real estate taxes, general and special assessments, license fees, levies, charges, expenses, impositions and Environmental Surcharges, as more fully described below, including any real estate tax consultant expense incurred for the purpose of maintaining equitable tax assessments on the Building so long as the engagement of such consultant, and the consultant's fee, have been approved by Tenant, payable with respect to the Premises and the Common Areas as follows:

(a) "Real estate taxes, general and special assessments, license fees, charges, expenses, impositions" shall mean such taxes, assessments, levies and charges levied, assessed or imposed:

(i) upon or with respect to, or which shall be or may become liens upon the Premises, the Building, or any portion of them or any interest of Landlord in them or under this Lease specifically excluding only payments due for the Smith Ranch subdivision improvement bonds now a lien upon the Premises:

(ii) upon or against, or which shall be measured by, or shall be or may because liens upon, any rents or rent income, as such, payable to or on behalf of Landlord, in connection with the Premises or any portion of them or any interest of Landlord in them; or

(iii) upon or with respect to the ownership, possession, leasing, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy by Tenant of the

Premises or any portion of them or any building or improvement of which they are a part; or

(iv) upon this transaction or any document to which Tenant is a party creating or transferring an interest or any estate in the Premises; or

(v) upon or against Landlord or any interest of Landlord in the Premises in any manner and for any reason whether similar or dissimilar to the foregoing; under or by virtue of any present or future law, ordinance, regulation or other requirement of any governmental or quasi-governmental authority, regardless of whether now customary or within the contemplation of the parties hereto and regardless of whether resulting from increased rate and/or valuation, or whether extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing.

(b) "Environmental Surcharge" shall mean and include any and all expenses, taxes, charges or penalties imposed by the Federal Department of Energy, Federal Environmental Protection Agency, The Federal Clean Air Act, or any regulations promulgated thereunder, or any other local, state or federal governmental agency or entity now or hereafter vested with the power to impose taxes, assessments, or other types of surcharges as a means of controlling or abating environmental pollution or the use of refuse services, energy or water in regard to the use, operation or occupancy of the Building, excluding any amounts attributable to conditions caused by Landlord or its agents or which predate the Delivery Date.

(c) All of the items set forth in subparagraphs (a) and (b) above are sometimes collectively referred to in this Lease as "taxes."

(d) It is the intention of the parties that insofar as it may lawfully be done, the provisions of this paragraph should be construed to provide that the amount of rent reserved to Landlord under this Lease shall be net of all taxes charges to Landlord, except such non-real estate taxes as Landlord may from time to time be required to pay on such rent in common with other ordinary income received by Landlord in the regular course of its business. In the event it shall be unlawful for Tenant to reimburse Landlord for such taxes, then the Minimum Rent payable hereunder shall be increased pro rata to net Landlord the same amount that would have been payable to Landlord prior to the imposition of any such taxes.

(f) Beginning at the commencement of the term of this Lease, Tenant shall pay to Landlord taxes not less than twenty-one (21) days prior to the date when such taxes become delinquent. Landlord shall submit to Tenant a bill for such taxes, together with true copies of the tax bill at least thirty (30) days prior to such payment being due to Landlord. If the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance) Tenant may, at Tenant's election, utilize the permitted installment method, but shall pay each installment with interest before delinquency.

(g) Landlord shall advise Tenant promptly of all notices pertaining to taxes. Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest in good faith the imposition of any tax, a portion of which is to be paid by Tenant, provided that:

(i) Tenant shall bear the responsibility for timely protests, legal actions, etc., as may be required for an effective protest:

(ii) If Landlord has paid such tax, Tenant shall not withhold its payment to Landlord of such tax; and

(iii) Tenant shall indemnify Landlord against any loss, cost, damage or expense which may arise from such contest by indemnity in form and content satisfactory to Landlord

(iv) Tenant shall pay, or cause to be paid, prior to delinquency, directly to the taxing authority, any and all taxes levied, assessed or which become payable during the lease term upon Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property located in the Premises.

7. UTILITIES:

(a) From the commencement of the term of this Lease, and throughout the term of this Lease, Tenant shall pay for all public and other utilities and related services rendered or furnished to the Premises, including, but not limited to, water, hot water, gas, electricity, telephone, heat, light, sewer, refuse or garbage collection or disposal, and related deposits.

(b) Tenant understands that the Marin Municipal Water District ("MMWD") which supplies water to the Building may limit the amount of water available. The allocation based on estimates by MMWD, shall be 2.08 acre feet per year for potable water and 1.1 acre feet per year for reclaimed water used for landscaping subject to such changes in allocation during the term of the Lease as the MMWD may make. If tenant's usage exceeds such allocation, tenant shall be responsible to reimburse Landlord for all penalties or surcharges which may be imposed by the MMWD on account of such excess use. If necessary to protect the water allocation available to the Building, Landlord shall have the right to terminate water service after Tenant has used the full amount available to it for the billing or other measurement period established by the MMWD. Such termination of service shall not relieve tenant of any of its obligations under this lease. Landlord Agrees that such right will not be exercisable unless Tenant has actual notice from Landlord of the amount of the current allocation, of the magnitude of Tenant's usage, and the fact that failure by Tenant to adhere to the allocation level would threaten the building's water allocation.

(c) Landlord shall maintain the necessary mains, conduits, wires and cables to bring utilities to the Premises and the cost of such maintenance shall be included as part of Common Area Charges under paragraph 6 above.

(d) Landlord shall not be liable in damages, consequential or otherwise, nor shall there be any rent abatement, arising out of any interruption whatsoever in utility services which is due to causes beyond Landlord's reasonable control, including, but not limited to fire, accident, strike, governmental authority, acts of God, or other causes beyond the reasonable control of Landlord or any temporary interruption in such service which is necessary to the making of alterations, repairs, or improvements to the Building or any part of it.

8. CONSTRUCTION:

(a) The work for construction of the Premises is set forth in the Leasehold Improvements Agreement (Exhibit "D"). Landlord shall have the sole responsibility for planning and executing Landlord's Work included in the Shell Plans and Specifications described in the Leasehold Improvements Agreement. Tenant shall prepare plans and specifications for Tenant Improvements and shall construct said improvements as set forth in the provisions of the Leasehold Improvements Agreement. Tenant is granted a Tenant Improvement Allance in an amount and subject to provisions set forth in the Leasehold Improvements Agreement.

(b) All construction work required or permitted by this Lease, whether by Landlord or by Tenant, shall be done in a good and workmanlike manner, and in compliance with all applicable laws and all lawful ordinance, regulations and orders of governmental authority and insurers of the Premises. Either party may inspect the work of the other at reasonable times and shall promptly give notice to the other of observed defects.

(c) Tenant's original installation of equipment and furnishings and all alterations and additions at any time thereafter undertaken by Tenant in accordance with Paragraph 11 below shall be performed by licensed contractors approved by Landlord, in such a manner as to avoid any labor dispute which causes or is likely to cause stoppage or impairment of work, deliveries or any other services to the Building or any occupant thereof. In the event there shall be any such stoppage or impairment which is caused by any such labor dispute or potential labor dispute, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, without limitation, (i) removing all disputants from the job site until such time as the labor dispute no longer exists, (ii) seeking an injunction in the event of a breach of contract between Tenant and Tenant's contractor, and (iii) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute. Any work to be performed before Landlord's Work is finished shall be coordinated with Landlord's Work.

Before starting any work, Tenant shall (i) obtain all required licenses and permits; (ii) deliver to Landlord a statement of the names of all contractors and subcontractors and the estimated cost of all labor and material to be furnished by them; (iii) cause Tenant's contractors to carry workmen's compensation insurance covering all the contractors' and subcontractors' employees, and public liability insurance with liability limits of the least \$500,000-\$1,000,000, and property damage insurance with limits of \$100,000, both general and vehicular (all such insurance to be written by companies licensed to do business in the State of California, and insuring Landlord and Tenant as well as the contractors); and (iv) deliver to Landlord certificates of all such insurance, providing that such insurance may not be canceled without thirty (30) days prior written notice to Landlord. Landlord shall have the right from time to time during the lease term to increase the minimum liability limits specified above, to meet changed circumstances as described in paragraph 27 below. At all times Tenant shall keep the Premises free from and clear of mechanics' liens.

9. REPAIRS:

Landlord shall maintain all of the demised Premises, excluding the Building, and shall maintain the roof, exterior structural walls, foundation as to load bearing integrity, fire sprinklers, electrical panels, and HVAC system. All of Landlord's costs of maintenance shall be subject to reimbursement pursuant to paragraph 5 hereof.

Tenant shall, at its sole cost, keep and maintain (including replacements if necessary) the Building, and every part thereof (except as noted in the preceding paragraph) and all appurtenances in clean, good and sanitary order, condition and repair, and Tenant expressly waives any and all rights it might otherwise have under the law to make repairs or replacements at the expense of the Landlord. Tenant shall keep its sewers and drains (and use the same only for designated purposes) open and clear and shall keep the sidewalks and Common Areas adjacent to the Premises clean and free of all debris. Tenant agrees that it will paint, varnish, wallpaper, or otherwise redecorate or renovate the interior of the Premises and Tenant's trade fixtures when necessary to maintain the Premises in a first-class condition. Landlord for the benefit of Tenant will enforce all rights to repair or replacement of defective work under contracts for the construction of the Building or Tenant's Improvements. On the last day of the term, or at any sooner termination of this Lease, Tenant shall also surrender to Landlord the Premises in good and sanitary condition and repair, but with reasonable use, wear and tear, or damage by fire, act of God or by the elements excepted; and Tenant also agrees to remove all of its signs and trade fixtures which Tenant has the right to remove from the Premises, restoring any damage caused by such removal. Repairs to the premises required to be made by Tenant under the provisions of this lease must be completed whether or not they are due to either conditions existing upon the commencement of the lease, or use during the term of the lease.

During the term of this Lease Landlord shall keep in force preventative maintenance contracts with qualified contractors covering all heating and air conditioning equipment and elevator equipment which serves the Premises.

10. ALTERATIONS:

Tenant may, from time to time, make non-structural alterations and additions to the interior of the Premises in accordance with plans and specifications first approved in writing by Landlord which approval shall not be unreasonably withheld or delayed. Landlord may disapprove such plans if they will result in unusual expense to re-adapt the Premises to normal office use on lease termination, unless Tenant agrees to restore the Premises to its original configuration prior to lease termination. All such changes shall become at once part of the Premises and belong to Landlord. except for trade fixtures, which may be removed by Tenant, upon termination or expiration of this Lease term. Landlord can elect within thirty (30) days before expiration of the term, or within five (5) days after expiration of the term, to require Tenant to remove any alterations made by Tenant where Landlord's written approval was conditioned upon and reserved such right. If Landlord so elects, Tenant at its sole cost shall restore the premises to the condition of the premises prior the installation of such alterations designated by Landlord at its election, before the last day of the term, or within thirty (30) days after notice of the election is given, whichever is later. Tenant shall have no right to remove any fighting fixtures or any portion of the HVAC system or electrical system whether or not such equipment would otherwise be a trade fixture of Tenant.

If Tenant makes any alterations to the premises as provided in this paragraph, the alteration shall not be commenced until three (3) working days after Landlord has received notice from Tenant stating the date the installation of the alterations is to commence so that Landlord can post and record an appropriate Notice of Non-Responsibility.

11. SIGNS AND DECORATIONS:

Tenant shall not place or permit to be placed, any sign, marquee, awning, decoration, window covering or other attachment on or to the roof, windows (inside or outside), doors (inside or outside), visible portions of inside walls or exterior walls of the Premises or at any other location in or adjacent to the Building without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord may, without liability to Tenant, enter upon the Premises and remove any such sign, marquee, awning, decoration, window covering or attachment affixed in violation of this paragraph, and Tenant agrees to pay the cost of any such removal. Tenant shall not exhibit or affix flags, pennants, banners or similar items on or to the exterior of the Premises or the building of which the Premises are a part. Also, no advertising medium shall be utilized by Tenant which can be heard or experienced outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television.

12. USE:

Tenant agrees to use and occupy the Premises continuously during the term of this Lease for General office use (including the use of computers, printers, copiers, modems and similar equipment and for shipping and receiving of supplies, materials and mail which is not inconsistent with such office use), food service for Tenant's employees and business guests, and not for any other purpose.

13. PARKING:

There is a cross easement between the Premises and the adjoining Retail Center for ingress and egress and for parking in the areas shown in Exhibit "B." Tenant shall not permit its employees to park in the areas designated as visitor or short-term parking in Exhibit "B." Landlord shall have the right to establish reasonable rules governing the use of the visitor or short-term parking areas including limitations on the duration of parking privileges.

14. RULES AND REGULATIONS:

Tenant and Tenant's employees and invitees shall faithfully observe and comply with any reasonable rules and regulations governing the Building as may from time to time be established by Landlord.

15. COMPLIANCE WITH LAW:

Except as otherwise provided in this Lease, Tenant, shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions or record, permits, the requirements of any applicable fire insurance underwriting or rating bureau, and the reasonable recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank), and (iv) traffic, circulation or parking of motor vehicles of Tenant, its employees and invitees now in effect



or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing lessee's compliance with any Applicable Law specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Law.

16. PROHIBITED USES:

(a) No use shall be made or permitted to be made of the Premises, or acts done, or materials stored or used in, which would increase the existing rate of insurance upon the building in which the Premises are located over the standard rate of insurance prevailing in the area of the Building, or cause a cancellation of any insurance policy covering all or part of such building, nor shall Tenant sell, or permit to be kept, used, or sold in or about the Premises, any article which may be prohibited by the form of fire insurance policy provided in paragraph 29(g) below, as it may provide from time to time. Tenant shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises by any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance,

(b) From and after the date of commencement of the lease term, Tenant shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable noise, odors or nuisances, and shall comply with all health, safety and police regulations in all respects.

17. HAZARDOUS SUBSTANCES:

A. Reportable Uses Require Consent. The term "Hazardous Substance" as used in this lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, which is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof. Tenant shall not engage in any activity in, on or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense with all Applicable Law (as defined in paragraph 13. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority. Reportable Use shall also include Tenant's being responsible for the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Law requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, but in compliance with all Applicable Law, use any ordinary and

customary materials reasonably required to be used by Tenant in the normal course of Tenant's business permitted on the Premises, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to the use or presence of any Hazardous Substance, activity or storage tank by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefrom or therefore, including, but not limited to, the installation (and removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasement) and/or the deposit of an additional Security Deposit under paragraph 4 hereof.

(b) Duty to Inform Landlord. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, which is a Reportable Use has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give written notice of such fact to Landlord. Tenant shall also immediately give Landlord a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on, or about the Premises, including but not limited to all such documents as may be involved in any Reportable Uses involving the Premises.

(c) Indemnification. Tenant shall indemnify, protect, defend and hold Landlord, its agents, employees, and the Premises, harmless from and against any and all loss of rents and/or damages, liabilities, judgements, costs, claims, liens, expenses, penalties, permits and reasonable attorney's and consultant's fees arising out of or involving any Hazardous Substance or storage tank brought onto the Premises by or for Tenant or under Tenant's control. Tenant's obligations under this Paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property of the environment created or suffered by Tenant, and the cost of investigation (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances or storage tanks, unless specifically so agreed by Landlord in writing at the time of such agreement.

Landlord shall indemnify, protect, defend and hold Tenant harmless with respect to any Hazardous Substance brought upon the Premises by Landlord or its Agents or existing upon the Delivery Date to the same extent and in the same manner.

18. VOLUNTARY SURRENDER:

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, but shall, at the option of Landlord, either (i) terminate all or any existing subleases or subtenancies, or (ii) operate as an assignment to Landlord of any or all such subleases or subtenancies.

19. NOTICES:

All notices to be given to Tenant may be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Tenant at Tenant's address given on page 1 of this Lease, or at such other address as Tenant may indicate from time to time during the term of this Lease.

Notice by Tenant to Landlord shall be in writing and deposited in the United States mail, postage prepaid, addressed to Landlord at the address specified on Page 1 of this lease, or such other address as Landlord may indicate from time to time during the term of this lease.

20. DELIVERY OF POSSESSION: HOLDING OVER:

(a) Immediately upon expiration or sooner termination of the lease term, Tenant shall vacate and deliver to Landlord possession of the Premises, and except as provided in the next sentence, all Tenant improvements and alterations, broom clean, in good condition and in substantially the same condition as they were in the commencement of this Lease, or when installed, if later, normal wear and tear excepted. Prior to such delivery, Tenant shall remove all personal property and alterations that Tenant has the right to remove or is obligated to remove under the provisions of Paragraph 11 and shall repair all damage caused and perform all restoration necessary as a result of the removal of any alterations or personal property.

(b) If Tenant has vacated the premises Landlord may elect to retain or dispose of in any manner any alterations or personal property that Tenant does not remove from the Premises on expiration or sooner termination of the lease term as allowed or required by this Lease. Title to any such alterations or personal property that Landlord elects to retain or dispose of after Tenant has vacated the Premises shall vest in Landlord. Tenant waives all claims against Landlord for damage or injury to Tenant resulting from Landlord's retention of any such alteration or personal property and shall indemnify and hold Landlord harmless from liability for damages and all costs and expenses incurred by Landlord in defending claims to any such alterations or personal property asserted by any other person. Tenant shall reimburse Landlord upon demand for Landlord's reasonable costs of storing, removing, and/or disposing of any such alterations or personal property.

(c) If Tenant fails to vacate and deliver possession of the Premises on the expiration or earlier termination of the lease term, as required under subparagraph (a) above, Tenant shall hold Landlord harmless from all damages resulting from Tenant's failure to so vacate and deliver possession of the Premises, including, without limitation, claims made by a succeeding tenant resulting from Tenant's failure to vacate and deliver possession of the Premises and any rental loss suffered by Landlord. Tenant understands that the termination date of this lease was selected to occur prior to expected vacancies in other buildings in the vicinity and that consequently any delay in vacating the Premises may substantially adversely affect Landlord's ability to re-lease the Premises.

(d) If Tenant, with Landlord's consent, remains in possession of the Premises after expiration of the lease term, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. All provisions of this Lease, except those pertaining to term, and option to extend, if any, shall apply to the month-to-month tenancy, provided that the Minimum Rent shall be one-hundred twenty-five percent (125%) of

the minimum rent payable during the last month of the lease term.

(e) Tenant shall vacate and deliver possession of the Premises free of all liens, charges, or encumbrances resulting from any act or omission on Tenant's part and free and clear of all violations thereon placed by any federal, state, municipal or other agency or authority, and shall indemnify Landlord against any and all loss, expense, damage, costs, or attorneys' fees arising out of Tenant's failure to do so.

21. ENTRY BY LANDLORD:

Tenant shall permit Landlord and its agents to enter the Premises at reasonable times upon reasonable notice for any of the following purposes: to inspect the same; to maintain the Building to make repairs, alterations or additions to any portion of the Building; to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; to install a leasing signs upon the Premises during the final one hundred twenty (120) days of the lease term; to show the Premises to prospective purchasers or lenders and, during the final one hundred eighty (180) days of the lease term, to prospective Tenants; and to install, use and maintain pipes, ducts, conduits, wires and appurtenant meters and equipment in the Premises. Landlord may exercise such right of entry without any abatement of rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises unless Landlord is negligent or acts with willful disregard of Tenant's business interests when making such entry, or if the need for such repairs arise from the negligent or willful act of Landlord, its employees or agents.

22. LANDLORD'S CONVEYANCE:

If during the term of this Lease Landlord, its successors or assigns, conveys all or part of its interest in the Premises, then from and after the effective date of the conveyance, Landlord shall be released and discharged from any and all obligations under this Lease with respect to the interest so conveyed, except those already accrued. If Landlord conveys, assigns and sells all its interest in the Premises to a third party, Tenant shall attorn to such party as if it had been named as Landlord under this Lease,

23. ASSIGNMENT AND SUBLETTING:

Tenant shall not assign this lease or sublet any portion of the Premises without the prior written consent of Landlord. No such assignment or subletting shall relieve Tenant of its obligations hereunder. Landlord shall not unreasonably withhold such consent. In determining whether or not to consent, Landlord may consider all relevant factors, including but not limited to, the financial responsibility of the proposed tenant, the nature of the tenant's business, any modifications to the building which might be required, any increased burden upon the parking facilities, traffic, water usage, or other factors which affect Landlord as the owner of the Premises and adjacent property. Tenant shall reimburse Landlord for all reasonable legal and other expenses incurred by Landlord in reviewing such requests for consent.

24. SUCCESSORS:

All the terms, covenants and conditions of this Lease shall be binding upon and inure to the

benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, and in the case of Tenant, all amounts due and payable hereunder shall be the obligation of such heirs, executors, administrators and assigns, regardless of the time period to which such amounts relate. Nothing in this paragraph shall be deemed to permit any assignment, subletting, occupancy or use contrary to the provisions of paragraph 23 above.

25. INDEMNIFICATION AND LIABILITY INSURANCE:

Landlord, its managing agent, and architects shall not be liable to Tenant, its officers, agents, employees, customers, invitee or third parties for loss or damage to property, including goods, wares and merchandise, for lost profits, or for injury or death to persons in, on, or about the Premises, and Tenant agrees to indemnify and hold Landlord, its managing agent, and architects harmless from and on account thereof no matter how arising or by whom caused, except for such loss or damage as may be caused by the negligence or willful act or omission of Landlord, its agents, architects or employees for which Landlord shall be liable and for which Landlord shall indemnify Tenant. Tenant acknowledges that the provisions of Paragraph 37 below require Tenant to pay all Landlord's, its managing agent's and architect's costs, expenses and fees resulting from any action associated with such loss, damage, injury or death, unless caused by Landlord's negligence or willful act.

During the term of this Lease, Tenant shall maintain in full force and effect with insurance companies with general policy holder's rating of not less than A and a financial rating of not less than X as rated in the most current available "Best's" Insurance Reports, licensed to do business in the state in which the Building is located, comprehensive liability insurance policies applicable to the Premises and Tenant's activities, including contractual, with limits of liability per person, per occurrence and for property damage at least equal to a combined single limit policy of \$1,000,000. The minimum limits specified above are the minimum amounts required by Landlord, and may be revised by Landlord from time to time, but not more frequently than once each year, when reasonably necessary to meet changed circumstances, including, without limitation (i) changes in the purchasing power of the dollar, (ii) changes indicated by the amount of plaintiffs' verdicts in personal injury actions in the State of California, or (iii) changes consistent with the standards required by Landlords of other similar buildings located in the County in which the Building is located. Such liability insurance shall be primary and not contributing to any insurance carried by Landlord, and Landlord's insurance (if any) shall be in excess thereof.

Tenant shall cause Landlord and its managing agent to be named as additional insured, and certificates evidencing such coverage and providing that the insurance may not be cancelled without thirty (30) days' prior written notice to Landlord shall be delivered to Landlord prior to Tenant taking possession of the Premises or entering to commence fixturation.

26. INSURANCE PREMIUMS:

Tenant shall pay to Landlord as part of Common Area Charges provided for in Paragraph 6 above, all premiums paid by Landlord for the property damage insurance policy described in Paragraph 28(g) below, or an appropriate pro rata share of the premiums if the policy insures more than the Premises. Provided, however, that Tenant's liability for the payment of premiums for earthquake insurance shall not exceed \$10,000 per annum increased in the same manner as the Management Fee as provided in paragraph 5(b), and the earthquake insurance must provide for a deductible of five percent (5%) or less of the damage.

27. SUBROGATION WAIVER:

With respect to all policies of insurance which are required by the provisions of this Lease Landlord and Tenant each agree to obtain a clause or endorsement denying to the insurer rights of subrogation against the other party to the extent such rights have been waived by the insured under the provisions of this Lease.

Each party, notwithstanding any provisions of this Lease to the contrary, waives any right of recovery against the other for injury or loss due to hazards covered by insurance to the extent of the insurance coverage required by this Lease.

28. DAMAGE AND DESTRUCTION:

(a) If the Building is destroyed or materially damaged (i.e., to the extent of five percent (5%) or more of the then full replacement cost) from a cause not insured against under Landlord's casualty insurance policy, with extended coverage, Landlord shall have the right to terminate this Lease by giving written notice of termination to Tenant within thirty (30) days after the date of such damage or destruction. If the Lease is not so terminated, then Landlord shall diligently proceed to repair and restore the Building.

(b) If the Building is materially damaged or destroyed from a cause covered by Landlord's casualty insurance referred to above, and they may be repaired or restored within one hundred fifty (150) days after commencement of repair or restoration, then Landlord shall diligently proceed to repair and restore the Premises. If Landlord determines that the Premises cannot be repaired or restored within such a period, then Landlord shall have the right to terminate this Lease by written notice to Tenant given within sixty (60) days after the date of such damage or destructions, and Tenant's obligation to pay rent and other charges under this Lease shall terminate as of the date of the damage or destruction, or the date Tenant ceases to do business at the Premises, whichever date is later.

(c) If the Building is damaged to the extent of fifty percent (50%) or more of its replacement cost, Landlord may elect to terminate this Lease by written notice to Tenant given within sixty (60) days after the date of such destruction.

(d) If in any case which is the subject of this paragraph 29, the Premises or any portion thereof is rendered unfit for use and occupancy and this Lease is not terminated as provided above, a just proportion of the Minimum Rent in light of the nature and extent of the damage shall be abated until the Premises, excluding any fixtures or items installed or paid for by Tenant which Tenant is entitled or required to remove under this Lease, have been restored by Landlord as provided above.

(e) Except as expressly provided otherwise in this Lease, damage to or destruction of the Premises shall not terminate this Lease or result in any abatement or rentals payable hereunder. Tenant waives any right of offset against its rental obligations provided by any statute or rule of law in connection with Landlord's duties of repair and restoration under the provisions of this Lease.

(f) Landlord's duties of repair and restoration under the provisions of this Lease shall extend only to those portions of the Premises insured under Landlord's casualty insurance with

extended coverage endorsements and Landlord shall not be responsible for any loss, damage, or destruction to Tenant's to fixtures, inventory or other Tenant-owned property.

(g) Landlord shall obtain and maintain in force a standard fire and extended risk insurance policy with Landlord as insured, insuring the Premises and building of which it is a part in amounts and in form satisfactory to Landlord, which may also include, at Landlord's option, rental continuation for a period of twelve (12) months, earthquake (subject to the provisions of paragraph 26), flood, demolition, increased cost of construction due to changes in building codes, and such other coverage as Landlord deems prudent or as may be required under the terms of any mortgage or deed of trust at any time encumbering the Building of which the Premises form a part. Any proceeds of such insurance shall be payable to Landlord and used for repair and reconstruction of the improvements, if Landlord is obligated under this Lease to repair or reconstruct, subject to any requirements as to the disposition of the proceeds that may be imposed by the beneficiary under any mortgage or deed of trust at any time encumbering the Building.

(h) Tenant shall obtain and maintain in force a standard fire and extended coverage insurance policy on all of Tenant's personal property, in an amount equal to their full replacement value.

29. DEFAULT:

(a) The following events shall constitute events of default by Tenant:

(i) Abandonment of the Premises; or dispossession of Premises by power of law or otherwise;

(ii) failure to pay any installment of Minimum Rent, or Additional Rent on the date when any such payment is due, with such a failure continuing for a period of ten (10) days after written notice of such delinquency, except that in the case of Minimum Rent, no written notice of delinquency shall be required:

(iii) assignment or subletting in violation of the provisions of paragraph 23;

(iv) failure by Tenant to perform any other covenants, agreements or obligations required of Tenant under this Lease with such a failure continuing for thirty (30) days after written notice of such failure: provided, however, if the nature of the failure is such that it cannot with the exercise of reasonable diligence be cured within said thirty (30) day period, then Tenant shall not be in default hereunder if it shall promptly commence such cure (in any event within said thirty-day period) and thereafter pursue the same to completion with diligence and continuity; provided, further, however, if such failure is of a nature which adversely affects the health and safety of users of the Building, obstructs or impedes the flow of pedestrian and vehicular traffic through the Common Areas, or adversely affects the appearance of the Building, and can with the exercise of reasonable diligence be cured within a shorter period of time, then the applicable cure period following notice shall be such shorter period of time. If on three (3) or more occasions during any period of twelve (12) consecutive months during the lease term Tenant shall fail to perform any obligation hereunder which adversely affects the health and safety of the Common Areas, and regardless of whether such prior failures shall have been cured within the required time period, then, commencing on the fourth such failure, no prior notice shall be required;

(vi) a general assignment by Tenant for the benefit of creditors;

(vii) the filing of a voluntary petition in bankruptcy by Tenant or the filing of an involuntary petition by Tenant's creditors, with such a petition remaining undischarged for a period of ninety (90) days;

(viii) the appointment of a receiver to take possession of substantially all of Tenant's assets or of the Premises, with such a receivership remaining undissolved for a period of ninety (90) days;

(ix) the attachment, execution or other judicial seizure of substantially all of Tenant's assets or of the Premises, with such an attachment, execution or other seizure remaining unreleased or undischarged for a period of ninety (90) days after the levy thereof;

(x) the chronic delinquency by Tenant in the payment of rentals due hereunder, with "chronic delinquency" meaning the failure by Tenant to pay any rental by the required due date on seven (7) or more occasions during any 12-month period.

(b) Upon any of the above events of default or any other breach of this Lease by, then Landlord, besides other rights or remedies it may have under this Lease or by law, shall have the right to: (i) immediately terminate this Lease and Tenant's right to possession of the Premises by giving Tenant written notice that this Lease is terminated, in which event, upon such termination, Landlord shall have the right to recover from Tenant the sum of; (A) the worth at the time of award of the unpaid rent which has been earned at the time of termination; (B) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant affirmatively proves could have been reasonably avoided; (C) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant affirmatively proves could be reasonably avoided; (D) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and (E) all such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law; or (ii) have this Lease continue in effect for so long as Landlord does not terminate this Lease and Tenant's right to possession of the Premises, in which event Landlord shall have the right to enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rentals payable by Tenant under this Lease as they become due, or (iii) without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such reletting all rent and other sums received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than rentals due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of rentals due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rentals payable by Tenant hereunder as the as the same may become due and payable hereunder. If the rent and other sums received from such reletting during any month are less than the rental to be paid during that month by Tenant hereunder, Tenant shall pay such



deficiency to Landlord; if such rent and other sums shall be more, Tenant shall have no right to the excess. Such deficiency shall be calculated and paid monthly. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises and reasonable attorneys' fees, all of which amounts shall be immediately due and payable from Tenant to Landlord. The failure or refusal of Landlord to relet the Premises shall not affect Tenant's liability. At its option, Landlord may request the appointment of a receiver for Tenant to take possession of the Premises and to exercise all rights of Landlord herein relating to the taking of possession of and reletting the Premises, and to apply any rent and other sums collected from the Premises accordingly. The terms "entry" and "re-entry" are not limited to their technical meanings. For the purpose of this paragraph: "worth at the time of award" as defined in Subparagraphs (b) (i) (A) and (B) shall be computed by allowing interest at the rate of ten percent (10%) per annum, and for Subparagraph (i)(c) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) Upon any such event of default or breach, all of Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the Premises and, during the length of such default or breach, Landlord shall have the right to take the exclusive possession of them and to use them, rent or charge free, or to remove and store the same in a public warehouse or elsewhere at the cost of and for the account of Tenant, until all defaults are cured or, at Landlord's option at any time during the remaining term of this Lease, to require Tenant to immediately remove the same.

(d) The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant, or condition. The subsequent acceptance of rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

30. RIGHT OF LANDLORD TO PERFORM:

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money required to be paid by it hereunder to third parties or fails to perform any other act on its part to be performed hereunder and such failure continues for ten (10) days after notice thereof by Landlord, Landlord may, without waiving or releasing Tenant from any obligations of, make any such payment or perform any such other act on Tenant's behalf. All sums so paid by Landlord and all necessary incidental costs, together with interest on all of the foregoing at the default rate specified in Paragraph 4(c) above from the date of such payment by Landlord, shall be payable to Landlord on demand.

31. CONDEMNATION:

(a) If during the lease term, the Premises, or any substantial portion thereof (i.e., ten percent (10%) or more of the gross leasable area), are damaged by action of public or other authority or are taken by eminent domain, or if Landlord receives compensable damage by reason of anything lawfully done in pursuance of public or other authority in connection with the Premises, this Lease shall terminate at Landlord's election, which election may be made whether or not Landlord's entire interest has been divested. If only a part of the Premises is taken and the remainder is insufficient for Tenant's purposes or, in case of such damage or taking, if the time needed to do the construction work necessary to put the Premises or such remainder in proper condition for use and occupation is reasonably estimated to exceed six (6) months, or if Landlord does not commence within sixty (60) days after the damage or the surrender of the part taken and proceed with reasonable diligence to do such work, Tenant may terminate this Lease, without penalty, by written notice given to Landlord within thirty (30) days after the right to terminate arises. If in any such case the Premises are rendered unfit for use and occupation and the Lease is not so terminated, a just proportion of the Minimum Rent according to the nature and extent of the injury shall be abated until the Premises (or in case of a taking what may remain thereof, excluding any fixtures or items installed or paid for by Tenant which Tenant is entitled or required to remove by agreement, have been put by Landlord in proper condition for use and occupation; and, in case of a taking which permanently reduces the area of the Premises, a just proportion of the Minimum Rent shall be abated for the remainder of the lease term.

(b) The entire award or compensation in such proceedings, whether for a total or partial taking or for diminution in the value of the leasehold or for the fee, shall belong to and be the property of Landlord; provided, however, that Tenant shall be entitled to recover from the condemnor such compensation as may be separately awarded by the condemnor to Tenant, or recoverable from the condemnor by Tenant in its own right, for the taking of trade fixtures and equipment owned by Tenant (meaning personal property, excluding fixtures, whether or not attached to the real property, which may be removed without injury to the Premises) for business goodwill and for Tenant's relocation expenses. Each party waives any statutory right in conflict with the provisions of this Paragraph 33, including, without limitations rights under California Code of Civil Procedure Section 1265.130.

(c) If the Premises or any part of them are taken for temporary use:

(i) this Lease, including Tenants' obligation to pay all rentals hereunder, shall be and remain in full force and effect, and

(ii) Tenant shall be entitled to receive such portion or portions of any award made for such use with respect to the period of the taking which is within the lease term, provided that if such taking remains in force at the expiration or earlier termination of this Lease, Tenant shall then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Paragraph 10 above with respect to surrender of the Premises and upon such payment shall be excused from such obligations.

32. OPTION TO RENEW: So long as Tenant shall not be in default at the time of the exercise of the option, Landlord grants to Tenant the option to renew the Lease for an additional term of five (5) years commencing upon the day following the expiration date of the initial term upon the following terms and conditions:

(a) The option shall be exercised by written notice to Landlord from Tenant delivered not more than one year prior to the commencement of the renewal term, and not less than nine months prior to the commencement of the renewal term. The notice shall be accompanied by Tenant's financial statements for its most recent fiscal year and any subsequent interim periods for which Tenant has issued financial statements. If such financial statements indicate that Tenant's financial condition is not satisfactory to reasonably ensure payment of rent under the Lease for the option term, Landlord may refuse to honor the exercise of such option. In the event that the option is not exercised within the time provided, it shall expire.

(b) If the option is exercised, during the renewal term, the minimum rent (in lieu of the Note Rent and the Land Rent) shall be equal to ninety-five percent (95%) of the fair rental value of the premises at the date of the commencement of the renewal term. In determining the fair rental value, the term of the Lease, and all the other terms and conditions of the Lease shall be considered. The fair rental value shall be determined on the basis of the fair rental value of a rentable square foot of comparable office space in Marin County. No consideration shall be given to the fact that Tenant shall occupy the entire building.

Upon the exercise of the option, the parties shall make an attempt to determine the fair rental value of the premises. In the event that they are unable to do so within a period of two (2) months from the exercise of the option, each party shall appoint an appraiser who shall be a licensed appraiser or a licensed commercial real estate broker doing business in Marin County, with at least five years experience in commercial leasing of comparable property in Marin County. The two appraisers shall meet and attempt to determine the fair rental value of the premises. If they are unable to agree within a period of thirty (30) days thereafter, the two shall choose a third appraiser who shall be similarly qualified. The third appraiser shall determine the fair rental value of the premises and his determination shall be binding upon the parties. Provided, however, that the fair rental value of the premises shall not be less than the rental paid during the last lease year of the initial term, nor less than the fair rental value proposed by the appraiser appointed by Tenant, and shall not be more than the fair rental value proposed by the appraiser appointed by Landlord.

If either party shall fail to appoint its appraiser at the time provided, or if the two appraisers shall fail to appoint the third appraiser within the time provided, upon application by either party, the appraisers shall be appointed by the president of the Marin County Board of Realtors.

Each party shall pay the compensation of its appointed appraiser and one-half the compensation of the third appraiser.

(c) The rent shall be adjusted annually in accordance with changes in the Index as described in paragraph 2 commencing one year from the commencement date of the renewal term using a base Index which shall be the Index last published prior to the commencement of the renewal term and an adjustment index which shall be the Index last published prior to the adjustment date.

(d) All the remaining terms and conditions of the Lease shall apply, including, but not limited to, the provisions for payment of additional rent in the form of common area charges, taxes, insurance, and maintenance of the building.

No additions shall be made to the Re-leasing Reserve provided for herein, but the reserve shall be maintained and shall be available to Landlord at the expiration of the renewal term.

(e) In the event the option is exercised, Landlord shall use its best efforts to obtain a new

loan to be secured by the premises sufficient to repay the balance of Note and the costs of refinancing. If Landlord is unable to secure a loan providing for monthly payments of interest and principal sufficient to amortize the principal over a term of not less than twenty-five (25) years which does not exceed eighty-five percent (85%) of the net operating income from the building, and due in not less than seven (7) years from the Commencement Date of the Renewal Term then as a condition for the renewal of the Lease, Tenant shall be required to extend the maturity date of the Note for a period of five (5) years from the date the Note is otherwise due, or in the alternative, cancel the option and vacate the premises at the end of the then current term. If Tenant proposes to assign the Note to a third party during the extension period of the Note, Landlord agrees to terminate its right to offset payments under the Note against rent due, if financial statements submitted by Tenant indicate that Tenant has sufficient income to pay the rent under the Lease. Such termination shall be effective upon assignment of the Note by Tenant. Net operating income means the Minimum Rent less the expenses of operating the Demised Premises to the extent not reimbursed by Tenant and specifically excluding any interest or principal loan payments or depreciation.

In the event that the foregoing option to renew is exercised, Tenant shall have two additional five-year options to renew upon the same terms and conditions with the fair rental value of the premises to be determined in the same manner at the time each option is exercised.

In the event that Tenant fails to exercise an option, all subsequent options shall terminate.

33. FIRST RIGHT OF NEGOTIATION: In the event that Landlord shall elect to sell the building during the term of the Lease, Tenant shall have the first right to negotiate for the purchase upon the following terms and conditions:

Prior to listing the building for sale, and prior to negotiation with respect to sale to any third party, Landlord shall give written notice to Tenant that Landlord wishes to sell the building, and shall advise Tenant of the proposed sale price and other terms and conditions of the sale. For a period of thirty (30) days thereafter, Landlord and Tenant shall negotiate in good faith for the purchase and sale of the building. In the event that no agreement is reached during said time, Landlord may list the building and may offer the building for sale to third parties without any further obligation to Tenant except that if Landlord proposes to make sale of the building for a sale price which is more than ten percent (10%) less than the last price offered to Tenant, Landlord shall give written notice of such proposed price to Tenant, and within a period of five (5) working days thereafter, Tenant may elect to purchase the building at the reduced price and upon the terms and conditions proposed.

In the event that Landlord receives an unsolicited offer for purchase of the building which Landlord wishes to accept, Landlord shall give Tenant written notice of such offer and shall include a copy of the offer in the notice. Within ten (10) working days following submission of the offer, Tenant shall have the option to purchase the building from Landlord upon the same terms and conditions as are offered by such third party.

This provision shall not apply to the sale of an undivided interest in the property, nor to a dissolution or reorganization of the partnership so long as the existing partners retain more than a fifty percent (50%) beneficial interest in the building.

In the event that the proposed sale provides for a tax deferred exchange to be made, as a condition for the purchase, Tenant shall be required to cooperate with Landlord in connection with such exchange.

34. SUBORDINATION:

This lease is and shall be prior to any encumbrance recorded after the date of this Lease affecting the premises. If, however, a lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to the encumbrance if Landlord first obtains from the lender a written statement that provides substantially as follows:

"As long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease. Tenant shall attom to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed in lieu of foreclosure so long as such party executed a document indicating that it will recognize Tenant's rights under the Lease, provide quite enjoyment of the Premises to Tenant so long as Tenant is not in default, and shall perform the obligations of Landlord hereunder."

Tenant shall execute any written agreement or other documents required by the lender to accomplish the purpose of this paragraph.

35. LANDLORD DEFAULT; MORTGAGEE PROTECTION:

(a) In the event Landlord shall neglect or fail to perform or observe any of the terms covenants, or conditions contained in this Lease on it part to be performed or observed within thirty (30) days after written notice of default (or if more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to commence within such thirty (30) day period and thereafter proceed diligently to cure such default after written notice thereof), then, in that event, Landlord shall be liable to Tenant for any and all damages sustained by Tenant as a result of Landlord's breach.

(b) If Landlord shall fail to perform any covenant, term or condition of this Lease on Landlord's part to be performed, and as a consequence of its default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied solely out of (i) the proceeds of sale received upon execution of such judgment levied against the right, title and interest of Landlord in the Building and its interest in the underlying realty; (ii) the rents or other income from the Building receivable by Landlord; (iii) the consideration received by landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in and to said property; and (iv) any condemnation awards or insurance proceeds. It is expressly understood and agreed that neither Landlord nor any partner of Landlord shall be personally liable for any deficiency if the proceeds of the sale or disposition of Landlord's interest in the Building is insufficient for the payment of any such judgment, and Tenant shall not institute any further action, suit, or similar demand against Landlord, or any partner of Landlord, for or on the account of such deficiency. Nothing contained herein shall limit the personal liability of Landlord or its partners for acts of gross negligence or for willful acts.

(c) Tenant agrees to give the holder of any mortgage or deed of trust encumbering the Premises, by registered mail, a copy of any notice of default served upon Landlord, provided Tenant has previously been notified in writing of the identity and address of the holder of any such mortgage or deed of trust. Tenant further agrees that if Landlord has failed to cure any default

giving rise to such notice within the time period provided for in this Lease, then the holder of such mortgage or deed of trust shall have an additional ninety (90) days in which to cure such default or, if such default cannot with the exercise or reasonable diligence be cured within such time period, then such additional time as may be necessary (including time to obtain possession of the Premises by power of sale or judicial foreclosure, if such should be necessary to effect a cure) if within such ninety (90) days the holder of such mortgage or deed of trust has commenced and is diligently pursuing the remedies necessary to cure such default.

36. FINANCIAL AND OFFSET STATEMENTS:

Tenant agrees to furnish to Landlord, upon seven (7) business days prior written notice, a financial statement including a balance sheet and statement of income and expense for Tenant's last fiscal year, and its most recent quarterly and year to date statement, and Tenant shall have the right to deliver copies of such financial statements to any person from whom Landlord has accepted a bona fide purchase offer for Landlord's Building, or for the purpose of obtaining a loan to be secured by Landlord's Building.

Tenant shall at any time, and from time to time, not later than seven (7) business days following Landlord's written request therefore, execute, acknowledge, and deliver to Landlord, without charge, a statement in writing, in a form provided by Landlord, certifying the date of commencement of this Lease, 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 date of the modifications) and further stating the dates to which the Minimum Rent and other charges have been paid, and setting forth such other matters as may reasonably be requested by Landlord.

37. ARBITRATION:

Except as provided in this paragraph, if there shall be any dispute between Tenant and Landlord with respect to the interpretation of this lease, or with respect to any claim of liability to the other party with respect to this lease, or with respect to any matter arising out of the occupation of the premises by Tenant, the matter shall be submitted to arbitration under the Commercial rules of Arbitration of the American Arbitration Association, and the hearing shall be held at San Rafael, California. In connection with such arbitration, the parties shall have the right to discovery as set forth in Section 1283.05 of the California Code of Civil Procedure. This provision for arbitration shall not apply with respect to any action brought by Landlord for unlawful detainer of the premises.

INITIALS:

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38. ATTORNEY'S FEES:

If Landlord must join in any litigation or arbitration brought by or against Tenant in order to protect an interest of Landlord, or if Landlord is joined as a party in any litigation commenced by or against Tenant, Tenant shall pay all costs, expenses, and attorney's fees incurred by Landlord, its managing agent, its architects, or their insurance carriers in connection with such litigation unless such litigation determines that Landlord has committed a breach of this Lease and adjudicates that Landlord is a liable party. If any action at law or in equity is brought between Landlord and Tenant

to enforce any of the provisions and/or rights under this Lease, Landlord and Tenant hereby expressly waive the right, if any, to trial by jury in order to avoid the time delays inherent in such process, and Landlord and Tenant agree that the unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorney's fees, incurred by such successful party, and if such successful party recovers judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as part of such judgment.

39. ENTIRE AGREEMENT:

This Lease and the Leasehold Improvements Agreement constitute the entire agreement between Landlord and Tenant, and there are no other agreements, oral or written, that would modify the terms set forth in this Lease. Except as otherwise expressly provided herein, any later agreement that would purport to renew, extend, modify, amend or terminate this Lease shall be of no force or effect unless in writing and executed by both Landlord and Tenant.

40. HAZARDOUS MATERIALS DISCLOSURE & BROKER DISCLAIMER:

Various construction materials may contain items that have been or may in the future be determined to be hazardous (toxic) or undesirable and may need to be specially treated/handled or removed. For example, some transformers and other electrical components contain PCBs, and asbestos has been used in components such as fire-proofing, heating and cooling systems, air duct insulation spray-on and tile acoustical materials, linoleum, floor tiles, roofing, dry wall and plaster. Due to prior or current uses of the Property or in the area, the Property may have hazardous or undesirable metals, minerals, chemicals, hydrocarbons, or biological or radioactive items in soils, water, building components, above or below-ground containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. Real estate agents have no expertise in the detection or correction of hazardous or undesirable items. Expert inspections are necessary. Current or future laws may require clean up by past, present and/or future owners and/or operators. It is the responsibility of the Landlord and Tenant to retain qualified experts to detect and correct such matters and to consult with legal counsel of their choice to determine what provisions, if any, they may wish to include in transaction documents regarding the Property.

To the best of Landlord's knowledge, no asbestos or other hazardous materials and undesirable substances are contained in the Property. Landlord is required under California Health and Safety Code Section 25915 et seq. to disclose reports and surveys regarding asbestos to certain persons, including their employees, contractors, co-owners, purchasers and tenants. Buyers/Tenants have similar disclosure obligations. Landlord and Tenant have additional hazardous materials disclosure responsibilities to each other under California Health and Safety Code Section 25359.7 and other California laws. Consult your attorney regarding this matter. The brokers in this transaction are not qualified to assist you in this matter or provide you with other legal or tax advice.

LANDLORD REPRESENTS AND WARRANTS THAT TO THE BEST OF ITS KNOWLEDGE, NO ASBESTOS OR OTHER HAZARDOUS MATERIALS ARE OR WILL BE CONTAINED IN THE PREMISES.

41. MISCELLANEOUS:

(a) The table of contents and marginal captions in this Lease are for convenience of reference only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

(b) Time is of the essence of this Lease and of all its provisions, except with respect to the delivery of possession of the Premises, which is governed by paragraph 1 above.

(c) As used herein, the words "Landlord" and "Tenant" shall include the plural as well as the singular. Words used in the neuter gender shall include the masculine and feminine, as the context may require. If there is more than one Landlord or Tenant, the obligations imposed upon Landlord or Tenant shall be joint and several.

(d) This Lease shall be construed and enforced in accordance with the laws of the State of California.

(e) All acts concerning this Lease, the Premises, or the Building, shall be performed on behalf of Landlord only by a partner of Landlord, if Landlord is a Partnership, or an officer of Landlord, if Landlord is a corporation, unless written notice to the contrary is given to Tenant.

(f) If any provision of this Lease, or the application of it to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to any such person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(g) Landlord and Tenant acknowledge and agree that the only real estate broker(s) involved in the negotiation of this Lease was were the Grubb & Ellis Company is acting as agent for and representing only Landlord and not as agent for Tenant, and Damner Pike acting as the agent for and representing only Tenant and not as agent for Landlord.

(h) Tenant acknowledges that it is aware that the agent for the Landlord, Roger A. Smith, is also a principal in this transaction with a forty-five percent (45%) ownership interest. Tenant further acknowledges that another principal in the transaction, Michael J. Smith, is a California licensed real estate broker, and Daniel Ross is a California licensed real estate salesperson.

(i) This Lease imposes numerous financial and other obligations on Landlord and Tenant, and each of them was urged, and had ample time, to consult an attorney before entering this Agreement. No representation or recommendation is made by the Landlord, the real estate brokers or their agents or employees as to the legal sufficiency, legal effect, or tax consequences of this lease or the transaction relating thereto; the parties shall rely solely upon the advice of their own attorneys as to the legal and tax consequences of this lease.

(j) The persons executing this lease on behalf of the parties hereby covenant and warrant that (i) they are duly authorized by appropriate resolution and/or the articles and by-laws of said corporation to execute this Lease and thereby bind Landlord and Tenant to all the terms and conditions thereof, (ii) Tenant is a duly qualified corporation and all steps have been taken prior to



the execution of this Lease to qualify Tenant to do business in the state where the Building is situated, (iii) all franchise and corporate taxes have been paid as of the date of execution, (iv) all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due, and (v) Landlord is a duly existing California general partnership.

(k) During the entire lease term Tenant shall maintain a business license as required by the municipality in which the Building is located.

(l) All agreements by Tenant contained in this Lease, whether expressed as covenants or conditions, shall be construed to be both covenants and conditions, conferring upon Landlord in the event of the breach thereof the right to terminate this Lease.

(m) All exhibits attached to this Lease shall be deemed to be incorporated herein by the individual reference to each such exhibit, and all such exhibits shall be deemed to be a part of this Lease as though set forth in full herein.

42. RIGHT TO MONTH-TO-MONTH TENANCY:

In the event that (a) Tenant has not exercised an option to extend in accordance with the provisions of Paragraph 32; and (b) the Note described in Paragraph 2(a) has not been repaid or assigned to a third party; and (c) Landlord has been unsuccessful in executing any new leases three (3) months prior to the expiration of the then current term of the lease, Tenant shall have the right to remain in the premises on a month-to-month basis at 95% of the fair rental value of the premises. The fair rental value shall be determined as provided for in Paragraph 32. Tenant must exercise this right in writing not later than eighty-five (85) days prior to the expiration of the current term.

IN WITNESS WHEREOF, the parties have executed this Lease or, as the case may be, have caused their duly authorized officers to execute this Lease, on the date last written below.

LANDLORD:  
111 PARTNERS

TENANT:  
FAIR, ISAAC AND COMPANY,  
INCORPORATED

By: \_\_\_\_\_  
Michael J. Smith

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_  
Roger A. Smith

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

By: \_\_\_\_\_  
Daniel C. Ross

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

EXHIBIT A  
PROPERTY DESCRIPTION

111 Smith Ranch Road  
San Rafael, California

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ALL THAT CERTAIN REAL PROPERTY situated in the City of San Rafael, County of Marin, State of California described as follows:

PARCEL ONE:

Parcel 3B, as shown upon that certain Parcel map entitled "Parcel Map, Lot 3 of Map of Smith Ranch, Northerly Portion 17 R.M. 39, San Rafael, Marin County, California", filed for record \_\_\_\_\_ in Book \_\_\_\_\_ of parcel Maps, at Page \_\_\_\_\_, Marin County Records.

Reserving therefrom an easement for access, parking, drainage and public utilities over that portion of the herein described property lying within the boundaries of that certain, "Mutual Access and Parking Easement, D.E. & P.U.E.", as shown upon the filed map referred to above.

Said easement to be appurtenant to and for the benefit of Parcel 3A, as shown upon the filed map referred to above.

PARCEL TWO:

An easement for access, parking, drainage and public utility purposes over that portion of Parcel 3A, lying within the boundaries of that certain, "Mutual Access and Parking Easement, D.E. & P.U.E.", as said parcel and easement are shown upon that certain Parcel Map entitled, "Parcel Map, Lot 3 of Map of Smith Ranch, Northerly Portion 17 R.M. 39, San Rafael, Marin County, California", filed for record \_\_\_\_\_ in Book \_\_\_\_\_ of Parcel Maps at Page \_\_\_\_\_, Marin County Records.

PARCEL THREE:

An easement for storm drainage purposes more particularly described as follows:

Beginning at the Easterly terminus of the course "South 81(degree) 38' 00" East, 536.00 feet": said point being on the Northerly line of Smith Ranch Road and the Southerly line of Lot 3, as shown and delineated on that certain map entitled, "Map of Smith Ranch - Northerly Portion", filed for record in Book 17 of Record Maps at Page 39, Marin County Records: thence leaving said Northerly line of said Smith Ranch Road (17 R.M. 39) along the Easterly line of said Lot 3 (17 R.M. 39) the following courses and distances; Easterly along a tangent curve to the left whose center bears North 8(degree) 22' 00" East, having, a radius of 20.00 feet, through a central angle of 90(degree) 00' 00", an arc length of 31.42 feet and thence North 8(degree) 22' 00" East, 23.00 feet, thence leaving, said Easterly line of said Lot 3 (17 R.M. 39) South 13(degree) 12' 17" East, 46-24 feet to said Northerly line of said Smith Ranch Road (17 R.M. 39), thence along said Northerly line of said Smith Ranch Road (17 R.M. 39) North 81(degree) 37' 00" West, 37.00 feet to the point of beginning.

PARCEL FOUR:

An easement for storm drainage over a strip of land 10 feet in width and being 5 feet on each side of the following described line:

Beginning at the Easterly terminus of the course "South 81(degree) 38' 00" East, 536.00 feet"; said point being on the Northerly line of Smith Ranch Road and the Southerly line of Lot 3, as shown and delineated on that certain Map entitled, "Map of Smith Ranch Northerly Portion", filed for record in Book 17 of Record Maps at Page 39, Marin County Records; thence leaving said Northerly line of said Smith Ranch Road (17 R.M. 39) along the Easterly line of said Lot 3 (17 R.M. 39) the following courses and distances; Easterly along a tangent curve to the left whose center bears North 8(degree) 22' 00" East, having a radius of 20.00 feet, through a central angle of 90(degree) 00' 00", an arc length of 31.42 feet, and thence North 8(degree) 22' 00" East, 128.00 feet to the true point of beginning; thence leaving said Easterly line of said Lot 3 (17 R.M. 39) South 81(degree) 38' 00" East 60.00 feet to the Westerly line of Parcel D, as shown on said "Map of Smith Ranch -Northerly Portion" (17 R.M. 39), being the terminus of this easement.

PARCEL FIVE:

An easement for access and public utility purposes more particularly described as follows:

Beginning at the Easterly terminus of the course "South 81(degree) 38' 00" East, 536.00 feet" said point being on the Northerly line of Smith Ranch Road and the Southerly line of Lot 3, as shown and delineated on that certain Map entitled, "Map of Smith Ranch - Northerly Portion", filed for record in Book 17 of Record Maps at Page 39, Marin County Record; thence leaving said Northerly line of said Smith Ranch Road (17 R.M. 39) along the Easterly line of said Lot 3 (17 R.M. 39) the following courses and distances, Easterly along a tangent curve to the left whose center bears North 8(degree) 22' 00" East, having a radius of 20.00 feet, through a central angle of 90(degree) 00' 00", an arc length of 31.42 feet, thence North 8(degree) 22' 00" East, 271.13 feet and thence Northeasterly along a tangent curve to the left whose center bears North 81(degree) 38' 00" West, having, a radius of 670 feet. through a central angle of 2(degree) 00' 00", an arc length of 23.39 feet; thence leaving said Easterly line of said Lot 3 (17 R.M. 39) South 81(degree) 38' 00" East, 27.41 feet, thence South 8(degree) 22' 00" West. 141.15 feet; thence Southerly along a tangent curve to the left whose center bears South 81(degree) 38' 00" East. having a radius of 292.00 feet, through a central angle of 10(degree) 59' 17", an arc length of 56.00 feet; thence Southerly along a reverse curve to the right whose center bears. South 87(degree) 22' 43" West, having a radius of 308.00 feet, through a central angle of 10(degree) 59' 17", an arc length of 59.07 feet; thence South 8(degree) 22' 00" West, 59.00 feet to said Northerly line of said Smith Ranch Road; thence along said Northerly line of said Smith Ranch Road (17 R.M. 39) North 81(degree) 38' 00" West, 58.00 feet to the point of beginning.

Exhibit B  
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Site Plan  
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111 Smith Ranch Road  
San Rafael, California

Exhibit C  
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Floor Plan  
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(Page 1 of 2)  
Office Building  
111 Smith Ranch Road  
San Rafael, California

Exhibit C  
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Floor Plan  
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(Page 2 of 2)  
Office Building  
111 Smith Ranch Road  
San Rafael, California

SCHEDULE A  
SHELL PLANS AND SPECIFICATIONS

111 Smith Ranch Road  
San Rafael, California

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1. GENERAL PROVISIONS:

- a. Shell plans and Specifications shall be subject to applicable governmental codes and ordinances.
- b. The building shell shall have the approximate dimensions shown on Exhibit C, Floor Plan, attached to this Lease.
- c. All work not described herein shall be considered tenant improvements and shall be constructed by tenant as provided for in the Leasehold Improvements Agreement.
- d. The atrium/lobby, bathrooms, janitor closet(s), mechanical rooms, both staircases and elevator shall be completed with all necessary finishes as part of the shell construction.

2. LANDSCAPING & SITE WORK:

To be completed in accordance with plans and specifications already prepared and submitted to the City of San Rafael by Glanville & Associates, Oberkamper and Associates, and Forsher & Guthrie. Tenant acknowledges receipt of a copy of said plans and its approval thereof.

3. FOUNDATIONS:

As required by the Geotechnical Report, 101, 111 Smith Ranch Road (Parcel 3), San Rafael, California, dated January 11, 1991, prepared by Miller Pacific Engineering Group. Tenant acknowledges receipt of a copy of said report.

- a. Continuous exterior footings with isolated column footings on compacted fill.
- b. Additional footings may be required for architectural features.

4. SUBSTRUCTURE:

- a. Slab on grade: Minimum of 5" thick, reinforced with reinforcing bars (not welded wire mesh) over a membrane vapor barrier and above a compacted aggregate base.

5. SUPERSTRUCTURE:

- a. Columns, beams and brace frames; tubular steel. Roofs and Floors: Wood frame of purlins, sub-purlins and plywood diaphragms.
- b. Lateral steel brace frames will be exposed as necessary on both levels. Steel columns will be located along exterior window line, aligned with window mullions where feasible.
- c. Floor has been designed for the following load conditions:

Live loads:	50 pounds per square foot
Partitions:	10 pounds per square foot

Deadloads:	
Structure	13 pounds per square foot
Gypcrete	13 pounds per square foot
Misc.	4 pounds per square foot

TOTAL:	100 pounds per square foot
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6. EXTERIOR CLOSURE:

- a. Exterior walls: Framing: 2'x6' wood studs and/or 2'x4' metal studs and plywood sheathing; Finish: Exterior insulation finish system (Driovit or other similar system), 6" thick, with a fine uniform texture, grey (exact color to be determined). This system will provide for all required wall insulation.
- b. Glazing: Continuous butt-joint glass (at exterior), 5'-6" high, sealed at each joint. All frames to be Medium Bronze, anodized. All glazing to be tinted light gray and windows shall be double paned on the south and west sides of the building. All doors and windows at the main and easterly accesses to the building will be a storefront system, finished similarly to the glazing system. The lobby glazing will not be double paned.

- c. Light weight metal trim elements to be fabricated of aluminum, painted finish.

7. ROOFING:

- a. Roof covering; multi-ply built-up with granular ballast.
- c. Insulation; roll type batt insulation will be incorporated between roof framing members.

8. CONVEYING:

- a. One completed hydraulic passenger elevator. Must meet California Title 24 Accessibility Standards.

9. MECHANICAL:

- a. Plumbing; completed men's and women's toilet rooms will be on each floor. The men's room will be furnished with one handicap toilet, one handicap height urinal, one standard height urinal and two handicap lavatories set in a counter. The womens' room will be furnished with one handicap toilet, one standard toilet and two handicap lavatories set in a counter.
- b. Fire Protection: A fire sprinkler system for office hazard shall be installed with distribution and coverage necessary for shell space and for completed bathrooms, lobbies, and stairwells, and mechanical room. Said system to include an alarm system as required by municipal codes.
- c. HVAC: Multiple zone package system (Variable-air-volume). Base equipment shall be roof mounted, and connected to utilities, and distributed to shell space. If the HVAC system is changed from these specifications at the request of Tenant, any increased cost shall be deleted from the budget for tenant improvements.

10. ELECTRICAL:

- a. Service and distribution; 1,600 amp service, panel board and feeders shall be installed. Tenant may increase the size of said service with any increased cost to be deleted from the budget for tenant improvements.
- b. Special Electrical: Alarm systems and emergency lighting as required

by codes and conditions of approval for completed shell, Cable TV and telephone conduits will be provided from right-of-way to the mechanical room.

11. INTERIOR CONSTRUCTION:

- a. Interior doors: Janitor closet, mechanical room, bathrooms, fire doors as required for shell.
- b. Wall finishes. Lobby: combination of paint and vinyl wall covering. Toilet rooms: ceramic tile and paint. Secondary staircase: Painted sheet rock. Mechanical Room: unpainted sheetrock.
- c. Floor finishes: Lobby and secondary exit: combination of carpet and tile. Toilet rooms: ceramic tile. Easterly stairs: glue down commercial carpet.
- d. Ceiling finishes. Lobby areas and toilet rooms, "5/8" gypsum board, painted.

12. OTHER:

- a. Complete shell shall be left free of debris and broom clean at completion by shell contractor.



SCHEDULE B  
INTERIOR PLANS AND SPECIFICATIONS

111 Smith Ranch Road  
San Rafael, California

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Tenant shall use the standards and materials listed below in the construction of its Tenant Improvements: All items not listed here shall be selected by Tenant subject to the provisions of this Leasehold Improvements Agreement.

- DOORS: Full height (3'0" wide), solid core, laminate finish.
- HARDWARE: Mortise lock and latches to be used, with auto closures installed as required by code.
- CEILING: Suspended T-Bar with 2'x2' or 2'x4' tiles. Grid to be 1" white metal. Ceiling height to be per Shell Plans and Specifications.
- LIGHTS: Fluorescent 2'x4' or 2'x2' parabolic, 3 lamp multi-cell fixtures with aluminum finished grid to be used in general purpose office areas.
- WINDOW COVERINGS: 1" metal miniblinds on exterior windows.
- FIRE SPRINKLERS: Semi-recessed heads with white trim.
- EXCEPTIONS: Tenant may deviate from the above standards where required for special purpose areas of the Building, for example computer rooms or lunch rooms.
- FINISHES: Tenant may select colors finishes, material and other details ("Finishes") regarding the final appearance of its Tenant Improvements, except Landlord may withhold its approval of said Finishes, as provided for in Paragraph 6(b) of this Leasehold Improvements Agreement if they are not similar to those used in other, first class office building in Marin County.

EXHIBIT D

LEASEHOLD IMPROVEMENTS AGREEMENT

-----  
111 Smith Ranch Road  
San Rafael, California

This Leasehold Improvements Agreement (this "Agreement") is made as of the day \_\_\_\_\_ of August, 1991, between 111 PARTNERS, a California general partnership having an address at 50 Bon Air Center, Suite 140, Greenbrae, California 94904 ("Landlord"), and FAIR, ISAAC AND COMPANY, INCORPORATED, a corporation, having an address at 120 North Redwood Drive, San Rafael, CA 94903-1996 ("Tenant").

1. The Lease and the Demised Premises. Upon and subject to the terms and conditions herein contained, Landlord and Tenant are entering into a "Lease" of even date herewith (herein called the "Lease"), whereby Landlord shall lease to Tenant, and Tenant shall lease from Landlord, upon and subject to the terms, covenants, provisions and conditions of the Lease, certain premises which are commonly known as 111 Smith Ranch Road, San Rafael, California (the "Project"). The Project consists of the Building, the landscaping and the parking area.

2. Construction of the Project. Landlord at its sole cost and expense agrees to commence construction as soon as possible and diligently to continue construction of the Project. The Project shall be constructed by Landlord in substantial compliance with the plans and specifications to be prepared by Forsher and Guthrie, (the Shell Plans and Specifications"). The Shell Plans and Specifications shall provide for the construction of a first class office building and shall be in accordance with the approvals heretofore granted by the City of San Rafael. The final Shell Plans and Specifications shall be subject to the reasonable approval of tenant. Such approval shall not be unreasonably withheld or delayed. If written work or any defects therein, nor shall such exercise be deemed notice of disapproval has not been delivered to Landlord within ten (10) working days following delivery of the Shell Plans and Specifications or within five (5) working days following delivery of any proposed changes to the Shell Plans or Specifications, Tenant shall be deemed to have approved the Shell Plans and Specifications or such change.

Landlord's Work shall consist of the completion of the work included in the Shell Plans and Specifications which shall include all items set forth in Schedule "A" hereto.

3. Inspection by Tenant. During the course of construction of Landlord's work, Tenant or Tenant's representative shall at all times have the right to inspect the construction. No exercise by Tenant of its right to inspect the construction shall be deemed to affect the rights and obligations of Landlord and Tenant with respect to the

work or any defects therein, nor shall such exercise be deemed an assumption by Tenant of any responsibility for the quality of the work.

4. Completion of Landlord's Work and Delivery of the Demised Premises.

(a) Substantial Completion. For purposes of the Lease and this Leasehold Improvements Agreement, "substantially complete the Building" means completing the Building in a manner sufficient to permit Tenant to commence and prosecute the construction of its Tenant Improvements in a reasonably efficient manner. Landlord shall be deemed to have substantially completed the Building notwithstanding the fact that certain items of Landlord's work are not complete, even if such items of Landlord's work may delay certain aspects of Tenant's work, so long as Tenant will have the ability to perform its work in a reasonably efficient manner.

(b) Target Date for Completion. Landlord agrees to use its best efforts to substantially complete the Building by April 1, 1992.

In the event that the construction activities in connection with Landlord's Work in or about the Building, or the state of completion (or lack thereof) of Landlord's Work in or about the Building, results in any delay in or interference with Tenant's work, then:

(i) the 90-day Tenant's Construction Period (as referred to in paragraph 1 (a) of the Lease) shall be extended one day for each day of such delay; and

(ii) Landlord shall reimburse Tenant for all additional costs incurred as a result of such delay or interference.

(c) Inquiries by Tenant as to Progress. Between the date of execution of the Lease and the date Landlord substantially completes the Building, Landlord agrees to respond to inquires from Tenant regarding the progress on the Project and the estimated date of substantial completion.

(d) Notice of Substantial Completion. When Landlord substantially completes the Building, Landlord shall (i) give Tenant written notice (the "Substantial Completion Notice") and (ii) deliver the Demised Premises to Tenant for purposes of constructing its tenant improvements. The fact that the balance of the Project has not been completed shall not prevent Landlord from delivering the Substantial Completion Notice to Tenant and delivering the Demised Premises to Tenant for the purpose of constructing its tenant improvements, if Tenant and its contractors are provided reasonable means of access to the Demised Premises.

(e) Delivery Date. The Delivery Date shall be the date which is the earlier of: (i) ten (10) days after the date on which Tenant actually received the Substantial

Completion Notice; or, (ii) the date upon which Tenant enters the Demised Premises to commence the construction of its tenant improvements.

5. Compensation for Delay in Completion of the Building.

If Landlord does not give Tenant the Substantial Completion Notice by June 1, 1992 (which date shall be subject to postponement in accordance with the provisions of paragraph 11 below) Landlord agrees that Tenant shall be entitled to an additional one (1) day of free rent for each day beyond June 1, 1992, until Landlord has given to Tenant the Substantial Completion Notice. Subject to the provisions of paragraph 10, such free rent shall constitute liquidated damages and the sole remedy of Tenant for the delay in possession, and Tenant hereby waives any claim against Landlord for any consequential or other damages or losses incurred by reason of any such delay. Such free rent shall be applied as soon as possible after the date on which rental otherwise becomes payable under the Lease. As used in this Leasehold Improvements Agreement, the term "free rent" shall mean a forgiveness of the Land Rent, as prorated on a daily basis for the period described.

6. Construction by Tenant of Interior Improvements.

(a) Construction by Tenant. Following the Commencement Date, Tenant shall construct its tenant improvements in the Demised Premises in accordance with plans and specifications to be approved by Landlord pursuant to the provisions of paragraph 6(b) below and in a good and workmanlike manner using new first-class materials.

(b) Approval of Interior Plans and Specifications. Prior to commencing such construction, Tenant shall submit to Landlord for Landlord's approval a complete set of plans and specifications for the tenant improvements. Landlord agrees that it will not unreasonably withhold its approval of Tenant's plans and specifications and will provide Tenant with detailed reasons for the basis of any objection to Tenant's plans and specifications. Landlord may withhold its approval of proposed tenant improvements which could not be altered without substantial expense to re-lease the Building after the termination of this Lease. Notwithstanding the foregoing, Landlord's approval shall not be withheld because such plans do not provide for corridor separations or demising interior walls. The Interior Plans and Specifications shall include the items set forth in Schedule "S" hereto. If Landlord does not respond to Tenant's request for approval within ten (10) business days of Landlord's receipt of the Tenant's plans and specifications (or any resubmittal of the plans and specifications), then Tenant's plans and specifications will be deemed approved.

(c) Approval of Contractors. Any contractor chosen by Tenant to perform the Tenant improvement work shall be subject to the prior approval of Landlord. Landlord agrees that it will not unreasonably withhold its approval of Tenant's contractor and will provide Tenant with specific reasons for the basis of any objection to Tenant's

contractor. If Landlord does not respond to Tenant's request for approval within seven (7) business days of Landlord's receipt of Tenant's proposed contractor, then Tenant may give to Landlord a written notice stating the failure of Landlord to respond to the prior request and further stating that if Landlord does not respond to such request within three (3) business days from the receipt by Landlord of such second notice, then Tenant's proposed contractor will be deemed approved. If Landlord does not respond to such request within three (3) business days from the receipt by Landlord of such second notice, then Tenant's proposed contractor shall be deemed approved. Tenant shall have the right to submit a list of not more than six (6) proposed contractors to Landlord for Landlord's approval in accordance with the procedures outlined in this paragraph 6.(c).

(d) Certain Bidders. Tenant agrees that, it shall give a set of plans and specifications for the tenant improvements to Ross/Donovan Company, and the company shall be given not less than ten (10) business days in which to bid or deliver to Tenant a proposal for constructing the tenant improvements. However, nothing herein shall obligate Tenant to consider such bid or negotiate with such contractor, it being understood that Tenant shall have the right to select its own contractor (subject only to the limitation set forth in paragraph 6.(c) above) on such terms and in such manner as Tenant in its sole and absolute discretion shall determine.

(e) Control of Contractors and Avoidance of Labor Disputes. Landlord may refuse to approve a contractor or supplier if Landlord reasonably believes that the presence of such contractor or supplier at the Demised Premises may cause labor or other difficulties for Landlord or its contractors. In the event that Landlord permits Tenant to enter or commence work in the Demised Premises prior to substantial completion of the Building, Tenant shall immediately take such actions as may be necessary to resolve any labor disputes which may arise by reason of Tenant's work or the presence or use of its contractors or suppliers on the job, including, without limitation, the removal of any non-union contractors or suppliers from the job.

(f) Inspection by Landlord. During the course of constructing the tenant improvements, Landlord or Landlord's representative shall at all times have the right to inspect the construction. Any inspection by Landlord of Tenant's construction or improvements shall not be deemed an acceptance by Landlord of such construction nor shall it impose upon Landlord any liability whatsoever for any defects in such construction or improvements. Landlord shall not be entitled to charge Tenant any fee for Landlord's approval or participation on the design and construction process for the construction of Tenant's improvements in the Demised Premises or any out of pocket expenses in connection therewith.

(g) Changes in the Interior Plans and Specifications. Tenant shall have the right to make changes in the approved plans and specifications subject to the limitations on alterations as set forth in paragraph 10 of the Lease and to the right of Landlord to approve such modifications in the same manner as the original plans and specifications.

7. Tenant Improvement Allowance.

(a) Initial Build-out. In connection with Tenant's initial build out of the Tenant's Improvements, Landlord agrees to pay to Tenant the sum of \$618,500 or the cost of Tenant's Improvements whichever is the lesser ("Tenant Improvements Allowance") to pay Tenant's architectural, space planning and engineering fees and for the cost of constructing the tenant improvements. Landlord shall pay to Tenant the Tenant Improvement Allowance in periodic progress payments within thirty (30) days after delivery to Landlord of invoices, and lien releases or waivers conditional only upon payment; provided, however, Tenant's requests for progress payments shall not at any time average more than one for each month of Tenant's Construction Period which has then elapsed.

(b) Indemnity by Tenant. Tenant hereby agrees to indemnify, defend and hold Landlord harmless from all demands, claims, causes of action or judgments and all reasonable expenses incurred in investigating or resisting the same for injury to persons, for loss of life or damage to property occurring on the Demised Premises resulting from Tenant's work in the Demised Premises (except to the extent such injury, loss of life or damage to property is the direct result of the negligence or willfully wrongful act of Landlord or its agents, employees or contractors), and Tenant agrees to provide Landlord with a certificate of insurance confirming that Tenant is maintaining adequate comprehensive general public liability insurance covering Tenant's obligation under this paragraph and naming Landlord as an additional insured.

8. Storage of Materials by Tenant. Tenant may request in writing that Landlord permit Tenant to store construction materials in the Demised Premises prior to the delivery by Landlord to Tenant of the Notice of Substantial Completion. The request by Tenant shall set forth the nature and quantity of the materials which Tenant wishes to store and may state the location within the Demised Premises where Tenant suggests that such materials be stored. Landlord shall permit Tenant to store such materials in the Demised Premises if, in the reasonable opinion of Landlord and Landlord's contractor, the storage of such materials will not present a material inconvenience to Landlord or Landlord's contractor or any subcontractor in the completion of the work required of Landlord by this Leasehold Improvements Agreement. In the event that the storage of such materials would present such a material inconvenience, then Landlord may refuse to permit Tenant to store such materials. In the event that Landlord permits the materials to be stored in the Demised Premises, Landlord may specify the location within the Demised Premises where the materials may be stored, and may later and from time to time require that Tenant move the materials to another location within the Demised Premises at the expense of Tenant, should such a move be required for the convenience of Landlord's contractor or any subcontractor, and Tenant shall promptly cause such materials to be moved within the Demised Premises to the new location specified by Landlord. In the event that Tenant does store materials in the Demised Premises prior to the giving by Landlord of the Notice of Substantial Completion, Tenant shall indemnify, defend and hold Landlord harmless from: (i) all demands, claims, causes of action or judgments and

all reasonable expenses incurred in investigating or resisting the same for injury to persons, for loss of life or damage to property occurring arising from or in connection with Tenant's storage of materials in the Demised Premises; and, (ii) the effects of any mechanics or other liens or claims which may attach to the Project or be claimed against Landlord by reason of the storage of such materials in the Demised Premises.

9. Project Completion. Notices of Completion and Defects. Following delivery of the Demised Premises to Tenant for the purposes of constructing its tenant improvements, Landlord agrees to diligently continue with the completion of Landlord's Work in accordance with this Leasehold Improvements Agreement. Tenant shall not be required to commence its business activities in the Premises, nor shall any rental obligations commence under the lease until Landlord's Work has been completed.

In the event Landlord has not completed Landlord's Work thirty (30) days after Tenant has completed its Tenant Improvements, subject to postponement in accordance with the provisions of paragraph 11 of this Leasehold Improvements Agreement, Landlord agrees that Tenant shall be entitled to an additional one (1) day of free rent for each day beyond said thirty (30) day period, until Landlord has given to Tenant the Final Completion Notice. Subject to the provisions of paragraph 10 of this Leasehold Improvements Agreement, such free rent shall constitute liquidated damages and the sole remedy of Tenant for the delay in possession, and Tenant hereby waives any claim against Landlord for any consequential or other damages or losses incurred by reason of any such delay. Such free rent shall be applied as soon as possible after the date on which rental otherwise becomes payable under the Lease. As used in this Leasehold Improvements Agreement, the term "free rent" shall mean a forgiveness of the Land Rent, as prorated on a daily basis for the period described.

Upon the completion of Landlord's Work, Landlord shall give Tenant written notice of such completion (the "Final Completion Notice"), and Tenant shall be deemed to have fully accepted Landlord's Work as satisfactorily completed in accordance with all requirements of this Leasehold Improvements Agreement and shall further be deemed to have waived any defects in Landlord's Work, except to the extent that:

(i) Tenant shall furnish Landlord with a list (the "Punch List") within thirty (30) days after the receipt by Tenant of the Final Completion Notice, which Punch List shall specify the items of construction which have not been completed, and

(ii) Tenant shall furnish Landlord with a list (the "Defect List") within one (1) year the date of receipt of the Final Completion Notice specifying any defects in the construction of Landlord's Work which were discovered prior to the end of such one (1) year period.

Landlord shall promptly undertake and complete the repair of each of the items on the Punch List and the Defect List, except those, if any, which do not have a material adverse affect upon the use, appearance or safety of the Demised

Premises by Tenant. Nothing in this paragraph 9 shall be deemed to affect or limit the obligations of Landlord to repair or maintain the structural components or any other portions of the Buildings which Landlord is required to repair or maintain under the provisions of the Lease.

10. Termination.

In the event that a grading permit for grading of the site is not issued by September 15, 1991, or in the event substantial Site Work has not commenced by October 15, 1991, or in the event that a building permit for the construction of the Building is not issued by December 31, 1991, Tenant may terminate all of the obligations under this Agreement and the Lease by written notice to Landlord delivered within five (5) days thereafter. If the permit is not issued or if construction is not commenced by such dates, and if Tenant elects to terminate this Lease, the obligations of the parties under this Agreement and the Lease shall terminate.

11. Delays.

(a) Tenant Caused Delays. If a delay shall occur in the substantial completion of construction as the result of:

(i) any delay of Tenant in approving any modifications to the Shell Plans or Specifications submitted to Tenant for its approval;

(ii) any request by Tenant that Landlord delay any element, or the completion, of construction;

(iii) any request for a change by Tenant in the Shell Plans and Specifications or the plans and specifications for the tenant improvements;

(iv) any breach or default by Tenant in the performance of Tenant's obligations under the Lease or this Leasehold Improvements Agreement;

(v) any interference by Tenant or its agents or contractors with the prosecution by Landlord of its work;

(vi) any reasonably necessary displacement of any construction from its place in Landlord's construction schedule resulting from any of the causes for delay described above and the fitting of such construction back into such schedule; or

(vii) any delay in obtaining any approval or permit from the City of San Rafael or any other governmental entity or any utility company or district resulting from any other delay referred to in this paragraph 11. (a); then:



a. any such delay in the substantial completion of construction shall extend all dates for the completion by Landlord of all or any part of its work by one (1) day for each day of such delay;

b. Tenant shall reimburse Landlord within thirty (30) days from demand for all reasonable additional costs incurred by Landlord as a result of such delays (including, without limitation, increased design costs, increased construction costs and increased financing costs arising by reason of the resulting delays, if any, in the construction schedule); and,

c. the Delivery Date and the Commencement Date shall each be deemed to have occurred one (1) day sooner than the day upon which the conditions for the occurrence of each such date are actually fulfilled for each day of such delay. Landlord shall notify Tenant in writing of the existence of any of the above delays of which Landlord has knowledge within ten (10) business days after the event causing the commencement of such delay occurs. In the event that Landlord fails to give such a notice to Tenant within ten (10) business days of the commencement of such delay, then the delay shall be deemed to have commenced on the date upon which such notice is actually given. Landlord shall use Landlord's reasonable efforts to minimize the length of any such delay.

(b) Other Delays. In the event that Landlord shall be delayed in or prevented from the performance of any act by reason of strikes, lockouts, unusual delays in transportation, unavailability of materials, acts or omissions of contractors and subcontractors, failure or unavailability of power, unavailability of fuel, restrictive governmental laws or regulations, fire or other casualty, inclement weather, riots, insurrections, the act, failure to act or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed to be a cause beyond the control of Landlord.

12. Disputes. Any dispute arising under this Agreement (including without limitation any dispute as to the cost or duration of a Tenant Caused Delay) shall be determined by arbitration in accordance with the construction arbitration rules of the American Arbitration Association.

13. Notices. Any notice or other communication which either party hereto shall desire or be required to give pursuant to the provisions of this Leasehold Improvements Agreement shall be given and deemed received in the manner provided in Article 19 of the Lease.

14. Assignment.

(a) By Tenant. This Agreement and Tenant's rights hereunder shall not be assigned by Tenant except to a permitted assignee of all of Tenant's rights under the Lease, and any other purported assignment by Tenant shall be null and void and of no force and effect.

(b) By Landlord. This Agreement and Landlord's rights hereunder shall not be assigned by Landlord except to a successor to Landlord's title to the Project and any other purported assignment by Landlord shall be null and void and of no force and effect; provided, however, that nothing contained in this Section shall apply to nor restrict Landlord from executing and delivering any collateral assignment, pledge or security interest which is granted in connection with any financing secured by a lien against the Project.

(c) Written Agreement. If a party shall duly assign its rights hereunder, the assignee shall execute, acknowledge and deliver to the other party an agreement in form and substance reasonably satisfactory to the other party whereby the assignee shall assume the obligations of this Agreement on the part of the assignor to be performed or observed.

15. Waiver of Certain Remedies.

(a) No Offset. No sum payable to Tenant as the result of any breach or default by Landlord under this Agreement shall be deducted from or offset against any minimum rent or additional rent or other sums payable under the Lease, and no such breach or default by Landlord under this Agreement shall excuse Tenant from the performance of any of its obligations under the Lease or relieve Tenant of any of its liabilities thereunder. Nothing in this subparagraph (a) shall be deemed to affect any express right of Tenant to terminate the Lease in accordance with the provisions of this Leasehold Improvements Agreement.

(b) No Consequential Damages. Any failure by Landlord to complete the Project shall not give rise to any claim or cause of action or remedy other than as set forth in this Leasehold Improvement Agreement. Tenant waives all claims for consequential or other damages arising from any such failure.

16. Limitation on Landlord Liability.

(a) Basic Limitation. Except as otherwise provided in below in this paragraph 16, if Landlord shall fail to perform any covenant, term or condition of this Leasehold Improvements Agreement on Landlord's part to be performed, and as a consequence of its default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied solely out of:

(i) the proceeds of sale received upon execution of such judgment levied against the right, title and interest of Landlord in the Project;

(ii) the rents or other income from the Project receivable (but not received) by Landlord;

(iii) the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in and to the Project; and,

(iv) any condemnation awards or insurance proceeds receivable in respect of the Project.

(b) No Personal Liability. It is expressly understood and agreed that neither Landlord nor any employee or partner in or of Landlord shall be personally liable for any deficiency if the proceeds of the sale or disposition of Landlord's interest in the Project is insufficient for the payment of any such judgment, and Tenant shall not institute any further action, suit, or similar demand against Landlord, or any employee or partner of Landlord, for or on the account of such deficiency. The foregoing notwithstanding, Tenant may seek to recover any consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in and to said property and any condemnation awards or insurance proceeds thereafter received by Landlord or any partner of Landlord, provided that any action to recover such proceeds is commenced by the filing of a complaint and the service of summons within ninety (90) days of the receipt by Tenant of actual notice of a sale or disposition of the Project by Landlord.

(c) Effect of Limitation. The limitations set forth in this paragraph 16 shall not apply to Tenant's right to recover liquidated damages as provided in paragraph 5 above.

17. Conflicts and Conformity with Lease. To the extent which this Agreement fails to provide the rights and obligations of Landlord and Tenant relative to any matter, the rights and obligations of Landlord and Tenant relative to such matters shall be governed by the Lease. If there shall be any conflict between this Agreement and the Lease, the provisions of this Agreement shall prevail.

18. Attorney Fees. Each party shall pay to the other all amounts for costs, including, but not limited to, the other party's attorneys fees and amounts paid to any collection agency, or reasonably incurred by the other party in connection with any breach or default beyond applicable grace and notice periods by the first party under this Leasehold Improvements Agreement or incurred in order to enforce the terms or provisions of this Leasehold Improvements Agreement. Such amounts shall be payable within thirty (30) days of demand. In addition, if any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in

or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys fees and costs to be fixed by the court or arbitrators therein. In the event Landlord or Tenant is made a party to any litigation between the other party and any third party, then the other party shall pay all costs and attorneys fees incurred by or imposed upon the first party in connection with such litigation; provided, however, if the first party is ultimately held to be liable, then the first party shall reimburse the other party for the cost of any attorneys fees paid by the other party on behalf of the first party.

19. Waiver. Waiver by a party of any breach of any term, covenant or condition contained in this Leasehold Improvements Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant, or condition contained in this Agreement. A party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of a party's consent to, or approval of, any subsequent act by the other party. The acceptance by a party of rent or other sums payable under the Lease by the other party in amounts less than that owed by the other party shall not be deemed a waiver of the amounts not paid or a waiver of any other breach or default under this Agreement or the Lease, other than failure of the other party to pay the particular rent or other sum so accepted, regardless of the first party's knowledge of such preceding breach at the time of acceptance of such rent, or sum equivalent to rent.

20. Captions. The captions of the paragraphs of this Leasehold Improvements Agreement are for convenience of reference only, are not a part of this Leasehold Improvements Agreement, and shall not be deemed in any way to define or limit the terms and provisions of the paragraph to which they refer.

21. Governing Law. This Leasehold Improvements Agreement shall be construed and enforced in accordance with the laws of the State of California.

22. Miscellaneous Matters.

(a) Covenants and Conditions. The covenants of Tenant set forth in this Leasehold Improvements Agreement shall be deemed also to be conditions.

(b) Relationship of Landlord and Tenant. Nothing in this Leasehold Improvements Agreement shall be deemed or construed as creating a partnership, joint venture or agency between Tenant and Landlord or any relationship between them other than that of landlord and tenant.

IN WITNESS WHEREOF, the parties have entered into this agreement upon the date above written.

LANDLORD:

111 PARTNERS

By: \_\_\_\_\_  
Michael J. Smith

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

By: \_\_\_\_\_  
Roger A. Smith

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

By: \_\_\_\_\_

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

TENANT:

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_

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

SCHEDULE A  
SHELL PLANS AND SPECIFICATIONS

111 Smith Ranch Road  
San Rafael, California

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1. GENERAL PROVISIONS:

- a. Shell plans and Specifications shall be subject to applicable governmental codes and ordinances.
- b. The building shell shall have the approximate dimensions shown on Exhibit C, Floor Plan, attached to this Lease.
- c. All work not described herein shall be considered tenant improvements and shall be constructed by tenant as provided for in the Leasehold Improvements Agreement.
- d. The atrium/lobby, bathrooms, janitor closet(s), mechanical rooms, both staircases and elevator shall be completed with all necessary finishes as part of the shell construction.

2. LANDSCAPING & SITE WORK:

To be completed in accordance with plans and specifications already prepared and submitted to the City of San Rafael by Glanville & Associates, Oberkamper and Associates, and Forsher & Guthrie. Tenant acknowledges receipt of a copy of said plans and its approval thereof.

3. FOUNDATIONS:

As required by the Geotechnical Report, 101, 111 Smith Ranch Road (Parcel 3), San Rafael, California, dated January 11, 1991, prepared by Miller Pacific Engineering Group. Tenant acknowledges receipt of a copy of said report.

- a. Continuous exterior footings with isolated column footings on compacted fill.
- b. Additional footings may be required for architectural features.

4. SUBSTRUCTURE:

- a. Slab on grade: Minimum of 5" thick, reinforced with reinforcing bars (not welded wire mesh) over a membrane vapor barrier and above a compacted aggregate base.

5. SUPERSTRUCTURE:

- a. Columns, beams and brace frames; tubular steel. Roofs and Floors: Wood frame of purlins, sub-purlins and plywood diaphragms.
- b. Lateral steel brace frames will be exposed as necessary on both levels. Steel columns will be located along exterior window line, aligned with window mullions where feasible.
- c. Floor has been designed for the following load conditions:

Live loads:	50 pounds per square foot
Partitions:	10 pounds per square foot

Deadloads:	
Structure	13 pounds per square foot
Gypcrete	13 pounds per square foot
Misc.	4 pounds per square foot
TOTAL:	100 pounds per square foot
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6. EXTERIOR CLOSURE:

- a. Exterior walls: Framing: 2'x6' wood studs and/or 2'x4' metal studs and plywood sheathing; Finish: Exterior insulation finish system (Drivit or other similar system), 6" thick, with a fine uniform texture, grey (exact color to be determined). This system will provide for all required wall insulation.
- b. Glazing: Continuous butt-joint glass (at exterior), 5'-6" high, sealed at each joint. All frames to be Medium Bronze, anodized. All glazing to be tinted light gray and windows shall be double paned on the south and west sides of the building. All doors and windows at the main and easterly accesses to the building will be a storefront system, finished similarly to the glazing system. The lobby glazing will not be double paned.

- c. Light weight metal trim elements to be fabricated of aluminum, painted finish.

7. ROOFING:

- a. Roof covering; multi-ply built-up with granular ballast.
- b. Insulation; roll type batt insulation will be incorporated between roof framing members.

8. CONVEYING:

- a. One completed hydraulic passenger elevator. Must meet California Title 24 Accessibility Standards.

9. MECHANICAL:

- a. Plumbing; completed men's and women's toilet rooms will be on each floor. The men's room will be furnished with one handicap toilet, one handicap height urinal, one standard height urinal and two handicap lavatories set in a counter. The women's room will be furnished with one handicap toilet, one standard toilet and two handicap lavatories set in a counter.
- b. Fire Protection: A fire sprinkler system for office hazard shall be installed with distribution and coverage necessary for shell space and for completed bathrooms, lobbies, and stairwells, and mechanical room. Said system to include an alarm system as required by municipal codes.
- c. HVAC: Multiple zone package system (Variable-air-volume). Base equipment shall be roof mounted, and connected to utilities, and distributed to shell space. If the HVAC system is changed from these specifications at the request of Tenant, any increased cost shall be deleted from the budget for tenant improvements.

10. ELECTRICAL:

- a. Service and distribution; 1,600 amp service, panel board and feeders shall be installed. Tenant may increase the size of said service with any increased cost to be deleted from the budget for tenant improvements.
- b. Special Electrical: Alarm systems and emergency lighting as required



by codes and conditions of approval for completed shell. Cable TV and telephone conduits will be provided from right-of-way to the mechanical room.

11. INTERIOR CONSTRUCTION:

- a. Interior doors: Janitor closet, mechanical room, bathrooms, fire doors as required for shell.
- b. Wall finishes. Lobby: combination of paint and vinyl wall covering. Toilet rooms: ceramic tile and paint. Secondary staircase: Painted sheet rock. Mechanical Room: unpainted sheetrock.
- c. Floor finishes: Lobby and secondary exit: combination of carpet and tile. Toilet rooms: ceramic tile. Easterly stairs: glue down commercial carpet.
- d. Ceiling finishes. Lobby areas and toilet rooms, "5/8" gypsum board, painted.

12. OTHER:

- a. Complete shell shall be left free of debris and broom clean at completion by shell contractor.

CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT, made as of September 5, 1991, by and between 111 PARTNERS, a California general partnership ("Borrower"), and FAIR, ISAAC AND COMPANY, INCORPORATED, a Delaware corporation ("Lender"),

W I T N E S S E T H:

Recital of Facts:

A. Borrower owns the real property described in Exhibit A attached hereto and made a part hereof ("Property").

B. Borrower proposes to construct on the Property the improvements described in Exhibit B attached hereto and made a part hereof ("Improvements") in accordance with the plans and specifications described in Exhibit B, as such plans and specifications may be amended in accordance with this Agreement ("Plans and Specifications"), and has requested a loan from Lender for the purpose of constructing the Improvements on the Property in accordance with the Plans and Specifications.

NOW, THEREFORE, Borrower and Lender agree as follows:

ARTICLE 1

Loan

1.1 Loan. Upon and subject to the terms of this Agreement, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender the principal sum of three million dollars (\$3,000,000) ("Loan") to finance the construction of the Improvements and for the other purposes provided in the Loan Documents (as hereinafter defined).

1.2 Loan Documents. Borrower shall deliver to Lender concurrently with execution and delivery of this Agreement the documents, properly executed and in recordable form if requested by Lender, described in Exhibit C attached hereto and made a part hereof (collectively "Loan Documents"). The terms "Note" and "Deed of Trust" shall have the meanings defined in Exhibit C.

1.3 Effective Date. The date of the Loan Documents is for reference purposes only. The effective date ("Effective Date") of delivery and transfer to Lender of the security under the Loan Documents and of Borrower's and Lender's obligations under the Loan Documents is the date the Deed of Trust is recorded in the office of the County Recorder of the County where the Property is located.

1.4 Formation and Organizational Documents. Borrower has previously delivered to Lender the following formation and organizational documents: Partnership Agreement dated June 1, 1990, among Michael J. Smith, Roger A. Smith and Daniel C. Ross and Statement of Partnership dated August 26, 1991, and recorded on August 27, 1991, as Instrument No. 91-054475 of Official Records of Marin County. Borrower hereby certifies to Lender that (a) the foregoing documents are all of the relevant formation and organizational documents of

1

Exhibit 10.14

Borrower; (b) such documents remain in full force and effect; and (c) such documents have not been amended or modified.

1.5 Opinion of Legal Counsel. Borrower shall cause to be furnished to Lender on the Effective Date, at Borrower's expense, an opinion of legal counsel approved by Lender covering such matters relating to Borrower and the Loan Documents as Lender may request.

1.6 Acceleration Upon Loss of Security. If at any time the Deed of Trust ceases to be a valid first lien upon the Property and the Improvements, all sums remaining unpaid and owing to Lender under the Note and the other Loan Documents shall automatically become immediately due and payable and Lender's obligation to disburse the remaining portion of the Loan which is then undisbursed, if any, shall terminate.

1.7 Tax Service. Lender is authorized to secure, at Borrower's expense, a tax service contract which shall provide tax information on the Property to Lender for the term of the Loan.

1.8 Management of Property. Borrower shall not enter into any agreement providing for the management, leasing or operation of the Property or the Improvements without the prior written consent of Lender.

1.9 Further Encumbrance. Without the prior written consent of Lender, Borrower shall not receive any other financing for the development of the Property or the construction of the Improvements and shall not further encumber the Property or the Improvements, except as permitted by and in compliance with the Note.

ARTICLE 2

Disbursement

2.1 Conditions Precedent. Lender shall not be obligated to make any disbursements or take any other action under the Loan Documents unless all of the following conditions precedent are satisfied at the time of such action:

(a) There exists no Default, as defined this Agreement, or default or event of default as defined in any of the other Loan Documents, or event, omission or failure of condition which would constitute such a default or event of default after notice or lapse of time, or both; and

(b) The undisbursed Loan proceeds, together with all sums (if any) to be provided by Borrower as shown in Exhibit D attached hereto and made a part hereof, shall at all times be not less than the amount which Lender from time to time determines reasonably necessary to: (i) pay, through final completion, all costs of development, construction and leasing of the Property and the Improvements in accordance with the Loan Documents; (ii) pay all sums which may accrue under the Loan Documents through final completion of the Improvements; and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Loan Documents through final completion of the Improvements. If Lender determines at any time that such funds are not sufficient for such purposes, Borrower may satisfy this

condition by depositing with Lender the amount of such deficiency in the Account (as hereinafter defined) within five (5) days after Lender's written demand; and

(c) Borrower has delivered to Lender all of the Loan Documents and all other documents, instruments, policies, and forms of evidence or other materials requested by Lender pursuant to this Agreement or any of the other Loan Documents.

2.2 Account. If required by Lender, a non-interest bearing demand deposit account in Borrower's and Lender's names ("Account") will be opened by Lender with a bank selected by Lender and administered in accordance with this Agreement. The proceeds of the Loan and Borrower's Funds (as hereinafter defined), when qualified for disbursement, shall be deposited into the Account, if opened, or otherwise disbursed to or for the benefit or account of Borrower, as determined by Lender, under the terms of this Agreement.

2.3 Borrower's Funds. Except as otherwise provided in this Agreement, all funds which are deposited with Lender pursuant to section 2.1(b) hereof ("Borrower's Funds") or any other provision of the Loan Documents shall be deposited in the Account, and controlled by Lender, for disbursement under this Agreement.

2.4 Pledge and Assignment. As security for performance of Borrower's obligations under the Loan Documents, Borrower irrevocably pledges and assigns to Lender, and grants to Lender a security interest in, all monies at any time deposited in the Account.

2.5 Disbursement. Subject to the conditions set forth in section 2.1 hereof, the proceeds of the Loan and Borrower's Funds shall be disbursed in accordance with Exhibit E attached hereto and made a part hereof. Disbursements made after the deposit of Borrower's Funds shall be made from Borrower's Funds until depleted.

2.6 Disbursed Funds. All disbursements of the Loan and Borrower's Funds shall be held by Borrower in trust and applied by Borrower solely for the purposes for which the funds have been disbursed. Lender is not obligated to monitor or determine Borrower's use or application of such disbursements.

2.7 Disbursement Authorization. Disbursements hereunder may be made by Lender to the Account or disbursed to or for the benefit or account of Borrower, as determined by Lender, upon the written request of any one (1) of the following persons, Michael J. Smith, Roger A. Smith, or Daniel C. Ross, who are authorized to request disbursements until written notice of Borrower's revocation of such authority is received by Lender.

### ARTICLE 3

#### Construction

3.1 Commencement and Completion. Borrower shall commence construction of the Improvements without delay immediately after, but not before, the Effective Date, shall diligently continue construction to completion, and shall complete

construction of the Improvements (other than the interior improvements for which Lender is responsible pursuant to the Lease (the "Lease") dated September 5, 1991, between Borrower, as landlord, and Lender, as tenant) on or before April 1, 1992.

3.2 Construction. Borrower shall construct the Improvements in a good and workmanlike manner in accordance with the Plans and Specifications and the recommendations of any soils or engineering report approved by Lender. In constructing the Improvements, Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Improvements or the Property (collectively "Requirements"). If necessary, the Plans and Specifications shall be modified to comply with the Requirements, subject to the provisions of section 3.3 hereof.

3.3 Plans and Specifications. Except as otherwise provided in this Article 3, there shall be no change in the Plans and Specifications without Lender's prior written approval. Requests for approval shall be submitted on a change order form acceptable to Lender signed by Borrower and, if required by Lender, the project architect and the general contractor, accompanied by working drawings and a written narrative of the proposed change. As conditions to its approval, (a) Lender may require satisfactory evidence of the cost of the proposed change and the time necessary to complete the proposed change and (b) to the extent Lender determines that the proposed change will result in increased cost, Lender may require Borrower to deposit Borrower's Funds in the amount of the increased cost into the Account in accordance with section 2.1(b) hereof. Borrower acknowledges that this approval process may result in delays. Upon Lender's request, Borrower, the project architect and the general contractor shall initial the copy of the Plans and Specifications delivered to, and approved by, Lender as a true copy of the Plans and Specifications for the Improvements. Borrower shall maintain at all times a full set of working drawings for the Improvements available for inspection by Lender. Within ten (10) days after Lender's request, Borrower shall deliver to Lender complete as-built Plans and Specifications for the completed Improvements.

3.4 Changes in Plans and Specifications. The prior written consent of Lender shall not be required for any changes in the Plans and Specifications unless such change (a) constitutes a material change in the building material or equipment specifications or the architectural or structural design, value, or quality of any of the Improvements, or (b) would result in an increase in any item of construction cost in excess of one thousand dollars (\$1,000) for any single change or in excess of ten thousand dollars (\$10,000) for all such changes in such items of construction cost, or (c) would affect the structural integrity, quality of building material or equipment, or overall efficiency of operating systems or utility systems of the Improvements. Notwithstanding the foregoing, Borrower shall submit all proposed changes in the Plans and Specifications to Lender at least ten (10) days prior to the commencement of construction relating to such proposed change, whether or not any such change is subject to Lender's approval.

3.5 Construction Information; Inspections. Lender is expressly authorized to contact any contractor, subcontractor or material supplier and, at all reasonable times, to enter the Property and inspect the Improvements and the work of construction in order to verify information disclosed pursuant to this section or for any other purpose. From time to time, and within ten (10) days after Lender's request, Borrower shall deliver to Lender:

(a) A complete list stating (i) the name, address and telephone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements and (ii) the dollar amount, including changes, if any, of each contract and subcontract, and the portion thereof, if any, paid through the date of such list; and

(b) Copies of each contract and subcontract identified in such list, including any changes thereto; and

(c) A cost breakdown, in a form acceptable to Lender, stating the estimated total cost of constructing the Improvements, and that portion, if any, of each cost item (i) which has been incurred and (ii) which has been paid, all as of the date of such cost breakdown; and

(d) A construction progress schedule, in a form acceptable to Lender, showing the progress of construction and the estimated sequencing and completion time for uncompleted work, all as of the date of such schedule; and

(e) With respect to any item designated above which has been previously delivered, such update thereof as Lender may request.

3.6 Prohibited Contracts. Without Lender's prior written consent, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, or other property for the use or occupancy of the Property or the Improvements, if any third party retains or purports to retain any interest (other than lien rights, if any, created by operation of law) in such items after their delivery to the Property. Borrower shall have five (5) days to effect the removal of any such retained interest.

3.7 Liens and Stop Notices. If a claim of lien is recorded affecting the Property or the Improvements or a bonded stop notice is served upon Lender which affects the Loan or Borrower's Funds, Borrower shall, within twenty (20) days after such recording or service or within five (5) days after Lender's demand (whichever last occurs): (a) pay and discharge the same; or (b) effect the release thereof by recording or delivering to Lender a surety bond in sufficient form and amount; or (c) provide Lender with other assurance which Lender deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Lender from the effect of such lien or bonded stop notice.

3.8 Construction responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and the Improvements, including, but not limited to, the quality and suitability of the Plans and Specifications and their compliance with the Requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Improvements or any other matter referred to in this section. Any inspection or review by Lender is to determine whether Borrower is properly discharging its obligations to Lender and may not be relied upon by Borrower or any third party. Lender owes no duty of care to Borrower or any third party to

protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements.

3.9 Improvement District. Without Lender's prior written consent, Borrower shall not, directly or indirectly, advocate or assist in the incorporation of any of the Property or the Improvements into any improvement or other assessment district.

3.10 Delay. Borrower shall promptly notify Lender in writing of any event causing delay or interruption of construction or the timely completion of construction. The notice shall specify the particular work delayed and the cause and period of each delay.

3.11 Surveys. At Lender's request, Borrower shall deliver to Lender: (a) a perimeter survey of the Property; (b) upon completion of the foundations of the Improvements, a survey showing the location of the Improvements on the Property and showing that the Improvements are located entirely within the Property and do not encroach upon any easement or breach or violate any of the Requirements; and (c) upon completion of the Improvements, an as-built survey acceptable to a title insurer for purposes of issuing an ALTA Loan Policy of title insurance. All such surveys shall be made and certified by a registered engineer or licensed surveyor.

3.12 Force Majeure. The time within which construction of the Improvements must be completed shall be extended for a period of time equal to the period of any delay directly affecting the construction work which is caused by fire, earthquake, inclement weather, strike, lockout, acts of public enemy, riot, insurrection, or governmental regulation of the sale or transportation of materials, supplies or labor, provided Borrower furnishes Lender with written notice of any such delay within seven (7) days after the occurrence of any such delay. In no event, however, shall the time for completion of the Improvements (other than the interior improvements for which Lender is responsible pursuant to the Lease) be extended beyond July 1, 1992.

3.13 Construction Agreement. Borrower and a general contractor approved by Lender ("Contractor") will enter into a construction agreement ("Construction Agreement"), pursuant to which Contractor will construct the Improvements in accordance with the Plans and Specifications. Borrower shall require Contractor to perform in accordance with the Construction Agreement and shall not amend, modify or terminate the duties of Contractor under the Construction Agreement without Lender's prior written consent. Upon Lender's request, Borrower shall execute an assignment of the Construction Agreement to Lender as security for Borrower's obligations under the Loan Documents and shall cause the Contractor to consent to any such assignment.

3.14 Architect's Agreement. Borrower and Forsher & Guthrie ("Architect") have entered into the Standard Form of Agreement Between Owner and Architect for Designated Services dated August 21, 1991 ("Architect's Agreement"), pursuant to which Architect is to design and supervise construction of the Improvements. Borrower shall require Architect to perform in accordance with the Architect's Agreement and shall not amend, modify or terminate the duties of Architect under the Architect's Agreement without Lender's prior written consent. Upon Lender's request, Borrower shall execute an assignment of the Architect's Agreement and the Plans and Specifications to Lender as security for Borrower's obligations under

the Loan Documents and shall cause the Architect to consent to any such assignment.

3.15 Bonds. Within five (5) days after Lender's request, Borrower shall procure from a surety acceptable to Lender, and deliver to Lender, dual obligee performance and labor and material payment bonds in a form, substance and amount acceptable to Lender and, if requested by Lender, cause any such bond to be recorded and the Construction Agreement to be filed in the office of the County Recorder of the County where the Property is located.

3.16 Contractors. Lender may, but shall not be obligated to, disapprove any contractor, subcontractor or material supplier whom Lender deems financially or otherwise unqualified. The absence of any such disapproval shall not constitute a representation of qualifications.

3.17 Completion of Plans and Specifications. Notwithstanding the foregoing provisions of Articles 1, 2 and 3, Borrower and Lender recognize that the Plans and Specifications (Exhibit B), the Financial Requirement Analysis (Exhibit D) and the Disbursement Plan (Exhibit E) have not been completed as of the date of this Agreement and will not be completed as of the Effective Date. Accordingly, Exhibits B, D and E attached to this Agreement are incomplete. Borrower shall, on or before November 1, 1991, (a) cause complete Plans and Specifications for the Improvements to be prepared, (b) prepare a final construction cost budget based on the complete Plans and Specifications, (c) enter into the Construction Agreement with the Contractor consistent with the complete Plans and Specifications and the final construction cost budget, and (d) obtain all required building permits for construction of the Improvements. The complete Plans and Specifications, the final construction cost budget, the Contractor and the Construction Agreement shall be subject to the prior written approval of Lender. Upon such approval by Lender, Borrower and Lender each shall execute and deliver an amendment to this Agreement containing Exhibits B, D and E, which shall become part of this Agreement, on the basis of the complete Plans and Specifications and the final construction cost budget approved by Lender. The total amount of the Loan shall not exceed three million dollars (\$3,000,000), and Borrower shall pay all costs over three million dollars (\$3,000,000) necessary to complete the Improvements in accordance with this Agreement.

3.18 Grading and Drainage work. Borrower has submitted to Lender, and Lender has approved, plans for the grading and drainage work, which consist of Sheet 1 (improvement plan), Sheets 2 and 3 (grading and drainage plans) and Sheet 4 (signing and striping plan for the parking area) dated August 1, 1991, prepared by Oberkamper & Associates. The portion of the Loan allocated to such grading and drainage work is three hundred six thousand two hundred dollars (\$306,200). Borrower shall commence such grading and drainage work promptly after the Effective Date, Borrower shall perform such grading and drainage work in accordance with such approved plans, and Lender shall disburse such portion of the Loan allocated to such grading and drainage work pursuant to this Agreement as the work progresses.



## ARTICLE 4

### Insurance

4.1 Title Insurance. Borrower shall, at Borrower's expense, procure from a title insurer satisfactory to Lender a 1970 LP-10 ALTA Loan Policy of title insurance ("Title Policy"), with any endorsements Lender may require, insuring Lender, in the principal amount of the Loan, of the validity and the priority of the lien of the Deed of Trust upon the Property and the Improvements, subject only to matters approved by Lender in writing. During the term of the Loan, Borrower shall, at Borrower's expense, procure and deliver to Lender, within five (5) days after Lender's request, such other endorsements to the Title Policy as Lender may require.

4.2 Hazard Insurance. Borrower shall procure and maintain a policy of builder's risk completed value hazard insurance, with a vandalism and malicious mischief endorsement and such other endorsements as Lender may require, in an amount acceptable to Lender. Lender shall be named under a Lender's Loss Payable Endorsement (form 438BFU) attached to the policy. At Lender's request, the policy shall contain an agreed value clause sufficient (as determined by Lender) to eliminate any risk of co-insurance.

4.3 Liability Insurance. Borrower shall procure and maintain a policy of comprehensive public liability insurance and property damage insurance with limits as required by Lender, insuring against liability for injury or death to any person and property damage occurring on the Property or in the Improvements from any cause whatsoever. The policy shall name Lender as an additional insured.

4.4 Blanket Coverage. Lender may accept, at its option, blanket insurance policies in satisfaction of Borrower's obligations to provide insurance.

4.5 General. Borrower shall procure and maintain all other insurance required by the Requirements, the Deed of Trust or applicable law. Lender shall receive the originals of all required insurance policies, or other evidence of insurance acceptable to Lender. Borrower shall maintain all required insurance until the Loan is repaid. All insurance policies shall provide that the insurance shall not be cancellable or materially changed without thirty (30) days' prior written notice to Lender. All insurance policies shall be issued by licensed insurance companies acceptable to Lender.

## ARTICLE 5

### Representations and warranties

Borrower hereby represents and warrants to Lender as of the Effective Date and continuing thereafter as follows:

5.1 Authority. Borrower has complied with all laws and regulations concerning its organization, existence and transaction of business. Borrower has the right and power to own and develop the Property and construct the Improvements as contemplated in the Loan Documents. Borrower has, or at all appropriate times shall have, properly obtained all permits, licenses and approvals necessary to construct, occupy, operate and lease the Improvements, and complied with the Requirements and all other applicable statutes, laws, regulations and ordinances.

5.2 Enforceability. Borrower is authorized to execute, deliver and perform under the Loan Documents, which are legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms.

5.3 No Violation. Borrower's undertakings in the Loan Documents do not violate any of the Requirements or any other applicable statute, law, regulation or ordinance or any order or ruling of any court or governmental entity, or conflict with, or constitute a breach or default under, any agreement by which Borrower is, or the Property and the Improvements are, bound or regulated. Borrower is not in violation of any statute, law, regulation or ordinance, or of any order of any court or governmental entity. There are no claims, actions or proceedings pending or, to Borrower's knowledge, threatened against Borrower or affecting the Property or the Improvements.

5.4 Financial Information. All financial information delivered to Lender, including, without limitation, information relating to the financial condition of Borrower, the Property, the Improvements, or partners of Borrower, fairly and accurately represents such financial condition and has been prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted in such information. No material adverse change in such financial condition has occurred.

5.5 Accuracy. All reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Loan or required by the Loan Documents are accurate, correct and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission.

5.6 Adequacy of Loan. The undisbursed Loan proceeds, together with Borrower's Funds and all other sums (if any) to be provided by Borrower as shown in Exhibit D, are sufficient to do all of the things specified in section 2.1(b) hereof.

5.7 Taxes. Borrower has filed all required federal, state, county and municipal tax returns and has paid all taxes owed and payable, and Borrower knows of no basis for additional assessment with respect to any taxes.

5.8 Utilities. All utility services, including, without limitation, gas, water, sewer, drainage, electrical and telephone, necessary for the development, construction and occupancy of the Property and the Improvements are available at or within the boundaries of the Property, or Borrower has taken all steps necessary to assure that all utility services will be available upon completion of the Improvements.

5.9 Compliance. Borrower is familiar with all Requirements. The development of the Property and the construction of the Improvements will conform to and comply with the Requirements and the Plans and Specifications.

## ARTICLE 6

### Default

6.1 Default. The following shall constitute a "Default" under the Loan Documents:

(a) Monetary. (i) Borrower's failure to pay when due any sums payable under the Note or any of the other Loan Documents; or (ii) Borrower's failure

to deposit any Borrower's Funds as and when required under section 2.1(b) hereof; or

(b) Construction; Use. (i) Any material deviation in the work of construction from the Plans and Specifications or the Requirements or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower's failure to remedy the same to Lender's satisfaction within ten (10) days after Lender's written demand to do so; or (ii) the cessation of construction of the Improvements prior to completion for a continuous period of more than fifteen (15) days (except as caused by events for which delay may be permitted under Article 3 hereof); or (iii) the prohibition, enjoining or delaying (in any manner) of the construction of any of the Improvements in accordance with the Loan Documents for a continuous period of more than thirty (30) days; or (iv) the curtailment in availability to the Property or the Improvements of utilities or other public services necessary for the full occupancy and utilization of the Improvements for a continuous period of more than thirty (30) days; or

(c) Liens, Attachment; Condemnation. (i) The filing of any claim of lien against the Property or the Improvements or the service on Lender of any bonded stop notice relating to the Loan and the continuance of the claim of lien or bonded stop notice for twenty (20) days without discharge, satisfaction or provision for payment being made in accordance with Article 3 hereof; or (ii) the condemnation, seizure or appropriation of, or occurrence of an uninsured casualty with respect to, any material (as determined by Lender in its sole and absolute discretion) portion of the Property or the Improvements; or (iii) the sequestration or attachment of, or any levy or execution upon, any of the Property or the Improvements, any other collateral provided by Borrower under any of the Loan Documents, any monies in the Account, or any substantial portion of the other assets of Borrower, which is not released, expunged or dismissed prior to the earlier of thirty (30) days after sequestration, attachment or execution or the sale of such other assets affected thereby; or

(d) Performance of obligations. Borrower's failure to perform its obligations under any of the Loan Documents; provided, however, that if a specific time is provided in the Loan Documents for the curing of such failure, Borrower's failure to perform will not constitute a Default until the specified time period expires; or

(e) Representations and Warranties. (i) The failure of any of Borrower's representations or warranties in any of the Loan Documents, except as to adverse change in financial condition, to be true within fifteen (15) days, or other period as may be provided, after notice by Lender; or (ii) any material adverse change in the financial condition of Borrower or any other person or entity in any manner obligated to Lender under the Loan Documents from the financial condition represented to Lender as of the Effective Date; or

(f) Voluntary Bankruptcy; Insolvency; Dissolution. (i) Borrower's filing of a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor

Relief Law"); or (ii) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law, which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; or (iii) Borrower's making a general assignment for the benefit of creditors; or (iv) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (v) the filing by or against Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower; or

(g) Involuntary Bankruptcy. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or any other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan, the Property or the Improvements prior to the earlier of the entry of any order granting relief sought in the involuntary petition or thirty (30) days after the date of filing of the petition; or

(h) Partners; Guarantors. The occurrence of an event specified in section 6.1(f) or section 6-1(g) hereof as to any person or entity in any manner obligated to Lender under the Loan Documents

6.2 Acceleration. Upon the occurrence of a Default specified in sections 6.1(a) through 6.1(e) hereof, inclusive, Lender may, at its option, declare all sums owing to Lender under the Note and the other Loan documents immediately due and payable. Upon the occurrence of a Default specified in section 6.1(f), 6.1(g) or 6.1(h) hereof, or upon the occurrence of any default or event of default specified in any of the Loan Documents which provides that acceleration shall be automatic, all sums owing to Lender under the Loan Documents shall automatically become immediately due and payable. Upon acceleration, Lender may, in addition to other uses permitted under the Loan Documents, apply undisbursed Loan proceeds and any sums in the Account to the sums owing to Lender under the Loan Documents.

6.3 Disbursement by Lender. Upon the occurrence of a Default which is occasioned by Borrower's failure to pay money, Lender may, but shall not be obligated, to make such payment from Loan proceeds, Borrower's Funds, or other funds of Lender. If such payment is made from proceeds of the Loan or from Borrower's Funds, Borrower shall deposit with Lender, upon written demand issued pursuant to section 2.1(b) hereof, an amount equal to such payment. If such payment is made from funds of Lender, Borrower shall repay such funds upon demand issued pursuant to section 6.6 hereof. In either case, the Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower.

6.4 Lender's Completion of Construction. If Default occurs, Lender may, upon five (5) days' written notice to Borrower, and with or without legal process, take possession of the Property and the Improvements, remove Borrower and all agents, employees and contractors of Borrower from the Property and the Improvements, complete the work of construction, and market and sell or lease the Property and the Improvements. Borrower irrevocably appoints Lender as its attorney-in-fact, which agency is coupled with an interest. As attorney-in-fact, Lender may, in Borrower's name, take or omit to take any action Lender may deem appropriate, including, without limitation, exercising Borrower's rights under the Loan Documents and all contracts concerning the Property or the Improvements.

6.5 Cessation of Construction. If Lender determines that the Improvements are not being constructed in accordance with the Plans and Specifications, the Requirements or the Loan Documents, Lender may order all construction on any of the Improvements affected by the condition of nonconformance immediately stopped. After such order, Borrower shall not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the condition of nonconformance until Lender notifies Borrower in writing that the nonconforming condition has been corrected.

6.6 Repayment of Funds Advanced. If Lender spends its funds in exercising any of its rights or remedies under the Loan Documents, the amount of funds spent shall be payable to Lender upon demand, together with interest at the rate applicable to the principal balance of the Note after default or maturity as specified therein, from the date the funds were spent. Until repaid, such amounts shall have the security afforded disbursements under the Note.

6.7 Right of Contest. Borrower may contest in good faith any claim, demand, levy or assessment (other than liens and stop notices, provision for which is made in Article 3 hereof) by any person other than Lender which would constitute a Default if (a) Borrower pursues the contest diligently and in a manner which Lender determines is not prejudicial to Lender and does not impair the rights of Lender under any of the Loan Documents and (b) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful. Borrower's compliance with this section shall operate to prevent such claim, demand, levy or assessment from becoming a Default.

## ARTICLE 7

### Miscellaneous Provisions

7.1 Expenses. Borrower shall pay within five (5) days Lender's demand all reasonable and necessary expenses incidental to making the Loan, including, without limitation, preclosing and closing expenses, commitment fees, architectural and engineering review expenses, appraisal fees, construction inspection fees and attorneys' fees, incurred by Lender; provided, however, that Borrower shall not be required to pay more than the total amount of sixty-two thousand five hundred dollars (\$62,500) on account of such expenses.

7.2 Financial Information. Within one hundred twenty (120) days after the end of Borrower's tax year, Borrower shall deliver to Lender a current signed financial statement, income and expense statement and balance sheet of Borrower. Borrower shall also deliver to Lender such quarterly, periodic or other financial information as Lender may request. If Borrower has audited financial information prepared, Borrower shall deliver to Lender copies of that information within five (5) days after its preparation. All financial reports shall be prepared in accordance with generally accepted accounting principles consistently applied, or other form acceptable to Lender.

7.3 Indemnity. Borrower indemnifies Lender against, and holds Lender harmless from, any losses, damages, liabilities, claims, demands, actions,

judgments, court costs and legal or other expenses (including attorneys' fees and disbursements) which Lender may incur as a direct or indirect consequence of: (i) the making of the Loan, except for violations of laws or regulations by Lender; or (ii) Borrower's failure to perform any obligations as and when required by this Agreement or any of the other Loan Documents; or (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; or (iv) any act or omission by Borrower, any contractor, subcontractor or material supplier, or any engineer, architect or other person or entity with respect to any of the Property or the Improvements. Borrower shall pay immediately upon Lender's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note after default or maturity as specified therein. Borrower's duty to indemnify Lender shall survive the release and cancellation of the Note and the reconveyance or partial reconveyance of the Deed of Trust.

7.4 Books and Records. Borrower shall maintain complete books of account and other records for the Property and the Improvements and for disbursement and use of the Loan proceeds and Borrower's Funds, and the same shall be available for inspection and copying by Lender.

7.5 Further Assurances. At Lender's request and at Borrower's expense, Borrower shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper (as determined by Lender) to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.

7.6 Form of Documents. The form and substance of all documents, instruments, and forms of evidence to be delivered to Lender under the terms of any of the Loan Documents shall be subject to Lender's approval and shall not be modified, superseded or terminated in any respect without Lender's prior written approval.

7.7 No Third Parties Benefited. No person other than Lender and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents.

7.8 Notices. All written notices and demands under the Loan Documents shall be deemed served upon delivery or, if mailed, upon receipt after deposit in United States Postal Service by certified mail, postage prepaid, and addressed to the address of Borrower or Lender appearing below. Notice of change of address may be given in the same manner, provided Borrower's address shall be in the State of California.

7.9 Authority to File Notices. Borrower irrevocably appoints and authorizes Lender, as Borrower's attorney-in-fact, which agency is coupled with an interest, to execute and/or record in Lender's or Borrower's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents.

7.10 Actions. Lender may commence, appear in or defend any action or proceeding purporting to affect the Property, the Improvements, the Loan Documents or the rights, duties or liabilities of Borrower or Lender under the Loan Documents. In exercising this right, Lender may incur and pay costs and expenses,

including, without limitation, attorneys' fees and court costs, and Borrower agrees to pay all such expenses so incurred or paid.

7.11 Relationship of Parties. The relationship of Borrower and Lender under the Loan Documents is, and shall at all times remain, solely that of borrower and lender. No partnership, joint venture or fiduciary relationship of any kind or nature whatsoever exists between Borrower and Lender and Borrower and Lender are not members of any joint or common enterprise. Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property, the Improvements or the Loan, except as expressly provided in the Loan Documents.

7.12 Lender's Delay. Lender shall not be liable in any way for Lender's failure to perform or delay in performing under the Loan Documents, and Lender may suspend or terminate all or any portion of Lender's obligations under the Loan Documents if Lender's delay or failure results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any governmental or local authority, or any war (whether declared or not), rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, announced or in the sole judgment of Lender deemed probable), or any other cause or event beyond Lender's control.

7.13 Attorneys' Fees; Enforcement. If any attorney is engaged by Lender to enforce, construe or defend any provision of any of the Loan Documents, or as a consequence of any Default or event of default under the Loan Documents, with or without the filing of any legal action or proceeding, Borrower shall pay to Lender, immediately upon demand, the amount of all attorneys' fees and disbursements incurred by Lender in connection therewith, together with interest thereon from the date of such demand at the rate of interest applicable to the principal balance of the Note after default or maturity as specified therein.

7.14 Assignment. Borrower shall not assign Borrower's interest under any of the Loan Documents, or in any monies due or to become due thereunder, without Lender's prior written consent. Any assignment made without Lender's consent shall be void. Borrower recognizes that this is not an ordinary loan and that Lender would not make this Loan except in reliance on Borrower's expertise and reputation, Lender's knowledge of Borrower, and Lender's understanding that this Agreement is more in the nature of an agreement involving personal services than a standard loan where Lender would rely on security which already exists. In this instance, the Improvements are not constructed and Lender is relying on Borrower's expertise and prior experience to develop the Property and construct the Improvements in accordance with the terms of the Loan Documents.

7.15 Disclosure of Information. If Lender elects to sell participations in the Loan, Lender may forward to each participant and prospective participant all documents and information relating to the Loan and all parties thereto, whether furnished by Borrower or otherwise.

7.16 Signs. Lender may place on the Property signs stating that Lender is providing construction financing.

7.17 Lender's Agents. Lender may designate an agent, representative or independent contractor to exercise any of Lender's rights under the Loan

Documents. Any reference to Lender in any of the Loan Documents shall include Lender's agents, employees, representatives or independent contractors.

7.18 Severability. If any provision of the Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from the Loan Documents and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion were not part of the Loan Documents.

7.19 Heirs, Successors and Assigns. The terms of the Loan Documents shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties; provided however, that this section does not waive the provisions of section 7.14 hereof.

7.20 Rights Cumulative, No Waiver. All Lender's rights and remedies provided in the Loan Documents, granted by law or otherwise, are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy shall not constitute a cure of any Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Defaults. No waiver shall be implied from any failure of Lender to take, or any delay by Lender in taking, action concerning any Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.

7.21 Time. Time is of the essence of each term of the Loan Documents.

7.22 Headings. All headings appearing in any of the Loan Documents are for convenience only and shall be disregarded in construing the Loan Documents.

7.23 Governing Law. The Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California.

7.24 Integration; Interpretation. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or the Improvements shall include all or any parts of the Property or the Improvements. Any reference to the Loan Documents in any of the Loan Documents includes any amendments, renewals or extensions approved in writing by Lender. Any reference in this Agreement to the Loan Documents shall include all or any of the provisions of this Agreement and the other Loan Documents unless otherwise specified.

7.25 Joint and Several Liability. The liability of all persons and entities who are in any manner obligated under any of the Loan Documents shall be joint and several.



7.26 Incorporation. Exhibits A, B, C, D and E, all attached hereto, are incorporated into this Agreement.

IN WITNESS WHEREOF, Borrower and Lender have executed this Construction Loan Agreement as of the date first hereinabove written.

111 PARTNERS, a California general partnership

By \_\_\_\_\_  
Michael J. Smith  
General Partner

By \_\_\_\_\_  
Roger A. Smith  
General Partner

By \_\_\_\_\_  
Daniel C. Ross  
General Partner

Borrower's Address:

50 Bon Air Center, Suite 140  
Greenbrae, CA 94904  
Attn: Roger A. Smith

FAIR, ISAAC AND COMPANY,  
INCORPORATED, a Delaware corporation

By \_\_\_\_\_  
Gerald de Kerchove  
Executive Vice President

Lender's Address:

120 North Redwood Drive  
San Rafael, CA 94903-1996  
Attn: Michael C. Gordon

EXHIBIT A

CONSTRUCTION LOAN AGREEMENT

(Description of Property)

All of the real property in the City of San Rafael, County of Marin, State of California, described as follows:

PARCEL ONE:

Parcel 3B, as shown upon that certain Parcel Map entitled "Parcel Map, Lot 3 of Map of Smith Ranch, Northerly Portion 17 R.M. 39, San Rafael, Marin County, California", filed for record August 13, 1991 in Book 25 of Parcel Maps, at Page 18, Marin County Records.

Reserving therefrom an easement for access, parking, drainage and public utilities over that portion of the herein described property lying within the boundaries of that certain, "Mutual Access and Parking Easement, D.E. & P.U.E.", as shown upon the filed map referred to above.

Said easement to be appurtenant to and for the benefit of Parcel 3A, as shown upon the filed map referred to above.

PARCEL TWO:

An easement for access, parking, drainage and public utility purposes over that portion of Parcel 3A, lying within the boundaries of that certain, "Mutual Access and Parking Easement, D.E. & P.U.E.", as said parcel and easement are shown upon that certain Parcel Map entitled, "Parcel Map, Lot 3 of Map of Smith Ranch, Northerly Portion 17 R.M. 39, San Rafael, Marin County, California", filed for record August 13, 1991 in Book 25 of Parcel Maps, at Page 18, Marin County Records.

PARCEL THREE:

An easement for storm drainage purposes more particularly described as follows:

Beginning at the Easterly terminus of the course "South 81(0) 38' 00" East, 536.00 feet"; said point being on the Northerly line of Smith Ranch Road and the Southerly line of Lot 3, as shown and delineated on that certain map entitled, "Map of Smith Ranch - Northerly Portion", filed for record in Book 17 of Record Maps at Page 39, Marin County Records; thence leaving said Northerly line of said Smith Ranch Road (17 RM 39) along the Easterly line of said Lot 3 (17 RM 39) the following courses and distances; Easterly along a tangent curve to the left whose center bears North 8(0) 22' 00" East, having a radius of 20.00 feet, through a central angle of 90(0) 00' 00", an arc length of 31.42 feet and thence North 8(0) 22' 00" East, 23.00 feet; thence leaving said Easterly line of said Lot 3 (17 RM 39) South 13(0) 12' 17" East 46.24 feet to said Northerly line of said Smith Ranch Road (17 RM 39); thence along said Northerly line of said Smith Ranch Road (17 RM 39) North 81(0) 38' 00" West, 37.00 feet to the point of beginning.

PARCEL FOUR:

An easement for storm drainage over a strip of land 10 feet in width and being 5 feet on each side of the following described line:

Beginning at the Easterly terminus of the course "South 81(0) 38' 00" East, 536.00 feet"; said point being on the Northerly line of Smith Ranch Road and the Southerly line of Lot 3, as shown and delineated on that certain Map entitled, "Map of Smith Ranch Northerly Portion", filed for record in Book 17 of Record Maps at Page 39, Marin County Records; thence leaving said Northerly line of said Smith Ranch Road (17 RM 39) along the Easterly line of said Lot 3 (17 RM 39) the following courses and distances; Easterly along a tangent curve to the left whose center bears North 8(0) 22' 00" East, having a radius of 20.00 feet, through a central angle of 90(0) 00' 00", an arc length of 31.42 feet, and thence North 8(0) 22' 00" East, 128 feet to the true point of beginning; thence leaving said Easterly line of said Lot 3 (17 RM 39) South 81(0) 38' 00" East 60.00 feet to the Westerly line of Parcel D, as shown on said "Map of Smith Ranch - Northerly Portion" (17 RM 39), being the terminus of this easement.

PARCEL FIVE:

An easement for access and public utility purposes more particularly described as follows:

Beginning at the Easterly terminus of the course "South 81(0) 38' 00" East, 536.00 feet"; said point being on the Northerly line of Smith Ranch Road and the Southerly line of Lot 3, as shown and delineated on that certain Map entitled, "Map of Smith Ranch - Northerly Portion", filed for record in Book 17 of Record Maps at Page 39, Marin County Records; thence leaving said Northerly line of said Smith Ranch Road (17 RM 39) along the Easterly line of said Lot 3 (17 RM 39) the following courses and distances; Easterly along a tangent curve to the left whose center bears North 8(0) 22' 00" East, having a radius of 20.00 feet, through a central angle of 90(0) 00' 00", an arc length of 31.42 feet; thence North 8(0) 22' 00" East, 271.13 feet and thence Northeasterly along a tangent curve to the left whose center bears North 81(0) 38' 00" West, having a radius of 670 feet, through a central angle of 2(0) 00' 00", an arc length of 23.39 feet; thence leaving said Easterly line of said Lot 3 (17 RM 39) South 81(0) 38' 00" East, 27.41 feet; thence South 8(0) 22' 00" West, 141.15 feet; thence Southerly along a tangent curve to the left whose center bears South 81(0) 38' 00" East, having a radius of 292 feet, through a central angle of 10(0) 59' 17", an arc length of 56.00 feet; thence Southerly along a reverse curve to the right whose center bears, South 87(0) 22' 43" West, having a radius of 308.00 feet, through a central angle of 10(0) 59' 17", an arc length of 59.07 feet; thence South 8(0) 22' 00" West, 59.00 feet to said Northerly line of said Smith Ranch Road; thence along said Northerly line of said Smith Ranch Road (17 RM 39) North 81(0) 38' 00" West, 58.00 feet to the point of beginning.

EXHIBIT B

CONSTRUCTION LOAN AGREEMENT

(Description of Improvements and  
Plans and Specifications)

1. Description of Improvements. The Improvements consist of a general purpose two-story office building, fully air conditioned and sprinklered, with one elevator, of steel and wood frame construction, tar and gravel roof, containing approximately 24,944 square feet of usable area (approximately 26,362 square feet of gross building area), with on-site parking for 89 vehicles and fully landscaped grounds, together with all appurtenances, fixtures, equipment and interior tenant improvements.

2. Description of Plans and Specifications. The Plans and Specifications described below were prepared for use by Borrower and Contractor in constructing the Improvements, and Borrower hereby represents and warrants to Lender that the description of the Plans and Specifications set forth below is accurate and complete.

Description (Sheet(s) or Page(s))	Prepared By	Date	Latest Revision Date if any
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EXHIBIT C

CONSTRUCTION LOAN AGREEMENT

(Loan Documents)

The loan documents numbered 1 through 8, inclusive, below, and amendments, modifications and supplements thereto which have received the prior written consent of Lender, and any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Agreement, are collectively referred to as the "Loan Documents":

1. This Agreement;

2. Promissory Note of even date herewith, in the original principal amount of the Loan, made by Borrower and payable to the order of Lender ("Note");

3. Construction Deed of Trust, Assignment of Rents and Security Agreement of even date herewith executed by Borrower, as trustor, to California Land Title Company of Marin, a California corporation, as trustee, for the benefit of Lender, as beneficiary ("Deed of Trust");

4. Assignment of Lessor's Interest in Leases of even date herewith executed by Borrower in favor of Lender;

5. Environmental Indemnity of even date herewith executed by Borrower in favor of Lender;

6. State of California Uniform Commercial Code - Financing Statement - Form UCC-1 executed by Borrower, as debtor, in favor of Lender, as secured party; and

7. Assignment of Architect's/Engineer's Agreements and Plans and Specifications and Architect's/Engineer's Consent of even date herewith executed by Borrower and Architect in favor of Lender.

EXHIBIT D

CONSTRUCTION LOAN AGREEMENT

(Financial Requirement Analysis)

The financial analysis set forth herein represents an analysis of the total costs necessary, in Borrower's estimation, to perform Borrower's obligations under the Loan Documents through final completion of the Improvements. Column A, "Total Costs," sets forth Borrower's representation of the maximum costs for each Item specified in Column A. Column B, "Costs Paid By Borrower," sets forth Borrower's representation of costs that Borrower has paid or has caused to be paid from other sources of funds for each Item specified in Column B. Column C, "Costs To Be Paid By Borrower," sets forth Borrower's representation of costs that Borrower will pay or will cause to be paid from other sources of funds for each Item specified in Column C. Column D, "Disbursement Budget," sets forth the portion of the Loan and Borrower's Funds which has been allocated for each Item specified in Column D and will be disbursed pursuant to the terms, covenants, conditions and provisions of Exhibit E and the Loan Documents. Unless specified otherwise, all references to Columns or Items in this Agreement refer to Columns or Items in this Exhibit D.

FINANCIAL REQUIREMENT ANALYSIS

	(A) TOTAL COSTS	(B) COSTS PAID BY BORROWER	(C) COSTS TO BE PAID BY BORROWER	(D) DISBURSEMENT BUDGET (a) (b)
1. LAND COST				
*2. Construction Costs of Improvements (\$____ sq. ft)				
*3. Tenant Improvement Costs (\$____ sq. ft)				
*4. Site Work Costs (\$____ sq. ft)				
*5. Offsite Costs (\$____ sq. ft)				
6. Architect and Engineering Fees				
7. Government Fees (permits, bonds, etc.)				
8. Operating Costs during construction (job supervision, utilities, etc.)				
*9. Contingency Reserve (____% of #'s 2-5)				
10. Other Hard Costs				
a. _____				
b. _____				
c. _____				
11. TOTAL HARD COSTS (Lines 2-10)	\$	\$	\$	\$
12. Interest Reserve				
13. Taxes during construction				
14. Insurance during construction				
15. Lender Loan Fee				
16. Permanent Loan Fee				
17. Title, Recording and Escrow expenses				
18. Legal Fees				
19. Promotion and Advertising				
20. Commission Expense				
21. Organization Expenses (developer overhead)				
22. Soft Costs Contingency				
23. Other Soft Costs:				
a. _____				
b. _____				
c. _____				
24 TOTAL SOFT COSTS (Lines 12-23)	\$	\$	\$	\$
25. CUMULATIVE TOTALS (Lines 1, 11 & 24)	\$	\$	\$	\$

Footnotes:

- (a) Borrower's Funds in the amount of \$\_\_\_\_\_ are included in the total shown on line #25 of the Disbursement Budget. Unless specified otherwise, all such funds shall be disbursed prior to any disbursement of Loan proceeds.
- (b) These funds will be available on or after the Effective Date as defined in the Construction Loan Agreement.

\* Items requiring retention.

EXHIBIT E

CONSTRUCTION LOAN AGREEMENT

(Disbursement Plan)

A. Timing of Disbursements. On or about the \_\_\_\_ ( ) day of each month, or at such other times as Lender may deem appropriate, Borrower shall submit to Lender a written itemized statement ("Application for Payment"), signed by Borrower, setting forth:

1. A description of the work performed, materials supplied and costs incurred or due for which disbursement is requested with respect to any line item ("Item") shown in Column D ("Disbursement Budget") of the Financial Requirement Analysis attached as Exhibit D to this Agreement; and

2. The total amount incurred, expended or due for each requested Item less prior disbursements.

Each Application for Payment by Borrower shall constitute a representation and warranty by Borrower that Borrower is in compliance with all the conditions precedent specified in section 2.1 of this Agreement.

B. Lender's Right to Condition Disbursements. Lender shall have the right to condition any disbursement upon Lender's receipt and approval of the following:

1. The Application for Payment and an itemized requisition for payment of Items 2 through 10 as shown in the Disbursement Budget ("Hard Costs");

2. Bills, invoices, documents of title, vouchers, statements, payroll records, receipts and any other documents evidencing the total amount expended, incurred or due for any requested Items;

3. Evidence of Borrower's use of a lien release, joint check and voucher system acceptable to Lender for payments or disbursements to any contractor, subcontractor, materialman, supplier or lien claimant;

4. Architect's, inspector's or engineer's periodic certifications of the percentage or stage of construction that has been completed and its conformance to the Plans and Specifications and the Requirements based upon any such architect's, inspector's or engineer's periodic, physical inspections of the Property and the Improvements;

5. Waivers and releases of mechanics' liens, stop notice claims, equitable lien claims or other lien claim rights;

6. Evidence of Borrower's compliance with the provisions of sections 3.2 and 5.1 of this Agreement;



7. Valid, recorded Notice(s) of Completion for the Improvements or any portions of the Improvements for which Notice(s) of Completion may be recorded under applicable law;

8. The Architect's and Engineer's, if any, Certificate of Substantial Completion prior to the final retention disbursement of Hard Costs

9. Any other document, requirement, evidence or information that Lender may request under any provision of the Loan Documents; and

10. In the event that any Application for Payment includes the cost of materials stored on the Property ("Onsite Materials"), such Application for Payment shall include each of the following: (a) evidence that the Onsite Materials have been paid for in full by Borrower; (b) evidence that the Onsite Materials are insured as required hereunder; and (c) evidence that the Onsite Materials are stored in an area on the Property for which adequate security is provided against theft and vandalism. Borrower acknowledges that this approval process may result in disbursement delays and Borrower consents to all such delays.

C. Periodic Disbursements. The Disbursement Budget (Column D) shall be disbursed by Lender into the Account or to or for the benefit or account of Borrower, as determined by Lender, periodically as follows:

1. Land Cost. The portion allocated to Land Cost, Column D, Item \_\_\_\_, initially totaling \_\_\_\_dollars (\$\_\_\_\_), shall be disbursed as follows:  
\_\_\_\_\_.

2. Construction Costs, Site Work Costs and Offsite Costs. The portion allocated to Construction Costs, Site Work Costs and Offsite Costs, Column D, Items \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed as construction progresses for the payment of Construction Costs, Site Work Costs and Offsite Costs Items up to ninety percent (90%) of the amount allocated for any requested Item less prior disbursements. The remaining ten percent (10%) of the amounts allocated to Construction Costs, Site Work Costs and Offsite Costs Items shall be disbursed after the Improvements are fully completed in accordance with the Plans and Specifications and the Requirements, the statutory lien period has expired, and Lender has received a lien-free LP-10 re-write of the Title Policy and evidence satisfactory to Lender of lien-free final completion.

3. Tenant Improvement Costs. The portion allocated to Tenant Improvement Costs, Column D, Item \_\_\_\_, initially totaling \_\_\_\_dollars (\$\_\_\_\_), shall be disbursed as construction progresses for the payment of Tenant Improvement Costs up to the maximum of the lower of \_\_\_\_ dollars (\$\_\_\_\_) per square foot or the actual cost per square foot of completed Tenant Improvements less prior disbursements. The remaining \_\_\_\_dollars (\$\_\_\_\_) of the amount allocated to Tenant Improvement Costs shall be disbursed after the Tenant Improvements are fully completed in accordance with tenant improvement plans and specifications (that have previously been approved in writing by Lender) and the Requirements, the statutory lien period has expired, and Lender has received a lien-free LP-10 re-write of the Title Policy and evidence satisfactory to Lender of lien-free final completion.

4. Architect and Engineering Fees. The portion allocated to Architect and Engineering Fees, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Architect and Engineering Fees.

5. Government Fees. The portion allocated to Government Fees, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Government Fees.

6. Operating Costs. The portion allocated to Operating Costs, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Operating Costs incurred during construction as Operating Costs become due and payable.

7. Contingency Reserve. The portion allocated to Contingency Reserve, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), and any increases in the Contingency Reserve pursuant hereto, shall be reallocated periodically to such other Items as Borrower shall, from time to time, request in writing and Lender shall approve in writing. After any such reallocation, the portion of the Contingency Reserve that has been reallocated will be disbursed in accordance with the provisions governing the disbursement of the Item(s) to which such portion of the Contingency Reserve has been allocated. If the actual cost or a revised guaranteed cost of an Item is less than the maximum amount of the Disbursement Budget allocated to any such Item, then any such excess amounts may be reallocated to the Contingency Reserve from time to time upon Borrower's written request and Lender's written approval. Any amounts reallocated to this Item will be disbursed in accordance with this paragraph. The increase, reallocation or depletion, or refusal of Lender to increase, reallocate or deplete, the Contingency Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents.

8. Other Hard Costs. The portion allocated to Other Hard Costs, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed as construction progresses for the payment of Other Hard Costs.

9. Interest Reserve. The portion allocated to Interest Reserve, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed directly to Lender for the payment of interest which accrues and becomes due under the Note during construction. Lender is hereby authorized to charge the Loan directly for such interest payments as they become due. Lender shall provide Borrower with a monthly interest statement. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, without limitation, paying interest accruing under the Note and depositing Borrower's Funds with Lender pursuant to section 2.1(b) of this Agreement.

10. Taxes. The portion allocated to Taxes, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Taxes incurred during construction as Taxes become due and payable. Funds with Lender pursuant to section 2.1(b) of this Agreement.

11. Insurance. The portion allocated to Insurance, Column D, Item \_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be periodically disbursed for the payment of Insurance premiums during construction as Insurance premiums become due and payable.

12. Lender Loan Fee. The portion allocated to Lender Loan Fee, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed directly to Lender for Borrower's credit on the Effective Date for the payment of Lender's Loan Fee.

13. Permanent Loan Fee. The portion allocated to Permanent Loan Fee, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of a Permanent Loan Fee for permanent financing.

14. Title, Recording and Escrow Expenses. The portion allocated to Title, Recording and Escrow Expenses, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Title, Recording and Escrow Expenses.

15. Legal Fees. The portion allocated to Legal Fees, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Legal Fees.

16. Promotion and Advertising. The portion allocated to Promotion and Advertising, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Promotion and Advertising expenses.

17. Commission Expense. The portion allocated to Commission Expense, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Commission Expense.

18. Organization Expense. The portion allocated to Organization Expense, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Organization Expense incurred during construction as Organization Expense becomes due and payable.

19. Soft Costs Contingency. The portion allocated to Soft Cost Contingency, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be periodically reallocated, at the written request of Borrower and with the written approval of Lender, within the Disbursement Budget, Column D, Items , or disbursed for cost overruns that have been approved by Lender for Column D, Items , in accordance with paragraphs hereof, depending upon the intended use of any such funds.

20. Other Soft Costs. The portion allocated to Other Soft Costs, Column D, Item\_\_\_\_, initially totaling \_\_\_\_ dollars (\$\_\_\_\_), shall be disbursed for the payment of Other Soft Costs.

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE is made and entered into effective as of the 2nd day of December, 1998, between CSM CORPORATION, a Minnesota corporation, ("Landlord") and DYNAMARK, INC., a Minnesota corporation, ("Tenant").

RECITALS

- First: The Landlord and Tenant entered into a lease dated March 11, 1997, covering certain premises located at 4265 Lexington Avenue North, Arden Hills, Minnesota (the "Lease").
- Second: The parties have executed a First Amendment to Lease, dated September 24, 1997, extending the term of the Lease and documenting increased construction costs payable by Tenant under the Lease.
- Third: The parties wish to execute this Second Amendment to Lease to confirm their agreement to certain matters related thereto:

AGREEMENT

In consideration of the above stated premises and the mutual covenants hereinafter contained, the parties hereby agree that the Lease is modified, amended, and/or supplemented as follows:

1. Premises. The Premises and certain improvements thereupon shall be and are hereby modified as shown on the site plan attached hereto as REVISED EXHIBIT A. REVISED EXHIBIT A replaces and is hereby substituted for Exhibit A attached to the First Amendment to Lease. Tenant acknowledges that the Premises are a part of a development which will include four buildings and associated appurtenant improvements, all as shown on REVISED EXHIBIT A. Tenant acknowledges and agrees that the Premises will be subject to and benefitted by various non-exclusive easements for ingress, egress and access over the private drives serving the Project, and certain exclusive easements for utilities and other purposes, provided that the same shall not interfere with the use and enjoyment of the Premises, as contemplated herein.
2. Lease Term. Landlord and Tenant are parties to a lease agreement dated December 2, 1998 (the "New Lease"), covering certain premises and a new building to be constructed thereon located adjacent to the Premises, all as shown on REVISED EXHIBIT A. The parties agree that the term of the Lease shall be adjusted such that the term of the Lease shall be coterminous with the term of the New Lease. More particularly, upon the commencement date of the New Lease, the term of the Lease shall be extended and shall run for a period of one hundred fifty-six (156) months commencing on the commencement date of the New Lease. If the commencement date of the New Lease is other than the first day of a calendar month, then the term of the Lease shall continue in full force and effect for a period of one hundred fifty-six (156) months from and after the first day of the month next succeeding the commencement date of the New Lease. When the commencement date of the New Lease has been established, the parties shall execute an addendum to this Second Amendment to Lease, confirming the term and expiration date of the Lease.
3. Subsection 1.5 of the Lease is hereby deleted in its entirety and replaced with the following:

1 Exhibit 10.23

"Base Rent. The Base Rental for the Premises during the remaining term of this Lease shall be as follows:

Period	Monthly Base Rent	Per Square Foot
11/1/98 - 07/31/02	\$24,062.50	\$8.75
08/01/02 - 12/31/06	\$25,437.50	\$9.25
01/01/07 - New Lease expiration date	\$26,812.50	\$9.75

Option Term:  
 -----  
 60 months following the  
 New Lease expiration date                      market                      market

Landlord and Tenant agree that the as built area of the Premises is 33,000 square feet."

4. Remodeling Allowance. Landlord agrees to provide Tenant with a one time allowance for remodeling the Premises. Landlord's maximum contribution towards the costs of remodeling will be based upon the time that such remodeling occurs, in accordance with the following schedule:

Period of Remodeling Expenditure	Maximum Allowance Amount Per Square Foot
1/1/01 - 12/31/02	\$3.00
1/1/03 - 12/31/04	\$3.75
1/1/05 - 12/31/06	\$4.50

The allowance shall apply towards Tenant's actual remodeling costs and shall be payable to Tenant upon completion of remodeling and receipt by Landlord of evidence of payment under normal and customary construction lending procedures. Landlord shall not be required to provide any allowance on costs submitted for reimbursement after December 31, 2010.

5. Guaranty. Landlord has required, as a condition to its execution of this Second Amendment to Lease, that Fair, Isaac and Company, Incorporated unconditionally guarantee the full performance of Tenant's obligations under the Lease, as amended. Tenant agrees to deliver such guaranty, in the form of EXHIBIT E attached hereto and incorporated herein by reference, within ten (10) days following the full execution of this Second Amendment to Lease by Landlord and Tenant. In the event Tenant fails to deliver such guaranty, Landlord may, at its option, terminate this Second Amendment to Lease upon five (5) days written notice to Tenant.
6. Section 1.4(B) of the Lease is deleted in its entirety and is replaced with the following:

"Option to Extend. Subject to the terms and conditions hereinafter set forth, Tenant shall have the option to extend the term of this Lease for one (1) additional sixty (60) month term ("Option Term") upon and pursuant to the same conditions contained herein. This option may be exercised by written notice of exercise from Tenant to Landlord given not less than one (1) year prior to the expiration of the Lease Term. Tenant may exercise this option only if: (i) no condition of default exists with respect to Tenant's performance of its obligations under the Lease; and (ii) Tenant simultaneously exercises its options to extend under the New Lease and under the Existing Lease covering the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota (as defined in Section 14.12 of the New Lease). Base Rent for the Option Term shall be at the fair market rate for comparable space in the north suburban geographic area. The fair market rent shall be agreed upon by Tenant and Landlord within sixty (60) days of Tenant's notice to Landlord of its irrevocable intent to exercise its option to extend set forth herein. The fair market rental rate shall be determined in accordance with the definition set forth in Section 7 of the

Existing Lease dated May 1, 1995 and amended December 30, 1996 for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. In the event that Landlord and Tenant fail to agree to the fair market rental rate in the time period set forth herein, then the fair market rent shall be established in accordance with the arbitration procedures set forth in section 8 of the Existing Lease for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. If Tenant fails to exercise this option as aforesaid, this option shall be null and void and of no further force and effect."

7. Miscellaneous. Except as expressly stated herein, the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to Lease to be executed the day and year first above written.

LANDLORD:  
CSM CORPORATION

TENANT:  
DYNAMARK, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

PARTICIPATION AGREEMENT

Among

FAIR, ISAAC AND COMPANY, INC.

And

LEASE PLAN NORTH AMERICA, INC.

And

THE PARTICIPANTS NAMED HEREIN

And

ABN AMRO BANK N.V.,

as Agent for the Participants

May 15, 1998

TABLE OF CONTENTS

	Page
SECTION 1.	INTERPRETATION.....2
1.01.	Definitions.....2
1.02.	Rules of Construction.....2
SECTION 2.	LEASE FACILITY.....2
2.01.	Acquisition, Lease, Amount Limitations, Etc. ....2
2.02.	Participation Agreement.....4
2.03.	Advance Requests.....5
2.04.	Fees.....7
2.05.	Funding of Advances.....7
2.06.	Sharing of Payments.....8
2.07.	Other Payment Terms.....11
2.08.	Commitment Reductions.....12
2.09.	Extensions.....13
2.10.	Nature of the Transactions.....14
2.11.	Security.....15
2.12.	Change of Circumstances.....18
2.13.	Taxes on Payments.....20
2.14.	Funding Loss Indemnification.....21
2.15.	Replacement of Participants.....22
SECTION 3.	CONDITIONS PRECEDENT.....22
3.01.	Initial Acquisition Advance.....22
3.02.	Tract 2 Acquisition Advance.....22
3.03.	Improvement/Expense Advances.....23
3.04.	Other Conditions Precedent.....23
3.05.	Covenant to Deliver.....23
SECTION 4.	REPRESENTATIONS AND WARRANTIES.....23
4.01.	Lessee's Representations and Warranties.....23
4.02.	Lessor's Representations and Warranties.....29
4.03.	Participants' Representations and Warranties.....30

TABLE OF CONTENTS  
(continued)

	Page
SECTION 5.	COVENANTS.....31
5.01.	Lessee's Affirmative Covenants.....31
5.02.	Lessee's Negative Covenants.....34
5.03.	Lessee's Financial Covenants.....41
5.04.	Lessor's Covenants.....42
5.05.	Participants' Covenants.....43
SECTION 6.	LESSOR, AGENT AND THEIR RELATIONS WITH PARTICIPANTS.....43
6.01.	Appointment of Agent.....43
6.02.	Powers and Immunities.....43
6.03.	Reliance.....44
6.04.	Defaults.....44
6.05.	Indemnification.....44
6.06.	Non-Reliance.....44
6.07.	Resignation or Removal of Agent.....45
6.08.	Authorization.....45
6.09.	Lessor and Agent in their Individual Capacities.....45
SECTION 7.	MISCELLANEOUS.....46
7.01.	Notices.....46
7.02.	Expenses.....48
7.03.	Indemnification.....48
7.04.	Waivers; Amendments.....49
7.05.	Successors and Assigns.....49
7.06.	Setoff.....53
7.07.	No Third Party Rights.....53
7.08.	Partial Invalidity.....53
7.09.	JURY TRIAL.....53
7.10.	Counterparts.....54
7.11.	No Joint Venture, Etc. ....54
7.12.	Usury Savings Clause.....54



TABLE OF CONTENTS  
(continued)

	Page
7.13. Confidentiality.....	54
7.14. Governing Law.....	54
7.15. Consent to Jurisdiction.....	55

TABLE OF CONTENTS  
(continued)

Page

SCHEDULES

I	Participants
II	Pricing Grid
1.01	Definitions
1.02	Rules of Construction
3.01	Conditions Precedent to Initial Acquisition Advances
3.02	Conditions Precedent to Tract 2 Acquisition Advances
4.01(f)	Environmental Reports
4.01(q)	Subsidiaries
4.01(u)	Property Representations
4.01(x)	Budget
5.02(a)	Existing Indebtedness
5.02(b)	Existing Liens
5.02(d)	Investment Policy

EXHIBITS

A	Land
B	Lease Agreement
C	Purchase Agreement
D	Construction Agency Agreement
E	Acquisition Request
F	Improvement/Expense Advance Request
G(1)	364-Day Commitment Extension Request
G(2)	Lease Extension Request
H	Assignment of Construction Agreements
I	Cash Collateral Agreement
J	Assignment of Lease
K	Lessor Deed of Trust
L	Lessor Security Agreement
M	Assignment Agreement

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this "Agreement" herein), dated as of May 15, 1998, is entered into by and among:

(1) FAIR, ISAAC AND COMPANY, INC., a Delaware corporation ("Lessee");

(2) LEASE PLAN NORTH AMERICA, INC., an Illinois corporation ("Lessor");

(3) Each of the financial institutions from time to time listed in Schedule I hereto, as amended from time to time (such financial institutions to be referred to collectively as the "Participants"); and

(4) ABN AMRO BANK N.V., acting through its San Francisco International Branch, as agent for the Participants (in such capacity, "Agent").

RECITALS

A. Lessee has requested Lessor and the Participants to provide to Lessee a lease facility pursuant to which:

(1) Lessor would (a) purchase the land described in Part 1 of Exhibit A (as more fully defined in Schedule 1.01, the "Tract 1 Land"), (b) purchase the land described in Part 2 of Exhibit A (as more fully defined in Schedule 1.01, the "Tract 2 Land" and collectively with the Tract 1 Land, or individually, as the case may be, the "Land"), (c) lease to Lessee the Land, (c) appoint Lessee as Lessor's agent to make certain improvements on the Land (which improvements will be owned by Lessor), (d) make advances to finance such improvements and to pay certain related expenses and (e) grant to Lessee the right to purchase the Land and such improvements; and

(2) The Participants would participate in such lease facility by (a) funding the purchase price and other advances to be made by Lessor and (b) acquiring participation interests in the rental and certain other payments to be made by Lessee.

B. Lessor and the Participants are willing to provide such lease facility upon the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants herein contained, the parties hereto hereby agree as follows:

EXHIBIT 10.38

SECTION 1. INTERPRETATION.

1.01. Definitions. Unless otherwise indicated in this Agreement or any other Operative Document, each term set forth in Schedule 1.01, when used in this Agreement or any other Operative Document, shall have the respective meaning given to that term in Schedule 1.01 or in the provision of this Agreement or other document, instrument or agreement referenced in Schedule 1.01.

1.02. Rules of Construction. Unless otherwise indicated in this Agreement or any other Operative Document, the rules of construction set forth in Schedule 1.02 shall apply to this Agreement and the other Operative Documents.

SECTION 2. LEASE FACILITY.

2.01. Acquisition, Lease, Amount Limitations, Etc.

(a) Acquisition, Lease, Etc. Subject to the terms and conditions of this Agreement (including the limitations set forth in Subparagraph 2.01(b)):

(i) On a date specified by Lessee pursuant to Subparagraph 2.03(a) for the acquisition of the Tract 1 Land (the "Closing Date"):

(A) Lessor shall purchase (with funds provided by the Participants) the Tract 1 Land, together with any Appurtenant Rights thereto, all Improvements thereto and other related property;

(B) Immediately upon the purchase by Lessor of such property, Lessor and Lessee shall execute (i) a Lease Agreement in the form of Exhibit B (the "Lease Agreement"), pursuant to which Lessor will lease to Lessee such property, (ii) a Purchase Agreement in the form of Exhibit C (the "Purchase Agreement"), pursuant to which Lessor grants to Lessee the right to purchase such property and (iii) a Construction Agency Agreement in the form of Exhibit D (the "Construction Agency Agreement"), pursuant to which Lessee agrees to construct certain improvements to such property;

(ii) On a date specified by Lessee pursuant to Subparagraph 2.03(a) for the acquisition of the Tract 2 Land (the "Tract 2 Acquisition Date"):

(A) Lessor shall purchase (with funds provided by the Participants) the Tract 2 Land, together with any Appurtenant Rights thereto, all Improvements thereto and other related property; and

(B) Immediately upon the purchase and acquisition by Lessor of such property, Lessor and Lessee shall execute amendments to the Lease Agreement, the Purchase Agreement and the Construction Agency

Agreement to the extent necessary to add such property to the property covered thereby; and

(iii) During the period (the "Commitment Period") beginning on the date of this Agreement and ending on the date which is 30 months after the date hereof (the "Outside Completion Date") or, if earlier, the first Business Day of the first full calendar month immediately succeeding the earlier of (A) the Completion Date and (B) the date on which the Unused Total Commitment is \$0 (the earlier of the Outside Completion Date and such first Business Day to be referred to as the "Commitment Termination Date"), Lessor shall, at the request of Lessee, make additional advances to Lessee (with funds provided by the Participants) to pay Permitted Improvement Costs and Permitted Transaction Expenses ("Improvement/Expense Advances").

(b) Amount Limitations. The advances made by Lessor to purchase the Land (the "Acquisition Advances") and the Improvement/Expense Advances made by Lessor (the Acquisition Advances and the Improvement/Expense Advances to be referred to collectively as the "Advances") shall be subject to the following limitations:

(i) Until Lessee delivers to Lessor the Plans and Specifications for all New Improvements to be constructed on the Property pursuant to Subparagraph 5.01(h) and a revised Expiration Date Appraisal for each Tract of Property (if required by Subparagraph 5.01(h)), the aggregate amount of all portions of all Advances made by Lessor which are allocated to any Line Item in the Budget, as set forth in the Schedule to the Acquisition Request or the Improvement/Expense Advance Request for such Advance pursuant to clause (v) of Subparagraph 2.03(a) or clause (i)(D) of Subparagraph 2.03(b), as applicable, shall not exceed shall not exceed 110% of such Line Item of the Budget;

(ii) Until Lessee delivers to Lessor the Plans and Specifications for all New Improvements to be constructed on the Property pursuant to Subparagraph 5.01(h) and a revised Expiration Date Appraisal for each Tract of Property (if required by Subparagraph 5.01(h)), the aggregate amount of all Advances made by Lessor shall not exceed the lesser of (A) aggregate amount of the Budget or (B) the Expiration Date Appraisal as delivered on the Closing Date;

(iii) After Lessee delivers to Lessor the Plans and Specifications for all New Improvements to be constructed on the Property pursuant to Subparagraph 5.01(h) and a revised Expiration Date Appraisal for each Tract of Property (if required by Subparagraph 5.01(h)), the aggregate amount of all Advances made by Lessor for such Tract of Property (including the Acquisition Advance and all Improvement/Expense Advances for such Tract of Property) shall not exceed the Expiration Date Appraisal for such Tract of Property;

(iv) The aggregate amount of all Advances made during the period commencing on the date of this Agreement and ending on the date 364 days

thereafter (the "364-Day Commitment Termination Date") shall not exceed Sixteen Million Dollars (\$16,000,000) (the "364-Day Commitment"); and;

(v) The aggregate amount of all Advances made during the period commencing on the date of this Agreement and ending on the Commitment Termination Date (such period to be referred to as the "Commitment Period") shall not exceed Fifty-Five Million Dollars (\$55,000,000) (the "Total Commitment").

Of the Total Commitment, Thirty-Nine Million Dollars (\$39,000,000) (the "Thirty Month Commitment") is available at any time during the entire Commitment Period. Unless otherwise directed by Lessee, all Advances made by Lessor on or prior to the 364-Day Commitment Termination Date shall be allocated first to the 364-Day Commitment and, after the 364-Day Commitment is reduced to zero, to the Thirty-Month Commitment. All Advances made by Lessor after the 364-Day Commitment Termination Date shall be allocated to the Thirty-Month Commitment, whether or not the 364-Day Commitment has been reduced to zero.

(c) Tranches. Each Advance shall consist of a Tranche A Portion, a Tranche B Portion and a Tranche C Portion. For accounting purposes, the Tranche A Portion and Tranche B Portion of each Advance shall constitute debt and the Tranche C Portion shall constitute equity.

## 2.02. Participation Agreement.

(a) Advances. Each Participant severally, unconditionally and irrevocably agrees with Lessor to participate in each Advance made by Lessor in an amount equal to such Participant's Proportionate Share of such Advance; provided, however, that the aggregate amount of each Participant's Proportionate Share of all Advances shall not exceed such Participant's Commitment. Each Participant shall fund its Proportionate Share of each Advance as provided in Subparagraph 2.05(a). Each Participant's Proportionate Share of each Advance shall consist of such Participant's Tranche A Portion, Tranche B Portion and Tranche C Portion of such Advance.

(b) Payments. In consideration of each Participant's participation in each Advance made by Lessor, such Participant shall participate in the payments made by Lessee under this Agreement and the other Operative Documents as provided in Paragraph 2.06.

(c) Other Rights of Participants and Agent.

(i) Until all amounts payable to Agent and Participants under this Agreement and the other Operative Documents are paid in full, Lessee shall deliver all notices for Lessor under this Agreement and the other Operative Documents to Agent at the office or facsimile number and during the hours specified in Paragraph 7.01. Agent shall promptly furnish to Lessor and each Participant copies of each such notice and, in the case of each request for an

Advance, shall notify each Participant of the amount of such Participant's Proportionate Share of the Advance requested thereby.

(ii) Lessor is not an agent for Participants or Agent and may exercise or refrain from exercising its rights under this Agreement and the other Operative Documents in its discretion; provided, however that, until all amounts payable to Agent and Participants under this Agreement and the other Operative Documents are paid in full, (A) Lessor shall, subject to the limitations set forth in Section VI, be required to act or to refrain from acting upon instructions of the Required Participants as provided in Paragraph 6.03 and (B) Agent may exercise any or all of the rights and remedies of Lessor, and shall be entitled to the other benefits afforded Lessor, under this Agreement and the other Operative Documents.

(iii) Neither Agent nor any Participant shall have any right, title or interest in the Property except for the Lien therein granted to Agent, for the benefit of the Participants, in the Lessor Deed of Trust, the Assignment of Lease and the Lessor Security Agreement.

2.03. Advance Requests.

(a) Acquisition Request. Lessee shall request Lessor to purchase the Land by delivering to Agent an irrevocable written request in the form of Exhibit E, appropriately completed (the "Acquisition Request"), which specifies, among other things:

(i) The Tract of Land to be purchased;

(ii) The amount of such requested Acquisition Advance, including the amount of the Acquisition Price and the Permitted Transaction Expenses (which may include expenses previously paid by Lessee) included in such Acquisition Advance;

(iii) The date selected by Lessor as the Acquisition Date for such purchase, which shall be, (A) in the case of the Acquisition Advance to purchase the Tract 1 Land (the "Initial Acquisition Advance"), on a Business Day on or prior to May 31, 1998 and (B) in the case of the Acquisition Advance to purchase the Tract 2 Land (the "Tract 2 Acquisition Advance"), on a date that is a Business Day on or prior to July 1, 1999;

(iv) The Portions into which such Advance(s) is (are) to be divided and the Rental Period for each Portion; and

(v) If Lessee has not yet delivered the Plans and Specifications as required by Subparagraph 5.01(h) and any revised Expiration Date Appraisal required by Subparagraph 5.01(h), a Schedule to such Acquisition Request setting forth by reference to Line Items in the Budget the purpose for which each portion of such Advance will be utilized and a reconciliation by Line Items in the Budget of all Advances made prior to the date of such Advance.

(b) Improvement/Expense Advance Requests. Lessee shall request Lessor to make each Improvement/Expense Advance by delivering to Lessor:

(i) An irrevocable written request in the form of Exhibit F, appropriately completed (an "Improvement/Expense Advance Request"), which specifies, among other things:

(A) The amount of such Advance, which shall be in the amount of \$500,000 or an integral multiple of \$100,000 in excess thereof;

(B) The date of such Advance, which shall be the Closing Date or the first Business Day of a month;

(C) The Permitted Improvement Costs and Permitted Transaction Expenses to be paid by such Advance and the Tract(s) of Land for which payable; and

(D) If Lessee has not yet delivered the Plans and Specifications as required by Subparagraph 5.01(h) and any revised Expiration Date Appraisal required by Subparagraph 5.01(h), a Schedule to such Improvement/Expense Advance Request setting forth by reference to Line Items in the Budget the purpose for which each portion of such Advance will be utilized and a reconciliation by Line Items in the Budget of all Advances made prior to the date of such Advance.

(ii) If the proceeds of such Advance are to be used to purchase Related Goods:

(A) A Supplement to Exhibit B to the Lease Agreement in the form of Exhibit B(1) to the Lease Agreement (an "Exhibit B Supplement"), which contains a description of such Related Goods; and

(B) Bills of sale for all such Related Goods showing Lessor as the purchaser.

Lessee shall not request more than one (1) Improvement/Expense Advance in any calendar month.

(c) Delivery of Advance Requests. Etc. Lessee shall deliver to Lessor the Acquisition Request for the Initial Acquisition Advance at least three (3) Business Days before the Closing Date and the Acquisition Request for the Tract 2 Acquisition Advance at least three (3) Business Day before the Tract 2 Acquisition Date. Lessee shall deliver each Improvement/Expense Advance Request to Lessor at least three (3) Business Days before the date of such Advance. The Acquisition Requests and Improvement/Expense Advance Requests (collectively, "Advance Requests") shall be delivered by first-class mail or facsimile as required by Subparagraph 2.02(c) and Paragraph 7.01; provided, however, that Lessee shall promptly deliver to Lessor the original of any Advance Request initially delivered by facsimile.



(d) Capitalization of Base Rent During Commitment Period. On each Scheduled Rent Payment Date occurring under the Lease Agreement during the Commitment Period, the Base Rent due on such Scheduled Rent Payment Date shall be capitalized by automatically treating the amount of such Base Rent as an Improvement/Expense Advance made on such Scheduled Rent Payment Date. Agent shall notify Lessee, Lessor and each Participant of the amount of the Base Rent due on each such Scheduled Rent Payment Date and so treated as an Improvement/Expense Advance.

2.04. Fees.

(a) Agent's Fees. Lessee shall pay to Agent, for its own account, agent's fees in the amounts and at the times set forth in the Agent's Fee Letter (the "Agent's Fees").

(b) Commitment Fees. Lessee shall pay to Agent, for the ratable benefit of the Participants as provided in clause (ii) of Subparagraph 2.06(c), commitment fees (the "Commitment Fees") as follows:

(i) Lessee shall pay Commitment Fees of twenty one hundredths of one percent (0.20%) per annum on the daily average Unused 364-Day Commitment for the 364-Day Commitment Period.

(ii) Lessee shall pay Commitment Fees of thirty hundredths of one percent (0.30%) per annum on the daily average Unused Thirty-Month Commitment for the entire Commitment Period.

Lessee shall pay the Commitment Fees in arrears on the first Business Day in each January, April, July and October (commencing July, 1998) and on the Commitment Termination Date (or if the Total Commitment is cancelled on a date prior to such day, on such prior date).

(c) 364-Day Commitment Extension Fee. If Lessor and the Participants consent to any extension of the 364-Day Commitment Termination Date requested by Lessee pursuant to Subparagraph 2.09(a), Lessee shall pay to Agent, for the ratable benefit of Lessor and the Participants as provided in clause (iii) of Subparagraph 2.06(c), an extension fee (the "364-Day Commitment Extension Fee") equal to one tenth of one percent (0.10%) of the Unused 364-Day Commitment on the original 364-Day Commitment Termination Date. Lessee shall pay the 364-Day Commitment Extension Fee on or prior to the original 364-Day Commitment Termination Date.

2.05. Funding of Advances.

(a) Participant Funding and Disbursement. Each Participant shall, before 11:00 a.m. on the date of each Advance, make available to Agent at its office specified in Paragraph 7.01, in same day or immediately available funds, such Participant's Proportionate Share of such Advance. After Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Section 3, Agent will promptly disburse such funds on behalf of Lessor, in same day or immediately available funds, as

directed by Lessee in the Advance Request for such Advance. Each Acquisition Advance shall be disbursed to an escrow or other account established for payment of the Acquisition Price and any related Permitted Transaction Expenses pursuant to the Acquisition Agreement or otherwise as directed by Lessee in the Acquisition Advance Request. Each Improvement/Expense Advance shall be disbursed as directed by Lessee in the Advance Request for such Improvement/Expense Advance.

(b) Participant Failure to Fund. Unless Agent shall have received notice from a Participant prior to the date of any Advance that such Participant will not make available to Agent such Participant's Proportionate Share of such Advance, Agent may assume that such Participant has made such portion available to Agent on the date of such Advance in accordance with Subparagraph 2.05(a), and Agent may, in reliance upon such assumption, disburse the full amount of such Advance on such date; provided, however, that neither Agent nor Lessor shall have any obligation to make an Advance requested hereunder in an amount which exceeds the aggregate amount of funds actually received by Agent from the Participants on account of their respective Proportionate Shares of such Advance. If any Participant does not make the amount of its Proportionate Share of any Advance available to Agent on or prior to the date such Advance is made, Agent promptly shall notify such Participant of such failure and such Participant shall pay to Agent, on demand, interest which shall accrue on such amount until made available to Agent at rates equal to (i) the daily Federal Funds Rate during the period from the date of such Advance through the third Business Day thereafter and (ii) the Base Rate plus two percent (2.0%) thereafter. A certificate of Agent submitted to any Participant with respect to any amounts owing under this Subparagraph 2.05(b) shall be conclusive absent manifest error. If any Participant's Proportionate Share of any Advance is not in fact made available to Agent by such Participant within three (3) Business Days after the date of such Advance, Lessee shall pay to Agent, on demand, an amount equal to such Proportionate Share together with interest thereon, for each day from the date such amount was made available to Lessee until the date such amount is repaid to Agent, at a per annum rate equal to the Base Rate.

(c) Participants' Obligations Several. The failure of any Participant to fund its Proportionate Share of any Advance shall not relieve any other Participant of its obligation hereunder to fund its Proportionate Share of such Advance, and no Participant shall be responsible for the failure of any other Participant to fund its Proportionate Share of any Advance on the date of such Advance.

#### 2.06. Sharing of Payments.

(a) Outstanding Lease Amount or any Portion thereof. Lessor shall share payments applied to reduce the Outstanding Lease Amount or any Portion thereof as follows:

(i) Each payment of the Outstanding Lease Amount or any Portion thereof derived from the purchase price paid by Lessee (or an Assignee Purchaser) to purchase the Property pursuant to the Purchase Agreement shall be

shared by the Participants pro rata according to their respective Outstanding Participation Amounts at the time of such payment.

(ii) Each payment of the Outstanding Lease Amount or any Portion thereof derived from the Residual Value Guaranty Amount paid by Lessee pursuant to the Purchase Agreement shall be shared first by the Tranche A Participants pro rata according to their respective Outstanding Tranche A Participation Amounts at the time of such payment; second, if any amounts remain after all Outstanding Tranche A Participation Amounts are paid in full, by the Tranche B Participants pro rata according to their respective Outstanding Tranche B Participation Amounts at the time of such payment; and third, if any amounts remain after all Outstanding Tranche A Participation Amounts and all Outstanding Tranche B Participation Amounts are paid in full, by the Tranche C Participants pro rata according to their respective Outstanding Tranche C Participation Amounts at the time of such payment.

(iii) Each payment of the Outstanding Lease Amount or any Portion thereof derived from:

(A) the purchase price paid by a Designated Purchaser to purchase the Property pursuant to the Purchase Agreement;

(B) the Indemnity Amount paid by Lessee pursuant to the Purchase Agreement; or

(C) Casualty Proceeds or Condemnation Proceeds related to any of the Property;

Shall be shared first by the Tranche B Participants pro rata according to their respective Outstanding Tranche B Participation Amounts at the time of such payment; second, if any amounts remain after all Outstanding Tranche B Participation Amounts are paid in full, by the Tranche A Participants pro rata according to their respective Outstanding Tranche A Participation Amounts at the time of such payment; and third, if any amounts remain after all Outstanding Tranche B Participation Amounts and all Outstanding Tranche A Participation Amounts are paid in full, by the Tranche C Participants pro rata according to their respective Outstanding Tranche C Participation Amounts at the time of such payment.

(iv) Each payment of the Outstanding Lease Amount or any Portion thereof derived from the purchase price paid by any other Person to purchase the Property (whether after the retention of such Property by Lessor following the Expiration Date of the Lease Agreement, upon foreclosure or otherwise) shall be shared first by the Tranche B Participants pro rata according to their respective Outstanding Tranche B Participation Amounts at the time of such payment; second, if any amounts remain after all Outstanding Tranche B Participation Amounts are paid in full, by the Tranche A Participants pro rata according to their

respective Outstanding Tranche A Participation Amounts at the time of such payment; and third, if any amounts remain after all Outstanding Tranche B Participation Amounts and all Outstanding Tranche A Participation Amounts are paid in full, by the Tranche C Participants pro rata according to their respective Outstanding Tranche C Participation Amounts at the time of such payment.

(v) Each payment of the Outstanding Lease Amount or any Portion thereof derived from Cash Collateral shall be shared (i) by the Tranche A Participants alone pro rata according to their respective Outstanding Tranche A Participation Amounts at the time of such payment, if such payment is made after the purchase of the Property by a Designated Purchaser pursuant to the Marketing Option in the Purchase Agreement or (ii) by all Participants pro rata according to their respective Outstanding Participation Amounts at the time of such payment if such payment is made in any other circumstance.

(b) Base Rent. Each payment applied to Base Rent shall be shared by the Participants which funded the Outstanding Lease Amount or any Portion thereof pro rata according to (i) the respective Outstanding Participation Amounts so funded by such Participants, (ii) the dates on which such Participants so funded such amounts and (iii) for Base Rent accruing at a Fixed Rental Rate, the respective Fixed Rate Quotes of such Participants. (If any Participant fails to provide a Fixed Rate Quote for determining any Fixed Rate for any Rental Period, such Participant shall, for the purposes of this Subparagraph 2.06(b), be deemed to have provided a Fixed Rate Quote equal to such Fixed Rate.)

(c) Supplemental Rent. Lessor shall share each payment applied to Supplemental Rent among the Lessor Parties as follows:

(i) Each payment applied to Agent's Fees shall be solely for the account of Agent.

(ii) Each payment applied to Commitment Fees shall be shared by the Participants pro rata according to (A) their respective Proportionate Shares and (B) in the case of each Participant which becomes a Participant hereunder after the date hereof, the date upon which such Participant so became a Participant.

(iii) Each payment applied to the 364-Day Commitment Extension Fee shall be shared by the Participants pro rata according to their respective Proportionate Shares on the date of such payment.

(iv) Each payment applied to reimburse any Lessor Party for any fees, costs and expenses incurred by such Lessor Party shall be solely for the account of such Lessor Party.

(v) Each payment of interest (other than Base Rent) shall be shared among the Lessor Parties owed the amount upon which such interest accrues pro rata according to (A) the respective amounts so owed such Lessor Parties and (B) the dates on which such amounts became owing to such Lessor Parties.

(vi) All other payments under this Agreement and the other Operative Documents shall be for the benefit of the Person or Persons specified.

(d) Disproportionate Payments, Etc. If any Participant shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of amounts owed to it in excess of its ratable share of payments on account of such amounts obtained by all Participants entitled to such payments, such Participant shall forthwith purchase from the other Participants such participations in the payments to be made under the Operative Documents as shall be necessary to cause such purchasing Participant to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Participant, such purchase shall be rescinded and each other Participant shall repay to the purchasing Participant the purchase price to the extent of such recovery together with an amount equal to such other Participant's ratable share (according to the proportion of (i) the amount of such other Participant's required repayment to (ii) the total amount so recovered from the purchasing Participant) of any interest or other amount paid or payable by the purchasing Participant in respect of the total amount so recovered. Lessee agrees that any Participant so purchasing a participation from another Participant pursuant to this Subparagraph 2.06(d) may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Participant were the direct creditor of Lessee in the amount of such participation.

#### 2.07. Other Payment Terms.

(a) Place and Manner of Payments by Lessee. Lessee shall make all payments due to any Lessor Party under this Agreement and the other Operative Documents by payments to Agent, for the account of such Person, at Agent's office, located at the address specified in Paragraph 7.01, with each payment due to a Participant to be for the account of such Participant's Applicable Participating Office. Lessee shall make all payments in lawful money of the United States and in same day or immediately available funds not later than 11:00 a.m. New York time on the date due. Agent shall promptly disburse to the appropriate Person each such payment received by Agent for such Person.

(b) Date. Whenever any payment due under this Agreement or any other Operative Document shall fall due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of Rent, interest or fees, as the case may be. Whenever this Agreement or any other Operative Document requires a payment to be made by Lessee but fails to specify a time for such payment to be made, such payment shall be due and payable ten (10) days after demand for such payment is made upon Lessee by the applicable party.

(c) Late Payments. If any amounts required to be paid by Lessee under this Agreement or any other Operative Document (including Rent, interest, fees or other amounts) remain unpaid after such amounts are due, Lessee shall pay interest on the

aggregate, outstanding balance of such amounts from the date due until those amounts are paid in full at a per annum rate equal to the Base Rate plus two percent (2.0%), such rate to change from time to time as the Base Rate shall change.

(d) Application of Payments. All payments under this Agreement and the other Operative Documents shall be applied first to unpaid fees, costs and expenses then due and payable under this Agreement or any other Operative Document, second to the accrued Base Rent then due and payable under this Agreement or any other Operative Document and finally to reduce the Outstanding Lease Amount or any Portion thereof.

(e) Failure to Pay Agent. Unless Agent shall have received notice from Lessee at least one (1) Business Day prior to the date on which any payment is due to Lessor or the Participants under this Agreement or the other Operative Documents that Lessee will not make such payment in full, Agent may assume that Lessee has made such payment in full to Agent on such date and Agent may, in reliance upon such assumption, cause to be distributed to the appropriate Persons on such due date an amount equal to the amount then due such Persons. If and to the extent Lessee shall not have so made such payment in full to Agent, each such Person shall repay to Agent forthwith on demand such amount distributed to such Person together with interest thereon, for each day from the date such amount is distributed to such Person until the date such Person repays such amount to Agent, at (i) the Federal Funds Rate for the first three (3) days and (ii) the Base Rate plus two percent (2.0%) thereafter, such rate to change from time to time as the Base Rate shall change. A certificate of Agent submitted to any Person with respect to any amounts owing by such Person under this Subparagraph 2.07(e) shall be conclusive absent manifest error.

#### 2.08. Commitment Reductions.

(a) Reduction or Cancellation of Commitments. Lessee may, at any time prior to the 364-Day Commitment Termination Date in the case of the 364-Day Commitment or the Commitment Termination Date in the case of the Thirty-Month Commitment, upon five (5) Business Days written notice to Lessor, permanently reduce the 364-Day Commitment or the Thirty-Month Commitment by the amount of One Million Dollars (\$1,000,000) or an integral multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof or cancel the 364-Day Commitment or the Thirty-Month Commitment in its entirety. Any reduction of the 364-Day Commitment or the Thirty-Month Commitment shall result in a corresponding reduction of the Total Commitment.

(b) Effect of Commitment Reductions. From the effective date of any reduction of the 364-Day Commitment or the Thirty-Month Commitment, the Commitment Fees shall be computed on the basis of the 364-Day Commitment or the Thirty-Month Commitment as so reduced. Once reduced or cancelled, the 364-Day Commitment, the Thirty-Month Commitment and the Total Commitment may not be increased or reinstated without the prior written consent of Lessor and all Participants. Any reduction of the 364-Day Commitment, the Thirty-Month Commitment or the Total Commitment pursuant to this Paragraph 2.08 shall be applied ratably to reduce each Participant's Commitment pro rata in accordance with its Proportionate Share.

2.09. Extensions.

(a) 364-Day Commitment Extension. Lessee may request Lessor to extend the 364-Day Commitment Termination Date for an additional period of six (6) months by appropriately completing, executing and delivering to Agent a written request in the form of Exhibit G(1) (a "364-Day Commitment Extension Request"). Lessee shall deliver the 364-Day Commitment Extension Request to Agent not more than six (6) months and not less than two (2) months before the original 364-Day Commitment Termination Date. Agent shall promptly deliver to Lessor and each Participant three (3) copies of each 364-Day Commitment Extension Request received by Agent. If Lessor or a Participant, in its sole and absolute discretion, consents to the 364-Day Commitment Extension Request, such Person shall evidence such consent by executing and returning two (2) copies of the 364-Day Commitment Extension Request to Agent not later than the ten (10) Business Days after receipt of the 364-Day Commitment Extension Request. Any failure by Lessor or any Participant so to execute and return a 364-Day Commitment Extension Request shall be deemed a denial thereof. If Lessee shall deliver a 364-Day Commitment Extension Request to Lessor pursuant to the first sentence of this Subparagraph 2.09(a), then not later than fifteen (15) Business Days after receipt of the 364-Day Commitment Extension Request, Agent shall notify Lessee, Lessor and the Participants in writing whether (i) Agent has received a copy of the 364-Day Commitment Extension Request executed by Lessor and each Participant, in which case the definition of "364-Day Commitment Termination Date" set forth in Subparagraph 2.01(a) shall be deemed extended to the date which is six (6) months after the original 364-Day Commitment Termination Date (subject to receipt by Agent of the 364-Day Commitment Extension Fee), or (ii) Agent has not received a copy of the 364-Day Commitment Extension Request executed by Lessor and each Participant, in which case such 364-Day Commitment Extension Request shall be deemed denied. Lessee acknowledges that neither Lessor nor any Participant has promised (either expressly or implicitly), or has any obligation or commitment, to extend or consent to the extension of the 364-Day Commitment Termination Date at any time.

(b) Lease Extension. Lessee may, on the terms and conditions provided herein, request Lessor to extend the Scheduled Expiration Date for (i) three consecutive and sequential one year periods (each of which is referred to herein as a "One Year Extension"), or (ii) one three year period (the "Three Year Extension"), provided that after giving effect to any such extension, the remaining scheduled term of the Lease shall not exceed five (5) years. A request by Lessee for the Three Year Extension shall preclude any request for a One Year Extension and any request for a One Year Extension shall preclude any request for the Three Year Extension. Each One Year Extension or the Three Year Extension shall be requested by Lessee by appropriately completing, executing and delivering to Agent a written request in the form of Exhibit G(2), together with an attachment thereto setting forth the terms upon which Lessee would propose for the requested extension (a "Lease Extension Request"). Lessee shall deliver each Lease Extension Request to Agent not less than six (6) months before the then current Scheduled Expiration Date. Agent shall promptly deliver to Lessor and each Participant three (3) copies of each Lease Extension Request received by Agent. If Lessor or a Participant, in its sole and absolute discretion, consents to a Lease Extension Request,

such Person shall evidence such consent by executing and returning two (2) copies of such Lease Extension Request to Agent not later than the earlier of (i) the last Business Day which is not less than five (5) months prior to the then current Scheduled Expiration Date or (ii) two (2) months after the date Agent receives the Lease Extension Request. Any failure by Lessor or any Participant so to execute and return a Lease Extension Request shall be deemed a denial thereof. Agent shall promptly notify Lessee if any Participant has denied such extension request, and Lessee may seek to obtain an Eligible Assignee to replace such Participant pursuant to Paragraph 2.15. Lessee shall deliver a Lease Extension Request to Lessor pursuant to the first sentence of this Subparagraph 2.09(b), then not later than the last Business Day which is not less than four (4) months prior to the then current Scheduled Expiration Date, Agent shall notify Lessee, Lessor and the Participants in writing whether (i) Agent has received a copy of the Lease Extension Request executed by Lessor and each Participant (including any Replacement Participant), in which case the definition of "Scheduled Expiration Date" set forth in Subparagraph 2.02(a) of the Lease Agreement shall be deemed extended to the date which is one (1) year after the then current Scheduled Expiration Date in the case of a One Year Extension, or three (3) years after the then current Scheduled Expiration Date in the case of the Three Year Extension (subject to the receipt by Agent of any amounts payable by Lessee in connection with such extension), or (ii) Agent has not received a copy of the Lease Extension Request executed by Lessor and each Participant, in which case such Lease Extension Request shall be deemed denied. Lessee acknowledges that neither Lessor nor any Participant has promised (either expressly or implicitly), or has any obligation or commitment, to extend or consent to the extension of the Scheduled Expiration Date at any time and that any such extension shall be subject to then applicable market, interest and credit conditions.

2.10. Nature of the Transactions. Lessee and the Lessor Parties intend that the transactions evidenced by this Agreement and the other Operative Documents constitute operating leases pursuant to FASB 13 for accounting purposes and loans secured by the Property for federal, state and local income tax purposes and bankruptcy law purposes. To the extent that this Agreement and the other Operative Documents reflect the lease form alone, they do so for convenience only. Lessee and the Lessor Parties intend that the Operative Documents have the dual form referred to in the first sentence of this paragraph, notwithstanding the use of the lease form alone.

(a) Tax Treatment. For purposes of all income, franchise and other taxes imposed upon or measured by income, Lessee and Lessor Parties intend that the transactions evidenced by the Operative Documents shall be treated as loans by the Participants (through Lessor) to Lessee secured by the Property, with Lessee as owner of the Property. Lessee and the Lessor Parties may only take deductions, credits, allowances and other reporting positions on their respective returns, reports and statements which are consistent with such treatment, unless required to do otherwise by an appropriate taxing authority or after a clearly applicable change in applicable Governmental Rules; provided, however, that if an appropriate taxing authority or a clearly applicable change in applicable Governmental Rules requires any Lessor Party to take such an inconsistent position, such Lessor Party shall promptly notify Lessee.



(b) Other Legal Treatment. For purposes of bankruptcy law, Lessee and Lessor Parties also intend that the transactions evidenced by the Operative Documents shall be treated as loans by the Participants (through Lessor) to Lessee secured by the Property, with Lessee as owner of the Property. Consistent with such treatment, Lessee and the Lessor Parties intend that, among other things for such purposes, (i) the Advances be treated as loans to Lessee by the Participants (through Lessor); (ii) the Advances be secured by the Property and the Lessor Parties have the rights and remedies of secured lenders; (iii) Base Rent be treated as interest on the Advances; (iv) Lessee be required to pay on the Expiration Date only the Residual Value Guaranty Amount, the Indemnity Amount and the other amounts required by Subparagraph 4.06(b) of the Purchase Agreement (or Subparagraph 4.06(c) if Lessor is retaining the Property) if Lessee exercises the Marketing Option in accordance with the Purchase Agreement; and (v) Lessee be required to pay on the Expiration Date the Outstanding Lease Amount or any Portion thereof and all other amounts outstanding under this Agreement and the other Operative Documents (including amounts required by Subparagraph 4.06(a) of the Purchase Agreement) if the Lease Agreement is terminated prior to its Scheduled Expiration Date after an Event of Default occurs under the Lease Agreement or if Lessee fails to or is otherwise not entitled to exercise the Marketing Option in accordance with the Purchase Agreement.

(c) No Reliance by Lessee. Lessee acknowledges and agrees that no Lessor Party has made any representations or warranties to Lessee concerning the tax, accounting or legal characteristics of the Operative Documents and that Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents as it deems appropriate.

(d) Modification of Operative Documents. Lessee and the Lessor Parties shall amend or modify this Agreement and the other Operative Documents to the extent necessary for the transaction evidenced by this Agreement and the other Operative Documents to qualify as an operating lease pursuant to FASB 13 for accounting purposes if, and only if, such amendments and modifications do not adversely affect either Lessee or any Lessor Party in its sole and absolute discretion .

2.11. Security.

(a) Lessee Obligations.

(i) To the extent that the transaction evidenced by the Lease Agreement, Purchase Agreement and other Operative Documents is treated as a loan by the Participants (through Lessor) to Lessee secured by the Property, with Lessee as owner of the Property pursuant to Paragraph 2.10, the Lessee Obligations shall be secured by the Real Property Collateral and the Personal Property Collateral (collectively, the "Property Collateral") as provided in Subparagraphs 2.07(a) and 2.07(b) of the Lease Agreement and in an Assignment of Construction Agreements in the form of Exhibit H, duly executed by Lessee (the "Assignment of Construction Agreements").

(ii) In addition to the Property Collateral, the Lessee Obligations may be secured, at Lessee's election, by a Cash Collateral Agreement in the form of Exhibit I, duly executed by Lessee (the "Cash Collateral Agreement"), and Cash Collateral delivered to Agent or Participants pursuant to the Cash Collateral Agreement. If Lessee elects to deliver any Cash Collateral pursuant to the Cash Collateral Agreement to decrease the Applicable Margin for the LIBOR Rental Rate or the Fixed Rental Rate, Lessee shall deliver to Agent, five (5) Business Days' prior to the delivery of such Cash Collateral, notice of such election and an opinion of its counsel in form and substance reasonably satisfactory to Lessor regarding the Cash Collateral Agreement and such Cash Collateral and shall deliver such Cash Collateral only on a Scheduled Rent Payment Date. Lessee shall have the option to pledge and withdraw Cash Collateral on any Scheduled Rent Payment Date; provided, however, that in order to withdraw Cash Collateral Lessee shall certify that no Default or Event of Default has occurred and is continuing and that all other conditions of the Cash Collateral Agreement have been complied with. Cash Collateral shall consist of eurodollar deposits or U.S. treasury securities with a maturity of less than two (2) years. In the event that U.S. treasury securities are pledged, Lessee shall be entitled to a credit for purposes of determining any decrease in the Applicable Margin, in the amount of ninety five percent (95%) of the market value of the U.S. treasury securities pledged on the day such pledge is made. Lessee shall bear all breakage or other related costs associated with the Cash Collateral or any withdrawal thereof.

In the event that Cash Collateral is withdrawn from the Cash Collateral Agreement after having been deposited thereunder, at the time of such withdrawal, Lessee shall pay to Lessor a withdrawal fee equal to the Applicable Withdrawal Percentage, as defined below, multiplied by the amount of the Cash Collateral withdrawn multiplied by a fraction the denominator of which shall be 360 and the numerator of which shall be the number of days (but not more than 180 days) that such Cash Collateral had been on deposit pursuant to the Cash Collateral Agreement. "Applicable Withdrawal Percentage" means 0.5%, in the case Level 1 pricing (as set forth in the Pricing Grid) is in effect of the date of withdrawal, and 0.75%, in the case Level 2 pricing (as set forth in the Pricing Grid) is in effect of the date of withdrawal. In the event that Cash Collateral is deposited under the Cash Collateral Agreement in different tranches, for purposes of computing the fee provided for in the previous sentence, sums withdrawn from the Cash Collateral Agreement shall be deemed to have been withdrawn on a first in first out basis.

Lessor, Agent and the Participants shall have a full right of offset against the Cash Collateral at all times in the amount of the Tranche A Participation Amount, the Tranche B Participation Amount and the Tranche C Participation Amount; provided that there shall be no right or offset against the Cash Collateral for the Tranche B Participation Amount and the Tranche C Participation Amount if the Lessee elects and completes the Marketing Option.

(iii) Lessee shall deliver to Lessor and Agent such additional mortgages, deeds of trust, security agreements, pledge agreements, lessor consents and estoppels (containing appropriate mortgagee and lender protection language) and other instruments, agreements, certificates, opinions and documents (including Uniform Commercial Code financing statements and fixture filings and landlord waivers) as Lessor or Agent may reasonably request to (A) grant, perfect, maintain, protect and evidence security interests in favor of Lessor or Agent in the Property Collateral and Cash Collateral prior to the Liens or other interests of any Person, except in the case of the Property Collateral for Permitted Property Liens; and (B) otherwise establish, maintain, protect and evidence the rights provided to Lessor and Agent in the Property Collateral and Cash Collateral. Lessee shall fully cooperate with Lessor and Agent and perform all additional acts reasonably requested by Lessor or Agent to effect the purposes of this Subparagraph 2.11(a).

(b) Lessor Obligations.

(i) The Lessor Obligations shall be secured by the following:

(A) An Assignment of Lease Agreement and Purchase Agreement in the form of Exhibit J, duly executed by Lessor (the "Assignment of Lease");

(B) A Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in the form of Exhibit K, duly executed by Lessor (the "Lessor Deed of Trust"); and

(C) A Security Agreement in the form of Exhibit L, duly executed by Lessor (the "Lessor Security Agreement").

(ii) Lessor shall deliver to Agent such additional mortgages, deeds of trust, security agreements, pledge agreements, lessor consents and estoppels (containing appropriate mortgagee and lender protection language) and other instruments, agreements, certificates, opinions and documents (including Uniform Commercial Code financing statements and fixture filings and landlord waivers) as Agent may reasonably request to (A) grant, perfect, maintain, protect and evidence security interests in favor of Agent in Lessor's rights in the Property Collateral and Cash Collateral; and (B) otherwise establish, maintain, protect and evidence the rights provided to Agent in the Property Collateral and Cash Collateral. Lessor shall fully cooperate with Agent and perform all additional acts reasonably requested by Agent to effect the purposes of this Subparagraph 2.11(b).

(iii) Lessee hereby consents to the Assignment of Lease, the Lessor Deed of Trust and the Lessor Security Agreement; the Liens granted to Agent therein; and all other Liens granted to Agent in any of the Operative Documents and the Property to secure the Lessor Obligations.

2.12. Change of Circumstances.

(a) Inability to Determine Rates. If, on or before the first day of any Rental Period for any Portion, (i) any Participant shall advise Agent that the LIBOR Rental Rate for such Rental Period and Portion cannot be adequately and reasonably determined due to the unavailability of funds in or other circumstances affecting the London interbank market, (ii) any Participant shall advise Agent that the LIBOR Rental Rate for such Rental Period and Portion does not adequately and fairly reflect the cost to such Participant of funding its share of such Portion or (iii) if Lessee has requested a Fixed Rental Rate for such Rental Period and Portion, any Participant shall advise Agent that such Participant is unable to provide a Fixed Rate Quote due to the unavailability of funds in or other circumstances affecting the domestic interbank market, Agent shall immediately give notice of such condition to Lessee, Lessor and the other Participants. After the giving of any such notice (and until Agent shall otherwise notify Lessee and Lessor that the circumstances giving rise to such condition no longer exist), the LIBOR Rental Rate or Fixed Rental Rate, as the case may be, shall be unavailable and the Rental Rate for each Rental Period shall be one of the other rental rates then available.

(b) Illegality. If, after the date of this Agreement, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by Lessor or any Participant with any request or directive (whether or not having the force of law) of any Governmental Authority (a "Change of Law") shall make it unlawful or impossible for any Participant to fund or maintain its portion of the Outstanding Lease Amount or any Portion thereof at the LIBOR Rental Rate or a Fixed Rental Rate, such Participant shall immediately notify Agent and Agent shall immediately notify Lessee, Lessor and the other Participants of such Change of Law. After the giving of any such notice (and until Agent shall otherwise notify Lessee and Lessor that such Change of Law is no longer in effect), the LIBOR Rental Rate or Fixed Rental Rate, as the case may be, shall be unavailable and the Rental Rate for each Rental Period shall be one of the other rental rates then available.

(c) Increased Costs. If, after the date of this Agreement, any Change of Law:

(i) Shall subject Lessor or any Participant to any tax, duty or other charge with respect to the Outstanding Lease Amount or any Portion thereof thereof shall change the basis of taxation of Base Rent payments by Lessee to Lessor or any Participant under this Agreement or any other Operative Document (except for changes in the rate of taxation on the overall net income of Lessor or any Participant imposed by its jurisdiction of incorporation or any jurisdiction in which it maintains an office); or

(ii) Shall impose, modify or hold applicable any reserve (excluding any Reserve Requirement or other reserve to the extent included in the calculation of the LIBOR Rental Rate), special deposit or similar requirement against assets

held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by Lessor or any Participant for its portion of the Outstanding Lease Amount or any Portion thereof; or

(iii) Shall impose on Lessor or any Participant any other condition related to the Outstanding Lease Amount or any Portion thereof, Base Rent or Lessor's or such Participant's commitments hereunder;

And the effect of any of the foregoing is to increase the cost to Lessor or such Participant of funding or maintaining its portion of the Outstanding Lease Amount or any Portion thereof or commitments or to reduce any amount receivable by Lessor or such Participant hereunder; then Lessee shall from time to time within thirty (30) days after demand by Lessor or such Participant, pay to Lessor or such Participant additional amounts sufficient to reimburse Lessor or such Participant for such increased costs or to compensate Lessor or such Participant for such reduced amounts; provided, however, that Lessee shall have no obligation to make any payment to any demanding party under this Subparagraph 2.12(c) on account of any such increased costs or reduced amounts relating to any Rental Period that ended more than six (6) months prior to such demanding party's first demand for payment (or, if any increased costs or reduced amounts do not relate to a particular Rental Period, on account of any such increased costs or reduced amounts realized by the demanding party more than six (6) months prior to its first demand for payment). A certificate setting forth in reasonable detail the amount of such increased costs or reduced amounts, submitted by Lessor or such Participant to Lessee shall constitute prima facie evidence of such costs or amounts. The obligations of Lessee under this Subparagraph 2.12(c) shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

(d) Capital Requirements. If, after the date of this Agreement, Lessor or any Participant determines that (i) any Change of Law affects the amount of capital required to be maintained by such Person or any other Person controlling such Person (a "Capital Adequacy Requirement") and (ii) the amount of capital maintained by such Person or such other Person which is attributable to or based upon the Advances, the commitments or this Agreement must be increased as a result of such Capital Adequacy Requirement (taking into account such Person's or such other Person's policies with respect to capital adequacy), Lessee shall pay to such Person or such other Person, within thirty (30) Business Days after demand of such Person, such amounts as such Person or such other Person reasonably shall determine are necessary to compensate such Person or such other Person for the increased costs to such Person or such other Person of such increased capital; provided, however, that Lessee shall have no obligation to make any payment to any demanding party under this Subparagraph 2.12(d) on account of any such increased costs relating to any Rental Period that ended more than six (6) months prior to such demanding party's first demand for payment (or, if any increased costs or reduced amounts do not relate to a particular Rental Period, on account of any such increased costs or reduced amounts realized by the demanding party more than six (6) months prior to its first demand for payment). A certificate of Lessor or any Participant setting forth in reasonable detail the computation of any such increased costs, delivered by such Person to Lessee shall constitute prima facie evidence of such costs. The obligations of Lessee

under this Subparagraph 2.12(d) shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

(e) Mitigation. If Lessor or any Participant becomes aware of (i) any Change of Law which will make it unlawful or impossible for such Person to fund or maintain its portion of the Outstanding Lease Amount or any Portion thereof at the LIBOR Rental Rate or (ii) any Change of Law or other event or condition which will obligate Lessee to pay any amount pursuant to Subparagraph 2.12(c) or Subparagraph 2.12(d), such Person shall notify Lessee and Agent thereof as promptly as practical. If any Person has given notice of any such Change of Law or other event or condition and thereafter becomes aware that such Change of Law or other event or condition has ceased to exist, such Person shall notify Lessee and Agent thereof as promptly as practical. Each Person affected by any Change of Law which makes it unlawful or impossible for such Person to fund or maintain its portion of the Outstanding Lease Amount or any Portion thereof at the LIBOR Rental Rate or to which Lessee is obligated to pay any amount pursuant to Subparagraph 2.12(c) or Subparagraph 2.12(d) shall use reasonable commercial efforts (including changing the jurisdiction of its Applicable Participating Office) to avoid the effect of such Change of Law or to avoid or materially reduce any amounts which Lessee is obligated to pay pursuant to Subparagraph 2.12(c) or Subparagraph 2.12(d) if, in the reasonable opinion of such Person, such efforts would not be disadvantageous to such Person.

#### 2.13. Taxes on Payments.

(a) Payments Free of Taxes. All payments made by Lessee under this Agreement and the other Operative Documents shall be made free and clear of, and without deduction or withholding for or on account of, any present or future Indemnified Taxes, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority. If any Indemnified Taxes are required to be withheld from any amounts payable to any Lessor Party hereunder or under the other Operative Documents, the amounts so payable to such Lessor Party shall be increased to the extent necessary to yield to such Lessor Party (after payment of all Indemnified Taxes) the Base Rent or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the other Operative Documents. Whenever any Indemnified Taxes are payable by Lessee, as promptly as possible thereafter, Lessee shall send to Agent for its own account or for the account of Lessor or such Participant, as the case may be, a certified copy of an original official receipt received by Lessee showing payment thereof. If Lessee fails to pay any Indemnified Taxes when due to the appropriate taxing authority or fails to remit to Agent the required receipts or other required documentary evidence, Lessee shall indemnify the Lessor Parties for any incremental taxes, interest or penalties that may become payable by the Lessor Parties as a result of any such failure. The obligations of Lessee under this Subparagraph 2.13(a) shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

(b) Withholding Exemption Certificates. On or prior to the Closing Date or, if such date does not occur within thirty (30) days after the date of this Agreement, by the end of such 30-day period, Lessor, if it is not incorporated under the laws of the United

States of America or a state thereof, and each Participant which is not incorporated under the laws of the United States of America or a state thereof shall deliver to Lessee and Agent two duly completed copies of United States Internal Revenue Service Form 1001 or 4224 (or successor applicable form), as the case may be, certifying in each case that Lessor or such Participant, as the case may be, is entitled to receive payments under this Agreement and the other Operative Documents without deduction or withholding of any United States federal income taxes. Each Person which delivers to Lessee and Agent a Form 1001 or 4224 pursuant to the immediately preceding sentence further undertakes to deliver to Lessee and Agent two further copies of Form 1001 or 4224 (or successor applicable forms), or other manner of certification or procedure, as the case may be, on or before the date that any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to Lessee and Agent, and such extensions or renewals thereof as may reasonably be requested by Lessee or Agent, certifying in the case of a Form 1001 or 4224 that such Person is entitled to receive payments under this Agreement and the other Operative Documents without deduction or withholding of any United States federal income taxes, unless in any such cases an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent Lessor or a Participant from duly completing and delivering any such form with respect to it and Lessor or such Participant advises Lessee and Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

(c) Mitigation. If any Lessor Party claims any additional amounts to be payable to it pursuant to this Paragraph 2.13, such Lessor Party shall use reasonable commercial efforts to file any certificate or document requested in writing by Lessee (including copies of Internal Revenue Service Form 1001 (or successor forms) reflecting a reduced rate of withholding) or to change the jurisdiction of its Applicable Participating Office if the making of such a filing or such change in the jurisdiction of its Applicable Participating Office would avoid the need for or materially reduce the amount of any such additional amounts which may thereafter accrue and if, in the reasonable opinion of a Participant, in the case of a change in the jurisdiction of its Applicable Participating Office, such change would not be disadvantageous to such Person.

(d) Tax Returns. Nothing contained in this Paragraph 2.13 shall require any Lessor Party to make available any of its tax returns (or any other information relating to its taxes which it deems to be confidential).

2.14. Funding Loss Indemnification. If Lessee shall (a) pay all or any portion of the Outstanding Lease Amount or any Portion thereof on any day other than the last day of a Rental Period therefor (whether an optional payment, a mandatory payment or otherwise) or (b) cancel or otherwise fail to consummate any Advance Request which has been delivered to Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise), Lessee shall, upon demand by Lessor or any Participant, reimburse such Person for and hold such Person harmless from all costs and losses incurred by such Person as a result of such payment, cancellation or failure. Lessee understands that such costs and losses may include, without limitation, losses incurred by Lessor or a Participant as a result of funding and other contracts

entered into by such Person to fund its portion of the Outstanding Lease Amount or any Portion thereof. Each Person demanding payment under this Paragraph 2.14 shall deliver to Lessee, with a copy to Agent, a certificate setting forth the amount of costs and losses for which demand is made, which certificate shall set forth in reasonable detail the calculation of the amount demanded. Such a certificate so delivered to Lessee shall constitute prima facie evidence of such costs and losses. The obligations of Lessee under this Paragraph 2.14 shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

2.15. Replacement of Participants. If any Participant shall (a) become a Defaulting Participant more than once, (b) continue as a Defaulting Participant for more than five (5) Business Days at any time, (c) deliver, pursuant to Subparagraph 2.12(b), a notice of a Change of Law which does not affect Majority Participants, (d) demand any payment under Subparagraph 2.12(c), 2.12(d) or 2.13(a) for a reason which is not applicable to Majority Participants, or (e) deny a Lease Extension Request made pursuant to Subparagraph 2.09(b), then Agent may (or upon the written request of Lessee if no Event of Default has occurred and is continuing, shall) replace such Participant (the "affected Participant"), or cause such affected Participant to be replaced, with another financial institution (the "replacement Participant") satisfying the requirements of an Eligible Assignee under Subparagraph 7.05(b), by having the affected Participant sell and assign all of its rights and obligations under this Agreement and the other Operative Documents to the replacement Participant pursuant to Subparagraph 7.05(b); provided, however, that if Lessee seeks to exercise such right, it must do so within sixty (60) days after it first receives notice of the event, condition or demand giving rise to such right, or within thirty (30) days after such notice in the case a denial of a Lease Extension Request, and no Lessor Party shall have any obligation to identify or locate a replacement Participant for Lessee. Upon receipt by any affected Participant of a written notice from Agent stating that Agent is exercising the replacement right set forth in this Paragraph 2.15, such affected Participant shall sell and assign all of its rights and obligations under this Agreement and the other Operative Documents to the replacement Participant pursuant to an Assignment Agreement and Subparagraph 7.05(b) for a purchase price equal to the sum of its portion of the Outstanding Lease Amount or any Portion thereof, the accrued and unpaid portion of the Base Rent relating to such portion and its ratable share of all fees to which it is entitled.

### SECTION 3. CONDITIONS PRECEDENT.

3.01. Initial Acquisition Advance. The obligation of Lessor to make the Initial Acquisition Advance (and the obligations of the Participants to fund their respective Proportionate Shares of the Initial Acquisition Advance) is (are) subject to receipt by Agent, on or prior to the Closing Date, of each item listed in Schedule 3.01, each in form and substance satisfactory to Lessor, Agent and each Participant, and with sufficient copies for, Lessor, Agent and each Participant.

3.02. Tract 2 Acquisition Advance. The obligation of Lessor to make the Tract 2 Acquisition Advance (and the obligations of the Participants to fund their respective Proportionate Shares of the Tract 2 Acquisition Advance) is (are) subject to receipt by Agent, on or prior to the Tract 2 Acquisition Date, of each item listed in Schedule 3.02, each in form and



substance satisfactory to Lessor, Agent and each Participant, and with sufficient copies for, Lessor, Agent and each Participant.

3.03. Improvement/Expense Advances. The obligation of Lessor to make each Improvement/Expense Advance (and the obligations of the Participants to fund their respective Proportionate Shares of such Advance) is (are) subject to (i) satisfaction of the conditions set forth in Paragraph 3.01, (ii) receipt by Agent pursuant to Paragraph 2.03 of the Advance Request for such Advance, appropriately completed and duly executed by Lessee, and (iii) receipt by Agent of date-down endorsements to Agent's and Lessor's title insurance policies or binders acceptable to Agent and Lessor.

3.04. Other Conditions Precedent. The occurrence of each Credit Event (including the making of each Advance by Lessor and the funding of each Advance by the Participants) is subject to the further conditions that, on the date such Credit Event is to occur and after giving effect to such Credit Event, the following shall be true and correct:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing or will result from such Credit Event; and

(c) All of the Operative Documents are in full force and effect.

The submission by Lessee to Lessor and Agent of each Advance Request, each Notice of Rental Period Selection and a Notice of Marketing Option Exercise shall be deemed to be a representation and warranty by Lessee that each of the statements set forth above in this Paragraph 3.03 is true and correct as of the date of such request and notice.

3.05. Covenant to Deliver. Lessee agrees (not as a condition but as a covenant) to deliver to Lessor and Agent each item required to be delivered to Lessor and Agent as a condition to each Advance if such Advance is made. Lessee expressly agrees that the making of any Advance prior to the receipt by Lessor and Agent of any such item shall not constitute a waiver by Lessor, Agent or any Participant of Lessee's obligation to deliver such item, unless expressly waived in writing.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES.

4.01. Lessee's Representations and Warranties. In order to induce the Lessor Parties to enter into this Agreement and the other Operative Documents to which they are parties, Lessee hereby represents and warrants to the Lessor Parties as follows:

(a) Due Incorporation, Qualification, etc. Each of Lessee and Lessee's Subsidiaries (i) is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation; (ii) has the power and authority to own, lease

and operate its properties and carry on its business as now conducted; and (iii) is duly qualified, licensed to do business and in good standing as a foreign corporation in each jurisdiction where the failure to be so qualified or licensed is reasonably likely to have a Material Adverse Effect.

(b) Authority. The execution, delivery and performance by Lessee of each Operative Document executed, or to be executed, by Lessee and the consummation of the transactions contemplated thereby (i) are within the power of Lessee and (ii) have been duly authorized by all necessary actions on the part of Lessee.

(c) Enforceability. Each Operative Document executed, or to be executed, by Lessee has been, or will be, duly executed and delivered by Lessee and constitutes, or will constitute, a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(d) Non-Contravention. The execution and delivery by Lessee of the Operative Documents executed by Lessee and the performance and consummation of the transactions contemplated thereby do not (i) violate any Requirement of Law applicable to Lessee; (ii) violate any provision of, or result in the breach or the acceleration of, or entitle any other Person to accelerate (whether after the giving of notice or lapse of time or both), any Contractual Obligation of Lessee; or (iii) result in the creation or imposition of any Lien (or the obligation to create or impose any Lien) upon any property, asset or revenue of Lessee (except such Liens as may be created in favor of the Lessor Parties pursuant to this Agreement or the other Operative Documents).

(e) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person (including, without limitation, the shareholders of any Person) is required in connection with the execution and delivery of the Operative Documents executed by Lessee and the performance and consummation by Lessee of the transactions contemplated thereby, except such as have been made or obtained and are in full force and effect.

(f) No Violation or Default. Neither Lessee nor any of its Subsidiaries is in violation of or in default with respect to (i) any Requirement of Law applicable to such Person; (ii) any Contractual Obligation of such Person (nor is there any waiver in effect which, if not in effect, would result in such a violation or default), where, in each case, such violation or default is reasonably likely to have a Material Adverse Effect. Without limiting the generality of the foregoing, except as disclosed in the reports and documents described on Schedule 4.01(f) (the "Environmental Reports"), neither Lessee nor any of its Subsidiaries (A) has violated any Environmental Laws, (B) has any liability under any Environmental Laws or (C) has received notice or other communication of an investigation or is under investigation by any Governmental Authority having authority to enforce Environmental Laws, where such violation, liability or investigation is reasonably likely to have a Material Adverse Effect. No Default has occurred and is continuing.

(g) Litigation. Except as set forth (with estimates of the dollar amounts involved) in Schedule 4.01(g), no actions (including, without limitation, derivative actions), suits, proceedings or investigations are pending or, to the knowledge of Lessee, threatened against Lessee or any of its Subsidiaries at law or in equity in any court or before any other Governmental Authority which (i) is reasonably likely (alone or in the aggregate) to have a Material Adverse Effect or (ii) seeks to enjoin, either directly or indirectly, the execution, delivery or performance by Lessee of the Operative Documents or the transactions contemplated thereby.

(h) Title; Possession Under Leases. Lessee and its Subsidiaries own and have good and marketable title, or a valid leasehold interest in, all their respective properties and assets as reflected in the most recent Financial Statements delivered to Agent (except those assets and properties disposed of in the ordinary course of business or otherwise in compliance with this Agreement since the date of such Financial Statements) and all respective assets and properties acquired by Lessee and its Subsidiaries since such date (except those disposed of in the ordinary course of business or otherwise in compliance with this Agreement). Such assets and properties are subject to no Lien, except for Permitted Liens. Each of Lessee and its Subsidiaries has complied with all material obligations under all material leases to which it is a party and all such leases are in full force and effect. Each of Lessee and its Subsidiaries enjoys peaceful and undisturbed possession under such leases.

(i) Financial Statements. The Financial Statements of Lessee and its Subsidiaries which have been delivered to Agent, (i) are in accordance with the books and records of Lessee and its Subsidiaries, which have been maintained in accordance with good business practice; (ii) have been prepared in conformity with GAAP; and (iii) fairly present the financial conditions and results of operations of Lessee and its Subsidiaries as of the date thereof and for the period covered thereby. Neither Lessee nor any of its Subsidiaries has any contingent obligations, liability for taxes or other outstanding obligations which are material in the aggregate, except as disclosed in the audited Financial Statements dated September 30, 1997, furnished by Lessee to Agent prior to the date hereof, or in the Financial Statements delivered to Agent pursuant to clause (i) or (ii) of Subparagraph 5.01.

(j) Equity Securities. All outstanding Equity Securities of Lessee are duly authorized, validly issued, fully paid and non-assessable. All Equity Securities of Lessee have been offered and sold in compliance with all federal and state securities laws and all other Requirements of Law.

(k) No Agreements to Sell Assets; Etc. Except as otherwise permitted by Subparagraph 5.02(c) or Subparagraph 5.02(d), neither Lessee nor any of its Subsidiaries has any legal obligation, absolute or contingent, to any Person to sell the assets of Lessee or any of its Subsidiaries (other than sales in the ordinary course of business), or to effect any merger, consolidation or other reorganization of Lessee or any of its Subsidiaries or to enter into any agreement with respect thereto.

(1) Employee Benefit Plans.

(i) Based upon the latest valuation of each Employee Benefit Plan that either Lessee or any ERISA Affiliate maintains or contributes to, or has any obligation under (which occurred within twelve months of the date of this representation), the current liabilities of such plan within the meaning of ss.302(d)(7) of ERISA did not exceed the aggregate value of the assets of such plan. Neither Lessee nor any ERISA Affiliate has any liability with respect to any post-retirement benefit under any Employee Benefit Plan which is a welfare plan (as defined in section 3(1) of ERISA), other than liability for health plan continuation coverage described in Part 6 of Title I(B) of ERISA, which liability for health plan contribution coverage is not reasonably likely to have a Material Adverse Effect.

(ii) Each Employee Benefit Plan complies, in both form and operation, in all material respects, with its terms, ERISA and the IRC, and no condition exists or event has occurred with respect to any such plan which would result in the incurrence by either Lessee or any ERISA Affiliate of any liability, fine or penalty that is reasonably likely to have a Material Adverse Effect. Each Employee Benefit Plan, related trust agreement, arrangement and commitment of Lessee or any ERISA Affiliate is legally valid and binding and in full force and effect. No Employee Benefit Plan is being audited or investigated by any government agency or is subject to any pending or threatened claim or suit that is reasonably likely to have a Material Adverse Effect. Neither Lessee nor any ERISA Affiliate nor any fiduciary of any Employee Benefit Plan has engaged in a prohibited transaction under section 406 of ERISA or section 4975 of the IRC.

(iii) Neither Lessee nor any ERISA Affiliate contributes to or has any material contingent obligations to any Multiemployer Plan. Neither Lessee nor any ERISA Affiliate has incurred any liability (including secondary liability) to any Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan under Section 4201 of ERISA or as a result of a sale of assets described in Section 4204 of ERISA that is reasonably likely to have a Material Adverse Effect. Neither Lessee nor any ERISA Affiliate has been notified that any Multiemployer Plan is in reorganization or insolvent under and within the meaning of Section 4241 or Section 4245 of ERISA or that any Multiemployer Plan intends to terminate or has been terminated under Section 4041A of ERISA.

(m) Other Regulations. Lessee is not subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code or to any other Governmental Rule limiting its ability to incur indebtedness.

(n) Patent and Other Rights. Lessee and its Subsidiaries own or license under validly existing agreements all patents, licenses, trademarks, trade names, trade secrets, service marks, copyrights and all rights with respect thereto, which are required to conduct their businesses as now conducted.

(o) Governmental Charges and Other Indebtedness. Lessee and its Subsidiaries have filed or caused to be filed all tax returns which are required to be filed by them where failure to file is reasonably likely to have a Material Adverse Effect. Lessee and its Subsidiaries have paid, or made provision for the payment of, all taxes and other Governmental Charges which have or may have become due pursuant to said returns or otherwise and all other indebtedness, except such Governmental Charges or indebtedness, if any, which are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided or which are not reasonably likely to have a Material Adverse Effect if unpaid.

(p) Margin Stock. Lessee owns no Margin Stock which, in the aggregate, would constitute a substantial part of the assets of Lessee, and no proceeds of any Loan will be used to purchase or carry, directly or indirectly, any Margin Stock or to extend credit, directly or indirectly, to any Person for the purpose of purchasing or carrying any Margin Stock.

(q) Subsidiaries, etc. Set forth in Schedule 4.01(q) (as supplemented by Lessee from time to time in a written notice to Agent) is a complete list of all of Lessee's Subsidiaries, the jurisdiction of incorporation of each, the classes of Equity Securities of each and the number of shares and percentages of shares of each such class owned directly or indirectly by Lessee. To the knowledge of Lessee after reasonable investigation, set forth on Schedule 4.01(q) (as supplemented by Lessee from time to time in a written notice to Agent) is a description of each partnership or joint venture in which Lessee is a partner or a venturer. Except as disclosed on Schedule 4.01(q), Lessee has no Subsidiaries, and to the knowledge of Lessee after reasonable investigation Lessee is not a partner in any partnership or a joint venturer in a joint venture.

(r) Catastrophic Events. Neither Lessee nor any of its Subsidiaries and none of their properties is or has been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or other casualty that is reasonably likely to have a Material Adverse Effect. There are no disputes presently subject to grievance procedure, arbitration or litigation under any of the collective bargaining agreements, employment contracts or employee welfare or incentive plans to which Lessee or any of its Subsidiaries is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to the best knowledge of Lessee, jurisdictional disputes or organizing activities occurring or threatened which alone or in the aggregate are reasonably likely to have a Material Adverse Effect.

(s) Burdensome Contractual Obligations, Etc. Neither Lessee nor any of its Subsidiaries and none of their properties is subject to any Contractual Obligation or Requirement of Law which is reasonably likely to have a Material Adverse Effect.

(t) No Material Adverse Effect. No event has occurred and no condition exists which is reasonably likely to have a Material Adverse Effect.

(u) The Property. The representations and warranties relating to each Tract set forth in Parts 1 and 2 of Schedule 4.01(u) are true and correct. The following representations and warranties apply to all Tracts on the Acquisition Date thereof:

(i) All of the Property complies and will comply at all times (whether before commencement of any construction, during any construction or after completion of construction of any New Improvements) with all applicable Governmental Rules (including Title III of the Americans with Disabilities Act; Environmental Laws; and zoning, land use, building, planning and fire laws, rules, regulations and codes) and Insurance Requirements, except for violations which are not reasonably likely to have a Material Adverse Effect. Except as disclosed in the Environmental Reports, (A) no Hazardous Materials have been used, generated, manufactured, stored, treated, disposed of, transported or present on or released or discharged from the Property in any manner that is reasonably likely to have a Material Adverse Effect and (B) there are no claims or actions which are reasonably likely to have a Material Adverse Effect pending or, to Lessee's knowledge, threatened against any of the Property by any Governmental Authority or any other Person relating to Hazardous Materials or pursuant to any Environmental Laws.

(ii) None of the Improvements (whether before commencement of any construction, during any construction or after completion of construction of any New Improvements) encroach or will at any time encroach in any manner onto any adjoining land, except as permitted by express written and recorded encroachment agreements approved by Agent or as affirmatively insured against by appropriate title insurance.

(iii) All licenses, approvals, authorizations, consents, permits, easements and rights-of-way required for the use of any of the Property have been obtained or, if not yet required, will be obtained before required.

(iv) After the Closing Date, Lessor will have good and valid fee interest in the Property, subject to no Liens except for Permitted Property Liens.

(v) Chief Executive Office. Lessee's chief executive office is located at 120 North Redwood Drive, San Rafael, California.

(w) Accuracy of Information Furnished. None of the Operative Documents and none of the other certificates, statements or information furnished to any Lessor Party by or on behalf of Lessee or any of its Subsidiaries in connection with the Operative Documents or the transactions contemplated thereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(x) The Budget attached hereto as Schedule 4.01(x) is based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein

and is consistent with the provisions of the Construction Agreements and the Operative Documents. To the best of Lessee's knowledge, the Budget includes all costs necessary to complete the acquisition of the Property and the construction of the New Improvements.

Lessee shall be deemed to have reaffirmed, for the benefit of the Lessor Parties, each representation and warranty contained in this Paragraph 4.01 on and as of the date of each Credit Event (except for representations and warranties expressly made as of a specified date, which shall be true as of such date).

4.02. Lessor's Representations and Warranties. In order to induce Lessee, Agent and the Participants to enter into this Agreement and the other Operative Documents to which they are parties, Lessor hereby represents and warranties to Lessee, Agent and the Participants as follows:

(a) Due Incorporation, Qualification, etc. Lessor (i) is a corporation duly organized, validly existing and in good standing under the laws of Delaware and (ii) has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) Authority. The execution, delivery and performance by Lessor of each Operative Document executed, or to be executed, by Lessor and the consummation of the transactions contemplated thereby (i) are within the power of Lessor and (ii) have been duly authorized by all necessary actions on the part of Lessor.

(c) Enforceability. Each Operative Document executed, or to be executed, by Lessor has been, or will be, duly executed and delivered by Lessor and constitutes, or will constitute, a legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(d) Non-Contravention. The execution and delivery by Lessor of the Operative Documents executed by Lessor and the performance and consummation of the transactions contemplated thereby do not (i) violate any Requirement of Law applicable to Lessor; (ii) violate any provision of, or result in the breach or the acceleration of, or entitle any other Person to accelerate (whether after the giving of notice or lapse of time or both), any Contractual Obligation of Lessor; or (iii) result in the creation or imposition of any Lien (or the obligation to create or impose any Lien) upon any property, asset or revenue of Lessor (except such Liens as may be created in favor of Agent pursuant to this Agreement or the other Operative Documents).

(e) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person (including, without limitation, the shareholders of any Person) is required in connection with the execution and delivery of the Operative Documents executed by Lessor and the

performance and consummation of the transactions contemplated thereby, except such as have been made or obtained and are in full force and effect.

(f) Litigation. No actions (including, without limitation, derivative actions), suits, proceedings or investigations are pending or, to the knowledge of Lessor, threatened against Lessor at law or in equity in any court or before any other Governmental Authority which (i) is reasonably likely (alone or in the aggregate) to materially and adversely affect the ability of Lessor to perform its obligations under the Operative Documents to which it is a party or (ii) seeks to enjoin, either directly or indirectly, the execution, delivery or performance by Lessor of the Operative Documents or the transactions contemplated thereby.

(g) Other Regulations. Lessor is not subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code or to any other Governmental Rule limiting its ability to incur indebtedness.

(h) Chief Executive Office. Lessor's chief executive office is located at 135 S. LaSalle Street, Suite 660, Chicago, Illinois, 60603.

4.03. Participants' Representations and Warranties. In order to induce Lessee, Lessor and Agent to enter into this Agreement and the other Operative Documents to which they are parties, each Participant hereby represents and warranties to Lessee, Lessor and Agent as follows:

(a) Due Incorporation, Qualification, etc. Such Participant (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and (ii) has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) Authority. The execution, delivery and performance by such Participant of each Operative Document executed, or to be executed, by such Participant and the consummation of the transactions contemplated thereby (i) are within the power of such Participant and (ii) have been duly authorized by all necessary actions on the part of such Participant.

(c) Enforceability. Each Operative Document executed, or to be executed, by such Participant has been, or will be, duly executed and delivered by such Participant and constitutes, or will constitute, a legal, valid and binding obligation of such Participant, enforceable against such Participant in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(d) Non-Contravention. The execution and delivery by such Participant of the Operative Documents executed by such Participant and the performance and consummation of the transactions contemplated thereby do not (i) violate any Requirement of Law applicable to such Participant; (ii) violate any provision of, or result in the breach or the acceleration of, or entitle any other Person to accelerate (whether



after the giving of notice or lapse of time or both), any Contractual Obligation of such Participant; or (iii) result in the creation or imposition of any Lien (or the obligation to create or impose any Lien) upon any property, asset or revenue of such Participant (except such Liens as may be created in favor of Lessor or Agent pursuant to this Agreement or the other Operative Documents).

(e) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person (including, without limitation, the shareholders of any Person) is required in connection with the execution and delivery of the Operative Documents executed by such Participant and the performance and consummation of the transactions contemplated thereby, except such as have been made or obtained and are in full force and effect.

(f) Litigation. No actions (including, without limitation, derivative actions), suits, proceedings or investigations are pending or, to the knowledge of such Participant, threatened against such Participant at law or in equity in any court or before any other Governmental Authority which (i) is reasonably likely (alone or in the aggregate) to materially and adversely affect the ability of such Participant to perform its obligations under the Operative Documents to which it is a party or (ii) seeks to enjoin, either directly or indirectly, the execution, delivery or performance by such Participant of the Operative Documents or the transactions contemplated thereby.

(g) Own Account. Such Participant is acquiring its participation interest hereunder for its own account for investment and not with a view to any distribution (as such term is used in Section 2(11) of the Securities Act of 1933) thereof, and, if in the future it should decide to dispose of its participation interest, it understands that it may do so only in compliance with the Securities Act of 1933 and the rules and regulations of the Securities and Exchange Commission thereunder and any applicable state securities laws.

## SECTION 5. COVENANTS.

5.01. Lessee's Affirmative Covenants. Until the termination of this Agreement and the satisfaction in full by Lessee of all Lessee Obligations, Lessee will comply, and will cause compliance, with the following affirmative covenants, unless Lessor and Required Participants shall otherwise consent in writing:

(a) Financial Statements, Reports, etc. Lessee shall furnish to Agent, with sufficient copies for Lessor and each Participant, the following, each in such form and such detail as Agent, Lessor or the Required Participants shall reasonably request:

(i) As soon as available and in no event later than ninety (90) days after the last day of each fiscal quarter of Lessee (other than the last quarter of each fiscal year), a copy of the Financial Statements of Lessee and its Subsidiaries (prepared on a consolidated basis) for such quarter and for the fiscal year to date, certified by the president or chief financial officer of Lessee to present fairly the financial condition, results of operations and other information reflected therein

and to have been prepared in accordance with GAAP (subject to normal year-end audit adjustments);

(ii) As soon as available and in no event later than one hundred, twenty (120) days after the close of each fiscal year of Lessee, (A) copies of the audited Financial Statements of Lessee and its Subsidiaries (prepared on a consolidated basis) for such year, audited by independent certified public accountants of recognized national standing acceptable to Agent and Required Participants, (B) copies of the unqualified opinions (or qualified opinions reasonably acceptable to Agent and Required Participants) delivered by such accountants in connection with all such Financial Statements and (C) certificates of such accountants to Agent stating that in making the examination necessary for their opinion they have reviewed Paragraph 5.03 and have obtained no knowledge of any violation by Lessee and its Subsidiaries of the covenants set forth therein, or if, in the opinion of such accountants, any such violation has occurred, a statement as to the nature thereof;

(iii) Contemporaneously with the quarterly and year-end Financial Statements required by the foregoing clauses (i) and (ii), a compliance certificate of the president or chief financial officer of Lessee (a "Compliance Certificate") which (A) states that no Default has occurred and is continuing, or, if any such Default has occurred and is continuing, a statement as to the nature thereof and what action Lessee proposes to take with respect thereto and (B) sets forth, for the quarter or year covered by such Financial Statements or as of the last day of such quarter or year (as the case may be), the calculation of the financial ratios and tests provided in Paragraph 5.03;

(iv) As soon as possible and in no event later than five (5) Business Days after any officer of Lessee knows of the occurrence or existence of (A) any Reportable Event under any Employee Benefit Plan or Multiemployer Plan; (B) any actual or threatened litigation, suits, claims or disputes against Lessee or any of its Subsidiaries involving potential monetary damages payable by Lessee or its Subsidiaries of \$20,000,000 or more (alone or in the aggregate), other than any frivolous claim or litigation; (C) any other event or condition which is reasonably likely to have a Material Adverse Effect; or (D) any Default; the statement of the president or chief financial officer of Lessee setting forth details of such event, condition or Default and the action which Lessee proposes to take with respect thereto;

(v) As soon as available and in no event later than five (5) Business Days after they are sent, made available or filed, copies of (A) all registration statements and reports filed by Lessee or any of its Subsidiaries with any securities exchange or the Securities and Exchange Commission (including, without limitation, all 10-Q, 10-K and 8-Q reports); (B) all reports, proxy statements and financial statements sent or made available by Lessee or any of its Subsidiaries to its security holders; and (C) all press releases and other similar public concerning any material developments in the business of Lessee or any of

its Subsidiaries made available by Lessee or any of its Subsidiaries to the public generally;

(vi) As soon as available, the consolidated plan and forecast of Lessee and its Subsidiaries for such fiscal year, including quarterly cash flow projections; and

(vii) Such other instruments, agreements, certificates, opinions, statements, documents and information relating to the operations or condition (financial or otherwise) of Lessee or its Subsidiaries, and compliance by Lessee with the terms of this Agreement and the other Operative Documents as Agent may from time to time reasonably request.

(b) Books and Records. Lessee and its Subsidiaries shall at all times keep proper books of record and account in which full, true and correct entries will be made of their transactions in accordance with GAAP.

(c) Inspections. Lessee and its Subsidiaries shall permit any Person designated by any Participant, upon reasonable notice and during normal business hours, to visit and inspect any of the properties and offices of Lessee and its Subsidiaries, to examine the books and records of Lessee and its Subsidiaries and make copies thereof and to discuss the affairs, finances and business of Lessee and its Subsidiaries with, and to be advised as to the same by, their officers, auditors and accountants, all at such times and intervals as any Participant may reasonably request; provided, however, that, if no Default has occurred and is continuing, Lessee shall not be required to permit more than four (4) such visits for inspection and examination in any fiscal year.

(d) Insurance. In addition to the insurance requirements set forth in the Lease Agreement with respect to the Property, Lessee and its Subsidiaries shall:

(i) Carry and maintain insurance of the types and in the amounts customarily carried from time to time during the term of this Agreement by others engaged in substantially the same business as such Person and operating in the same geographic area as such Person, including, but not limited to, fire, public liability, property damage and worker's compensation;

(ii) Carry and maintain each policy for such insurance with (A) a company which has a general policy holder of A or better and a financial rating of at least 10 from A.M. Best and Company at the time such policy is placed and at the time of each annual renewal thereof or (B) any other insurer which is reasonably satisfactory to Agent; and

(iii) Deliver to Agent from time to time, as Agent may request, schedules setting forth all insurance then in effect.

(e) Governmental Charges and Other Indebtedness. Lessee and its Subsidiaries shall promptly pay and discharge when due (i) all taxes and other Governmental Charges prior to the date upon which penalties accrue thereon, (ii) all

Indebtedness which, if unpaid, could become a Lien upon the property of Lessee or its Subsidiaries and (iii) all other indebtedness which, if unpaid, is reasonably likely to have a Material Adverse Effect, except such Indebtedness as may in good faith be contested or disputed, or for which arrangements for deferred payment have been made, provided that in each such case appropriate reserves are maintained to the reasonable satisfaction of Agent.

(f) Use of Proceeds. Lessee shall not use any part of the proceeds of any Advance, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock or for the purpose of purchasing or carrying or trading in any securities under such circumstances as to involve Lessee or any Lessor Party in a violation of Regulations G, T, U or X issued by the Federal Reserve Board.

(g) General Business Operations. Each of Lessee and its Subsidiaries shall (i) preserve and maintain its corporate existence and all of its rights, privileges and franchises reasonably necessary to the conduct of its business, (ii) conduct its business activities in compliance with all Requirements of Law and Contractual Obligations applicable to such Person, the violation of which is reasonably likely to have a Material Adverse Effect and (iii) keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. Lessee shall maintain its chief executive office and principal place of business in the United States and shall not relocate its chief executive office or principal place of business outside of California except upon not less than ninety (90) days prior written notice to Agent.

(h) Plans and Specifications. As soon as available, Lessee shall deliver to Lessor and Agent a copy of the Plans and Specifications for the New Improvements, together with a certificate of each engineer or architect who drafted a material part of such plans and specifications certifying that such plans and specifications are complete and comply with all applicable laws, and either (i) a revised Expiration Date Appraisal which conforms with such Plans and Specifications or (ii) a certificate from the appraiser who prepared the Expiration Date Appraisal to the effect that such Plans and Specifications do not cause the value of any Sub-Tract to be less than the value of such Sub-Tract as set forth in the Expiration Date Appraisal delivered on the Closing Date.

5.02. Lessee's Negative Covenants. Until the termination of this Agreement and the satisfaction in full by Lessee of all Lessee Obligations, Lessee will comply, and will cause compliance, with the following negative covenants, unless Lessor and Required Participants shall otherwise consent in writing:

(a) Indebtedness. Neither Lessee nor any of its Subsidiaries shall create, incur, assume or permit to exist any Indebtedness or any Guaranty Obligations except for the following ("Permitted Indebtedness"):

(i) The Lessee Obligations under the Operative Documents;

(ii) Indebtedness of Lessee and its Subsidiaries listed in Schedule 5.02(a) and existing on the date of this Agreement;

(iii) Indebtedness of Lessee and its Subsidiaries arising from the endorsement of instruments for collection in the ordinary course of Lessee's or a Subsidiary's business;

(iv) Indebtedness of Lessee and its Subsidiaries for trade accounts payable, provided that (A) such accounts arise in the ordinary course of business and (B) no material part of such account is more than ninety (90) days past due (unless subject to a bona fide dispute and for which adequate reserves have been established);

(v) Indebtedness of Lessee and its Subsidiaries under Rate Contracts, provided that all such arrangements are entered into in connection with bona fide hedging operations and not for speculation;

(vi) Indebtedness of Lessee and its Subsidiaries under purchase money loans and Capital Leases incurred by Lessee or any of its Subsidiaries to finance the acquisition by such Person of real property, fixtures or equipment provided that in each case, (A) such Indebtedness is incurred by such Person at the time of, or not later than ninety (90) days after, the first functional use by such Person of the property so financed and (B) such Indebtedness does not exceed the purchase price of the property so financed;

(vii) Subordinated Indebtedness of Lessee and its Subsidiaries;

(viii) Indebtedness of Lessee and its Subsidiaries under initial or successive refinancings of any Indebtedness permitted by clause (ii) above or under replacements of lines of credit or other credit commitments permitted by clause (ii) above, provided that (A) the principal amount of any such refinancing or replacement does not exceed the principal amount of the Indebtedness being refinanced or commitment being replaced and (B) the material terms and provisions of any such refinancing or replacement (including redemption, prepayment, default and subordination provisions) are not substantially less favorable than the comparable terms of the Indebtedness being refinanced or commitment being replaced, except that the maturity of the new Indebtedness or commitment may be longer;

(ix) Indebtedness of Lessee and its Subsidiaries with respect to Surety Instruments incurred in the ordinary course of business (including surety bonds issued to secure obligations of Lessee and its Subsidiaries in respect of equipment ordered from Lessee and its Subsidiaries);

(x) Guaranty Obligations of Lessee in respect of Permitted Indebtedness of its Subsidiaries and joint ventures described on Schedule 4.01(q);

(xi) Indebtedness of Lessee to any of its Subsidiaries, Indebtedness of any of Lessee's Subsidiaries to Lessee or Indebtedness of any of Lessee's Subsidiaries to any of Lessee's other Subsidiaries, provided that (A) any Indebtedness of Lessee to any of its Subsidiaries and any Indebtedness of any

of Lessee's Subsidiaries to Lessee shall be subject to Subparagraph 5.02(j) and (B) any Indebtedness of Lessee to any of its Subsidiaries is Subordinated Indebtedness;

(xiii) Other Indebtedness of Lessee and its Subsidiaries, provided that the aggregate amount of such other Indebtedness outstanding at any time does not exceed twenty-five percent (25%) of Lessee's Tangible Net Worth on the last day of the immediately preceding fiscal year.

(b) Liens. Neither Lessee nor any of its Subsidiaries shall create, incur, assume or permit to exist any Lien on or with respect to any of its assets or property of any character, whether now owned or hereafter acquired, except for the following ("Permitted Liens"):

(i) Liens in favor of any Lessor Party securing the Lessee Obligations;

(ii) Liens listed in Schedule 5.02(b) and existing on the date of this Agreement;

(iii) Liens for taxes or other Governmental Charges not at the time delinquent or thereafter payable without penalty or being contested in good faith, provided that adequate reserves for the payment thereof have been established in accordance with GAAP;

(iv) Liens of carriers, warehousemen, mechanics, materialmen, vendors, and landlords and other similar Liens imposed by law incurred in the ordinary course of business for sums not overdue or being contested in good faith, provided that adequate reserves for the payment thereof have been established in accordance with GAAP;

(v) Deposits under workers' compensation, unemployment insurance and social security laws or to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or to secure statutory obligations of surety or appeal bonds or to secure indemnity, performance or other similar bonds in the ordinary course of business;

(vi) Zoning restrictions, easements, rights-of-way, title irregularities and other similar encumbrances, which alone or in the aggregate are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of Lessee or any of its Subsidiaries;

(vii) Banker's Liens and similar Liens (including set-off rights) in respect of bank deposits;

(viii) Liens on any property or assets acquired, or on the property or assets of any Persons acquired, by Lessee or any of its Subsidiaries after the date of this Agreement pursuant to Subparagraph 5.02(d), provided that (A) such Liens

exist at the time such property or assets or such Persons are so acquired and (B) such Liens were not created in contemplation of such acquisitions;

(ix) Judgement Liens, provided that such Liens do not have a value in excess of twenty million dollars (\$20,000,000) or such Liens are released, stayed, vacated or otherwise dismissed within thirty (30) days after issue or levy and, if so stayed, such stay is not thereafter removed;

(x) Rights of (A) vendors or lessors under conditional sale agreements, Capital Leases or other title retention agreements, provided that, in each case, (1) such rights secure or otherwise relate to Permitted Indebtedness, (2) such rights do not extend to any property other than property acquired with the proceeds of such Permitted Indebtedness and (3) such rights do not secure any Indebtedness other than such Permitted Indebtedness and (B) lessors under operating leases;

(xi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties and in connection with the importation of goods in the ordinary course of Lessee's and its Subsidiaries' businesses;

(xii) Liens securing Indebtedness which constitutes Permitted Indebtedness under clause (vi) of Subparagraph 5.02(a) provided that, in each case, such Lien (A) covers only those assets, the acquisition of which was financed by such Permitted Indebtedness, and (B) secures only such Permitted Indebtedness;

(xiii) Liens on the property or assets of any Subsidiary of Lessee in favor of Lessee or any other Subsidiary of Lessee;

(xiv) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by the Liens described in clause (ii) or (xii) above, provided that any extension, renewal or replacement Lien (A) is limited to the property covered by the existing Lien and (B) secures Indebtedness which is no greater in amount and has material terms no less favorable to the Participants than the Indebtedness secured by the existing Lien;

(xv) Liens on insurance proceeds in favor of insurance companies with respect to the financing of insurance premiums;

(xvi) Liens in inventory of Lessee and its Subsidiaries in favor of (A) customers of Lessee and its Subsidiaries to secure the obligations of Lessee and its Subsidiaries in respect of equipment ordered from Lessee and its Subsidiaries by such customers or (B) sureties that have issued surety bonds to such customers to secure such obligations, provided that each such Lien (1) covers only (y) the equipment ordered by a customer pursuant to a purchase order which has been delivered to Lessee or one of its Subsidiaries and (z) the parts and other inventory of Lessee and its Subsidiaries which will be used to build such equipment, (2) secures only the obligations of Lessee and its Subsidiaries in respect of such

equipment and (3) terminates upon the delivery of such equipment to such customer or the ultimate purchaser thereof or the return to such customer of such deposit;

(xvii) Permitted Property Liens in the Property; and

(xviii) Other Liens, provided that the aggregate amount of the Indebtedness outstanding at any time and secured by such other Liens does not exceed fifteen percent (15%) of Lessee's Tangible Net Worth on the last day of the immediately preceding fiscal year;

Provided, however, that the foregoing exceptions shall not be construed to permit any Liens, except for Permitted Property Liens, in any of the Property.

(c) Asset Dispositions. Neither Lessee nor any of its Subsidiaries shall sell, lease, transfer or otherwise dispose of all or any part of its assets or property, whether now owned or hereafter acquired, except for the following:

(i) Sales of inventory by Lessee and its Subsidiaries in the ordinary course of their businesses;

(ii) Sales or other dispositions of surplus, damaged, worn or obsolete equipment or inventory;

(iii) Sales or other dispositions of Investments permitted by clause (i) of Subparagraph 5.02(e) for not less than fair market value;

(iv) Sales or assignments of defaulted receivables to a collection agency in the ordinary course of business;

(v) Licenses by Lessee or its Subsidiaries of its patents, copyrights, trademarks, trade names and service marks in the ordinary course of its business provided that, in each case, the terms of the transaction are terms which then would prevail in the market for similar transactions between unaffiliated parties dealing at arm's length;

(vi) Sales or other dispositions of assets and property by Lessee to any of Lessee's Subsidiaries or by any of Lessee's Subsidiaries to Lessee or any of its other Subsidiaries, provided that the terms of any such sales or other dispositions by or to Lessee are terms which are no less favorable to Lessee than would prevail in the market for similar transactions between unaffiliated parties dealing at arm's length;

(vii) Sales, for cash, in the ordinary course of business of accounts receivable of Lessee and its Subsidiaries and certain rights and property of Lessee and its Subsidiaries related to the collection of or constituting proceeds of such accounts receivable, with or without recourse, at a discount rate not to exceed ten percent (10%), provided that the aggregate amount of accounts receivable so sold



by Lessee in any fiscal quarter does not exceed twenty million dollars (\$20,000,000);

(viii) Other sales, leases, transfers and disposals of assets and property, provided that the aggregate value of all such assets and property (based upon the book value of such assets and property) so sold, leased, transferred or otherwise disposed for cash of in any fiscal year does not exceed twenty percent (20%) of Lessee's Tangible Net Worth on the last day of the immediately preceding fiscal year;

Provided, however, that the foregoing exceptions shall not be construed to permit any sales, leases, transfers or other disposals of any of the Property, except as expressly permitted by the Lease Agreement.

(d) Mergers, Acquisitions, Etc. Neither Lessee nor any of its Subsidiaries shall acquire any other Person (whether through merger with such Person, acquisition of such Person as a Subsidiary or otherwise) or all or substantially all of the assets of any other Person, except that Lessee and its Subsidiaries may make any such acquisitions if (i) the aggregate consideration paid by Lessee and its Subsidiaries in cash for all such acquisitions after the date of this Agreement does not exceed \$50,000,000; (ii) the aggregate consideration paid by Lessee and its Subsidiaries in stock for all such acquisitions after the date of this Agreement does not exceed \$75,000,000 (such stock to be valued at the market value thereof at the time paid as consideration); (iii) in any merger involving Lessee, Lessee is the surviving corporation; and (iv) both immediately before and after giving effect to any such acquisition, no Default shall have occurred and be continuing.

(e) Investments. Neither Lessee nor any of its Subsidiaries shall make any Investment except for Investments in the following:

(i) Investments in Cash Equivalents;

(ii) Investments permitted by the investment policy of Lessee set forth in Schedule 5.02(e) or, if any changes to the investment policy of Lessee are hereafter duly approved by the Board of Directors of Lessee, in any subsequent investment policy which is the most recent investment policy delivered by Lessee to Agent with a certificate of Lessee's chief financial officer to the effect that such investment policy has been duly approved by Lessee's Board of Directors and is then in effect;

(iii) Loans and other extensions of credit by Lessee and its Subsidiaries to each other to the extent permitted by clause (xi) of Subparagraph 5.02(a) and other types of Investments by Lessee and its Subsidiaries to each other;

(iv) Investments consisting of loans to employees, officers and directors, provided that the aggregate principal amount of such loans does not exceed \$10,000,000 at any time;

(v) Investments of Lessee and its Subsidiaries in Rate Contracts, provided that all such arrangements are entered into in connection with bona fide hedging operations and not for speculation;

(vi) Investments permitted by Subparagraph 5.02(d);  
and

(vii) Money market mutual funds registered with the Securities and Exchange Commission, meeting the requirement of Rule 2a-7 promulgated under the Investment Company Act of 1940

(viii) Other Investments, provided that the aggregate amount of such other Investments plus the aggregate cost of all mergers and consolidations consummated, Subsidiaries established and Subsidiaries and assets acquired by Lessee pursuant to Subparagraph 5.02(d) does not exceed in any fiscal year (A) \$50,000,000 for any amounts paid in cash and (B) \$75,000,000 for any amounts paid with shares of common stock of Lessee (as determined according to the stock price of such shares on the date of transfer) and accounted for on a pooling basis in accordance with GAAP.

(f) Dividends, Redemptions, Etc. Neither Lessee nor any of its Subsidiaries shall pay any dividends or make any distributions on its Equity Securities; purchase, redeem, retire, defease or otherwise acquire for value any of its Equity Securities; return any capital to any holder of its Equity Securities as such; make any distribution of assets, Equity Securities, obligations or securities to any holder of its Equity Securities as such; or set apart any sum for any such purpose; except as follows:

(i) Either Lessee or any of its Subsidiaries may pay dividends on its capital stock payable solely in such Person's own capital stock;

(ii) Any Subsidiary of Lessee may pay dividends to Lessee;

(iii) Lessee may repurchase its Equity Securities, provided that the cost of any such repurchase, when added to the aggregate cost of all other repurchases made pursuant to this clause (iii) since the date of this Agreement, does not exceed five percent (5%) of Lessee's Tangible Net Worth on the last day of the immediately preceding fiscal year; and

(iv) Lessee may pay dividends in cash in any fiscal year in an aggregate amount of not more than three percent of Lessee's Tangible Net Worth on the last day of the immediately preceding fiscal year.

(g) Change in Business. Neither Lessee nor any of its Subsidiaries shall engage, either directly or indirectly through Affiliates, in any business other than the business of providing technology based services and solutions, data processing services, data analysis services or related services.

(h) Indebtedness Payments, Etc. Neither Lessee nor any of its Subsidiaries shall (i) prepay, redeem, purchase, defease or otherwise satisfy in any manner prior to the

scheduled payment thereof any Subordinated Indebtedness or (ii) amend, modify or otherwise change any of the subordination or other provisions of any document, instrument or agreement evidencing Subordinated Indebtedness in a manner which adversely affects the material rights of the Lessor Parties.

(i) ERISA. Neither Lessee nor any ERISA Affiliate shall (i) adopt or institute any Employee Benefit Plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA, (ii) take any action which will result in the partial or complete withdrawal, within the meanings of sections 4203 and 4205 of ERISA, from a Multiemployer Plan, (iii) engage or permit any Person to engage in any transaction prohibited by section 406 of ERISA or section 4975 of the IRC involving any Employee Benefit Plan or Multiemployer Plan which would subject either Lessee or any ERISA Affiliate to any tax, penalty or other liability including a liability to indemnify, (iv) incur or allow to exist any accumulated funding deficiency (within the meaning of section 412 of the IRC or section 302 of ERISA), (v) fail to make full payment when due of all amounts due as contributions to any Employee Benefit Plan or Multiemployer Plan, (vi) fail to comply with the requirements of section 4980B of the IRC or Part 6 of Title I(B) of ERISA, or (vii) adopt any amendment to any Employee Benefit Plan which would require the posting of security pursuant to section 401(a)(29) of the IRC, where singly or cumulatively, the above would have a Material Adverse Effect.

(j) Transactions With Affiliates. Neither Lessee nor any of its Subsidiaries shall enter into any Contractual Obligation with any Affiliate or engage in any other transaction with any Affiliate except upon terms at least as favorable to Lessee or such Subsidiary as an arms-length transaction with unaffiliated Persons.

(k) Accounting Changes. Neither Lessee nor any of its Subsidiaries shall (i) change its fiscal year (currently October 1 through September 30) or (ii) except as required by GAAP, change its accounting practices in any manner which would affect Lessee's compliance with Paragraph 5.03.

(l) Capital Expenditures. Lessee and its Subsidiaries shall not pay or incur Capital Expenditures which exceed in aggregate in any fiscal year \$50,000,000.

5.03. Lessee's Financial Covenants. Until the termination of this Agreement and the satisfaction in full by Lessee of all Lessee Obligations, Lessee will comply, and will cause compliance, with the following financial covenants, unless Lessor and Required Participants shall otherwise consent in writing:

(a) Tangible Net Worth. Lessee shall not permit its Tangible Net Worth on the last day of any fiscal quarter (such date to be referred to herein as a "determination date") which occurs after December 31, 1997 (such date to be referred to herein as the "base date") to be less than the sum on such determination date of the following:

(i) Eighty-five percent (85%) of the Tangible Net Worth of Lessee and its Subsidiaries on the base date;

plus

41

(ii) Seventy-five percent (75%) of the sum of Lessee's consolidated quarterly net income (ignoring any quarterly losses, except as otherwise provided in clause (iii) below) for each fiscal quarter after the base date through and including the fiscal quarter ending on the determination date;

minus

(iii) the sum of Lessee's consolidated quarterly "in-process R & D loss" for each fiscal quarter after the base date through and including the fiscal quarter ending on the determination date;

plus

(iv) One hundred percent (100%) of the Net Proceeds of all Equity Securities issued by Lessee and its Subsidiaries (to Persons other than Lessee or its Subsidiaries) during the period commencing on the base date and ending on the determination date; and

As used in this Subparagraph 5.03(a), "in-process R & D loss" shall mean, with respect to any fiscal quarter in which Lessee experiences a consolidated net loss, the lesser of (A) the amount of such net loss and (B) the sum of all in-process research and development charges, determined on a consolidated basis in accordance with GAAP, taken by Lessee and its Subsidiaries during such quarter.

(b) Leverage Ratio. Lessee shall not permit its Leverage Ratio to be greater than 1.15 to 1.00 at any time.

(c) Quick Ratio. Lessee shall not permit its Quick Ratio on the last day of any fiscal quarter to be less than (i) 1.00 to 1.00 for each fiscal quarter ending on June 30, 1998 and September 30, 1998 and (ii) 1.25 to 1.00 for each fiscal quarter thereafter.

(d) Fixed Charge Coverage Ratio. Lessee shall not permit its Fixed Charge Coverage Ratio for any consecutive four-quarter period to be less than 2.00 to 1.00.

5.04. Lessor's Covenants. Until the termination of this Agreement and the satisfaction in full by Lessor of all Lessor Obligations, Lessor will comply, and will cause compliance, with the following covenants, unless Lessee and Required Participants shall otherwise consent in writing:

(a) Use of Proceeds. Lessor shall use the proceeds of all amounts delivered to Lessor by Participants pursuant to Subparagraph 2.05(a) solely to fund Advances.

(b) Lessor Liens. Lessor shall not create, incur, assume or permit to exist any Lessor Lien (other than any Lien granted to Agent or any Participant pursuant to the Operative Documents to secure the Lessor Obligations) and shall promptly discharge, at its sole cost and expense, any Lessor Lien on the Property (other than any Liens granted to Agent or any Participant pursuant to the Operative Documents to secure the Lessor Obligations); provided, however, that Lessor shall not be required so to discharge any

such Lessor Lien if the same is being (or promptly will be) contested in good faith by appropriate proceedings diligently prosecuted, provided that any such contest is completed and all Lessor Liens are discharged on or prior to the Expiration Date.

(c) Property Disposition. Lessor shall not sell, lease, transfer or otherwise dispose of its right, title and interest in the Property and the Operative Documents except as provided in Subparagraph 2.11(b) or Subparagraph 7.05(d) hereof or in the Purchase Agreement or after retaining the Property following the Expiration Date.

(d) Chief Executive Office. Lessor shall not change its chief executive office without giving Agent prompt written notice.

5.05. Participants' Covenants. Each Participant covenants that it will not fund its portion of any Advance with the assets of any "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any "plan" (as defined in Section 4975(e)(1) of the IRC.

## SECTION 6. LESSOR, AGENT AND THEIR RELATIONS WITH PARTICIPANTS.

6.01. Appointment of Agent. Each Participant hereby appoints and authorizes Agent to act as its agent hereunder and under the other Operative Documents with such powers as are expressly delegated to Agent by the terms of this Agreement and the other Operative Documents, together with such other powers as are reasonably incidental thereto. Lessor is not an agent for the Participants or Agent, and neither this Agreement nor any other Operative Document shall be construed to constitute or evidence a partnership among the Lessor Parties or otherwise to impose upon Lessor or Agent any fiduciary duty.

6.02. Powers and Immunities. Neither Lessor nor Agent shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Operative Document, be a trustee for any Participant or have any fiduciary duty to any Participant. Notwithstanding anything to the contrary contained herein, neither Lessor nor Agent shall be required to take any action which is contrary to this Agreement or any other Operative Document or any applicable Governmental Rule. Neither Lessor nor Agent nor any Participant shall be responsible to any Participant for any recitals, statements, representations or warranties made by Lessee or any of its Subsidiaries contained in this Agreement or in any other Operative Document, for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Operative Document or for any failure by Lessee or any of its Subsidiaries to perform their respective obligations hereunder or thereunder. Lessor and Agent may employ agents and attorneys-in-fact and shall not be responsible to any Participant for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither Lessor nor Agent nor any of their respective directors, officers, employees, agents or advisors shall be responsible to any Participant for any action taken or omitted to be taken by it or them hereunder or under any other Operative Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Except as otherwise provided under this Agreement, Lessor and Agent shall take such action with respect to the Operative Documents as shall be directed by the Required Participants.

6.03. Reliance. Lessor or Agent shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile or telex) believed by it in good faith to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Lessor or Agent with reasonable care. As to any other matters not expressly provided for by this Agreement, neither Lessor nor Agent shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Participants and shall in all cases be fully protected by the Participants in acting, or in refraining from acting, hereunder or under any other Operative Document in accordance with the instructions of the Required Participants, and such instructions of the Required Participants and any action taken or failure to act pursuant thereto shall be binding on all of the Participants.

6.04. Defaults. Neither Lessor nor Agent shall be deemed to have knowledge or notice of the occurrence of any Default unless Lessor and Agent have received a written notice from a Participant or Lessee, referring to this Agreement, describing such Default and stating that such notice is a "Notice of Default". If Lessor and Agent receive such a notice of the occurrence of a Default, Agent shall give prompt notice thereof to the Participants. Lessor and Agent shall take such action with respect to such Default as shall be reasonably directed by the Required Participants; provided, however, that until Lessor and Agent shall have received such directions, Lessor or Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Participants.

6.05. Indemnification. Without limiting the Obligations of Lessee hereunder, each Participant agrees to indemnify Lessor and Agent, ratably in accordance with such Participant's Proportionate Share, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against Lessor or Agent in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof; provided, however, that no Participant shall be liable for any of the foregoing to the extent they arise from Lessor's or Agent's gross negligence or willful misconduct. Lessor or Agent shall be fully justified in refusing to take or in continuing to take any action hereunder unless it shall first be indemnified to its satisfaction by the Participants 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 obligations of each Participant under this Paragraph 6.05 shall survive the payment and performance of the Lessee Obligations, the termination of this Agreement and any Participant ceasing to be a party to this Agreement (with respect to events which occurred prior to the time such Participant ceased to be a Participant hereunder).

6.06. Non-Reliance. Each Participant represents that it has, independently and without reliance on Lessor, Agent, or any other Participant, and based on such documents and information as it has deemed appropriate, made its own appraisal of the business, prospects, management, financial condition and affairs of Lessee and the Subsidiaries and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon Lessor, Agent or any other Participant, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not

taking action under this Agreement or any other Operative Document. Neither Lessor nor Agent nor any of their respective affiliates nor any of their respective directors, officers, employees, agents or advisors shall (a) be required to keep any Participant informed as to the performance or observance by Lessee or any of its Subsidiaries of the obligations under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of Lessee or any of its Subsidiaries; (b) have any duty or responsibility to provide any Participant with any credit or other information concerning Lessee or any of its Subsidiaries which may come into the possession of Lessor or Agent, except for notices, reports and other documents and information expressly required to be furnished to the Participants by Lessor or Agent hereunder; or (c) be responsible to any Participant for (i) any recital, statement, representation or warranty made by Lessee or any officer, employee or agent of Lessee in this Agreement or in any of the other Operative Documents, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any Operative Document, (iii) the value or sufficiency of the Property or the validity or perfection of any of the liens or security interests intended to be created by the Operative Documents, or (iv) any failure by Lessee to perform its obligations under this Agreement or any other Operative Document.

6.07. Resignation or Removal of Agent. Agent may resign at any time by giving thirty (30) days prior written notice thereof to Lessee and the Participants, and Agent may be removed at any time with or without cause by the Required Participants. Upon any such resignation or removal, the Required Participants shall have the right to appoint a successor Agent, which Agent, if not a Participant, shall be reasonably acceptable to Lessee; provided, however, that Lessee shall have no right to approve a successor Agent if a Default has occurred and is continuing. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from the duties and obligations thereafter arising hereunder. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Section VI and any other provision of this Agreement or any other Operative Document which by its terms survives the termination of this Agreement shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

6.08. Authorization. Agent is hereby authorized by the Participants to execute, deliver and perform, each of the Operative Documents to which Agent is or is intended to be a party and each Participant agrees to be bound by all of the agreements of Agent contained in the Operative Documents.

6.09. Lessor and Agent in their Individual Capacities. Lessor, Agent and their respective affiliates may make loans to, accept deposits from and generally engage in any kind of banking or other business with Lessee and its Subsidiaries and affiliates as though Lessor were not Lessor hereunder and Agent were not Agent hereunder. With respect to Advances, if any, made by Agent in its capacity as a Participant, Agent in its capacity as a Participant shall have the same rights and powers under this Agreement and the other Operative Documents as any other Participant and may exercise the same as though it were not Agent, and the terms "Participant" or "Participants" shall include Agent in its capacity as a Participant.

SECTION 7. MISCELLANEOUS

7.01. Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Lessor, Lessee, any Participant or Agent under this Agreement or the other Operative Documents shall be in writing and faxed, mailed or delivered, if to Lessor, Lessee or Agent, at its respective facsimile number or address set forth below or, if to any Participant, at the address or facsimile number specified beneath the heading "Address for Notices" under the name of such Participant in Part B of Schedule I (or to such other facsimile number or address for any party as indicated in any notice given by that party to the other parties). All such notices and communications shall be effective (a) when sent by Federal Express or other overnight service of recognized standing, on the Business Day following the deposit with such service; (b) when mailed, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery; and (d) when faxed, upon confirmation of receipt; provided, however, that any Advance Request, Notice of Rental Period Selection, Extension Request, Notice of Term Purchase Option Exercise, Notice of Marketing Option Exercise or Notice of Expiration Date Purchase Option Exercise delivered to Lessor or Agent shall not be effective until received by Lessor or Agent.



Lessee: Fair, Isaac and Company, Inc.  
120 North Redwood Drive  
San Rafael, CA 94903-1996  
Attn: Peter L. McCorkell, General Counsel  
Tel. No: (415) 472-2211  
Fax. No: (415) 444-5029

With copies to:

Fair, Isaac and Company, Inc.  
120 North Redwood Drive  
San Rafael, CA 94903-1996  
Attn: Chief Financial Officer  
Tel. No: (415) 472-2211  
Fax. No: (415) 444-5069

Fair, Isaac and Company, Inc.  
120 North Redwood Drive  
San Rafael, CA 94903-1996  
Attn: Treasurer  
Tel. No: (415) 472-2211  
Fax. No: (415) 444-5069

Lessor: Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
135 South LaSalle Street, Suite 660  
Chicago, IL 60603  
Attn: David M. Shipley  
Tel. No: (312) 904-2183  
Fax. No: (312) 904-6217

Agent: ABN AMRO Bank N.V.  
Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman  
Tel. No: (212) 314-1724  
Fax. No: (212) 314-1712

With a copy to:

ABN AMRO Bank N.V.  
101 California Street, Suite 4550  
San Francisco, CA 94111-5812  
Attn: Jamie Dillon  
Tel. No: (415) 984-3750

Each Advance Request, Notice of Rental Period Selection, Extension Request, Notice of Term Purchase Option Exercise, Notice of Marketing Option Exercise and Notice of Expiration Date Purchase Option Exercise shall be given by Lessee to Agent's office located at its address referred to above during its normal business hours; provided, however, that any such notice received by Agent after 10:00 a.m. on any Business Day shall be deemed received by Agent on the next Business Day. In any case where this Agreement authorizes notices, requests, demands or other communications by Lessee to any Lessor Party to be made by telephone or facsimile, any Lessor Party may conclusively presume that anyone purporting to be a person designated in any incumbency certificate or other similar document received by such Lessor Party is such a person.

7.02. Expenses. Lessee shall pay on demand, whether or not any Advance is made hereunder, (a) all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Lessor and Agent in connection with the preparation, negotiation, execution and delivery of, the consummation of the transactions contemplated by and the exercise of their duties under, this Agreement and the other Operative Documents, and the preparation, negotiation, execution and delivery of amendments and waivers hereunder and thereunder and (b) all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by the Lessor Parties in the enforcement or attempted enforcement of any of the Lessee Obligations or in preserving any of the Lessor Parties' rights and remedies (including all such fees and expenses incurred in connection with any "workout" or restructuring affecting the Operative Documents or the Lessee Obligations or any bankruptcy or similar proceeding involving Lessee or any of its Subsidiaries). As used herein, the term "reasonable attorneys' fees and expenses" shall include, without limitation, allocable costs and expenses of Agent's and Participants' in-house legal counsel and staff. The obligations of Lessee under this Paragraph 7.02 shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

7.03. Indemnification. To the fullest extent permitted by law, Lessee agrees to protect, indemnify, defend and hold harmless, on an after-tax basis, the Lessor Parties and the other Indemnitees from and against any and all liabilities, losses, damages or expenses of any kind or nature (including Indemnified Taxes) and from any suits, claims or demands (including in respect of or for reasonable attorney's fees and other expenses) arising on account of or in connection with any matter or thing or action or failure to act by Indemnitees, or any of them, arising out of or relating to the Operative Documents, any transaction contemplated thereby or the Property, including any use by Lessee of the Property or the Advances, except to the extent such liability arises from the willful misconduct or gross negligence of such Indemnitee. Upon receiving knowledge of any suit, claim or demand asserted by a third party that any Lessor Party believes is covered by this indemnity, such Lessor Party shall give Lessee notice of the matter and an opportunity to defend it, at Lessee's sole cost and expense, with legal counsel reasonably satisfactory to such Lessor Party. Such Lessor Parties may also require Lessee to defend the matter. Any failure or delay of any Lessor Party to notify Lessee of any such suit, claim or demand shall not relieve Lessee of its obligations under this Paragraph 7.03 but shall reduce such obligations to the extent of any increase in those obligations caused solely by any such failure or

delay that is unreasonable. The obligations of Lessee under this Paragraph 7.03 shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

7.04. Waivers; Amendments. Any term, covenant, agreement or condition of this Agreement or any other Operative Document may be amended or waived if such amendment or waiver is in writing and is signed by Lessor, Lessee and the Required Participants; provided, however that:

(a) Any amendment, waiver or consent which (i) increases the 364-Day Commitment, Thirty-Month Commitment or Total Commitment, (ii) extends the Scheduled Expiration Date, (iii) reduces the Rental Rate or any fees or other amounts payable for the account of the Participants hereunder, (iv) postpones any date scheduled for any payment of Base Rent or any fees or other amounts payable for the account of the Participants hereunder or thereunder, (v) amends Paragraph 2.06 or this Paragraph 7.04, (vi) amends the definition of Required Participants or (vii) releases Lessor's interest in any substantial part of the Property, must be in writing and signed or approved in writing by all Participants;

(b) Any amendment, waiver or consent which increases or decreases the Proportionate Share of any Participant must be in writing and signed by such Participant; and

(c) Any amendment, waiver or consent which affects the rights or obligations of Agent must be in writing and signed by Agent.

No failure or delay by any Lessor Party in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

7.05. Successors and Assigns.

(a) Binding Effect. This Agreement and the other Operative Documents shall be binding upon and inure to the benefit of Lessee, Lessor, the Participants, Agent and their respective permitted successors and assigns. All references in this Agreement to any Person shall be deemed to include all successors and assigns of such Person.

(b) Participant Assignments.

(i) Any Participant may, at any time, sell and assign to any other Participant or any Eligible Assignee (individually, an "Assignee Participant") all or a portion of its rights and obligations under this Agreement and the other Operative Documents (such a sale and assignment to be referred to herein as an "Assignment") pursuant to an assignment agreement in the form of Exhibit M (an "Assignment Agreement"), executed by each Assignee Participant and such assignor Participant (an "Assignor Participant") and delivered to Agent for its acceptance and recording in the Register; provided, however, that:

(A) Without the written consent of Lessor, Agent and, if no Default has occurred and is continuing, Lessee (which consent of Lessor, Agent and Lessee shall not be unreasonably withheld), no Participant may make any Assignment to any Assignee Participant which is not, immediately prior to such Assignment, a Participant hereunder or an Affiliate thereof; or

(B) Without the written consent of Lessor, Agent and, if no Default has occurred and is continuing, Lessee (which consent of Lessor, Agent and Lessee shall not be unreasonably withheld), no Participant may make any Assignment to any Assignee Participant if, after giving effect to such Assignment, the Commitment of such Participant or such Assignee Participant would be less than Five Million Dollars (\$5,000,000) (except that a Participant may make an Assignment which reduces its Commitment to zero without the written consent of Lessor, Agent or Lessee); or

(C) Without the written consent of Lessor, Agent and, if no Default has occurred and is continuing, Lessee (which consent of Lessor, Agent and Lessee shall not be unreasonably withheld), no Participant may make any Assignment of its Outstanding Tranche A Participation Amount or its Outstanding Tranche B Participation Amount which does not assign and delegate an equal pro rata interest in (1) such Participant's Outstanding Tranche A Participation Amount and its Outstanding Tranche B Participation Amount, (2) such Participant's Tranche A Percentage and its Tranche B Percentage, and (3) such Participant's other rights, duties and obligations relating to the Tranche A Portion and the Tranche B Portion under this Agreement and the other Operative Documents.

(D) Without the written consent of Lessor, Agent and, if no Default has occurred and is continuing, Lessee (which consent of Lessor, Agent and Lessee shall not be unreasonably withheld), no Tranche C Participant may make any Assignment of its Outstanding Tranche C Participation Amount which does not assign and delegate an equal pro rata interest in (1) such Participant's Outstanding Tranche C Participation Amount, (2) such Participant's Tranche C Percentage, and (3) such Participant's other rights, duties and obligations relating to the Tranche C Portion under this Agreement and the other Operative Documents.

Upon such execution, delivery, acceptance and recording of each Assignment Agreement, from and after the Assignment Effective Date determined pursuant to such Assignment Agreement, (y) each Assignee Participant thereunder shall be a Participant hereunder with a Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share as set forth on Attachment 1 to such Assignment Agreement (under the caption "Tranche Percentages and Proportionate Shares After Assignment") and shall have the rights, duties and obligations of such a Participant under this Agreement and the other Operative

Documents, and (z) the Assignor Participant thereunder shall be a Participant with a Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share as set forth on Attachment 1 to such Assignment Agreement (under the caption "Tranche Percentages and Proportionate Shares After Assignment"), or, if the Proportionate Share of the Assignor Participant has been reduced to 0%, the Assignor Participant shall cease to be a Participant and to have any obligation to fund any portion of any Advance; provided, however, that any such Assignor Participant which ceases to be a Participant shall continue to be entitled to the benefits of any provision of this Agreement which by its terms survives the termination of this Agreement. Each Assignment Agreement shall be deemed to amend Schedule I to the extent, and only to the extent, necessary to reflect the addition of each Assignee Participant, the deletion of each Assignor Participant which reduces its Proportionate Share to 0% and the resulting adjustment of Tranche A Percentages, Tranche B Percentages, Tranche C Percentages and Proportionate Shares arising from the purchase by each Assignee Participant of all or a portion of the rights and obligations of an Assignor Participant under this Agreement and the other Operative Documents. Each Assignee Participant which was not previously a Participant hereunder and which is not incorporated under the laws of the United States of America or a state thereof shall, within three (3) Business Days of becoming a Participant, deliver to Lessee and Agent two duly completed copies of United States Internal Revenue Service Form 1001 or 4224 (or successor applicable form), as the case may be, certifying in each case that such Participant is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes.

(ii) Agent shall maintain at its address referred to in Paragraph 7.01 a copy of each Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Participants and the Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share of each Participant from time to time. The entries in the Register shall be conclusive in the absence of manifest error, and Lessee, Agent and the Participants may treat each Person whose name is recorded in the Register as the owner of the interests recorded therein for all purposes of this Agreement. The Register shall be available for inspection by Lessee or any Participant at any reasonable time and from time to time upon reasonable prior notice.

(iii) Upon its receipt of an Assignment Agreement executed by an Assignor Participant and an Assignee Participant (and, to the extent required by clause (i) of this Subparagraph 7.05(b), by Lessor, Agent and Lessee), together with payment to Agent by Assignor Participant of a registration and processing fee of \$2,500, Agent shall (A) promptly accept such Assignment Agreement and (B) on the Assignment Effective Date determined pursuant thereto record the information contained therein in the Register and give notice of such acceptance and recordation to Lessor, the Participants and Lessee. Agent may, from time to time at its election, prepare and deliver to Lessor, the Participants and Lessee a

revised Schedule I reflecting the names, addresses and respective Proportionate Shares of all Participants then parties hereto.

(iv) Subject to Subparagraph 7.13(g), the Lessor Parties may disclose the Operative Documents and any financial or other information relating to Lessee or any Subsidiary to each other or to any potential Assignee Participant.

(c) Participant Subparticipations. Any Participant may at any time sell to one or more banks or other financial institutions ("Subparticipants") subparticipation interests in the rights and interests of such Participant under this Agreement and the other Operative Documents. In the event of any such sale by a Participant of subparticipation interests, such Participant's obligations under this Agreement and the other Operative Documents shall remain unchanged, such Participant shall remain solely responsible for the performance thereof and Lessee and the other Lessor Parties shall continue to deal solely and directly with such Participant in connection with such Participant's rights and obligations under this Agreement. Any agreement pursuant to which any such sale is effected may require the selling Participant to obtain the consent of the Subparticipant in order for such Participant to agree in writing to any amendment, waiver or consent of a type specified in clause (i), (ii), (iii) or (iv) of Subparagraph 7.04(a) but may not otherwise require the selling Participant to obtain the consent of such Subparticipant to any other amendment, waiver or consent hereunder. Lessee agrees that any Participant which has transferred any subparticipation interest shall, notwithstanding any such transfer, be entitled to the full benefits accorded such Participant under Paragraph 2.12, Paragraph 2.13, and Paragraph 2.14, as if such Participant had not made such transfer.

(d) Lessor Assignments. Lessor may, upon one (1) month's prior written notice to Lessee and Agent, sell and assign all of its right, title and interest in the Property and its rights, powers, privileges, duties and obligations under this Agreement and the other Operative Documents, provided that:

(i) If such sale and assignment is effected after either (A) the occurrence of a Change of Law which makes it unlawful or unreasonably burdensome for Lessor to hold legal or beneficial title to the Property or to perform its obligations and duties under this Agreement and the other Operative Documents or (B) the resignation or removal of the Agent which was the Agent at the time Lessor became the Lessor, the purchaser/assignee (the "successor Lessor") shall be either (1) a Participant or an Eligible Assignee that will not cause the transaction evidenced by this Agreement and the other Operative Documents to lose its treatment as an operating lease under FASB 13 or (2) a Person approved as provided in clause (ii) below; or

(ii) If such sale and assignment is effected in any other circumstance, the successor Lessor shall be a Person that is (A) a financial institution or a Person controlled by a financial institution and (B) approved in writing by Agent, Required Participants and, if no Default has occurred and is continuing, Lessee (which consents of Agent, Required Participants and Lessee shall not be unreasonably withheld); and

(iii) The successor Lessor executes such documents, instruments and agreements as may reasonably be necessary to evidence its agreement to assume all of the obligations and duties of the Lessor under this Agreement and the other Operative Documents.

Upon the consummation of any such sale and assignment, (A) the successor Lessor shall become the "Lessor" and shall succeed to and become vested with all the rights, powers, privileges, duties and obligations of the Lessor under this Agreement and the other Operative Documents and (B) the retiring Lessor shall be discharged from the duties and obligations of the Lessor thereafter arising under this Agreement and the other Operative Documents. After any retiring Lessor's discharge as the Lessor, the provisions of Section VI and any other provision of this Agreement or any other Operative Document which by its terms survives the termination of this Agreement shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Lessor.

7.06. Setoff. In addition to any rights and remedies of the Participants provided by law, each Participant shall have the right, with the prior written consent of Agent, but without prior notice to or consent of Lessee, any such notice and consent being expressly waived by Lessee to the extent permitted by applicable law, upon the occurrence and during the continuance of an Event of Default, to set-off and apply against the Lessee Obligations, whether matured or unmatured, any amount owing from such Participant to Lessee, at or at any time after, the occurrence of such Event of Default. The aforesaid right of set-off may be exercised by such Participant against Lessee or against any trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, receiver or execution, judgment or attachment creditor of Lessee or against anyone else claiming through or against Lessee or such trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of set-off shall not have been exercised by such Participant prior to the occurrence of an Event of Default. Each Participant agrees promptly to notify Lessee after any such set-off and application made by such Participant, provided that the failure to give such notice shall not affect the validity of such set-off and application.

7.07. No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the parties hereto and their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

7.08. Partial Invalidity. If at any time any provision of this Agreement or any other Operative Document is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement or the other Operative Documents nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

7.09. JURY TRIAL. EACH OF LESSEE AND THE LESSOR PARTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY

WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING TO THE OPERATIVE DOCUMENTS IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY OPERATIVE DOCUMENT.

7.10. Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

7.11. No Joint Venture, Etc. Neither this Agreement nor any other Operative Document nor any transaction contemplated hereby or thereby shall be construed to (a) constitute a partnership or joint venture between Lessee and any Lessor Party or (b) impose upon any Lessor Party any agency relationship with or fiduciary duty to Lessee.

7.12. Usury Savings Clause. Nothing contained in this Agreement or any other Operative Documents shall be deemed to require the payment of interest or other charges by Lessee in excess of the amount the applicable Lessor Parties may lawfully charge under applicable usury laws. In the event any Lessor Party shall collect monies which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute excess interest shall, upon such determination, at the option of Lessor, be returned to Lessee or credited against other Lessee Obligations.

7.13. Confidentiality. No Lessor Party shall disclose to any Person any information with respect to Lessee or any of its Subsidiaries which is furnished pursuant to this Agreement or under the other Operative Documents, except that any Lessor Party may disclose any such information (a) to its own directors, officers, employees, auditors, counsel and other advisors and to its Affiliates to the extent reasonably determined by such Lessor Party to be necessary for the administration or enforcement of the Operative Documents; (b) to any other Lessor Party; (c) which is otherwise available to the public; (d) if required or appropriate in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over such Lessor Party; (e) if required in response to any summons or subpoena; (f) in connection with any litigation among the parties relating to the Operative Documents or the transactions contemplated thereby; (g) to comply with any Requirement of Law applicable to such Lessor Party; (h) to any Assignee Participant or Subparticipant or any prospective Assignee Participant or Subparticipant, provided that such Assignee Participant or Subparticipant or prospective Assignee Participant or Subparticipant agrees to be bound by this Paragraph 7.13; or (i) otherwise with the prior consent of Lessee; provided, however, that (i) any Lessor Party served with any summons or subpoena demanding the disclosure of any such information shall use reasonable efforts to notify Lessee promptly of such summons or subpoena and, if requested by Lessee and not materially disadvantageous to such Lessor Party, to cooperate with Lessee in obtaining a protective order restricting such disclosure, and (ii) any disclosure made in violation of this Agreement shall not affect the obligations of Lessee and its Subsidiaries under this Agreement and the other Operative Documents.

7.14. Governing Law. This Agreement and the other Operative Documents shall be governed by the laws of the State of California. Lessee hereby unconditionally and irrevocably



waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Agreement and the other Operative Documents.

7.15. Consent to Jurisdiction. Lessee irrevocably submits to the jurisdiction of: any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Lessee against Lessor Parties, arising out of or relating to this Agreement or the other Operative Documents; and (b) any state court sitting in Marin County over any suit, action, or proceeding, brought by Lessor Parties to exercise their STATUTORY POWER OF SALE under this Agreement or any action brought by Lessor Parties to enforce their rights with respect to the Collateral. Lessee irrevocably waives, to the fullest extent permitted by law, any objection that Lessee may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[The first signature page follows.]

IN WITNESS WHEREOF, Lessee, Lessor, the Participants and Agent have caused this Agreement to be executed as of the day and year first above written.

LESSEE: FAIR, ISAAC AND COMPANY, INC.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSOR: LEASE PLAN NORTH AMERICA, INC.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGENT: ABN AMRO BANK N.V.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PARTICIPANTS: ABN AMRO BANK N.V.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KEYBANK NATIONAL ASSOCIATION  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANQUE NATIONALE de PARIS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FLEET NATIONAL BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE DAI-ICHI KANGO BANK, LIMITED  
Los Angeles Agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE I

PARTICIPANTS

PART A(1)

TRANCHE PERCENTAGES AND PROPORTIONATE SHARES  
PRIOR TO COMMITMENT TERMINATION DATE

Participant		Tranche A Percentage	Tranche B Percentage	Tranche C Percentage	Proportionate Share
ABN AMRO Bank N.V.	13,350,000	22.49606373%	1.77666354%	0.0%	24.27272727%
KeyBank National Association	15,000,000	25.27647610%	1.99625117%	0.0%	27.27272727%
Banque National de Paris	10,000,000	16.85098407%	1.33083411%	0.0%	18.18181818%
Fleet National Bank	10,000,000	16.85098407%	1.33083411%	0.0%	18.18181818%
The Dai-Ichi Kangyo Bank, Limited	5,000,000	8.42549203%	0.66541706%	0.0%	9.09090909%
Lease Plan North America, Inc.	1,650,000	0.0%	0.0%	3.0%	3.0%
<b>Total</b>	<b>55,000,000</b>	<b>89.9%</b>	<b>7.1%</b>	<b>3.0%</b>	<b>100.0%</b>

## PART A(2)

## TRANCHE PERCENTAGES AND PROPORTIONATE SHARES

## ON AND AFTER COMMITMENT TERMINATION DATE

Participant		Tranche A Percentage	Tranche B Percentage	Tranche C Percentage	Proportionate Share
ABN AMRO Bank N.V.	13,350,000	20.89456420%	3.37816307%	0.0%	24.27272727%
KeyBank National Association	15,000,000	23.47703843%	3.79568885%	0.0%	27.27272727%
Banque National de Paris	10,000,000	15.65135895%	2.53045923%	0.0%	18.18181818%
Fleet National Bank	10,000,000	15.65135895%	2.53045923%	0.0%	18.18181818%
The Dai-Ichi Kangyo Bank, Limited	5,000,000	7.82567948%	1.26522962%	0.0%	9.09090909%
Lease Plan North America, Inc.	1,650,000	0.0%	0.0%	3.0%	3.0%
Total	55,000,000	83.5%	13.5%	3.0%	100.0%

PART B - ADDRESSES, ETC.

ABN AMRO BANK N.V.

Applicable Participating Office:

ABN AMRO Bank N.V.  
San Francisco International Branch  
101 California Street, Suite 4550  
San Francisco, CA 94111

Address for Notices:

ABN AMRO Bank N.V.  
San Francisco International Branch  
101 California Street, Suite 4550  
San Francisco, CA 94111  
Attention: Jamie Dillon  
Telephone: (415) 984-3750  
Fax: (415) 362-3524

ABN AMRO North America, Inc.  
Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attention: Linda Boardman  
Telephone: (212) 314-1724  
Fax: (212) 314-1712

Wiring Instructions:

ABN AMRO Bank N.V.  
New York, New York  
ABA No.: 026009580  
Account Name: ABN AMRO Bank - Chicago CPU  
Account No.: 650-001-1789-41  
Reference: Fair, Isaac and Company, Inc. Synthetic Lease

KEYBANK NATIONAL ASSOCIATION

Applicable Participating Office:

KeyBank National Association  
700 Fifth Ave., 46th Floor  
Seattle, Washington 98104

Address for Notices:

KeyBank National Association  
700 Fifth Ave., 46th Floor  
Seattle, Washington 98104  
Telephone: 206-684-6085  
Fax: 206-684-6035

KeyBank National Association  
431 E. Parkcenter Blvd.  
Boise, Idaho 83704  
Telephone: 800-297-5518  
Fax: 800-297-5495

Wiring Instructions:

KeyBank National Association  
Seattle, Washington  
Attn: Specialty Services  
ABA No. 125000574  
Account No.: 01500163  
Reference: Fair Isaac

BANQUE NATIONAL de PARIS

Applicable Participating Office:

Banque National de Paris  
180 Montgomery Street, 3rd floor  
San Francisco, CA 94104

Address for Notices:

Banque National de Paris  
180 Montgomery Street, 3rd floor  
San Francisco, CA 94104  
Attn: William LaHerran, Vice President  
Telephone: 415-956-0707  
Fax: 415-296-8954

Banque National de Paris  
Treasury Department  
180 Montgomery Street, 3rd floor  
San Francisco, CA 94104  
Attn: Don Hart, Vice President  
Telephone: 415-956-2511  
Fax: 415-989-9041

Wiring Instructions:

Federal Reserve Bank of New York  
ABA 026007689  
Account name: Banque National de Paris, San Francisco  
Account No.: 14334000176  
Reference: Fair Isaac and Company  
Attn: Peggy T.



FLEET NATIONAL BANK

Applicable Participating Office:

Fleet National Bank  
One Federal Street  
Boston, MA 02110

Address for Notices:

Fleet National Bank  
One Federal Street  
Boston, MA 02110  
Attn: Mathew M. Glauninger  
Telephone: 617-346-0622  
Fax: 617-346-0151

Fleet National Bank  
One Federal Street  
Boston, MA 02110  
Attn: Pauline Kowalczyk  
Telephone: 617-346-0622  
Fax: 617-346-0151

Wiring Instructions:

Fleet National Bank  
Boston, MA  
ABA 011000138  
Account No.: 1510351-03156  
For further credit to: Commercial Loan Wire Suspense  
Reference: Fair Isaac and Company, Inc.

THE DAI-ICHI KANGYO BANK, LIMITED  
Los Angeles Agency

Applicable Participating Office:

The Dai-Ichi Kango Bank Limited  
Los Angeles Agency  
101 California Street, Suite 4000  
San Francisco, CA 94111

Address for Notices:

The Dai-Ichi Kango Bank Limited  
Los Angeles Agency  
101 California Street, Suite 4000  
San Francisco, CA 94111  
Telephone: 415-393-1813  
Fax: 415-788-7868

The Dai-Ichi Kango Bank Limited  
Los Angeles Agency  
555 West 5th Street  
Los Angeles, CA 90013  
Telephone: 213-243-4774  
Fax: 213-243-4896

Wiring Instructions:

The Dai-Ichi Kango Bank Limited  
New York Branch  
New York, NY  
ABA:  
Account No.: 79740111195  
Attn: Credit Administration

SCHEDULE II

PRICING GRID

(For LIBOR Rental Rate or Fixed Rental Rate, when not cash-secured)

LEVERAGE RATIO	PRICING PERIOD	APPLICABLE MARGIN FOR TRANCHES A & B
RATIO	LEVEL	LIBOR RENTAL RATE
-----	-----	-----
More than 0.85	1	0.75%
Less than or equal to 0.85	2	1.00%

EXPLANATION

1. During any period when Agent does not have, in accordance with the Cash Collateral Agreement, a first priority perfected security interest in Cash Collateral with a value equal to or greater than the aggregate Outstanding Lease Amount or any Portion thereof, the Applicable Margin with respect to the LIBOR Rental Rate will be set for each Pricing Period and will vary depending upon whether such period is a Level 1 Period, or a Level 2 Period.
2. Each Pricing Period will be a Level 1 Period or a Level 2 Period depending upon Lessee's Leverage Ratio for the most recent consecutive four-fiscal quarters ending prior to the first day of such Pricing Period.

SCHEDULE 1.01

DEFINITIONS

"364-Day Commitment" shall have the meaning given to that term in Subparagraph 2.03(b) of the Participation Agreement.

"364-Day Commitment Extension Fee" shall have the meaning given to that term in Subparagraph 2.04(c) of the Participation Agreement.

"364-Day Commitment Period" shall have the meaning given to that term in Subparagraph 2.03(b) of the Participation Agreement.

"364-Day Commitment Termination Date" shall have the meaning given to that term in Subparagraph 2.03(b) of the Participation Agreement.

"ABN AMRO" shall mean ABN AMRO Bank N.V.

"Acquisition Advances" shall have the meaning given to that term in Subparagraph 2.01(b) of the Participation Agreement.

"Acquisition Agreement" shall mean, in the case of the Tract 1 Land, that certain Asset Sale Agreement, dated as of June 25, 1996, between PG&E, as seller, and Village Builders, L.P., as buyer, as amended by the First Amendment to Asset Sale Agreement dated as of August 15, 1997 and assigned by the Assignment of Asset Sale Agreement between Village Builders, L.P. and Lessee, and in the case of the Tract 2 Land, that certain Owner Participation, Disposition and Development Agreement, dated on or about May 19, 1998, between the San Rafael Redevelopment Agency, as seller, and Lessee, as buyer.

"Acquisition Date" shall mean the date on which Lessor acquires a Tract of Land pursuant to the applicable Acquisition Agreement.

"Acquisition Price" shall mean, with respect to each Tract of Land, the total purchase price payable by Lessor for such property on the Acquisition Date thereof.

"Acquisition Request" shall have the meaning given to that term in Subparagraph 2.03(a) of the Participation Agreement.

"Adjusted Net Income" shall mean, with respect to Lessee for any period, the sum, determined on a consolidated basis in accordance with GAAP, of the following:

(a) The net income or net loss of Lessee and its Subsidiaries for such period before provision for income taxes;

plus

1.01-1

(b) The sum (to the extent deducted in calculating net income or loss in clause (a) above) of (i) all Interest Expenses of Lessee and its Subsidiaries accruing during such period, (ii) all rental expenses of Lessee and its Subsidiaries accruing during such period, (iii) all income tax expense of Lessee and its Subsidiaries payable to any governmental authority and accruing during such period, and (iv) all payments of principal (or, in the case of Capital Leases, synthetic leases or other off-balance sheet financings, amounts attributable to principal) of Indebtedness paid or scheduled to be paid by Lessee and its Subsidiaries during such period;

plus

(c) The sum of all charges taken by Lessee and its Subsidiaries during such period in connection with the acquisition of in-process research and development.

"Advances" shall have the meaning given to that term in Subparagraph 2.01(b) of the Participation Agreement.

"Advance Requests" shall have the meaning given to that term in Subparagraph 2.03(c) of the Participation Agreement.

"Affiliate" shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, twenty (20%) or more of any class of Equity Securities of such Person, (b) each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person or (c) each of such Person's officers, directors, joint venturers and partners; provided, however, that in no case shall any Lessor Party be deemed to be an Affiliate of Lessee or any of its Subsidiaries for purposes of the Operative Documents. For the purpose of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Agent" shall mean ABN AMRO, acting in its capacity as Agent for the Participants under the Operative Documents.

"Agent's Fee Letter" shall mean the letter agreement dated as of April 6, 1998 between Lessee and Agent regarding certain fees payable by Lessee to Agent.

"Agent's Fees" shall have the meaning given to that term in Subparagraph 2.04(a) of the Participation Agreement.

"Alternate Rental Rate" shall mean, for any Rental Period (or portion thereof), the per annum rate equal to the Base Rate in effect from time to time during such period plus the Applicable Margin, such rate to change from time during such period as the Base Rate or Applicable Margin shall change.

"Applicable Margin" shall mean:

(a) Tranche A and Tranche B. With respect to the Outstanding Tranche A Amount and Outstanding Tranche B Amount:

(i) No Cash Collateral. During any period when Agent does not have, in accordance with the Cash Collateral Agreement, a first priority perfected security interest in any Cash Collateral securing the Lessee Obligations:

(A) The per annum margin which is determined pursuant to the Pricing Grid and added to the LIBO Rate with respect to the LIBOR Rental Rate or the Fixed Rate with respect to the Fixed Rental Rate ; or

(B) Zero percent (0%) per annum with respect to the Alternate Rental Rate;

(ii) Full Cash Collateral. During any period when Agent has, in accordance with the Cash Collateral Agreement, a first priority perfected security interest in Cash Collateral that secures the Lessee Obligations and has a value equal to or greater than the full Outstanding Lease Amount or any Portion thereof:

(A) Twenty-five hundredths of one percent (0.25%) per annum with respect to the LIBOR Rental Rate or the Fixed Rental Rate; or

(B) Zero percent (0%) per annum with respect to the Alternate Rental Rate; or

(iii) Partial Cash Collateral. During any period when Agent has, in accordance with the Cash Collateral Agreement, a first priority perfected security interest in Cash Collateral that secures the Lessee Obligations but has a value less than the full Outstanding Lease Amount or any Portion thereof:

(A) The per annum margin equal to the sum of the following with respect to the LIBOR Rental Rate or the Fixed Rental Rate:

(1) The product of (y) the per annum margin which is determined pursuant to the Pricing Grid and added to the LIBO Rate or the Fixed Rate as the case may be (z) a fraction, the numerator of which is the remainder of the Outstanding Lease Amount or any Portion thereof minus the value of the Cash Collateral and the denominator of which is the Outstanding Lease Amount or any Portion thereof; plus

(2) The product of (y) twenty-five hundredths of one percent (0.25%) per annum above times (z) a fraction, the numerator of which is the value of the Cash Collateral and the denominator of which is the Outstanding Lease Amount or any Portion thereof; or

(B) Zero percent (0%) per annum with respect to the Alternate Rental Rate; and

(b) Tranche C. With respect to the Outstanding Tranche C Amount:

(i) Two and one-half percent (2.5%) per annum with respect to the LIBOR Rental Rate; or

(ii) Two and one-half percent (2.5%) per annum with respect to the Alternate Rental Rate;

provided, however, that each Applicable Margin set forth in subparagraphs (a) and (b) of this definition shall be increased by two percent (2.0%) per annum on the date an Event of Default occurs and shall continue at such increased rate unless and until such Event of Default is waived in accordance with the Operative Documents.

"Applicable Participating Office" shall mean, with respect to any Participant, (a) initially, its office designated as such in Part B of Schedule I (or, in the case of any Participant which becomes a Participant by an assignment pursuant to Subparagraph 7.05(b) of the Participation Agreement, its office designated as such in the applicable Assignment Agreement) and (b) subsequently, such other office or offices as such Participant may designate to Agent as the office at which such Participant's interest in the Lease Agreement will thereafter be maintained and for the account of which all payments of Rent and other amounts payable to such Participant under the Operative Documents will thereafter be made.

"Appraisal" shall mean an appraisal of the Property or a portion thereof in a form satisfactory to Lessee, Lessor, Agent and the Required Participants, prepared by an independent MAI appraiser that (a) complies with the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and all other applicable Governmental Rules and (b) is approved by Lessor, Agent and the Required Participants (at the time such appraiser is selected).

"Appurtenant Rights" shall mean all easements and rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to any Land or the Improvements thereto and the reversions, remainders, and all the estates, rights, titles, interests, property, possession, claim and demand whatsoever, both in law and in equity, of, in and to such Land and Improvements and every part and parcel thereof, with the appurtenances thereto.

"Assignee Participant" shall have the meaning given to that term in Subparagraph 7.05(b) of the Participation Agreement.

"Assignment" shall have the meaning given to that term in Subparagraph 7.05(b) of the Participation Agreement.

"Assignment Agreement" shall have the meaning given to that term in Subparagraph 7.05(b) of the Participation Agreement.

"Assignment Effective Date" shall have, with respect to each Assignment Agreement, the meaning set forth therein.

"Assignment of Construction Agreements" shall have the meaning given to that term in Subparagraph 2.11(a) of the Participation Agreement.

"Assignment of Lease" shall have the meaning given to that term in Subparagraph 2.11(b).

"Assignor Participant" shall have the meaning given to that term in Subparagraph 7.05(b) of the Participation Agreement.

"Assumed Appraisal" shall have the meaning given to that term in Subparagraph 3.02(h) of the Purchase Agreement.

"Base Rate" shall mean, on any day, the greater of (a) the Prime Rate in effect on such date and (b) the Federal Funds Rate for such day plus one-half percent (0.50%).

"Base Rent" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Budget" shall mean the budget for the acquisition of the Property and the New Improvements set forth on Schedule 4.01(x).

"Business Day" shall mean any day on which (a) commercial banks are not authorized or required to close in San Francisco, California, Chicago, Illinois or New York, New York and (b) if such Business Day is related to a LIBOR Rental Rate, dealings in Dollar deposits are carried out in the London interbank market.

"Capital Adequacy Requirement" shall have the meaning given to that term in Subparagraph 2.12(d) of the Participation Agreement.

"Capital Asset" shall mean, with respect to any Person, any tangible fixed or capital asset owned or leased (in the case of a Capital Lease) by such Person, or any expense incurred by such Person that is required by GAAP to be reported as a non-current asset on such Person's balance sheet.

"Capital Expenditures" shall mean, with respect to Lessee and its Subsidiaries for any period, the sum, determined on a consolidated basis in accordance with GAAP, of all amounts expended and indebtedness incurred or assumed by Lessee and its Subsidiaries during such period for the acquisition of Capital Assets (including all amounts expended and indebtedness incurred or assumed in connection with Capital Leases).

"Capital Leases" shall mean any and all lease obligations that, in accordance with GAAP, are required to be capitalized on the books of a lessee.

"Cash Collateral" shall mean eurodollar deposits or United States Treasury Securities and deposit accounts held or maintained by Agent and Participants to the extent such securities and



accounts are held and maintained in accordance with the Cash Collateral Agreement and Lessor has a first priority perfected security interest therein securing the Lessee Obligations.

"Cash Collateral Agreement" shall have the meaning given to that term in Subparagraph 2.11(a) of the Participation Agreement.

"Cash Equivalents" shall mean, on any date:

(a) Any debt investments that mature within one year from such date if such investments are permitted by the investment policy of Lessee set forth in Schedule 5.02(e) to the Participation Agreement; or

(b) If the investment policy of Lessee is changed after the date of the Participation Agreement, any debt investments that mature within one year from such date if (i) such investments are permitted by the most recent investment policy of Lessee and (ii) such investment policy has been approved by Lessee's Board of Directors and by Lessor and Required Participants.

"Casualty" shall mean any damage to, destruction of or decrease in the value of all or any portion of any of the Property as a result of fire, flood, earthquake or other natural cause; the actions or inactions of any Person or Persons (whether willful or unintentional and whether or not constituting negligence); or any other cause.

"Casualty and Condemnation Proceeds" shall mean all awards, damages, compensation, reimbursement and other payments made or to be made to Lessee, Lessor or Agent from any insurer, Governmental Authority or other Person (other than Lessee or any Lessor Party) on account of any Casualty or Condemnation.

"Change of Control" shall mean (a) with respect to Lessee, the occurrence of any of the following events: (i) any person or group of persons (within the meaning of Section 13 or 14 of the Securities Exchange Act of 1934, as amended) shall (A) acquire beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of twenty-five percent (25%) or more of the outstanding Equity Securities of Lessee entitled to vote for members of the board of directors, or (B) acquire all or substantially all of the assets of Lessee and its Subsidiaries taken as a whole, or (ii) during any period of twelve (12) consecutive calendar months, individuals who are directors of Lessee on the first day of such period ("Initial Directors") and any directors of Lessee who are specifically approved by two-thirds of the Initial Directors and previously-approved Directors ("Approved Directors") shall cease to constitute a majority of the Board of Directors of Lessee before the end of such period; and (b) with respect to Lessee's Japanese Subsidiary, Lessee shall cease to own at least fifty-one percent (51%) of the Equity Securities of such Subsidiary except for nominal amounts of director stock necessary to do business in Japan.

"Change of Law" shall have the meaning given to that term in Subparagraph 2.12(b) of the Participation Agreement.

"Closing Date" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Closing Date Appraisal" shall mean, with respect to any Tract of Land, on or as of a recent date prior to its Acquisition Date, an Appraisal that assesses at such time the Fair Market Value of such property on such date.

"Collateral" shall mean the Property Collateral, the Cash Collateral and all other property in which any Lessor Party has a Lien to secure any of the Lessee Obligations.

"Commencement Date" shall have the meaning given to that term in Subparagraph 2.02(a) of the Lease Agreement.

"Commitment" shall mean, with respect to any Participant at any time, such Participant's Proportionate Share of the Total Commitment at such time.

"Commitment Fees" shall have the meaning given to that term in Subparagraph 2.04(b) of the Participation Agreement.

"Commitment Period" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Commitment Termination Date" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Completion" shall have the meaning given to that term in Subparagraph 3.05(c) of the Construction Agency Agreement. "Complete", "Completed" and "Completion" shall have comparable meanings.

"Completion Date" shall mean the first date on which all of the conditions set forth in Subparagraph 3.05(c) of the Construction Agency Agreement are satisfied.

"Compliance Certificate" shall have the meaning given to that term in Subparagraph 5.01(a) of the Participation Agreement.

"Condemnation" shall mean any condemnation, requisition, confiscation, seizure or other taking or sale of the use, access, occupancy or other right in or to all or any portion of any of the Property (whether wholly or partially, temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Governmental Authority or other Person having the power of eminent domain, including an action by any such Governmental Authority or Person to change the grade of, or widen the streets adjacent to, such Property or alter the pedestrian or vehicular traffic flow to such Property so as to result in change in access to such Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use, access, occupancy or other right is taken.

"Conforming Bid" shall have the meaning given to that term in Subparagraph 3.02(c) of the Purchase Agreement.

"Construction Agency Agreement" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Construction Agreements" shall have the meaning given to that term in Paragraph 3.02 of the Construction Agency Agreement.

"Contingent Obligation" shall mean, with respect to any Person, (a) any Guaranty Obligation of that Person; and (b) any direct or indirect obligation or liability, contingent or otherwise, of that Person (i) in respect of any Surety Instrument issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or payments, (ii) as a partner or joint venturer in any partnership or joint venture, (iii) to purchase any materials, supplies or other property from, or to obtain the services of, another Person if the relevant contract or other related document or obligation requires that payment for such materials, supplies or other property, or for such services, shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered, or such services are ever performed or tendered, or (iv) in respect to any Rate Contract that is not entered into in connection with a bona fide hedging operation that provides offsetting benefits to such Person. The amount of any Contingent Obligation shall (subject, in the case of Guaranty Obligations, to the last sentence of the definition of "Guaranty Obligation") be deemed equal to the maximum reasonably anticipated liability in respect thereof, and shall, with respect to item (b)(iv) of this definition be marked to market on a current basis.

"Contractual Obligation" of any Person shall mean, any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument; contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound.

"Credit Event" shall mean the making of each Advance, the selection of a new Rental Period or the exercise of the Marketing Option under the Purchase Agreement.

"Current Appraisal" shall have the meaning given to that term in Subparagraph 3.02(h) of the Purchase Agreement.

"Default" shall mean any Event of Default under the Lease Agreement or any event or circumstance not yet constituting an Event of Default under the Lease Agreement which, with the giving of any notice or the lapse of any period of time or both, would become an Event of Default under the Lease Agreement.

"Defaulting Participant" shall mean a Participant which has failed to fund its portion of any Advance which it is required to fund under the Participation Agreement and has continued in such failure for three (3) Business Days after written notice from Agent.

"Deposit Accounts" shall have the meaning given to that term in Subparagraph 2.01(a) of the Cash Collateral Agreement.

"Depository Bank" shall have the meaning given to that term in Paragraph 2.02 of the Cash Collateral Agreement.

"Designated Purchaser" shall have the meaning given to that term in Subparagraph 3.02(e) of the Purchase Agreement.

"Dollars" and "\$" shall mean the lawful currency of the United States of America and, in relation to any payment under the Operative Documents, same day or immediately available funds.

"Eligible Assignee" shall mean (a) a commercial bank organized under the laws of the United States, or any state thereof, and having a combined capital and surplus of at least \$100,000,000; (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (the "OECD"), or a political subdivision of any such country, and having a combined capital and surplus of at least \$100,000,000, provided that such bank is acting through a branch or agency located in the United States; or (c) a Person that is (i) a Subsidiary of a Participant, (ii) a Subsidiary of a Person of which a Participant is a Subsidiary, or (iii) a Person of which a Participant is a Subsidiary.

"Employee Benefit Plan" shall mean any employee benefit plan within the meaning of section 3(3) of ERISA maintained or contributed to by Lessee or any ERISA Affiliate, other than a Multiemployer Plan.

"Environmental Laws" shall mean the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980 (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all other Governmental Rules relating to the protection of human health and the environment, including all Governmental Rules pertaining to reporting, licensing, permitting, transportation, storage, disposal, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials.

"Environmental Reports" shall have the meaning set forth in Subparagraph 4.01(f) of the Participation Agreement.

"Equity Securities" of any Person shall mean (a) all common stock, preferred stock, participations, shares, partnership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may from time to time be amended or supplemented, including any rules or regulations issued in connection therewith.

"ERISA Affiliate" shall mean any Person which is treated as a single employer with Lessee under Section 414 of the IRC.

"Event of Default" shall have the meaning given to that term in Paragraph 5.01 of the Lease Agreement.

"Exhibit B Supplement" shall have the meaning given to that term in Subparagraph 2.03(b) of the Participation Agreement.

"Existing Improvements" shall mean, with respect to the Land, all Improvements existing on the Land on the Closing Date.

"Expiration Date" shall mean the earlier of (a) the Scheduled Expiration Date under the Lease Agreement, as such date may be extended pursuant to this Agreement, and (b) the Termination Date for the Lease Agreement, if the Lease Agreement is terminated prior to its Scheduled Expiration Date in accordance with its terms.

"Expiration Date Appraisal" shall mean, with respect to any Tract of Land at any time, an Appraisal that assesses at such time the Fair Market Value of such property on the Scheduled Expiration Date and as improved in accordance with the Budget for the New Improvements, as such Appraisal may be revised as contemplated by Subparagraph 5.01(h) of the Participation Agreement. Until the first Appraisal complying with this definition is delivered, the term "Expiration Date Appraisal" shall include the preliminary market valuation delivered pursuant to Item F(2) of Schedule 3.01 to the Participation Agreement.

"Expiration Date Purchase Option" shall have the meaning given to that term in Subparagraph 3.01(b) of the Purchase Agreement.

"Fair Market Value" shall mean, with respect to any of the Property or any portion thereof, the maximum reasonable amount (not less than zero) that would be paid in cash in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, for the ownership of the Property or such portion.

"FASB 13" shall mean Financial Accounting Standards Board Statement No. 13.

"Federal Funds Rate" shall mean, for any day, the rate per annum set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Board (including any such successor publication, "H.15 (519)") for such day opposite the caption "Federal Funds (Effective)". If on any relevant day, such rate is not yet published in H.15 (519), the rate for such day shall be the rate set forth in the daily statistical release designated as the Composite 3:30 p.m. Quotations for U.S. Government Securities, or any successor publication, published by the Federal Reserve Bank of New York (including any such successor publication, the "Composite 3:30 p.m. Quotations") for such day under the caption "Federal Funds Effective Rate". If on any relevant day, such rate is not yet published in either H.15 (519) or the Composite 3:30 p.m. Quotations, the rate for such day shall be the arithmetic means, as determined by Agent, of the rates quoted to Agent for such day by three (3) Federal funds brokers of recognized standing selected by Agent.

"Federal Reserve Board" shall mean the Board of Governors of the Federal Reserve System.

"Financial Statements" shall mean, with respect to any accounting period for any Person, statements of income, shareholders' equity and cash flows of such Person for such period, and a balance sheet of such Person as of the end of such period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year if such period is less than a full fiscal year or, if such period is a full fiscal year, corresponding figures from the preceding annual audit, all prepared in reasonable detail and in accordance with GAAP.

"Fixed Charge Coverage Ratio" shall mean, with respect to Lessee for any period, the ratio, determined on a consolidated basis in accordance with GAAP, of:

(a) The Adjusted Net Income of Lessee and its Subsidiaries for such period;

divided by

(b) The sum of (i) all Interest Expenses of Lessee and its Subsidiaries accruing during such period, (ii) all rental expenses of Lessee and its Subsidiaries accruing during such period, (iii) all current maturities of long term Indebtedness (including, in the case of Capital Leases, amounts attributable to current maturities of principal) paid or scheduled to be paid by Lessee and its Subsidiaries during such period and (iv) 20% of all Indebtedness and all synthetic leases and other off balance sheet obligations.

"Fixed Rate" shall mean, with respect to any Rental Period and Portion for which Lessee accepts a Fixed Rate Offer pursuant to clause (iv)(D) of Subparagraph 2.03(a) of the Lease Agreement, the weighted average per annum rate set forth in such Fixed Rate Offer.

"Fixed Rate Acceptance" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Fixed Rate Offer" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Fixed Rate Quote" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Fixed Rate Rejection" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Fixed Rate Request" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Fixed Rental Rate" shall mean, for any Rental Period and Portion, the per annum rate equal to the Fixed Rate for such Rental Period, plus the Applicable Margin, such rate to change from time to time during such period as the Applicable Margin shall change.

"Force Majeure Events" shall mean any Acts of God, riots, civil commotions, insurrections, wars, strikes, lockouts or other events beyond the control of Lessee, except for (a) any such events that are known to or should be known to Lessee on the Closing Date; (b) any such events that are caused by the financial condition of Lessee or the failure of Lessee to make

any payments under any Construction Agreements, any Operative Documents or any related agreements or (c) any events that could be remedied through the payment of money or the exercise of other commercially reasonable efforts.

"GAAP" shall mean generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

"Governmental Authority" shall mean any domestic or foreign national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, any central bank or any comparable authority.

"Governmental Charges" shall mean taxes, levies, assessments, fees, imposts, duties, licenses, recording charges, claims or other charges imposed by any Governmental Authority.

"Governmental Rule" shall mean any law, rule, regulation, ordinance, order, code, interpretation, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

"Guaranty Obligation" shall mean, with respect to any Person, any direct or indirect liability of that Person with respect to any indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligations") of another Person (the "primary obligor"), including any obligation of that Person, whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, or (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof. The amount of any Guaranty Obligation shall be deemed equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or if indeterminable, the maximum reasonably anticipated liability in respect thereof.

"Hazardous Materials" shall mean all materials, substances and wastes which are classified or regulated as "hazardous," "toxic" or similar descriptions under any Environmental Law.

"Improvement/Expense Advance Request" shall have the meaning given to that term in Subparagraph 2.03(b) of the Participation Agreement.

"Improvement/Expense Advances" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Improvements" shall mean all buildings, structures, facilities, fixtures and other improvements of every kind and description now or hereafter located on any of the Land, including (a) all parking areas, roads, driveways, walks, fences, walls, drainage facilities and other site improvements; (b) all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, all plumbing, lighting, heating, ventilating, air-conditioning, refrigerating, incinerating, compacting, fire protection and sprinkler, surveillance and security, public address and communications equipment and systems, partitions, elevators, escalators, motors, machinery, pipes, fittings and other items of equipment of every kind and description now or hereafter located on such Land or attached to the Improvements thereto which by the nature of their location thereon or attachment thereto are real property under applicable law; and (c) all Modifications to such Land or its Improvements, except for any Modifications removed by Lessee from the Property pursuant to Subparagraph 3.10 of the applicable Lease Agreement.

"Indebtedness" of any Person shall mean, without duplication:

(a) All obligations of such Person evidenced by notes, bonds, debentures or other similar instruments and all other obligations of such Person for borrowed money (including recourse obligations of such Person in connection with receivables and other assets sold by such Person);

(b) All obligations of such Person for the deferred purchase price of property or services (including obligations under letters of credit and other credit facilities which secure or finance such purchase price and obligations under "synthetic" leases but excluding trade payables incurred in the ordinary course of business on ordinary terms which are not overdue);

(c) All obligations of such Person under conditional sale or other title retention agreements with respect to property acquired by such Person (to the extent of the value of such property if the rights and remedies of the seller or lender under such agreement in the event of default are limited solely to repossession or sale of such property);

(d) All obligations of such Person as lessee under or with respect to Capital Leases;

(e) All non-contingent payment or reimbursement obligations of such Person, contingent or otherwise, under or with respect to Surety Instruments;

(f) All net obligations of such Person, contingent or otherwise, under or with respect to Rate Contracts;

(g) All Guaranty Obligations of such Person with respect to the obligations of other Persons of the types described in clauses (a) - (f) above; and

(h) All obligations of other Persons of the types described in clauses (a) - (f) above to the extent secured by (or for which any holder of such obligations has an existing right, contingent or otherwise, to be secured by) any Lien in any property



(including accounts and contract rights) of such Person, even though such Person has not assumed or become liable for the payment of such obligations

"Indemnified Taxes" shall mean all income taxes, stamp taxes, sales taxes, use taxes, rental taxes, gross receipts taxes, property (tangible and intangible) taxes, franchise taxes, excise taxes, value added taxes, turnover taxes, withholding taxes and other taxes and Governmental Charges, together with any and all assessments, penalties, fines, additions and interest thereon, except:

(a) Net income taxes and franchise taxes in lieu of net income taxes imposed on any Lessor Party by its jurisdiction of incorporation or a jurisdiction in which it maintains an office (provided, however, that this definition shall not be construed to prevent a payment from being made on an after-tax basis);

(b) Any tax or other Governmental Charge that has not become a Lien on any of the Property and that Lessee is contesting pursuant to Paragraph 3.12 of the Lease Agreement (but only while Lessee is so contesting such tax or Governmental Charge); or

(c) Any tax or other Governmental Charge that is imposed upon an Indemnitee primarily as a result of the gross negligence or willful misconduct of such Indemnitee itself (as opposed to gross negligence or willful misconduct imputed to such Indemnitee), but not taxes or other Governmental Charges imposed as a result of ordinary negligence of such Indemnitee.

"Indemnitees" shall mean the Lessor Parties and their Affiliates and their respective directors, officers, employees, agents, attorneys and advisors.

"Indemnity Amount" shall have the meaning given to that term in Subparagraph 3.02(g) of the Purchase Agreement.

"Initial Acquisition Advance" shall have the meaning given to the term in Subparagraph 2.03(a) of the Participation Agreement.

"Initial Bid" shall have the meaning given to that term in Subparagraph 3.02(b) of the Purchase Agreement.

"Initial Marketing Period" shall have the meaning given to that term in Subparagraph 3.02(b) of the Purchase Agreement.

"Insurance Requirements" shall mean all terms, conditions and requirements imposed by the policies of insurance which Lessee is required to maintain by the Operative Documents.

"Interest Expenses" shall mean, with respect to Lessee and its Subsidiaries for any period, the sum, determined on a consolidated basis in accordance with GAAP, of (a) all interest accrued on the Indebtedness of Lessee and its Subsidiaries during such period (including interest attributable to Capital Leases, synthetic leases and other off-balance sheet financings) and (b) all letter of credit fees payable by Lessee and its Subsidiaries accrued during such period.

"Investment" of any Person shall mean any loan or advance of funds by such Person to any other Person (other than advances to employees of such Person for moving and travel expenses, drawing accounts and similar expenditures in the ordinary course of business), any purchase or other acquisition of any Equity Securities or Indebtedness of any other Person, any capital contribution by such Person to or any other investment by such Person in any other Person (including any Guaranty Obligations of such Person and any indebtedness of such Person of the type described in clause (h) of the definition of "Indebtedness" on behalf of any other Person); provided, however, that Investments shall not include (a) accounts receivable or other indebtedness owed by customers of such Person which are current assets and arose from sales of inventory in the ordinary course of such Person's business or (b) prepaid expenses of such Person incurred and prepaid in the ordinary course of business.

"IRC" shall mean the Internal Revenue Code of 1986.

"Issues and Profits" shall mean all present and future rents, royalties, issues, profits, receipts, revenues, income, earnings and other benefits accruing from any of the Land, Improvements or Appurtenant Rights (whether in the form of accounts, chattel paper, instruments, documents, investment property, general intangibles or otherwise) including all rents and other amounts payable pursuant to any Subleases.

"Land" shall mean all lots, pieces, tracts or parcels of land described in Exhibit A to the Lease Agreement and leased by Lessee pursuant to the Lease Agreement.

"Lease Agreement" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Lease Extension Request" shall have the meaning given to that term in Subparagraph 2.09(b) of the Participation Agreement.

"Lease Reduction Payments" shall mean each of the following to the extent applied to reduce the Outstanding Lease Amount or any Portion thereof pursuant to the Operative Documents:

(a) Casualty and Condemnation Proceeds;

(b) The purchase price paid for the Property (or any portion thereof) by Lessee, an Assignee Purchaser or a Designated Purchaser pursuant to the Purchase Agreement;

(c) The Residual Value Guaranty and Indemnity Amount paid by Lessee pursuant to the Purchase Agreement;

(d) Any proceeds received by Lessee from any sale of the Property after the Expiration Date if such Property is retained by Lessor after such Expiration Date pursuant to the applicable Purchase Agreement; and

(e) Any proceeds received by any Lessor Party from the exercise of any of its remedies under the Operative Documents after the occurrence of an Event of Default under the Lease Agreement.

"Lessee" shall mean Fair Isaac and Company, Inc., acting in its capacity as Lessee under the Operative Documents.

"Lessee Obligations" shall mean and include all liabilities and obligations owed by Lessee to any Lessor Party under any of the Operative Documents of every kind and description and however arising (whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising), including the obligation of Lessee to pay Rent, to pay the Residual Value Guaranty Amount, Indemnity Amount and/or Outstanding Lease Amount or any Portion thereof and to pay all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Lessee or payable by Lessee under the Operative Documents.

"Lessee Security Documents" shall mean and include the Lease Agreement, the Cash Collateral Agreement, the Assignment of Construction Agreements, and all other instruments, agreements, certificates, opinions and documents (including Uniform Commercial Code financing statements and fixture filings and landlord waivers) delivered to any Lessor Party in connection with any Collateral or to secure the Lessee Obligations.

"Lessor" shall mean Lease Plan North America, Inc. , acting in its capacity as Lessor under the Operative Documents.

"Lessor Deed of Trust" shall have the meaning given to that term in Subparagraph 2.11(b) of the Participation Agreement.

"Lessor Liens" shall mean any Liens or other interests in any of the Property of any Person other than Lessee or a Lessor Party arising as a result of (a) any transfer or assignment by Lessor to such Person of any of Lessor's interests in such Property in violation of any of the Operative Documents or (b) any claim against Lessor by any such Person unrelated to any of the Operative Documents or the transactions contemplated thereby. (Lessor Liens shall include Liens granted by Lessor to Agent or any Participant to secure the Lessor Obligations.)

"Lessor Obligations" shall mean and include all liabilities and obligations owed by Lessor to Agent or any Participant under any of the Operative Documents of every kind and description and however arising (whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising), including the obligation of Lessor to share payments made by Lessee to Lessor under the Operative Documents as provided in Paragraph 2.06 of the Participation Agreement.

"Lessor Parties" shall mean Lessor, the Participants and Agent.

"Lessor Security Agreement" shall have the meaning given to that term in Subparagraph 2.11(b) of the Participation Agreement.

"Leverage Ratio" shall mean, with respect to Lessee and its Subsidiaries at any time, the ratio, determined on a consolidated basis in accordance with GAAP, of (a) total liabilities,

including all Indebtedness of Lessee and its Subsidiaries at such time as reflected on Lessee's balance sheet plus the total amount of all synthetic leases and other off balance sheet obligations of Lessee and its Subsidiaries to (b) the Tangible Net Worth of Lessee and its Subsidiaries at such time.

"LIBO Rate" shall mean, with respect to any Rental Period and Portion, a rate per annum equal to the quotient (rounded upward if necessary to the nearest 1/100 of one percent) of (a) the arithmetic mean (rounded up if necessary to the nearest 1/16 of one percent) of the rates per annum appearing on the Telerate Page 3750 (or any successor publication) on the second Business Day prior to the first day of such Rental Period, at or about 11:00 A.M. (London time) (for delivery on the first day of such Rental Period for a term comparable to such Rental Period, (or for a term of one (1) month for any Rental Period that is less than one (1) month but is at least seven (7) days), divided by (b) one minus the Reserve Requirement in effect from time to time. If for any reason rates are not available as provided in clause (a) of the preceding sentence, the rate to be used in clause (a) shall be, the rate per annum at which Dollar deposits are offered to ABN AMRO by prime banks in the London interbank market on the second Business Day prior to the first day of such Rental Period at or about 11:00 A.M. (London time) (for delivery on the first day of such Interest Period) in an amount substantially equal to ABN AMRO's Proportionate Share of the applicable Portion and for a term comparable to such Rental Period (or for a term of one (1) month for any Rental Period that is less than one (1) month but is at least seven (7) days). The LIBO Rate shall be adjusted automatically as of the effective date of any change in the Reserve Requirement.

"LIBOR Rental Rate" shall mean, for any Rental Period and Portion, the per annum rate equal to the LIBO Rate for such Rental Period and Portion, plus the Applicable Margin, such rate to change from time to time during such period as the Applicable Margin shall change.

"Lien" shall mean, with respect to any property, any security interest, mortgage, pledge, lien, charge or other encumbrance in, of, or on such property or the income therefrom, including the interest of a vendor or lessor under a conditional sale agreement, Capital Lease, "synthetic" lease or other title retention agreement, or any agreement to provide any of the foregoing, and the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction.

"Line Item" shall mean each line item set forth in the Budget.

"Major Casualty" shall mean, with respect to the Property, any Casualty affecting such Property where (a) the damage to such Property is treated by any insurer of such Property as a total loss; (b) such Property cannot reasonably be repaired and restored to the condition in which it existed immediately prior to such Casualty; or (c) the reasonably anticipated cost to repair and restore such Property to the condition in which it existed immediately prior to such Casualty would exceed twenty-five percent (25%) of the Outstanding Lease Amount or any Portion thereof.

"Major Condemnation" shall mean, with respect to the Property, any Condemnation affecting such Property where (a) all or substantially all of such Property is taken by such Condemnation; (b) such Property cannot reasonably be repaired and restored to the condition in

which it existed immediately prior to such Condemnation; or (c) the reasonably anticipated cost to repair and restore such Property to the condition in which it existed immediately prior to such Condemnation would exceed twenty-five percent (25%) of the Outstanding Lease Amount or any Portion thereof.

"Majority Participants" shall mean (a) at any time the aggregate Outstanding Lease Amount or any Portion thereof is greater than \$0, Participants whose aggregate Outstanding Participation Amounts equal or exceed fifty percent (50%) of the aggregate Outstanding Lease Amount or any Portion thereof at such time and (b) at any time the aggregate Outstanding Lease Amount or any Portion thereof is \$0, Participants whose Proportionate Shares equal or exceed fifty percent (50%).

"Margin Stock" shall have the meaning given to that term in Regulation U issued by the Federal Reserve Board, as amended from time to time, and any successor regulation thereto.

"Marketing Option" shall have the meaning given to that term in Subparagraph 3.01(a) of the Purchase Agreement.

"Marketing Option Event of Default" shall mean any Event of Default other than a Non-Marketing Option Event of Default.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, assets, operations or financial or other condition of Lessee and its Subsidiaries, taken as a whole; (b) the ability of Lessee to pay or perform the Lessee Obligations when due in accordance with the terms of the Operative Documents; (c) the rights and remedies of any Lessor Party under the Operative Documents or any related document, instrument or agreement; or (d) the value of the Property and the Collateral, any Lessor Party's security interests, Liens or other rights in the Property and the Collateral or the perfection or priority of such security interests, Liens or rights.

"Material Casualty" shall mean any Casualty to the Property that alone, or in combination with any prior Casualties to the Property for which repairs to restore the Property to its prior condition have not been completed, will require repairs costing \$1,000,000 or more to restore the Property to its prior condition.

"Maturity" shall mean, with respect to any Rent, interest, fee or other amount payable by Lessee under the Operative Documents, the date such Rent, interest, fee or other amount becomes due, whether upon the stated maturity or due date, upon acceleration or otherwise.

"Modifications" shall have the meaning given to that term in Subparagraph 3.01(c) of the Lease Agreement.

"Multiemployer Plan" shall mean any multiemployer plan within the meaning of section 3(37) of ERISA maintained or contributed to by Lessee or any ERISA Affiliate.

"Net Proceeds" shall mean, with respect to any issuance of Equity Securities by Lessee or any of its Subsidiaries, the aggregate consideration received by Lessee or such Subsidiary from such issuance less the sum of the actual amount of the reasonable fees and commissions payable to Persons other than Lessee or any Affiliate of Lessee and the other reasonable costs and

expenses (including reasonable legal expenses) directly related to such issuance that are to be paid by Lessee or any of its Subsidiaries.

"New Improvements" shall mean, with respect to the Land, all new Improvements to the Land contemplated by the Plans and Specifications.

"Non-Marketing Option Event of Default" shall mean:

(a) An Event of Default under Subparagraph 5.01(m) of the Lease Agreement; or

(b) An Event of Default under Subparagraph 5.01(c) of the Lease Agreement resulting from Lessee's failure to start and complete the construction of the New Improvements in accordance with the Construction Agency Agreement where such failure is caused solely by a Force Majeure Event.

"Notice of Expiration Date Purchase Option Exercise" shall have the meaning given to that term in Paragraph 3.01 of the Purchase Agreement.

"Notice of Marketing Option Exercise" shall have the meaning given to that term in Paragraph 3.01 of the Purchase Agreement.

"Notice of Rental Period Selection" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Notice of Term Purchase Option Exercise" shall have the meaning given to that term in Subparagraph 2.01(a) of the Purchase Agreement.

"Operative Documents" shall mean and include the Participation Agreement, the Lease Agreement, the Construction Agency Agreement, the Purchase Agreement, the Lessee Security Documents, the Lessor Deed of Trust, the Lessor Security Agreement, the Assignment of Lease, the Acquisition Agreements, the PG&E Agreements and the Agent's Fee Letter; all other notices, requests, certificates, documents, instruments and agreements delivered to any Lessor Party pursuant to Paragraph 3.01 or 3.02 of the Participation Agreement; and all notices, requests, certificates, documents, instruments and agreements delivered to any Lessor Party in connection with any of the foregoing on or after the date of the Participation Agreement. (Without limiting the generality of the preceding definition, the term "Operative Documents" shall include all written waivers, amendments and modifications to any of the notices, requests, certificates, documents, instruments and agreements referred to therein.)

"Outside Completion Date" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Outstanding Lease Amount or any Portion thereof" shall mean, on any date, the remainder of (a) the sum of all Advances made by Lessor on or prior to such date, minus (b) the sum of all Lease Reduction Payments applied by Lessor on or prior to such date.

"Outstanding Participation Amount" shall mean, with respect to any Participant on any date, the remainder of (a) the sum of the portions of all Advances funded by such Participant on or prior to such date, minus (b) the sum of such Participant's share of all Lease Reduction Payments applied to the Outstanding Lease Amount or any Portion thereof on or prior to such date.

"Outstanding Tranche A Participation Amount" shall mean, with respect to any Tranche A Participant on any date, the remainder of (a) such Participant's Tranche A Portion of all Advances made by Lessor on or prior to such date, minus (b) such Participant's share of all Lease Reduction Payments applied to the Tranche A Portion of the Advances on or prior to such date.

"Outstanding Tranche B Participation Amount" shall mean, with respect to any Tranche B Participant on any date, the remainder of (a) such Participant's Tranche B Portion of all Advances made by Lessor on or prior to such date, minus (b) such Participant's share of all Lease Reduction Payments applied to the Tranche B Portion of the Advances on or prior to such date.

"Outstanding Tranche C Participation Amount" shall mean, with respect to any Tranche C Participant on any date, the remainder of (a) such Participant's Tranche C Portion of all Advances made by Lessor on or prior to such date, minus (b) such Participant's share of all Lease Reduction Payments applied to the Tranche C Portion of the Advances on or prior to such date.

"Participants" shall mean the financial institutions from time to time listed in Schedule I to the Participation Agreement (as amended from time to time pursuant to Subparagraph 7.05(b) of the Participation Agreement or otherwise), acting in their capacities as Participants under the Operative Documents.

"Participation Agreement" shall mean the Participation Agreement, dated as of May \_\_, 1998 among Lessee and the Lessor Parties.

"PBGC" shall mean the Pension Benefit Guaranty Corporation, or any successor thereto.

"Permitted Improvement Costs" shall mean all reasonable costs and expenses necessary for the construction of the New Improvements to the Land (not including the costs of the Land, the Existing Improvements and the other Property to be acquired for the Acquisition Price paid by Lessor for the Land and the other initial Property on the Closing Date), including:

(a) All reasonable costs and expenses of building supplies and materials necessary for the construction of the New Improvements;

(b) All reasonable costs and expenses of architects, engineers, contractors and other Persons providing labor and services necessary for the construction of the New Improvements;

(c) All reasonable costs and expenses of performance and other bonds and other insurance necessary for the construction of the New Improvements; and

(d) All Base Rent accruing during the Commitment Period.

"Permitted Indebtedness" shall have the meaning given to that term in Subparagraph 5.02(a) of the Participation Agreement.

"Permitted Liens" shall have the meaning given to that term in Subparagraph 5.02(b) of the Participation Agreement.

"Permitted Property Liens" shall have the meaning given to that term in Subparagraph 3.07(a) of the Lease Agreement.

"Permitted Transaction Expenses" shall mean the following costs and expenses to the extent payable by Lessee in connection with and directly related to the preparation, execution and delivery of the Operative Documents and the transactions contemplated thereby:

(a) The reasonable fees and expenses of counsel for Lessee incurred in connection with the preparation, negotiation, execution and delivery of the Operative Documents;

(b) The reasonable fees and expenses of counsel for each of Lessor and Agent incurred in connection with the preparation, negotiation, execution and delivery of the Operative Documents;

(c) The reasonable fees and expenses incurred in recording, registering or filing any of the Operative Documents;

(d) The title fees, premiums and escrow costs and other expenses relating to title insurance and the closing of the transactions contemplated by the Operative Documents;

(e) The reasonable fees and expenses of required environmental audits and appraisals;

(f) The reasonable fees and expenses of consultants and accountants for Lessee;

(g) The reasonable fees and expenses for surveys; and

(h) Other related reasonable fees and expenses.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, an unincorporated association, a limited liability company, a joint venture, a trust or other entity or a Governmental Authority.

"Personal Property Collateral" shall have the meaning given to that term in Subparagraph 2.07(b) of the Lease Agreement.

"PG&E" shall mean Pacific Gas and Electric Company, a California corporation.



"PG&E Agreements" shall mean each of (i) the Acquisition Agreement relating to the Tract 1 Land, (ii) Grant Deed between PG&E, as grantor, and Lessor, as grantee, conveying fee title to the Tract 1 Land, (iii) the Amended and Restated Environmental Agreement between PG&E and Lessor, which also shall be executed by Lessee, (iv) the License Agreement between PG&E and Lessor; and (v) the Agreement Regarding Development Within Nonexclusive Easements between PG&E and Lessor and any other agreements relating to such agreements or delivered in connection with such agreements..

"Plans and Specifications" shall mean the final architectural, engineering and construction plans, specifications and drawings for the New Improvements to be constructed on the Land delivered to Lessor pursuant to Subparagraph 5.01(h) of the Participation Agreement, including, if applicable, all civil plans, landscaping plans, and plans for the exterior and interior of structures, as such plans, specifications and drawings may thereafter be revised, amended, supplemented or modified pursuant to Paragraph 3.01 of the Construction Agency Agreement.

"Portion" shall mean a portion of the Outstanding Lease Amount. If, at any time, Lessee has not elected to divide the Outstanding Lease Amount into two or more portions, any reference to a Portion shall mean the total Outstanding Lease Amount at such time.

"Pricing Grid" shall mean the Pricing Grid as set forth on Schedule II to the Participation Agreement.

"Prime Rate" shall mean the per annum rate publicly announced by ABN AMRO from time to time at its Chicago Office. The Prime Rate is determined by ABN AMRO from time to time as a means of pricing credit extensions to some customers and is neither directly tied to any external rate of interest or index nor necessarily the lowest rate of interest charged by ABN AMRO at any given time for any particular class of customers or credit extensions. Any change in the Base Rate resulting from a change in the Prime Rate shall become effective on the Business Day on which each change in the Prime Rate occurs.

"Property" shall have the meaning given to that term in Paragraph 2.01 of the Lease Agreement.

"Property Collateral" shall have the meaning given to that term in Subparagraph 2.11(a) of the Participation Agreement.

"Proportionate Share" shall mean, with respect to each Participant, the percentage set forth under the caption "Proportionate Share" opposite such Participant's name on Part A of Schedule I, or, if changed, such percentage as may be set forth for such Participant in the Register. The Proportionate Share of each Participant shall equal the sum of such Participant's Tranche A Proportionate Share, Tranche B Proportionate Share and Tranche C Proportionate Share.

"Purchase Agreement" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement.

"Purchase Documents" shall have the meaning given to that term in Subparagraph 4.01(a) of the Purchase Agreement.

"Purchaser" shall have the meaning given to that term in Subparagraph 4.01(a) of the Purchase Agreement.

"Quick Ratio" shall mean, with respect to Lessee at any time, the ratio, determined on a consolidated basis in accordance with GAAP, of:

(a) The remainder of (i) the sum (without duplication) of all cash, Cash Equivalents and net accounts receivable of Lessee and its Subsidiaries at such time, minus (ii) the sum (without duplication) of all such cash, Cash Equivalents and net accounts receivable that are subject to a Lien or are otherwise restricted, provided that unless an Event of Default has occurred and is continuing, Cash Equivalents held pursuant to the Cash Collateral Agreement shall not be deemed to be subject to a Lien or otherwise restricted;

to

(b) Current liabilities of Lessee and its Subsidiaries, determined in accordance with GAAP, plus to the extent not included in current liabilities, the principal amount of all Indebtedness outstanding under revolving credit facilities and 20% of all synthetic lease obligations and other off balance sheet obligations due within one year.

"Rate Contracts" shall mean swap agreements (as that term is defined in Section 101 of the Federal Bankruptcy Reform Act of 1978, as amended) and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates.

"Real Property Collateral" shall have the meaning given to that term in Subparagraph 2.07(a) of the Lease Agreement.

"Register" shall have the meaning given to that term in Subparagraph 7.05(b) of the Participation Agreement.

"Related Agreements" shall mean all chattel paper, accounts, instruments, documents, investment property and general intangibles relating to any of the Land, Improvements or Appurtenant Rights or to the present or future development, construction, operation or use of any of the Land, Improvements or Appurtenant Rights, including (a) all plans, specifications, construction agreements, maps, surveys, studies, books of account, records, files, insurance policies, guarantees and warranties relating to such Land or Improvements or to the present or future development, construction, operation or use of such Land, Improvements or Appurtenant Rights (including the Construction Agreements and the Plans and Specifications); (b) all architectural, engineering, construction and management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to such Land, Improvements or Appurtenant Rights or to the present or future development, construction, operation or use of such Land, Improvements or Appurtenant Rights; and (c) all computer software and intellectual property, guaranties and warranties, letters of credit, and documents relating to such Land, Improvements or Appurtenant Rights or to the present or future development, construction, operation or use of such Land, Improvements or Appurtenant Rights.

"Related Goods" shall mean:

(a) All machinery, furniture, equipment, fixtures and other goods and tangible personal property (including construction materials and supplies) financed by any Advance, including all such property described in Exhibit B to the Lease Agreement and in each Exhibit B Supplement delivered by Lessee; and

(b) All machinery, equipment, fixtures and other goods and tangible personal property (including construction materials and supplies) now or hereafter intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to any of the Improvements or any other Related Goods.

"Related Permits" shall mean all licenses, authorizations, certificates, variances, consents, approvals and other permits, now or hereafter pertaining to any of the Land, Improvements or Appurtenant Rights and all tradenames or business names relating to any of the Land, Improvements or Appurtenant Rights or the present or future development, construction, operation or use of any of the Land, Improvements or Appurtenant Rights.

"Rent" shall mean collectively Base Rent and Supplemental Rent.

"Rental Period" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Rental Rate" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Repair and Restoration Account" shall have the meaning given to that term in Subparagraph 3.04(c) of the Lease Agreement.

"Reportable Event" shall have the meaning given to that term in ERISA and applicable regulations thereunder.

"Required Participants" shall mean (a) at any time the aggregate Outstanding Lease Amount or any Portion thereof is greater than \$0, Participants whose aggregate Outstanding Participation Amounts equal or exceed sixty-six and two-thirds percent (66-2/3%) or more of the aggregate Outstanding Lease Amount or any Portion thereof at such time and (b) at any time the aggregate Outstanding Lease Amount or any Portion thereof is \$0, Participants whose Proportionate Shares equal or exceed sixty-six and two-thirds percent (66-2/3%).

"Requirement of Law" applicable to any Person shall mean (a) the Articles or Certificate of Incorporation and By-laws, Partnership Agreement or other organizational or governing documents of such Person, (b) any Governmental Rule applicable to such Person, (c) any license, permit, approval or other authorization granted by any Governmental Authority to or for the benefit of such Person or (d) any judgment, decision or determination of any Governmental Authority or arbitrator, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserve Requirement" shall mean, with respect to any day in any Rental Period, the aggregate of the reserve requirement rates (expressed as a decimal) in effect on such day for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Federal Reserve Board) maintained by a member bank of the Federal Reserve System. As used herein, the term "reserve requirement" shall include, without limitation, any basic, supplemental or emergency reserve requirements imposed on any Participant by any Governmental Authority.

"Residual Value Guaranty Amount" shall have the meaning given to that term in Subparagraph 3.02(g) of the Purchase Agreement.

"Scheduled Expiration Date" shall have the meaning given to that term in Subparagraph 2.02(a) of the Lease Agreement.

"Scheduled Rent Payment Date" shall have the meaning given to that term in Subparagraph 2.03(a) of the Lease Agreement.

"Secondary Marketing Period" shall have the meaning given to that term in Subparagraph 3.02(b) of the Purchase Agreement.

"Seller" shall mean, respect to the Tract 1 Land, PG&E, and with respect to the Tract 2 Land, the City of San Rafael, California.

"Solvent" shall mean, with respect to any Person on any date, that on such date (a) the fair value of the property of such Person is greater than the fair value of the liabilities (including, without limitation, contingent liabilities) of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital.

"Subleases" shall mean all leases and subleases of any of the Land, Improvements and/or Appurtenant Rights by Lessee as lessor or sublessor, now or hereafter in effect, whether or not of record, including all guaranties and security therefor and the right to bring actions and proceedings thereunder or for the enforcement thereof and to do anything which Lessee is or may become entitled to do thereunder.

"Subordinated Indebtedness" shall mean Indebtedness which is unsecured and subordinated to the Lessee Obligations on terms acceptable to Lessor and the Required Participants.

"Subparticipants" shall have the meaning given to that term in Subparagraph 7.05(c) of the Participation Agreement.

"Subsidiary" of any Person shall mean (a) any corporation of which more than 50% of the issued and outstanding Equity Securities having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of

any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries, (b) any partnership, joint venture, or other Person of which more than 50% of the equity interest having the power to vote, direct or control the management of such partnership, joint venture, business trust or other Person is at the time owned and controlled by such Person, by such Person and one or more of the other Subsidiaries or by one or more of such Person's other Subsidiaries or (c) any other Person included in the Financial Statements of such Person on a consolidated basis.

"Sub-Tract Parcel" shall have the meaning set forth in Paragraph 2.02 of the Purchase Agreement.

"Supplemental Rent" shall have the meaning given to such term in Subparagraph 2.03(b) of the Lease Agreement.

"Surety Instruments" shall mean all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Tangible Net Worth" shall mean, with respect to Lessee and its Subsidiaries at any time, the remainder at such time, determined on a consolidated basis in accordance with GAAP, of (a) the total assets of Lessee and its Subsidiaries minus (b) the sum (without limitation and without duplication of deductions) of (i) the total liabilities of Lessee and its Subsidiaries, (ii) all reserves established by Lessee and its Subsidiaries for anticipated losses and expenses (to the extent not deducted in calculating total assets in clause (a) above), and (iii) all intangible assets of Lessee and its Subsidiaries (to the extent included in calculating total assets in clause (a) above), including, without limitation, goodwill (including any amounts, however designated on the balance sheet, representing the cost of acquisition of businesses and investments in excess of underlying tangible assets), trademarks, trademark rights, trade name rights, copyrights, patents, patent rights, licenses, unamortized debt discount, marketing expenses, organizational expenses, non-compete agreements and deferred research and development.

"Term" shall mean the period beginning on the Commencement Date of the Lease Agreement and ending on the Expiration Date of the Lease Agreement.

"Termination Date" shall mean (a) the date set forth in a Notice of Term Purchase Option as the Scheduled Rent Payment Date on which the Lease Agreement will be terminated by Lessee pursuant to Paragraph 4.01 of the Lease Agreement and the Property will be purchased by Lessee pursuant to Section II of the Purchase Agreement or (b) the date set forth in a written notice delivered by Lessor to Lessee pursuant to Subparagraph 5.03(a) or 5.04(a) of the Lease Agreement after the occurrence of an Event of Default thereunder as the date on which the Lease Agreement will be terminated.

"Term Purchase Option" shall have the meaning given to that term in Paragraph 2.01 of the Purchase Agreement.

"Thirty-Month Commitment" shall have the meaning given to that term in Subparagraph 2.01(b) of the Participation Agreement.

"Total Commitment" shall mean the amount set forth as such in Subparagraph 2.01(b) of the Participation Agreement or, if such amount is reduced pursuant to Subparagraph 2.08(a) of the Participation Agreement, the amount to which so reduced.

"Tract" shall mean:

(a) With respect to any land, the lots, pieces, parcels and tracts of land described in each Part of Exhibit A to the Lease Agreement or Exhibit A to the Participation Agreement, as the case may be; and

(b) With respect to any Property, a tract of land, together with all Property related to such tract of land.

"Tract 1 Land" and "Tract 2 Land" shall mean the lots, pieces, parcels and tracts of land described in Part 1 and Part 2, respectively, of Exhibit A to the Participation Agreement.

"Tract 2 Acquisition Advance" shall have the meaning given to that term in Subparagraph 2.03(a) of the Participation Agreement.

"Tract 2 Acquisition Date" shall have the meaning given to that term in Subparagraph 2.01(a) of the Participation Agreement. "Tranche A Participant" shall mean, at any time, any Participant having an Outstanding Tranche A Participation Amount at such time.

"Tranche A Percentage" shall mean (a) with respect to each Participant at any time prior to the Commitment Termination Date, the percentage set forth under the caption "Tranche A Percentage" opposite such Participant's name in Part A(1) of Schedule I and (b) with respect to each Participant at any time on or after the Commitment Termination Date, the percentage set forth under the caption "Tranche A Percentage" opposite such Participant's name in Part A(2) of Schedule I; or in the case of either such percentage, if changed, such percentage as may be set forth for such Participant in the Register.

"Tranche A Portion" shall mean, (a) with respect to any Advance without reference to any Participant, the portion of such Advance equal to the Tranche A Proportionate Share of such Advance and (b) with respect to any Advance with reference to any Participant, the portion of such Advance equal to such Participant's Tranche A Percentage of such Advance.

"Tranche A Proportionate Share" shall mean (a) at any time prior to the Commitment Termination Date, eighty-nine and nine-tenths percent (89.9%) and (b) at any time on or after the Commitment Termination Date, eighty-three and five tenths percent (83.5%).

"Tranche B Participant" shall mean, at any time, any Participant having an Outstanding Tranche B Participation Amount at such time.

"Tranche B Percentage" shall mean (a) with respect to each Participant at any time prior to the Commitment Termination Date, the percentage set forth under the caption "Tranche B Percentage" opposite such Participant's name in Part A(1) of Schedule I and (b) with respect to

each Participant at any time on or after the Commitment Termination Date, the percentage set forth under the caption "Tranche B Percentage" opposite such Participant's name in Part A(2) of Schedule I; or in the case of either such percentage, if changed, such percentage as may be set forth for such Participant in the Register.

"Tranche B Portion" shall mean, (a) with respect to any Advance without reference to any Participant, the portion of such Advance equal to the Tranche B Proportionate Share of such Advance and (b) with respect to any Advance with reference to any Participant, the portion of such Advance equal to such Participant's Tranche B Percentage of such Advance.

"Tranche B Proportionate Share" shall mean (a) at any time prior to the Commitment Termination Date, seven and one-tenth percent (7.1% and (b) at any time on or after the Commitment Termination Date, thirteen and five-tenths percent (13.5%).

"Tranche C Participant" shall mean, at any time, any Participant having an Outstanding Tranche C Participation Amount at such time.

"Tranche C Percentage" shall mean (a) with respect to each Participant at any time prior to the Commitment Termination Date, the percentage set forth under the caption "Tranche C Percentage" opposite such Participant's name in Part A(1) of Schedule I and (b) with respect to each Participant at any time on or after the Commitment Termination Date, the percentage set forth under the caption "Tranche C Percentage" opposite such Participant's name in Part A(2) of Schedule I; or in the case of either such percentage, if changed, such percentage as may be set forth for such Participant in the Register.

"Tranche C Portion" shall mean, (a) with respect to any Advance without reference to any Participant, the portion of such Advance equal to the Tranche C Proportionate Share of such Advance and (b) with respect to any Advance with reference to any Participant, the portion of such Advance equal to such Participant's Tranche C Percentage of such Advance.

"Tranche C Proportionate Share" shall mean, at all times (whether before, on or after the Commitment Termination Date), three percent (3.0%).

"Trustee" shall have the meaning given to that term in the introductory paragraph of the Lease Agreement.

"Unused" shall mean (a) with respect to the 364-Day Commitment at any time, the remainder of (i) the 364-Day Commitment at such time minus (ii) the aggregate amount of all Advances made prior to such time and allocated to the 364-Day Commitment; (b) with respect to the Thirty-Month Commitment at any time, the remainder of (i) the Thirty-Month Commitment at such time minus (ii) the aggregate amount of all Advances made prior to such time and allocated to the Thirty-Month Commitment; and (b) with respect to the Total Commitment at any time, the remainder of (i) the Total Commitment at such time minus (b) the aggregate amount of all Advances made prior to such time.

SCHEDULE 1.02

RULES OF CONSTRUCTION

(a) GAAP. Unless otherwise indicated in any Operative Document, all accounting terms used in the Operative Documents shall be construed, and all accounting and financial computations thereunder shall be computed, in accordance with GAAP. If GAAP changes after the date of the Participation Agreement such that any covenants contained in the Operative Documents would then be calculated in a different manner or with different components, Lessee and the Lessor Parties agree to negotiate in good faith to amend the applicable Operative Documents in such respects as are necessary to conform those covenants as criteria for evaluating Lessee's financial condition to substantially the same criteria as were effective prior to such change in GAAP; provided, however, that, until Lessee and the Lessor Parties so amend the Operative Documents, all such covenants shall be calculated in accordance with GAAP as in effect immediately prior to such change.

(b) Headings. Headings in each of the Operative Documents are for convenience of reference only and are not part of the substance thereof.

(c) Plural Terms. All terms defined in any Operative Document in the singular form shall have comparable meanings when used in the plural form and vice versa.

(d) Time. All references in each of the Operative Documents to a time of day shall mean San Francisco, California time, unless otherwise indicated. All references in each of the Operative Documents to a date (the "action date") which is one month prior to or after another date (the "reference date") shall mean the date in the immediately preceding or succeeding calendar month (as the case may be) which numerically corresponds to the reference date; provided, however, that (i) if such corresponding date in the immediately preceding or succeeding calendar month (as the case may be) is not a Business Day, the action date shall be the next succeeding Business Day after such corresponding date (unless, in the case of a Rental Period, such next Business Day falls in another calendar month, in which case the action date shall be the immediately preceding Business Day) and (ii) if the reference date is the last Business Day of a calendar month (or a day for which there is no numerically corresponding day in the immediately preceding calendar month) the action date shall be the last Business Day of the immediately preceding or succeeding calendar month (as the case may be). All references in each of the Operative Documents to an earlier date which is two or more months prior to a reference date or to a later date which is two or more months after a reference date shall be determined in a comparable manner.

(e) Construction. The Operative Documents are the result of negotiations among, and have been reviewed by Lessee and each Lessor Party and their respective counsel. Accordingly, the Operative Documents shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against Lessee or any Lessor Party.

(f) Entire Agreement. The Operative Documents, taken together, constitute and contain the entire agreement of Lessee and the Lessor Parties and supersede any and all prior



agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter thereof.

(g) Calculation of Base Rent, Interest and Fees. All calculations of Base Rent, interest and fees under the Operative Documents for any period (i) shall include the first day of such period and exclude the last day of such period and (ii) shall be calculated on the basis of a year of 360 days for actual days elapsed, except that during any period that Base Rent or any interest is to be calculated based upon the Base Rate, such Base Rent or interest shall be calculated on the basis of a year of 365 or 366 days, as appropriate, for actual days elapsed.

(h) References.

(i) References in any Operative Document to "Recitals," "Sections," "Paragraphs," "Subparagraphs," "Articles," "Exhibits" and "Schedules" are to recitals, sections, paragraphs, subparagraphs, articles, exhibits and schedules therein and thereto unless otherwise indicated.

(ii) References in any Operative Document to any document, instrument or agreement (A) shall include all exhibits, schedules and other attachments thereto, (B) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (C) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.

(iii) References in any Operative Document to any Governmental Rule (A) shall include any successor Governmental Rule, (B) shall include all rules and regulations promulgated under such Governmental Rule (or any successor Governmental Rule), and (C) shall mean such Governmental Rule (or successor Governmental Rule) and such rules and regulations, as amended, modified, codified or reenacted from time to time and in effect at any given time.

(iv) References in any Operative Document to any Person in a particular capacity (A) shall include any permitted successors to and assigns of such Person in that capacity and (B) shall exclude such Person individually or in any other capacity.

(i) Other Interpretive Provisions. The words "hereof," "herein" and "hereunder" and words of similar import when used in any Operative Document shall refer to such Operative Document as a whole and not to any particular provision of such Operative Document. The words "include" and "including" and words of similar import when used in any Operative Document shall not be construed to be limiting or exclusive. In the event of any inconsistency between the terms of the Participation Agreement and the terms of any other Operative Document, the terms of the Participation Agreement shall govern.

(j) Governing Law. Unless otherwise provided in any Operative Document, each of the Operative Documents shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules.

SCHEDULE 3.01

CONDITIONS PRECEDENT TO INITIAL ACQUISITION ADVANCE

A. Principal Operative Documents.

(1) The Participation Agreement, duly executed by Lessee, Lessor, each Participant and Agent;

(2) The Lease Agreement, duly executed by Lessee and Lessor and appropriately notarized for recording;

(3) The Purchase Agreement, duly executed by Lessee and Lessor;

(4) The Construction Agency Agreement, duly executed by Lessee and Lessor;

(5) The Assignment of Construction Agreements, duly executed by Lessee;

(6) The Cash Collateral Agreement, duly executed by Lessee;

(7) The Assignment of Lease, duly executed by Lessor and appropriately notarized for recording;

(8) The Lessor Deed of Trust, duly executed by Lessor and appropriately notarized for recording; and

(9) The Lessor Security Agreement, duly executed by Lessor.

B. Lessee Corporate Documents.

(1) The Certificate or Articles of Incorporation of Lessee, certified as of a recent date prior to the Closing Date by the Secretary of State (or comparable official) of its jurisdiction of incorporation;

(2) A Certificate of Good Standing (or comparable certificate) for Lessee, certified as of a recent date prior to the Closing Date by the Secretary of State (or comparable official) of its jurisdiction of incorporation;

(3) A certificate of the Secretary or an Assistant Secretary of Lessee, dated the Closing Date, certifying (a) that attached thereto is a true and correct copy of the Bylaws of Lessee as in effect on the Closing Date; (b) that attached thereto are true and correct copies of resolutions duly adopted by the Board of Directors of Lessee and continuing in effect, which authorize the execution, delivery and performance by Lessee of the Operative Documents executed or to be executed by Lessee and the consummation of the

transactions contemplated thereby; and (c) that there are no proceedings for the dissolution or liquidation of Lessee;

(4) A certificate of the Secretary or an Assistant Secretary of Lessee, dated the Closing Date, certifying the incumbency, signatures and authority of the officers of Lessee authorized to execute, deliver and perform the Operative Documents and all other documents, instruments or agreements related thereto executed or to be executed by Lessee; and

(5) A Certificates of Good Standing (or comparable certificates) for Lessee, certified as of a recent date prior to the Closing Date by the Secretary of State of California.

C. Financial Statements, Financial Condition, Etc.

(1) A copy of the audited consolidated Financial Statements of Lessee for the fiscal year ended September 30, 1997, audited by KPMG Peat Marwick and a copy of the unqualified opinion delivered by such accountants in connection with such Financial Statements;

(2) A copy of the 10-Q report filed by Lessee with the Securities and Exchange Commission for the quarter ended December 31, 1997;

(3) A copy of the 10-K report filed by Lessee with the Securities and Exchange Commission for the fiscal year ended September 30, 1997;

(4) A copy of the most recently completed annual report (Form 5500 Series) filed with the Internal Revenue Service with respect to each Employee Benefit Plan of Lessee and its Subsidiaries, certified by the Lessee;

(5) The consolidated plan and forecast of Lessee and its Subsidiaries for the fiscal year to end September 30, 1998 including quarterly cash flow projections and quarterly projections of Lessee's compliance with each of the covenants set forth in Paragraph 5.03 of the Participation Agreement; and

(6) Such other financial, business and other information regarding Lessee, or any of its Subsidiaries as Agent or any Participant may reasonably request, including information as to possible contingent liabilities, tax matters, environmental matters and obligations for employee benefits and compensation.

D. Collateral Documents.

(1) Evidence that the Lease Agreement, the Assignment of Lease, and the Lessor Deed of Trust, delivered pursuant to items A(2), A(7) and A(8) and the Memorandum of Purchase Agreement relating to the Purchase Agreement delivered

pursuant to item A(3) with respect to the Tract 1 Land have been properly recorded in the Official Records of Marin County;

(2) An extended coverage owner's policy or binder of title insurance (or a commitment therefor) for the Property insuring Lessor's fee simple estate to the Tract 1 Land (subject to such exceptions as Agent may approve), in such amounts and with such endorsements as Agent may reasonably require, issued by a title insurer acceptable to Agent, together with such policies of co-insurance or re-insurance (or commitments therefor) as Agent may require;

(3) An extended coverage lender's policy of title insurance (or a commitment therefor) for the Tract 1 Land insuring the validity and priority of the Lease Agreement (subject to such exceptions as Agent may approve), in such amounts and with such endorsements as Agent may reasonably require, issued by a title insurer acceptable to Agent, together with such policies of co-insurance or re-insurance (or commitments therefor) as Agent may require;

(4) An extended coverage lender's policy of title insurance (or a commitment therefor) for the Tract 1 Land insuring the validity and priority of the Lessor Deed of Trust (subject to such exceptions as Agent may approve), in such amounts and with such endorsements as Agent may reasonably require, issued by a title insurer acceptable to Agent, together with such policies of co-insurance or re-insurance (or commitments therefor) as Agent may require;

(5) Copies of all leases for the Tract 1 Land and all other documents, instruments and agreements recorded against or otherwise affecting the Property, including all amendments, extensions and other modifications thereof;

(6) Subordination, non-disturbance and attornment agreements from the lessee under each of the leases for the Tract 1 Land;

(7) Such consents and estoppels, with appropriate mortgagee protection language, as are requested by Agent, each duly executed by the appropriate Person;

(8) Such Uniform Commercial Code financing statements and fixture filings (appropriately completed and executed) for filing in such jurisdictions as Agent may request to perfect the Liens granted to Lessor and Agent in the Lessee Security Documents, the Lessor Security Agreement and the other Operative Documents;

(9) Such Uniform Commercial Code termination statements (appropriately completed and executed) for filing in such jurisdictions as Agent may request to terminate any financing statement evidencing Liens of other Persons in the Collateral which are prior to the Liens granted to Lessor and Agent in the Lessee Security Documents, the Lessor Security Agreement and the other Operative Documents, except for any such prior Liens which are expressly permitted by the Operative Documents to be prior;

(10) Uniform Commercial Code search certificates from the jurisdictions in which Uniform Commercial Code financing statements are to be filed pursuant to item B(8) above reflecting no other financing statements or filings which evidence Liens of other Persons in the Collateral which are prior to the Liens granted to Lessor and Agent in the Lessee Security Documents, the Lessor Security Agreement and the other Operative Documents, except for any such prior Liens (a) which are expressly permitted by the Operative Documents to be prior or (b) for which Agent has received a termination statement pursuant to item B(9) above;

(11) Such other documents, instruments and agreements as Agents may reasonably request to establish and perfect the Liens granted to any Lessor Party in the Lessee Security Documents, the Lessor Deed of Trust, the Lessor Security Agreement and the other Operative Documents;

(12) Such other evidence as Agent may request to establish that the Liens granted to Agent or any Participant in the Lessee Security Documents, the Lessor Deed of Trust, the Lessor Security Agreement and the other Operative Documents are perfected and prior to the Liens of other Persons in the Collateral, except for any such Liens which are expressly permitted by the Operative Documents to be prior; and

E. Opinions.

(1) A favorable written opinion of Pillsbury, Madison & Sutro LLP, counsel to Lessee, dated the Closing Date, addressed to Lessor and Agent, for the benefit of Lessor, Agent and the Participants, and covering such legal matters as Agent may reasonably request and otherwise in form and substance satisfactory to Agent.

F. Other Items.

(1) A duly completed and timely delivered Acquisition Request, duly executed by Lessee;

(2) A preliminary market valuation for the Property, satisfactory to Lessor, dated as of a recent date prior to the Closing Date;

(3) Bills of sale for all Related Goods to be acquired with the Initial Acquisition Advances to be made on the Closing Date, each reflecting Lessor as the purchaser of such Related Goods;

(4) An as-built survey of the Property (i) prepared by a registered surveyor reasonably satisfactory to Agent, (ii) certified as correct and as (A) having been made in accordance with the most recent standards for "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and ACSM, and (B) meeting the accuracy requirements of a Class A survey (as defined therein) and including items 1-5, 7-13 and 15 of Table 3 thereof, and (iii) disclosing, among other things, (A) the location of the perimeter of the Property by courses and distances, (B) all easements and rights-of-way, whether above or underground, (C) the

lines of the street abutting the Property and the width thereof, (D) encroachments, if any, and the extent thereof in feet and inches upon the Property, and (E) all boundary and lot lines, and all other matters that would be disclosed by inspection of the Property and the public records;

(5) If requested by Lessor, Agent or any Participant, a list of and copies of all Construction Agreements;

(6) Each of the Environmental Reports;

(7) Certificates of insurance evidencing the insurance Lessee is required to maintain pursuant to Paragraph 3.03 of the Lease Agreements;

(8) A certificate of an Authorized Officer of Lessee, addressed to Lessor and Agent and dated the Closing Date, certifying that:

(a) The representations and warranties set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as of such date (except for such representations and warranties made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing as of such date;

(c) All of the Operative Documents are in full force and effect on such date.

(9) The Acquisition Agreement for the Tract 1 Land and an assignment of such Acquisition Agreement to Lessor.

(10) All fees and expenses payable to the Lessor Parties on or prior to the Closing Date (including all Agent's Fees);

(11) All fees and expenses of Lessor's and Agent's counsels through the Closing Date;

(12) Each of the PG&E Agreements, which shall have been duly executed and delivered and be binding on PG&E and an appropriate officer's certificates of PG&E as to the due authorization and execution of such Agreements; and

(13) The agreements between Lessee and Village Builders, L.P. relating to leasing the Property and making leasehold improvements to the Property shall have been terminated and Phase II of the Purchase Agreement between Lessee and Village Builders LP shall have been terminated as no longer in effect.

Such other evidence as Agent may reasonably request to establish the accuracy and completeness of the representations and warranties and the compliance with the terms and conditions contained in the Operative Documents.

CONDITIONS PRECEDENT TO TRACT 2 ACQUISITION ADVANCE

A. Principal Operative Documents.

(1) An amendment to the Lease Agreement adding the Tract 2 Land to the Property covered thereby, duly executed by Lessee and Lessor and appropriately notarized;

(2) An amendment to the Purchase Agreement adding the Tract 2 Land to the Property covered thereby, duly executed by Lessee and Lessor;

(3) An amendment to the Construction Agency Agreement adding the Tract 2 Land to the Property covered thereby, duly executed by Lessee and Lessor;

(4) An amendment to the Assignment of Lease adding the Tract 2 Land to the Property covered thereby, duly executed by Lessee and Lessor and appropriately notarized; and

(5) An amendment to the Lessor Deed of Trust adding the Tract 2 Land to the Property covered thereby, duly executed by Lessee and Lessor and, appropriately notarized.

B. Collateral Documents.

(1) An amendment to the Memorandum of Purchase Agreement adding the Tract 2 Land to the Property covered thereby, duly executed by Lessee and Lessor and appropriately notarized for recording, and evidence that such amendment has been properly recorded in the Official Records of the County of Marin, California;

(2) Evidence that the Lease Agreement, the Assignment of Lease and the Lessor Deed of Trust, or amendments thereto, have been properly recorded in the Official Records of the County of Marin, California;

(3) An extended coverage owner's policy or binder of title insurance (or a commitment therefor) for the Tract 2 Land insuring Lessor's fee simple title to such Property (subject to such exceptions as Agent may approve), in such amounts and with such endorsements as Agent may reasonably require, issued by a title insurer acceptable to Agent, together with such policies of co-insurance or re-insurance (or commitments therefor) as Agent may require;

(4) An extended coverage lender's policy of title insurance (or a commitment therefor) for the Tract 2 Land insuring the validity and priority of the Lease Agreement

(subject to such exceptions as Agent may approve), in such amounts and with such endorsements as Agent may reasonably require, issued by a title insurer acceptable to Agent, together with such policies of co-insurance or re-insurance (or commitments therefor) as Agent may require;

(5) An extended coverage lender's policy of title insurance (or a commitment therefor) for the Tract 2 Land insuring the validity and priority of the Lessor Deed of Trust (subject to such exceptions as Agent may approve), in such amounts and with such endorsements as Agent may reasonably require, issued by a title insurer acceptable to Agent, together with such policies of co-insurance or re-insurance (or commitments therefor) as Agent may require;

(6) Copies of all leases for the Tract 2 Land and all other documents, instruments and agreements recorded against or otherwise affecting such Property, including all amendments, extensions and other modifications thereof;

(7) Subordination, non-disturbance and attornment agreements from the lessee under each of the leases for the Tract 2 Land;

(8) Such consents and estoppels, with appropriate mortgagee protection language, as are requested by Agent, each duly executed by the appropriate Person;

(9) Such Uniform Commercial Code financing statements and fixture filings (appropriately completed and executed) for filing in such jurisdictions as Agent may request to perfect the Liens granted to Lessor and Agent in the Lessee Security Documents, the Lessor Security Agreement and the other Operative Documents;

(10) Such Uniform Commercial Code termination statements (appropriately completed and executed) for filing in such jurisdictions as Agent may request to terminate any financing statement evidencing Liens of other Persons in the Collateral which are prior to the Liens granted to Lessor and Agent in the Lessee Security Documents, the Lessor Security Agreement and the other Operative Documents, except for any such prior Liens which are expressly permitted by the Operative Documents to be prior;

(11) Uniform Commercial Code search certificates from the jurisdictions in which Uniform Commercial Code financing statements are to be filed pursuant to item B.(9) above reflecting no other financing statements or filings which evidence Liens of other Persons in the Collateral which are prior to the Liens granted to Lessor and Agent in the Lessee Security Documents, the Lessor Security Agreement and the other Operative Documents, except for any such prior Liens (a) which are expressly permitted by the Operative Documents to be prior or (b) for which Agent has received a termination statement pursuant to item B.(10) above;

(12) Such other documents, instruments and agreements as Agents may reasonably request to establish and perfect the Liens granted to any Lessor Party in the Lessee Security Documents, the Lessor Deed of Trust, the Lessor Security Agreement and the other Operative Documents; and



(13) Such other evidence as Agent may request to establish that the Liens granted to Agent or any Participant in the Lessee Security Documents, the Lessor Deed of Trust, the Lessor Security Agreement and the other Operative Documents are perfected and prior to the Liens of other Persons in the Collateral, except for any such Liens which are expressly permitted by the Operative Documents to be prior.

C. Opinions.

(1) A favorable written opinion of Pillsbury, Madison & Sutro LLP, counsel to Lessee, dated the Tract 2 Acquisition Date, addressed to Lessor and Agent, for the benefit of Lessor, Agent and the Participants, and covering such legal matters as Agent may reasonably request and otherwise in form and substance satisfactory to Agent.

D. Other Items.

(1) A duly completed and timely delivered Acquisition Request for the Tract 2 Advance, duly executed by Lessee;

(2) A letter updating the Expiration Date Appraisal or other evidence satisfactory to Lessor as to appraised value of the Tract 2 Land as of the Tract 2 Acquisition Date;

(3) Bills of sale for all Related Goods to be acquired for the Acquisition Advance to be made on the Tract 2 Acquisition Date, each reflecting Lessor as the purchaser of such Related Goods;

(4) An as-built survey of the Property (i) prepared by a registered surveyor reasonably satisfactory to Agent, (ii) certified as correct and as (A) having been made in accordance with the most recent standards for "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and ACSM, and (B) meeting the accuracy requirements of a Class A survey (as defined therein) and including items 1-5, 7-13 and 15 of Table 3 thereof, and (iii) disclosing, among other things, (A) the location of the perimeter of the Property by courses and distances, (B) all easements and rights-of-way, whether above or underground, (C) the lines of the street abutting the Property and the width thereof, (D) encroachments, if any, and the extent thereof in feet and inches upon the Property, and (E) all boundary and lot lines, and all other matters that would be disclosed by inspection of the Property and the public records;

(5) If requested by Lessor, Agent or any Participant, a list of and copies of all Construction Agreements;

(6) Each of the Environmental Reports to the extent not previously delivered;

(7) Certificates of insurance evidencing the insurance Lessee is required to maintain pursuant to Paragraph 3.03 of the Lease Agreement;

(8) The Acquisition Agreement for the Tract 2 Land and an assignment of such Acquisition Agreement by Lessee to Lessor;

(9) All fees and expenses payable to the Lessor Parties on or prior to the Acquisition Date for the Tract 2 Land (including all Agent's Fees);

(10) All fees and expenses of Lessor's and Agent's counsels through the Acquisition Date for the Tract 2 Land; and

(11) Such other evidence as Agent, Lessor or any Participant may reasonably request to establish the accuracy and completeness of the representations and warranties and the compliance with the terms and conditions contained in the Operative Documents.

SCHEDULE 4.01(q)

SUBSIDIARIES

Subsidiary	Jurisdiction of Corporation	Class of Equity	Shares Owned by Lessee	Percentage Owned by Lessee
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4.01(q)-1

Schedule 4.01(f)

Environmental Reports

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. 85-80, Waste Discharge Requirements for: Pacific Gas and Electric Company, Redwood Regional Office, San Rafael, Marin County, Adopted June 19, 1985

California Department of Health Services, Toxic Substances Control Division, Consent Order, Docket No. HAS 89-/90-002 - Covenant of Deed Restriction, Covenant and Agreement to Restrict Use of Property, Pacific Gas and Electric Company, San Rafael, California, July 14, 1989

Phase I Environmental Site Assessment for the Former PG&E San Rafael Service Center Site, City of San Rafael Corporation Yard, and Shell Station, San Rafael, California, August 14, 1996, Levine-Fricke (Prepared for Fair, Isaac & Company)

Final Risk Appraisal, San Rafael Retail Project, San Rafael, California, June 21, 1989, Harding Lawson Associates

1995 Annual Groundwater Monitoring Report for the Pacific Gas and Electric Company's Former San Rafael Manufactured Gas Plant Site, June, 1996, Tetra Tech, Inc.

Review of 1989 Risk Appraisal, Second and Lindaro Streets, San Rafael, California, July 3, 1996, Harding Lawson Associates

Soil and Groundwater Investigation, Second and Lindaro Streets, San Rafael, California, October 28, 1996, Harding Lawson Associates

Evaluation of Existing Groundwater Extraction System and Revised Proposed Extraction and Monitoring System Modifications, Village Properties/Fair, Isaac Development, Second and Lindaro Property, San Rafael, California, May 7, 1997, Harding Lawson Associates

1996 Annual Groundwater Monitoring Report for the Pacific Gas and Electric Company's Former San Rafael Manufactured Gas Plan Site, June, 1997, Tetra Tech, Inc.

Risk Assessment of Groundwater and Soil, PG&E Parcel, San Rafael, California, July 8, 1997, Harding Lawson Associates

Revised Risk Assessment of Groundwater and Soil, PG&E Parcel, San Rafael, California, July 18, 1997, Harding Lawson Associates

Health and Safety Plan, Fair, Isaac Office Park, 250 Lindaro Avenue, San Rafael, California, June 11, 1997, Harding Lawson Associates

(Revised) Soil Management Work Plan, Fair, Isaac Office Park, Second and Lindaro Streets, San Rafael, California, June 12, 1997, Revision 1, September 30, 1997, Revision 2, February 1998, Harding Lawson Associates

(Revised) Health and Safety Plan, Fair, Isaac Office Park, 250 Lindero Avenue, San Rafael, California, Revised September 30, 1997, Harding Lawson Associates

Draft Environmental Impact Report for the Fair, Isaac Office Park Project, Volume I - EIR Text & Appendices, August 18, 1997, Robert Bein, William Frost & Associates

San Rafael Downtown Retail Center, Draft Environmental Impact Report, EIP Associates, December, 1987

Limited Phase I and Phase II Environmental Site Assessment Report, Shell Station and San Rafael Corporation Yard, 755 Second Street, 790 Lincoln Avenue, San Rafael, California, September 25, 1995, McCulley, Frick & Gilman, Inc. (Prepared for The City of San Rafael Redevelopment Agency)

1997 Annual Ground Water Monitoring Report, for PG&E's former San Rafael Plant Site, April 1998, Tetra Tech, Inc.

4.01(f)-2

SCHEDULE 4.01(u) -PART 1

TRACT 1 PROPERTY

(i) The Tract 1 Land consists of approximately 10.47 acres located in the City of San Rafael, Marin County, California, more particularly described in Part 1 to Exhibit A.

(ii) Upon the completion of the New Improvements on the Tract 1 Land, the Improvements on the Land will consist of two office buildings containing approximately 150,000 rentable square feet (including parking, landscaping, recreational and related facilities, amenities and improvements).

(iii) Access to the Tract 1 Land for pedestrians and motor vehicles from publicly dedicated streets and public highways is available.

(iv) No portion of the Tract 1 Land is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable Governmental Authority, or if any portion of the Property is located in such an area, flood insurance has been obtained for the Property or such portion thereof in accordance with Paragraph 3.03 of the Lease Agreement and the National Flood Insurance Act of 1968.

SCHEDULE 4.01(u) - PART 2

TRACT 2 PROPERTY

(i) The Tract 2 Land consists of approximately 2.25 acres located in the City of San Rafael, Marin County, California, more particularly described in Part 2 to Exhibit A.

(ii) No New Improvements will be built on the Tract 2 Land prior to the Scheduled Expiration Date.

(iii) Access to the Tract 2 Land for pedestrians and motor vehicles from publicly dedicated streets and public highways is available.

(iv) No portion of the Tract 2 Land is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable Governmental Authority, or if any portion of the Property is located in such an area, flood insurance has been obtained for the Property or such portion thereof in accordance with Paragraph 3.03 of the Lease Agreement and the National Flood Insurance Act of 1968.

SCHEDULE 4.01(x)

BUDGET

4.01(x)



SCHEDULE 5.02(a)  
EXISTING INDEBTEDNESS

None.

5.02(a)-1

SCHEDULE 5.02(b)

EXISTING LIENS

None.

5.02(b)-1

SCHEDULE 5.02(e)  
INVESTMENT POLICY

5.02(E)-1

EXHIBIT A

LAND

Part 1

Property to be acquired from PG&E.

A-1

EXHIBIT A

LAND

Part 2

Property to be acquired from City of San Rafael.

A-2

EXHIBIT B  
LEASE AGREEMENT

B-1

EXHIBIT C  
PURCHASE AGREEMENT

C-1

EXHIBIT D  
CONSTRUCTION AGENCY AGREEMENT

D-1



EXHIBIT E

ACQUISITION REQUEST

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to that certain Participation Agreement, dated as of May 15, 1998, (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Subparagraph 2.03(a) of the Participation Agreement, Lessee hereby irrevocably requests Lessor to acquire [the Tract1/Tract2 Land] and to make the Acquisition Advance as follows:

(a) The Acquisition Advances shall be made on \_\_\_\_\_, 1998; and

(b) The Acquisition Advance shall be in the amount of \$\_\_\_\_\_ which shall be used to pay (i) \$\_\_\_\_\_ on account of the purchase price to be paid for the [Tract 1/ Tract 2 Land] pursuant to the applicable Acquisition Agreement, and (ii) \$\_\_\_\_\_ on account of Permitted Transaction Expenses.

3. Lessee desires that the Rental Rate on such Advance be calculated as follows: (select one)

(a) At the LIBOR Rental Rate with a Rental Period of \_\_\_ months, or

(b) At the Alternate Base Rate.

4. [For Advances requested prior to delivery of the Plans and Specifications pursuant to Subparagraph 5.01(h) of the Participation Agreement.] [Set forth on Schedule 1 hereto is an allocation of such Advance to each applicable Line Item of the Budget and a reconciliation of Advances made prior to the date hereof to the applicable Line Items of the Budget.]

5. Lessee hereby certifies to the Lessor Parties that, on the date of this Acquisition Request and after giving effect to the use of the requested Acquisition Advance[s] as described above:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing;

(c) All of the Operative Documents are in full force and effect;

(d) No action, suit or other proceeding affecting the title to, or the use, operation or value of, the applicable Property (including any proceeding for Condemnation or under any Environmental Law) is pending or, to the best of Lessee's knowledge, threatened; and

(e) No Casualty affecting the applicable Property has occurred.

6. Please disburse the proceeds of the Acquisition Advance to \_\_\_\_\_.

IN WITNESS WHEREOF, Lessee has executed this Acquisition Request on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE 1  
TO  
ACQUISITION REQUEST

E-3

EXHIBIT F

IMPROVEMENT/EXPENSE ADVANCE REQUEST

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to that certain Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Subparagraph 2.03(b) of the Participation Agreement, Lessee hereby irrevocably requests Lessor to make an Improvement/Expense Advance as follows:

(a) Such Improvement/Expense Advance shall be in the aggregate amount of \$\_\_\_\_\_; and

(b) The date of such Improvement/Expense Advance shall be \_\_\_\_\_, \_\_\_\_ (the "Advance Date").

3. Lessee desires that the Rental Rate on such Advance be calculated as follows: (select one)

(a) At the LIBOR Rental Rate with a Rental Period of \_\_ months, or

(b) At the Alternate Base Rate.

4. [For Advances requested prior to delivery of the Plans and Specifications pursuant to Subparagraph 5.01(h) of the Participation Agreement.] [Set forth on Schedule 1 hereto is an allocation of such Advance to each applicable Line Item of the Budget and a reconciliation of Advances made prior to the date hereof to the applicable Line Items of the Budget.]

5. [Lessee will use \$\_\_\_\_\_ of the proceeds of the requested Improvement/Expense Advance to pay the costs for the Related Goods described in the Supplement to Exhibit B to the Lease Agreement which is attached hereto. Bills of sale for all such Related Goods, each showing Lessor as the purchaser, also are attached hereto.][Whenever the requested Improvement/Expense Advance is to be used to pay for Related Goods, include the preceding two sentences, complete and attach an Exhibit B Supplement describing the Related Goods and attach the applicable bills of sale.] Lessee will use the [remaining] proceeds of such Improvement/Expense Advance to pay the costs and expenses set forth in Schedule 1 hereto. All such costs and expenses are Permitted Improvement Costs and/or Permitted Transaction Expenses which are now due and payable. No prior Advance has been requested to pay any such costs and expenses.

6. Lessee hereby certifies to the Lessor Parties that, on the date of this Improvement/Expense Advance Request and after giving effect to the requested Improvement/Expense Advance:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing; and

(c) All of the Operative Documents are in full force and effect.

7. Please disburse the proceeds of the Improvement/Expense Advance to \_\_\_\_\_.

IN WITNESS WHEREOF, Lessee has executed this Improvement/Expense Advance Request on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE 1

TO

IMPROVEMENT/EXPENSE ADVANCE REQUEST

F-3

EXHIBIT G(1)

364-DAY COMMITMENT EXTENSION REQUEST

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to that certain Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Subparagraph 2.09(a) of the Participation Agreement, Lessee hereby irrevocably requests Lessor to extend (and the Participants to consent to such extension) the Unused 364-Day Commitment (\$\_\_\_\_\_) for an additional six (6) months by extending the current 364-Day Commitment Termination Date from [\_\_\_\_\_] to [\_\_\_\_\_].

3. Lessee hereby certifies to the Lessor Parties that, on the date of this 364-Day Commitment Extension Request and after giving effect to the extension requested hereby:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing; and

(c) All of the Operative Documents are in full force and effect.

IN WITNESS WHEREOF, Lessee has executed this 364-Day Commitment Extension Request on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSENT

The undersigned hereby consents to the extension of the 364-Day Commitment Termination Date requested above.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



EXHIBIT G(2)

LEASE EXTENSION REQUEST

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to that certain Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Subparagraph 2.09(b) of the Participation Agreement, Lessee hereby irrevocably requests Lessor to extend (and the Participants to consent to such extension) the Term of the Lease Agreement for an additional \_\_\_\_\_ by extending the current Scheduled Expiration Date from [\_\_\_\_\_] to [\_\_\_\_\_].

3. Lessee hereby certifies to the Lessor Parties that, on the date of this Lease Extension Request and after giving effect to the extension requested hereby:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing; and

(c) All of the Operative Documents are in full force and effect.

IN WITNESS WHEREOF, Lessee has executed this Lease Extension Request on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSENT

The undersigned hereby consents to the extension of the Scheduled Expiration Date requested above upon the terms set forth in the attachment hereto.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

G(2)-2

EXHIBIT H  
ASSIGNMENT OF CONSTRUCTION AGREEMENTS

H-1

EXHIBIT I  
CASH COLLATERAL AGREEMENT

I-1

EXHIBIT J  
ASSIGNMENT OF LEASE

J-1

EXHIBIT K  
LESSOR DEED OF TRUST

K-1

EXHIBIT L  
LESSOR SECURITY AGREEMENT

L-1

EXHIBIT M

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT, dated as of the date set forth at the top of Attachment 1 hereto, by and among:

(1) The party designated under item A of Attachment I hereto as the Assignor Participant ("Assignor Participant"); and

(2) Each party designated under item B of Attachment I hereto as an Assignee Participant (individually, an "Assignee Participant").

RECITALS

A. Assignor Participant is one of the "Participants" in a Participation Agreement dated as of May 15, 1998, among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), Assignor Participant and the other institutions parties thereto as "Participants" (collectively, the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). (Such Participation Agreement, as amended, supplemented or otherwise modified in accordance with its terms from time to time to be referred to herein as the "Participation Agreement").

B. Assignor Participant wishes to sell, and each Assignee Participant wishes to purchase, all or a portion of Assignor Participant's rights under the Participation Agreement pursuant to Subparagraph 7.05(b) of the Participation Agreement.

AGREEMENT

Now, therefore, the parties hereto hereby agree as follows:

1. Definitions. Except as otherwise defined in this Assignment Agreement, all capitalized terms used herein and defined in the Participation Agreement have the respective meanings given to those terms in the Participation Agreement.

2. Sale and Assignment. Subject to the terms and conditions of this Assignment Agreement, Assignor Participant hereby agrees to sell, assign and delegate to each Assignee Participant and each Assignee Participant hereby agrees to purchase, accept and assume the rights, obligations and duties of a Participant under the Participation Agreement and the other Operative Documents equal to the Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share set forth under the captions "Tranche Percentages and Proportionate Shares Assigned" opposite such Assignee Participant's name on Part A of



Attachment I hereto. Such sale, assignment and delegation shall become effective on the date designated in Part C of Attachment I hereto (the "Assignment Effective Date"), which date shall be, unless Agent shall otherwise consent, at least five (5) Business Days after the date following the date counterparts of this Assignment Agreement are delivered to Agent in accordance with Paragraph 3 hereof.

3. Assignment Effective Notice. Upon (a) receipt by Agent of five (5) counterparts of this Assignment Agreement (to each of which is attached a fully completed Attachment 1), each of which has been executed by Assignor Participant and each Assignee Participant (and, to the extent required by clause (i) of Subparagraph 7.05(b) of the Participation Agreement, by Lessor, Lessee and Agent) and (b) payment to Agent of the registration and processing fee specified in clause (iii) of Subparagraph 7.05(b) of the Participation Agreement, Agent will transmit to Lessor, Lessee, Assignor Participant and each Assignee Participant an Assignment Effective Notice substantially in the form of Attachment 2 hereto, fully completed (an "Assignment Effective Notice").

4. Assignment Effective Date. At or before 12:00 noon (local time of Assignor Participant) on the Assignment Effective Date, each Assignee Participant shall pay to Assignor Participant, in immediately available or same day funds, an amount equal to the purchase price, as agreed between Assignor Participant and such Assignee Participant (the "Assignment Purchase Price"), for the respective Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share purchased by such Assignee Participant hereunder. Effective upon receipt by Assignor Participant of the Assignment Purchase Price payable by each Assignee Participant, the sale, assignment and delegation to such Assignee Participant of such Proportionate Share as described in Paragraph 2 hereof shall become effective.

5. Payments After the Assignment Effective Date. Assignor Participant and each Assignee Participant hereby agree that Agent shall, and hereby authorize and direct Agent to, allocate amounts payable under the Participation Agreement and the other Operative Documents as follows:

(a) All payments applied to reduce the Outstanding Lease Amount or any Portion thereof after the Assignment Effective Date with respect to each Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share assigned to an Assignee Participant pursuant to this Assignment Agreement shall be payable to such Assignee Participant.

(b) All Base Rent, interest, fees and other amounts accrued after the Assignment Effective Date with respect to each Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share assigned to an Assignee Participant pursuant to this Assignment Agreement shall be payable to such Assignee Participant.

Assignor Participant and each Assignee Participant shall make any separate arrangements between themselves which they deem appropriate with respect to payments between them of amounts paid under the Operative Documents on account of the Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share assigned to such Assignee

Participant, and neither Agent nor Lessee shall have any responsibility to effect or carry out such separate arrangements.

6. Delivery of Copies of Operative Documents. Concurrently with the execution and delivery hereof, Assignor Participant will provide to each Assignee Participant (if it is not already a party to the Participation Agreement) conformed copies of all documents delivered to Assignor Participant on or prior to the Closing Date in satisfaction of the conditions precedent set forth in the Participation Agreement.

7. Further Assurances. Each of the parties to this Assignment Agreement agrees that at any time and from time to time upon the written request of any other party, it will execute and deliver such further documents and do such further acts and things as such other party may reasonably request in order to effect the purposes of this Assignment Agreement.

8. Further Representations, Warranties and Covenants. Assignor Participant and each Assignee Participant further represent and warrant to and covenant with each other, Lessor, Agent and the other Participants as follows:

(a) Other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned hereby free and clear of any adverse claim, Assignor Participant makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Participation Agreement or the other Operative Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Participation Agreement or the other Operative Documents furnished or the Collateral or any security interest therein.

(b) Assignor Participant makes no representation or warranty and assumes no responsibility with respect to the financial condition of Lessee or any of its obligations under the Participation Agreement or any other Operative Documents.

(c) Each Assignee Participant confirms that it has received a copy of the Participation Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement.

(d) Each Assignee Participant will, independently and without reliance upon Lessor, Agent, Assignor Participant or any other Participant and based upon such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Participation Agreement and the other Operative Documents.

(e) Each Assignee Participant appoints and authorizes Agent to take such action as Agent on its behalf and to exercise such powers under the Participation Agreement and the other Operative Documents as Agent is authorized to exercise by the terms thereof, together with such powers as are reasonably incidental thereto, all in accordance with Section VI of the Participation Agreement.

(f) Each Assignee Participant (i) affirms that each of the representations and warranties set forth in Paragraph 4.03 of the Participation Agreement is true and correct with respect to such Participant and (ii) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Participation Agreement and the other Operative Documents are required to be performed by it as a Participant.

(g) Each Assignee Participant represents and warrants that, as of the date hereof, it would not have any basis for demanding any payment under Subparagraph 2.12(c) or Subparagraph 2.12(d) of the Participation Agreement or, to its knowledge, under Subparagraph 2.13(a) of the Participation Agreement.

(h) Part B of Attachment 1 hereto sets forth administrative information with respect to each Assignee Participant.

9. Effect of this Assignment Agreement. On and after the Assignment Effective Date, (a) each Assignee Participant shall be a Participant with a Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share as set forth under the caption "Tranche Percentages and Proportionate Share After Assignment" opposite such Assignee Participant's name in Part A of Attachment 1 hereto and shall have the rights, duties and obligations of such a Participant under the Participation Agreement and the other Operative Documents and (b) Assignor Participant shall be a Participant with a Tranche A Percentage, Tranche B Percentage, Tranche C Percentage and Proportionate Share as set forth under the caption "Tranche Percentages and Proportionate Share After Assignment" opposite Assignor Participant's name in Part A of Attachment 1 hereto and shall have the rights, duties and obligations of such a Participant under the Participation Agreement and the other Operative Documents, or, if the Proportionate Share of Assignor Participant has been reduced to zero, Assignor Participant shall cease to be a Participant and shall have no further obligation to fund any portion of any Advance.

10. Miscellaneous. This Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Paragraph headings in this Assignment Agreement are for convenience of reference only and are not part of the substance hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be executed by their respective duly authorized officers as of the date set forth in Attachment 1 hereto.

\_\_\_\_\_, as  
Assignor Participant

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_, as  
Assignee Participant

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_, as  
Assignee Participant

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_, as  
Assignee Participant

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSENTED TO AND ACKNOWLEDGED BY:

\_\_\_\_\_  
as Lessee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
as Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
As Lessor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED FOR RECORDATION IN REGISTER:

\_\_\_\_\_  
As Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT 1

TO ASSIGNMENT AGREEMENT

PART A(1) TRANCHE PERCENTAGES PRIOR TO COMMITMENT TERMINATION DATE

	Tranche Percentages and Proportionate Shares Assigned			
	Tranche A Percentage	Tranche B Percentage	Tranche C Percentage	Proportionate Share
Assignor Participant:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
Assignee Participants:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%

	Tranche Percentages and Proportionate Shares After Assignment			
	Tranche A Percentage	Tranche B Percentage	Tranche C Percentage	Proportionate Share
Assignor Participant:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
Assignee Participants:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%

ATTACHMENT 1

TO ASSIGNMENT AGREEMENT

PART A(1) TRANCHE PERCENTAGES PRIOR TO COMMITMENT TERMINATION DATE

	Tranche Percentages and Proportionate Shares Assigned			
	Tranche A Percentage	Tranche B Percentage	Tranche C Percentage	Proportionate Share
Assignor Participant:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
Assignee Participants:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%

	Tranche Percentages and Proportionate Shares After Assignment			
	Tranche A Percentage	Tranche B Percentage	Tranche C Percentage	Proportionate Share
Assignor Participant:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
Assignee Participants:				
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%
-	--, -----%	--, -----%	--, -----%	--, -----%

PART B

[Assignee Participant]

Applicable Participating Office:

---

Address for notices:

Telephone No:  
Telecopier No:  
Wiring Instructions:

[Assignee Participant]

Applicable Participating Office:

---

Address for notices:

Telephone No:  
Telecopier No:  
Wiring Instructions:



PART C

ASSIGNMENT EFFECTIVE DATE \_\_\_\_\_, \_\_\_\_\_

M(1)-4

ATTACHMENT 2

TO ASSIGNMENT AGREEMENT

FORM OF

ASSIGNMENT EFFECTIVE NOTICE

Reference is made to the Participation Agreement, dated as of May 15, 1998, among Fair, Isaac and Company, Inc., Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions parties thereto as "Participants" (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). Agent hereby acknowledges receipt of five executed counterparts of a completed Assignment Agreement, a copy of which is attached hereto. [Note: Attach copy of Assignment Agreement.] Terms defined in such Assignment Agreement are used herein as therein defined.

1. Pursuant to such Assignment Agreement, you are advised that the Assignment Effective Date will be \_\_\_\_\_.

2. Pursuant to such Assignment Agreement, each Assignee Participant is required to pay its Purchase Price to Assignor Participant at or before 12:00 Noon on the Assignment Effective Date in immediately available funds.

Very truly yours,

ABN AMRO Bank N.V.,  
as Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

M(2)-1



Recording requested by and  
when recorded return to:

Christine Fitzpatrick, Esq.  
Orrick, Herrington & Sutcliffe  
Old Federal Reserve Bank Building  
400 Sansome Street  
San Francisco, California 94111

-----  
-----  
LEASE AGREEMENT,  
CONSTRUCTION DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING

Between

FAIR, ISAAC AND COMPANY, INC.

And

LEASE PLAN NORTH AMERICA, INC.

May 15, 1998

-----  
-----  
THIS LEASE IS NOT INTENDED TO CONSTITUTE  
A TRUE LEASE FOR INCOME TAX PURPOSES  
(SEE PARAGRAPH 2.06)

-----  
-----  
Maturity Date: May 15, 2003  
Maximum Principal Amount to be Advanced: \$55,000,000  
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TABLE OF CONTENTS

	Page
SECTION 1. INTERPRETATION.....	2
1.01. Definitions.....	2
1.02. Rules of Construction.....	2
SECTION 2. BASIC PROVISIONS.....	2
2.01. Lease of the Property.....	2
2.02. Term.....	2
2.03. Rent.....	3
2.04. Use.....	7
2.05. "As Is" Lease.....	7
2.06. Nature of Transaction.....	8
2.07. Security, Etc. ....	8
SECTION 3. OTHER LESSEE AND LESSOR RIGHTS AND OBLIGATIONS.....	10
3.01. Maintenance, Repair, Etc. ....	10
3.02. Risk of Loss.....	11
3.03. Insurance.....	12
3.04. Casualty and Condemnation.....	14
3.05. Taxes.....	18
3.06. Environmental Matters.....	18
3.07. Liens, Easements, Etc. ....	19
3.08. Subletting.....	20
3.09. Utility Charges.....	21
3.10. Removal of Property.....	21
3.11. Compliance with Governmental Rules and Insurance Requirements.....	21
3.12. Permitted Contests.....	21
3.13. Lessor Obligations; Right to Perform Lessee Obligations.....	22
3.14. Inspection Rights.....	22
SECTION 4. EXPIRATION DATE.....	22
4.01. Termination by Lessee Prior to Scheduled Expiration Date....	22
4.02. Surrender of Property.....	22
4.03. Holding Over.....	23
SECTION 5. DEFAULT.....	23

TABLE OF CONTENTS  
(continued)

	Page
5.01.	Events of Default.....23
5.02.	General Remedies.....25
5.03.	Lease Remedies.....26
5.04.	Loan Remedies.....27
5.05.	Remedies Cumulative.....30
5.06.	No Cure or Waiver.....30
5.07.	Exercise of Rights and Remedies.....30
SECTION 6.	MISCELLANEOUS.....30
6.01.	Notices.....30
6.02.	Waivers; Amendments.....30
6.03.	Successors and Assigns.....30
6.04.	No Third Party Rights.....30
6.05.	Partial Invalidity.....31
6.06.	Governing Law.....31
6.07.	Counterparts.....31
6.08.	Nature of Lessee's Obligations.....31
EXHIBITS	
A	Land (2.01(a))
B	Related Goods (2.01(d))
C	Notice of Rental Period Selection

LEASE AGREEMENT,  
CONSTRUCTION DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING

THIS LEASE AGREEMENT, CONSTRUCTION DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Agreement" herein), dated as of May 15, 1998 is entered into by and among:

(1) FAIR, ISAAC AND COMPANY, INC., a Delaware corporation ("Lessee");

(2) LEASE PLAN NORTH AMERICA, INC., an Illinois corporation ("Lessor").

RECITALS

A. Lessee has requested Lessor and the financial institutions which are "Participants" under the Participation Agreement referred to in Recital B below (such financial institutions to be referred to collectively as the "Participants") to provide to Lessee a lease facility pursuant to which:

(1) Lessor would (a) purchase certain property designated by Lessee, (b) lease such property to Lessee, (c) appoint Lessee as Lessor's agent to make such improvements (which improvements will be owned by Lessor), (d) make advances to finance such improvements and to pay certain related expenses and (e) grant to Lessee the right to purchase such property; and

(2) The Participants would participate in such lease facility by (a) funding the purchase price and other advances to be made by Lessor and (b) acquiring participation interests in the rental and certain other payments to be made by Lessee.

B. Pursuant to a Participation Agreement dated as of May 15, 1998 (the "Participation Agreement") among Lessee, Lessor, the Participants and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"), Lessor and the Participants have agreed to provide such lease facility upon the terms and subject to the conditions set forth therein, including without limitation the execution and delivery of this Agreement setting forth the terms of the lease by Lessor to Lessee of the property.

EXHIBIT 10.39

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. INTERPRETATION.

1.01. Definitions. Unless otherwise indicated in this Agreement or any other Operative Document, each term set forth in Schedule 1.01 to the Participation Agreement, when used in this Agreement or any other Operative Document, shall have the respective meaning given to that term in such Schedule 1.01 or in the provision of this Agreement or other document, instrument or agreement referenced in such Schedule 1.01.

1.02. Rules of Construction. Unless otherwise indicated in this Agreement or any other Operative Document, the rules of construction set forth in Schedule 1.02 to the Participation Agreement shall apply to this Agreement and the other Operative Documents.

SECTION 2. BASIC PROVISIONS.

2.01. Lease of the Property. Subject to the acquisition thereof by Lessor pursuant to the Participation Agreement and applicable Acquisition Agreement either on the Closing Date or during the term hereof, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the following property (the "Property") to the extent of Lessor's estate, right, title and interest therein, thereto or thereunder:

(a) All lots, pieces, tracts and parcels of land described in Exhibit A (the "Land");

(b) All Improvements located on the Land;

(c) All Appurtenant Rights belonging, relating or pertaining to any of the Land or Improvements;

(d) All Related Goods (including those described in Exhibit B and in each Exhibit B Supplement), Related Permits and Related Agreements related to any of the foregoing Land, Improvements or Appurtenant Rights; and

(e) All accessions and accretions to and replacements and substitutions for the foregoing.

2.02. Term.

(a) Original Term. The original term of this Agreement shall commence on the Closing Date (the "Commencement Date") and shall end on May 15, 2003 (such date

as it may be extended pursuant to Subparagraph 2.02(b) to be referred to as the "Scheduled Expiration Date").

(b) Extensions. Lessee may request Lessor to extend the Scheduled Expiration Date in effect for either (i) three (3) additional periods of one (1) year each, or (ii) one (1) additional period of three (3) years, as each is provided in Subparagraph 2.09(b) of the Participation Agreement, provided that after giving effect to any such extension, the remaining scheduled term shall not exceed five (5) years. If Lessor and each Participant consents to any such request in accordance with such provision, the current Scheduled Expiration Date shall be deemed extended by one (1) year or three (3) years, as applicable. Lessee acknowledges that neither Lessor nor any Participant has any obligation or commitment (either express or implied) to extend, or consent to the extension of, the Scheduled Expiration Date at any time.

## 2.03. Rent.

### (a) Base Rent.

(i) Lessee shall pay as base rent hereunder ("Base Rent") for each Rental Period for each Portion of the Outstanding Lease Amount an amount equal to the product of (A) the Rental Rate for such Rental Period and Portion, times (B) the amount of such Portion on the first day of such Rental Period (which shall include any Advance under made on the first day of such Rental Period), times (C) a fraction, the numerator of which is the number of days in such Rental Period and the denominator of which is 360. If the Rental Rate shall change during any Rental Period, the Rental Rate for such Rental Period shall be the weighted average of the Rental Rates in effect from time to time during such Rental Period.

(ii) Prior to the first Business Day in the first calendar month immediately following the month in which the Commencement Date occurs, the Outstanding Lease Amount shall consist of a single Portion in the full amount of the Outstanding Lease Amount. Thereafter, Lessee may elect to divide the Outstanding Lease Amount into two or more Portions by delivering a Notice of Rental Period Selection as provided in clause (iii) below; provided, however, that (A) each Portion shall be in the amount of \$10,000,000 or an integral multiple of \$100,000 in excess thereof; (B) the total number of Portions outstanding at any time shall not exceed four (4); and (C) the Outstanding Lease Amount shall consist of a single Portion in the amount of the Outstanding Lease Amount if the Outstanding Lease Amount is less than \$10,000,000.

(iii) The Term shall consist of the following rental periods (individually, a "Rental Period") for each Portion:

(A) The period which begins on the Commencement Date and ends on the first Business Day in the first calendar month immediately following the month in which the Commencement Date occurs; and



(B) Each successive period thereafter which begins on the last day of the immediately preceding Rental Period for the applicable Portion and ends at the end of the time period selected by Lessee as provided below in this clause (B) through and including the Scheduled Expiration Date.

(1) Unless Lessee has selected a longer Rental Period for a Portion to have a Fixed Rate pursuant to clause (iv)(D) of this Subparagraph 2.03(a), Lessee shall, subject to clause (3) below, select a Rental Period for each Portion of one (1), two (2), three (3) or six (6) months; provided, however, that (y) no such Rental Period shall be longer than one (1) month if a Default has occurred and is continuing on the date three (3) Business Days prior to the first day of such Rental Period and (z) each such Rental Period for which Lessee fails to make a selection in accordance with this clause (iii)(B)(1) shall be one (1) month. Lessee shall select each such Rental Period by delivering to Lessor, at least three (3) Business Days prior to the first day of such Rental Period, an irrevocable written notice in the form of Exhibit C, appropriately completed (a "Notice of Rental Period Selection"). Each Notice of Rental Period Selection shall be delivered by first-class mail or facsimile as required by Subparagraph 2.02(a) and Paragraph 7.01 of the Participation Agreement; provided, however, that Lessee shall promptly deliver the original of any Notice of Rental Period Selection initially delivered by facsimile.

(2) If Lessee has elected to exercise the Fixed Rate option for any Rental Period for a Portion pursuant to clause (iv)(D) of this Subparagraph 2.03(a), Lessee shall, subject to clause (3) below, select a Rental Period of twelve (12) months or longer for such Rental Period, which Rental Period shall begin on the last day of the then current Rental Period for such Portion. Lessee shall select each such Rental Period by delivering to Agent a Fixed Rate Request pursuant to clause (iv)(D) below.

(3) Lessee's selection of the time period for each Rental Period which begins on or after the Commencement Date is subject to the following:

(y) Each Rental Period shall begin and end on the first Business Day of a calendar month, except that the last Rental Period may begin on the first Business Day in which the Scheduled Expiration Date is to occur and end on the Scheduled Expiration Date; and

(z) No Rental Period shall end after the Scheduled Expiration Date.

(iv) The rental rate for each Rental Period for a Portion ("Rental Rate") shall be the LIBOR Rental Rate for such Rental Period and Portion, except as follows:

(A) If the Commencement Date is not the first Business Day of a month, the Rental Rate for the first Rental Period (which begins on or after the Commencement Date, but prior to the first Business Day of the succeeding month) shall be (y) the LIBOR Rental Rate for the period beginning on or after the Commencement Date but prior to the first Business Day of the succeeding month and ending on the first Business Day of such succeeding month provided that such period is greater than seven (7) days or (z) the Alternate Rental Rate if such period is seven (7) days or less. The Rental Rate for the last Rental Period (which begins on the first Business Day of month in which the Scheduled Expiration Date is to occur) shall be (y) the LIBOR Rental Rate for the period beginning on the first Business Day of such month and ending on the Scheduled Expiration Date, provided that such period is greater than seven (7) days, or (z) the Alternate Rental Rate if such period is seven (7) days or less.

(B) The Rental Rate for any Rental Period (or portion thereof) during which the LIBOR Rental Rate is unavailable pursuant to Subparagraph 2.12(a) or Subparagraph 2.12(b) of the Participation Agreement shall be the Alternate Rental Rate.

(C) If Lessee so selects by notifying Lessor in writing prior to the time Lessee is required to select a new Rental Period pursuant to clause (iii)(B)(1) above, the rental rate for any Rental Period shall be the Alternate Rental Rate.

(D) If Lessee so selects, the rental rate for a Rental Period for any Portion (of one year or more) shall be a Fixed Rental Rate, with the Fixed Rate for such Rental Period determined as follows:

(1) Lessee shall request Lessor to provide a Fixed Rate by delivering to Agent a written request (a "Fixed Rate Request") in the form of Exhibit C, which specifies the Portion and Rental Period for which such Fixed Rate is requested, which Rental Period shall comply with clause (iii)(B) of this Subparagraph 2.03(a). Lessee shall deliver each Fixed Rate Request to Agent, no later than 12:00 noon (Eastern Standard Time or Eastern Daylight Time, as applicable) at least four (4) Business Days prior to the first day of such Rental Period. Agent shall promptly furnish to Lessor and each Participant copies of each Fixed Rate Request.

(2) Not later than 11:00 a.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) three (3) Business Days prior to the first day of the Rental Period specified in each Fixed Rate Request, each Participant shall advise Agent telephonically and shall immediately thereafter confirm such telephonic notice by delivering to Agent by facsimile a written irrevocable quote (a "Fixed Rate Quote") specifying the per annum fixed rate at which such Participant is willing to fund its Proportionate Share of the applicable Portion during such Rental Period.

(3) After receipt of the various Fixed Rate Quotes, Agent shall promptly calculate the weighted average (rounded upward if necessary to the nearest 1/100 of one percent) of the Fixed Rate Quotes provided by each Participant and shall deliver to Lessee no later than 11:20 a.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) three (3) Business Days prior to the first day of the Rental Period specified in each Fixed Rate Request, with copies to Lessor and each Participant, a written irrevocable offer (a "Fixed Rate Offer") specifying such average. If any Participant fails to provide a Fixed Rate Quote, Agent shall calculate the weighted average of the Fixed Rate Quotes actually received and the Fixed Rate Quote submitted by such Participant shall be deemed to be the weighted average of the Fixed Rate Quotes actually received from all Participants.

(4) Not later than 11:30 a.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) three (3) Business Days prior to the first day of the Rental Period specified in each Fixed Rate Request, Lessee shall deliver to Agent a written irrevocable notice either accepting the Fixed Rate Offer (a "Fixed Rate Acceptance") or rejecting the Fixed Rate Offer (a "Fixed Rate Rejection"). If Lessee fails to deliver either a Fixed Rate Acceptance or Fixed Rate Rejection as required hereunder, the Fixed Rate Offer shall be deemed rejected.

(y) If Lessee accepts a Fixed Rate Offer, the rental rate for the Rental Period and Portion specified in the applicable Fixed Rate Request shall be a Fixed Rental Rate and the Fixed Rate for such Rental Period and Portion shall be the average rate set forth in such Fixed Rate Offer; provided that each Participant shall be entitled to receive a Fixed Rate equal to the Fixed Rate Quote submitted or deemed submitted by such Participant.

(z) If Lessee rejects a Fixed Rate Offer or if the Fixed Rate Request is not delivered by the Agent within the applicable time periods, the rental rate for the applicable

Portion shall continue at the LIBOR Rental Rate (except as otherwise provided in clause (iv)(A), (iv)(B) or (iv)(C) of this Subparagraph 2.03(a)), with the next succeeding Rental Period for such Portion to be determined as provided in clause (iii)(B)(1) of this Subparagraph 2.03(a). Each Fixed Rate Request, Fixed Rate Quote, Fixed Rate Acceptance and Fixed Rate Rejection shall be delivered by facsimile as required by Paragraph 7.01 of the Participation Agreement[]; provided, however, that

(v) Lessee shall pay Base Rent in arrears (A) for each Portion, on the last day of each Rental Period therefor and, in the case of any Rental Period which exceeds three (3) months, each day occurring every three (3) months after the first day of such Rental Period (individually, a "Scheduled Rent Payment Date") and (B) for all Portions, on the Expiration Date.

(b) Supplemental Rent. Lessee shall pay as supplemental rent hereunder ("Supplemental Rent") all amounts (other than Base Rent, the purchase price payable by Lessee for any purchase of the Property by Lessee pursuant to the Purchase Agreement and the Residual Value Guaranty Amount and Indemnity Amount payable under the Purchase Agreement) payable by Lessee under this Agreement and the other Operative Documents. Lessee shall pay all Supplemental Rent amounts on the dates specified in this Agreement and the other Operative Documents for the payment of such amounts or, if no date is specified for the payment of any such amount, 10 days after demand of Lessor or any other Person to whom such amount is payable.

2.04. Use. Lessee may use the Property for (i) general office uses, (ii) uses reasonably ancillary to ordinary general office uses, such as cafeterias for employees, and (iii) the sale of goods and services by Lessee or any corporate successor to Lessee that do not involve customer purchases in person.

2.05. "As Is" Lease. Lessee has conducted, or will conduct from time to time with regard to property that may be added hereto after the date hereof, all due diligence which it deems appropriate regarding the Property and agrees that no Lessor Party has any obligation to conduct any such due diligence. Lessee is leasing the Property "as is, with all faults" without any representation, warranty, indemnity or undertaking by any Lessor Party regarding any aspect of the Property, including (a) the condition of the Property (including any Improvements to the Property made prior to the Commencement Date or during the Term); (b) title to the Property (including possession of the Property by any Person or the existence of any Lien or any other right, title or interest in or to any of the Property in favor of any Person); (c) the value, habitability, usability, design, operation or fitness for use of the Property; (d) the availability or adequacy of utilities and other services to the Property; (e) any latent, hidden or patent defect in the Property; (f) the zoning or status of the Property or any other restrictions on the use of the Property; (g) the economics of the Property; (h) any Casualty or Condemnation; or (i) the compliance of the Property with any applicable Governmental Rule or Insurance Requirement; provided, however, that Lessor shall be obligated to remove Lessor Liens to the extent required in Subparagraph 5.04(b) of the Participation Agreement. Without limiting the generality of the

foregoing, Lessee specifically waives any covenant of quiet enjoyment except as otherwise provided in Subparagraph 5.04(b) of the Participation Agreement.

2.06. Nature of Transaction. As more fully provided in Paragraph 2.10 of the Participation Agreement, Lessee and Lessor, the Participants and Agent (collectively, the "Lessor Parties") intend that the transaction evidenced by this Agreement and the other Operative Documents constitute an operating lease in accordance with FASB 13 for accounting purposes and a loan secured by the Property for federal, state and local income tax purposes and bankruptcy law purposes.

2.07. Security, Etc. In order to secure the Lessee Obligations and otherwise to assure the Lessor Parties the benefits hereof in the event that the transaction evidenced by this Agreement and the other Operative Documents is, pursuant to the intent of Lessee and the Lessor Parties, treated as a loan for certain purposes, Lessee hereby makes the following grants and agrees as follows:

(a) Real Property Security. As security for the Lessee Obligations, Lessee hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Lessor, as beneficiary (in trust for the benefit of the Lessor Parties), with power of sale and right of entry and possession, all estate, right, title and interest of Lessee in the following property, whether now owned or hereafter acquired, (collectively, the "Real Property Collateral"):

(i) The Land;

(ii) All Improvements located on the Land;

(iii) All Appurtenant Rights belonging, relating or pertaining to any of the foregoing Land or Improvements;

(iv) All Subleases of and all Issues and Profits accruing from any of the foregoing Land, Improvements or Appurtenant Rights to the extent that such Subleases and Issues and Profits constitute real property;

(v) All Related Goods, Related Permits and Related Agreements related to any of the foregoing Land, Improvements or Appurtenant Rights to the extent that such Related Goods, Related Agreements and Related Permits constitute real property;

(vi) All other Property to the extent that such property constitutes real property; and

(vii) All proceeds of the foregoing, including Casualty and Condemnation Proceeds.

(b) Personal Property Security. As security for the Lessee Obligations, Lessee hereby irrevocably and unconditionally assigns and grants to Lessor, for the benefit of the Lessor Parties, a security interest in all estate, right, title and interest of Lessee in the

following property, whether now owned or hereafter acquired, (collectively, the "Personal Property Collateral"):

(i) All Subleases of and all Issues and Profits accruing from any of the Land, Improvements or Appurtenant Rights to the extent that such Subleases and Issues and Profits constitute personal property;

(ii) All Related Goods, Related Permits and Related Agreements related to any of the Land, Improvements or Appurtenant Rights to the extent that such Related Goods, Related Agreements and Related Permits constitute personal property;

(iii) All Cash Collateral and all other deposit accounts, instruments, investment property and monies held by any Lessor Party in connection with this Agreement or any other Operative Document (including any Repair and Restoration Account);

(iv) All other Property to the extent such Property constitutes personal property; and

(v) All proceeds of the foregoing, including Casualty and Condemnation Proceeds.

For purpose of the provisions of this Agreement related to the creation and enforcement of this Agreement as a security agreement and a fixture filing with respect to the Related Goods, Lessee is the "debtor" and Lessor is the "secured party," acting for the benefit of the Lessor Parties. This Agreement constitutes a fixture filing for purposes of the California Commercial Code with respect to the Related Goods which are or are to become fixtures on the Land or Improvements. The mailing addresses of Lessee and of Lessor from which information concerning security interests hereunder may be obtained are as set forth on the signature page of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement related to this Agreement shall be sufficient as a financing statement for any of the purposes referenced herein.

(c) Absolute Assignment of Subleases, Issues, and Profits. Lessee hereby irrevocably assigns to Lessor, for the benefit of the Lessor Parties, all of Lessee's estate, right, title and interest in, to and under the Subleases and the Issues and Profits, whether now owned or hereafter acquired. This is a present and absolute assignment for security purposes, and Lessor's right to the Subleases and Issues and Profits is not contingent upon, and may be exercised without possession of, the Property.

(i) If no Event of Default has occurred and is continuing, Lessee shall have a revocable license to collect and retain the Issues and Profits as they become due. Upon the occurrence and during the continuance of an Event of Default, such license shall automatically terminate, and Lessor may collect and apply the Issues and Profits pursuant to Subparagraph 5.02(d) without further notice to Lessee or any other party and without taking possession of the Property.

All Issues and Profits thereafter collected by Lessee shall be held by Lessee as trustee in a constructive trust for the benefit of Lessor. Lessee hereby irrevocably authorizes and directs the sublessees under the Subleases, without any need on their part to inquire as to whether an Event of Default has actually occurred or is then existing, to rely upon and comply with any notice or demand by Lessor for the payment to Lessor of any rental or other sums which may become due under the Subleases or for the performance of any of the sublessees' undertakings under the Subleases. Collection of any Issues and Profits by Lessor shall not cure or waive any default or notice of default hereunder or invalidate any acts done pursuant to such notice.

(ii) The foregoing irrevocable assignment shall not cause any Lessor Party to be (A) a mortgagee in possession; (B) responsible or liable for (1) the control, care, management or repair of the Property or for performing any of Lessee's obligations or duties under the Subleases, (2) any waste committed on the Property by the sublessees under any of the Subleases or by any other Persons, (3) any dangerous or defective condition of the Property, or (4) any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any sublessee, licensee, employee, invitee or other Person; or (C) responsible for or impose upon any Lessor Party any duty to produce rents or profits. No Lessor Party, in the absence of gross negligence or willful disregard on its part, shall be liable to Lessee as a consequence of (y) the exercise or failure to exercise any of the rights, remedies or powers granted to Lessor hereunder or (z) the failure or refusal of Lessor to perform or discharge any obligation, duty or liability of Lessee arising under the Subleases.

### SECTION 3. OTHER LESSEE AND LESSOR RIGHTS AND OBLIGATIONS.

#### 3.01. Maintenance, Repair, Etc.

(a) General. Lessee shall not permit any waste of the Property, except for ordinary wear and tear, and shall, at its sole cost and expense, maintain the Property in good working order, mechanical condition and repair and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by all applicable Governmental Rules and Insurance Requirements and on a basis consistent with the operation and maintenance of commercial properties comparable in type and location to the Property and in compliance with prudent industry practice.

(b) New Improvements. Lessee shall make or cause to be made all of the New Improvements authorized and required by the Construction Agency Agreement in accordance with the Construction Agency Agreement.

(c) Other Modifications. Lessee, at its sole cost and expense, may from time to time make alterations, renovations, improvements and additions to the Property and

substitutions and replacements therefor (collectively, "Modifications") in addition to the New Improvements; provided that:

(i) No Modification impairs the value, utility or useful life of the Property or any part thereof from that which existed immediately prior to such Modification;

(ii) All Modifications are made expeditiously and, in no case unless Lessee currently is exercising either the Term Purchase Option or the Expiration Date Purchase Option, shall Modifications in an aggregate amount of \$100,000 remain uncompleted later than six (6) months prior to the Scheduled Expiration Date;

(iii) All Modifications are made in a good and workmanlike manner and in compliance with all applicable Governmental Rules and Insurance Requirements;

(iv) Subject to Paragraph 3.12 relating to permitted contests, Lessee pays all costs and expenses and discharges (or cause to be insured or bonded over) any Liens arising in connection with any Modification not later than the earlier of (A) sixty (60) days after the same shall be filed (or otherwise becomes effective) and (B) unless Lessee currently is exercising either the Term Purchase Option or the Expiration Date Purchase Option, six (6) months prior to the Scheduled Expiration Date;

(v) At least one (1) month prior to the commencement of (A) any Modifications which are anticipated to cost \$500,000 or more in the aggregate, or (B) any Modifications which cause the total of all Modifications undertaken during the previous twelve-month period to exceed an aggregate cost of \$1,000,000, Lessee shall deliver to Lessor, with sufficient copies for Agent and each Participant, a brief written description of such Modifications; and

(vi) All Modifications otherwise comply with this Agreement and the other Operative Documents.

(d) Abandonment. Lessee shall not abandon the Property or any material portion thereof for any period in excess of sixty (60) consecutive days during the term hereof, except as a part of any New Improvements or Modifications as permitted herein or in the other Operative Documents.

3.02. Risk of Loss. Lessee assumes all risks of loss arising from any Casualty or Condemnation which arises or occurs prior to the Expiration Date or while Lessee is in possession of the Property and all liability for all personal injuries and deaths and damages to property suffered by any Person or property on or in connection with the Property which arises or occurs prior to the Expiration Date or while Lessee is in possession of the Property, except in each case to the extent any such loss or liability is primarily caused by the gross negligence or willful misconduct of a Lessor Party. Lessee hereby waives the provisions of California Civil



Code Sections 1932(1), 1932(2) and 1933(4), and any and all other applicable existing or future Governmental Rules permitting the termination of this Agreement as a result of any Casualty or Condemnation, and Lessor shall in no event be answerable or accountable for any risk of loss of or decrease in the enjoyment and beneficial use of the Property as a result of any such event.

3.03. Insurance.

(a) Coverage. Lessee, at its sole cost and expense, shall carry and maintain the following insurance coverage:

(i) At all times during the Term, commercial liability insurance covering claims for injuries or death sustained by persons or damage to property while on the Property, and workers' compensation insurance;

(ii) At all times after commencement of construction of any structure, (A) unless covered by builders' risk insurance pursuant to clause (iii) of Subparagraph 3.03(a), property insurance covering loss or damage by earthquake in an amount not less than the then current probable maximum loss (as determined by a seismic expert reasonably approved by Lessor and Agent and subject to a reasonable deductible of not more than 15% of the total value at risk and (B) property insurance covering loss or damage by fire, flood and other risks (other than earthquake) in an amount not less than the Asset Termination Value;

(iii) At all times after commencement of construction of any structure, builders' risk insurance in the full amount of the Asset Termination Value, as such may change from time to time, covering fire, flood, earthquake and other normal insured risks; and

(iv) At all times during the Term as appropriate, such other insurance of the types customarily carried by a reasonably prudent Person owning or operating properties similar to the Property in the same geographic area as the Property.

Except as otherwise specifically required above, such insurance shall be in amounts, in a form and with deductibles reasonably approved by Lessor.

(b) Carriers. Any primary insurance carried and maintained by Lessee pursuant to this Paragraph 3.03 shall be underwritten by an insurance company which (A) has, at the time such insurance is placed and at the time of each renewal thereof, a general policyholder rating of "A" and a financial rating of at least 10 from A.M. Best and Company or any successor thereto (or if there is none, an organization having a similar national reputation) or (B) is otherwise approved by Lessor and Required Participants.

(c) Terms. Each insurance policy maintained by Lessee pursuant to this Paragraph 3.03 shall provide as follows, whether through endorsements or otherwise:

(i) Lessor and Agent shall be named as additional insureds, in the case of each policy of liability insurance and property insurance, and additional loss payees, in the case of each policy of property insurance.

(ii) In respect of the interests of Lessor in the policy, the insurance shall not be invalidated by any action or by inaction of Lessee or by any Person having temporary possession of the Property while under contract with Lessee to perform maintenance, repair, alteration or similar work on the Property, and shall insure the interests of Lessor regardless of any breach or violation of any warranty, declaration or condition contained in the insurance policy by Lessee, Lessor or any other additional insured (other than by such additional insured, as to such additional insured); provided, however, that the foregoing shall not be deemed to (A) cause such insurance policies to cover matters otherwise excluded from coverage by the terms of such policies or (B) require any insurance to remain in force notwithstanding non-payment of premiums except as provided in clause (iii) below.

(iii) If the insurance policy is cancelled for any reason whatsoever, or substantial change is made in the coverage that affects the interests of Lessor, or if the insurance coverage is allowed to lapse for non-payment of premium, such cancellation, change or lapse shall not be effective as to Lessor for thirty (30) days after receipt by Lessor of written notice from the insurers of such cancellation, change or lapse.

(iv) No Lessor Party shall have any obligation or liability for premiums, commissions, assessments, or calls in connection with the insurance.

(v) The insurer shall waive any rights of set-off or counterclaim or any other deduction, whether by attachment or otherwise, that it may have against any Lessor Party.

(vi) The insurance shall be primary without right of contribution from any other insurance that may be carried by any Lessor Party with respect to its interest in the Property.

(vii) The insurer shall waive any right of subrogation against any Lessor Party.

(viii) All provisions of the insurance, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured party.

(ix) The insurance shall not be invalidated should Lessee or any Lessor Party waive, in writing, prior to a loss, any or all rights of recovery against any Person for losses covered by such policy, nor shall the insurance in favor of any Lessor Party or Lessee, as the case may be, or their respective rights under and interests in said policies be invalidated or reduced by any act or omission or

negligence of any Lessee Party or Lessor, as the case may be, or any other Person having any interest in the Property.

(x) All insurance proceeds with a value of less than Five Million Dollars (\$5,000,000) in respect of any loss or occurrence with respect to the Property shall be paid to and adjusted solely by Lessee and all other insurance proceeds shall be paid to Lessor and adjusted jointly by Lessor and Lessee, except that, from and after the date on which the insurer receives written notice from Lessor that an Event of Default has occurred and is continuing (and unless and until such insurer receives written notice from Lessor that all Events of Default have been cured), all losses shall be adjusted solely by, and all insurance proceeds shall be paid solely to, Lessor.

(xi) Each policy shall contain a standard form mortgagee endorsement in favor of Lessor.

(d) Evidence of Insurance. Lessee, at its sole cost and expense, shall furnish to Lessor from time to time (i) upon each renewal of insurance and upon any material change in terms thereof, certificates evidencing such renewal or change and Lessee's compliance with the insurance requirements set forth in the Paragraph 3.03, and (ii) upon the request of Lessor, such other certificates or other documents as Lessor may reasonably request to evidence Lessee's compliance with the insurance requirements set forth in this Paragraph 3.03.

(e) Release of Lessor Parties. Lessee hereby waives, releases and discharges each Lessor Party and its directors, officers, employees, agents and advisors from all claims whatsoever arising out of any loss, claim, expense or damage to or destruction covered or coverable by insurance required under this Paragraph 3.03, notwithstanding that such loss, claim, expense or damage may have been caused by any such Person, and, as among Lessee and such Persons, Lessee agrees to look to the insurance coverage only in the event of such loss.

#### 3.04. Casualty and Condemnation.

(a) Notice. Lessee shall give Lessor prompt written notice of the occurrence of any Material Casualty affecting, or the institution of any proceedings for the Condemnation of, the Property or any portion thereof.

(b) Repair or Purchase Option. After the occurrence of any Material Casualty or Condemnation affecting the Property or any portion thereof, Lessee shall either (i) repair and restore the Property as required by Subparagraph 3.04(c) or (ii) exercise the Term Purchase Option and purchase the Property pursuant to the Purchase Agreement; provided, however, that Lessee may not elect to repair and restore the Property if such casualty or condemnation is a Major Casualty or Major Condemnation or if an Event of Default has occurred and is continuing, unless Lessor and the Required Participants shall consent in writing. Not later than forty-five (45) days after the occurrence of any

Material Casualty or Condemnation, Lessee shall deliver to Lessor a written notice indicating whether it elects to repair and restore or purchase the Property.

(c) Repair and Restoration. If Lessee elects to repair and restore the Property following any Material Casualty or Condemnation, Lessee shall diligently proceed to obtain all necessary permits and to repair and restore the Property to the condition in which it existed immediately prior to such Material Casualty or Condemnation and shall use reasonable efforts to complete all such repairs and restoration as soon as reasonably practicable, but not later than the earlier of (y) twelve (12) months following the occurrence of the Material Casualty or Condemnation and (z) six (6) months prior to the Scheduled Expiration Date unless Lessee currently is exercising either the Term Purchase Option or the Expiration Date Purchase Option. Lessee shall use its own funds to make such repairs and restoration, except to the extent any Casualty and Condemnation Proceeds are available and are released to Lessee for such purpose pursuant to Subparagraph 3.04(f). Lessee's exercise of the repair and restoration option shall, if Lessor or Required Participants direct, be subject to satisfaction of the following conditions:

(i) Within two (2) months after the occurrence of the Material Casualty or Condemnation, Lessee shall deposit in a deposit account acceptable to and controlled by Lessor (a "Repair and Restoration Account") of funds (including any Casualty and Condemnation Proceeds which are available and are released to Lessee pursuant to Subparagraph 3.04(f)) in the amount which Lessor determines is needed to complete and fully pay all costs of the repair or restoration (including taxes, financing charges, insurance and rent during the repair period).

(ii) As soon as reasonably possible after the occurrence of the Material Casualty or Condemnation, Lessee shall establish an arrangement for lien releases and disbursement of funds acceptable to Lessor and in a manner and upon such terms and conditions as would be required by a prudent interim construction lender.

(iii) As soon as reasonably possible after the occurrence of the Material Casualty or Condemnation, Lessee shall deliver to Lessor the following, each in form and substance acceptable to Lessor;

(A) Evidence that the Property can, in Lessor's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the Casualty or partial Condemnation causing the loss or damage within the earlier to occur of (A) twelve (12) months after the occurrence of the Casualty or Condemnation and (B) unless Lessee currently is exercising either the Term Purchase Option or the Expiration Date Purchase Option, six (6) months prior to the Scheduled Expiration Date;

(B) Evidence that all necessary governmental approvals can be timely obtained to allow the rebuilding and reoccupancy of the Property;

(C) Copies of all plans and specifications for the work;

(D) Copies of all contracts for the work, signed by a contractor reasonably acceptable to Lessor;

(E) A cost breakdown for the work;

(F) A payment and performance bond for the work or other security satisfactory to Lessor;

(G) Evidence that, upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the Casualty or Condemnation occurred; and

(H) Evidence of satisfaction of any additional conditions that Lessor or Required Participants may reasonably establish to protect their rights under this Agreement and the other Operative Documents.

All plans and specifications for the work must be reasonably acceptable to Lessor, except that Lessor's approval shall not be required if the restoration work is based on the same plans and specifications as were originally used to construct the Property. To the extent that the funds in a Repair and Restoration Account include both Casualty and Condemnation Proceeds and other funds deposited by Lessee, the other funds deposited by Lessee shall be used first. Lessee acknowledges that the specific conditions described above are reasonable.

(d) Prosecution of Claims for Casualty and Condemnation Proceeds. Lessee shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Casualty and Condemnation Proceeds; provided, however, that any settlement or compromise of any such claim shall, except as otherwise provided in clause (x) of Subparagraph 3.03(c), be subject to the written consent of Lessor and Required Participants, which consents shall not be unreasonably withheld. Lessor may participate in any proceedings relating to such claims, and, after the occurrence and during the continuance of any Event of Default, Lessor is hereby authorized, in its own name or in Lessee's name, to adjust any loss covered by insurance or any Casualty or Condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Lessee shall from time to time deliver to Lessor any and all further assignments and other instruments required to permit such participation.

(e) Assignment of Casualty and Condemnation Proceeds. Lessee hereby absolutely and irrevocably assigns to Lessor all Casualty and Condemnation Proceeds and all claims relating thereto. Except as otherwise provided in clause (x) of Subparagraph 3.03(c), Lessee agrees that all Casualty and Condemnation Proceeds are to be paid to Lessor and Lessee hereby authorizes and directs any insurer, Governmental

Authority or other Person responsible for paying any Casualty and Condemnation Proceeds to make payment thereof directly to Lessor alone, and not to Lessor and Lessee jointly. If Lessee receives any Casualty and Condemnation Proceeds payable to Lessor hereunder, Lessee shall promptly pay over such Casualty and Condemnation Proceeds to Lessor. Lessee hereby covenants that until such Casualty and Condemnation Proceeds are so paid over to Lessor, Lessee shall hold such Casualty and Condemnation Proceeds in trust for the benefit of Lessor and shall not commingle such Casualty and Condemnation Proceeds with any other funds or assets of Lessee or any other Person. Except as otherwise provided in clause (x) of Subparagraph 3.03(c), Lessor may commence, appear in, defend or prosecute any assigned right, claim or action, and may adjust, compromise, settle and collect all rights, claims and actions assigned to Lessor, but shall not be responsible for any failure to collect any such right, claim or action, regardless of the cause of the failure.

(f) Use of Casualty and Condemnation Proceeds.

(i) If (A) no Event of Default has occurred and is continuing, (B) Lessee exercises the repair and restoration option pursuant to Subparagraphs 3.04(b) and 3.04(c) and (C) Lessee complies with any conditions imposed pursuant to Subparagraph 3.04(c); then Lessor shall release any Casualty and Condemnation Proceeds to Lessee for repair or restoration of the Property, but may condition such release and use of the Casualty and Condemnation Proceeds upon deposit of the Casualty and Condemnation Proceeds in a Repair and Restoration Account. Lessee shall have the option, upon the completion of such restoration of the Property, to apply any surplus Casualty and Condemnation Proceeds remaining after the completion of such restoration to the payment of Rent and/or the reduction of the Outstanding Lease Amount, notwithstanding that such amounts are not then due and payable or that such amounts are otherwise adequately secured.

(ii) If (A) an Event of Default has occurred and is continuing, (B) Lessee fails to or is unable to comply with any conditions imposed pursuant to Subparagraph 3.04(c) or (C) Lessee elects to exercise the Term Purchase Option and purchase the Property pursuant to the Purchase Agreement; then, at the absolute discretion of Lessor and the Required Participants, regardless of any impairment of security or lack of impairment of security, but subject to applicable Governmental Rules governing use of Casualty and Condemnation Proceeds, if any, Lessor may (1) apply all or any of the Casualty and Condemnation Proceeds it receives to the expenses of Lessor Parties in obtaining such proceeds; (2) apply the balance to the payment of Rent and/or the reduction of the Outstanding Lease Amount, notwithstanding that such amounts are not then due and payable or that such amounts are otherwise adequately secured and/or (3) release all or any part of such proceeds to Lessee upon any conditions Lessor and the Required Participants may elect.

(iii) Lessor shall apply any Casualty and Condemnation Proceeds which are to be used to reduce the Outstanding Lease Amount only on the last day of a Rental Period unless a Default has occurred and is continuing.

(iv) Application of all or any portion of the Casualty and Condemnation Proceeds, or the release thereof to Lessee, shall not cure or waive any Default or notice of default or invalidate any acts done pursuant to such notice.

3.05. Taxes. Subject to Paragraph 3.12 relating to permitted contests, Lessee shall promptly pay when due all Indemnified Taxes imposed on or payable by Lessee or any Lessor Party in connection with the Property, this Agreement or any of the other Operative Documents, or any of the transactions contemplated hereby or thereby. As promptly as possible after any Indemnified Taxes are payable by Lessee, Lessee shall send to Lessor for the account of the applicable Lessor Party a copy of an original official receipt received by Lessee showing payment thereof. If Lessee fails to pay any such Indemnified Taxes when due to the appropriate taxing authority or fails to remit to Lessor the required receipts or other required documentary evidence, Lessee shall indemnify the Lessor Parties for any incremental taxes, interest or penalties that may become payable by the Lessor Parties as a result of any such failure. The obligations of Lessee under this Paragraph 3.05 shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

3.06. Environmental Matters.

(a) Lessee's Covenants. Lessee shall not cause or permit Hazardous Materials to be used, generated, manufactured, stored, treated, disposed of, transported or present on or released or discharged from the Property in violation of Environmental Laws that is reasonably likely to have a Material Adverse Effect. Lessee may use Hazardous Materials in connection with the operation of its business (or the business of permitted subtenants) so long as such use is consistent with the preceding sentence. Other than as previously disclosed to Lessor under the Participation Agreement, Lessee shall immediately notify Lessor in writing of (i) any knowledge by Lessee that the Property does not comply with any Environmental Laws; (ii) any claims against Lessee or the Property relating to Hazardous Materials or pursuant to Environmental Laws; and (iii) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under the provisions of California Health and Safety Code Sections 25220 et seq. or any regulation adopted in accordance therewith. In response to the release or discharge of any Hazardous Materials on, under or about the Property, Lessee shall immediately take, at Lessee's sole expense, all remedial action required by any Environmental Laws or any judgment, consent decree, settlement or compromise in respect to any claim based thereon.

(b) Inspection By Lessor. Upon reasonable prior notice to Lessee, Lessor, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of

any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property, provided that any such Person so entering and inspecting the Property shall do so in compliance with the PG&E Agreements and without materially disrupting the operations of Lessee.

(c) Indemnity. Without in any way limiting any other indemnity contained in this Agreement or any other Operative Document, Lessee agrees to defend, indemnify and hold harmless the Lessor Parties and the other Indemnitees from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property or (ii) the breach of any covenant, representation or warranty of Lessee relating to Hazardous Materials or Environmental Laws contained in this Agreement or any Operative Document, excluding any breach of the PG&E Agreements by Lessor while Lessor is in physical possession of the Property after an Event of Default. This indemnity shall include (A) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any Governmental Authority or is otherwise necessary to render the Property in compliance with all Environmental Laws; (B) all other direct or indirect consequential damages (including any third party claims, claims by any Governmental Authority, or any fines or penalties against the Indemnitees; and (C) all court costs and attorneys' fees (including expert witness fees and the cost of any consultants) paid or incurred by the Indemnitees. Lessee shall pay immediately upon Lessor's demand any amounts owing under this indemnity. Lessee shall use legal counsel reasonably acceptable to Lessor in any action or proceeding arising under this indemnity. The obligations of Lessee under this Subparagraph 3.06(c) shall survive the payment and performance of the Lessee Obligations and the termination of this Agreement.

(d) PG&E Agreements. Lessee shall take all necessary action to comply to the fullest extent possible with all of the terms and conditions of the PG&E Agreements. Lessor agrees that it will not take any affirmative action which would constitute a breach the PG&E Agreements, provided that for purposes of this covenant, any action by Lessee under the PG&E Agreements shall not be deemed to be the action of Lessor.

(e) Legal Effect of Section. Lessee and Lessor agree that (i) this Paragraph 3.06 and clause (i) of Subparagraph 4.01(u) of the Participation Agreement are intended as Lessor's written request for information (and Lessee's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5 and (ii) each representation and warranty and covenant herein and therein (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Lessor and Lessee to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

3.07. Liens, Easements, Etc.



(a) Lessee's Covenants. Subject to Paragraph 3.12 relating to permitted contests, Lessee shall not create, incur, assume or permit to exist any Lien or easement on or with respect to any of the Property of any character, whether now owned or hereafter acquired, except for the following ("Permitted Property Liens"):

(i) Liens in favor of a Lessor Party securing the Lessee Obligations and other Lessor Liens;

(ii) Liens and easements in existence on the Commencement Date to the extent reflected in the title insurance policies delivered to Agent pursuant to Paragraph 3.01 of and Schedule 3.01 to the Participation Agreement and approved by Lessor;

(iii) Liens for taxes or other Governmental Charges not at the time delinquent or thereafter payable without penalty; and

(iv) Liens of carriers, warehousemen, mechanics, materialmen and vendors and other similar Liens imposed by law incurred in the ordinary course of business for sums not overdue.

Subject to Paragraph 3.12 relating to permitted contests, Lessee shall promptly (A) pay all Indebtedness of Lessee and other obligations prior to the time the non-payment thereof would give rise to a Lien on the Property and (B) discharge, at its sole cost and expense, any Lien on the Property which is not a Permitted Property Lien.

(b) No Consents. Nothing contained in this Agreement shall be construed as constituting the consent or request of any Lessor Party, express or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Property or any part thereof. NOTICE IS HEREBY GIVEN THAT NO LESSOR PARTY IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF ANY LESSOR PARTY IN AND TO THE PROPERTY.

3.08. Subletting. Lessee may, in the ordinary course of business, sublease the Property or any portion thereof to any Person, provided, that (a) Lessee remains directly and primarily liable for performing its obligations under this Agreement and all other Lessee Obligations; (b) each sublease is subject to and subordinated to this Agreement; (c) each sublease has a term which expires on or prior to the Scheduled Expiration Date (or, if longer, includes a provision that the sublease terminates on the Expiration Date if such Expiration Date occurs prior to the Scheduled Expiration Date unless Lessee purchases the Property on the Expiration Date pursuant to the Purchase Agreement); (d) each sublease prohibits the sublessee from engaging in any activities on the Property other than those permitted by Paragraph 2.04, provided that Lessee

may sublease the Tract 2 Property to a Person which occupies the Tract 2 Property as of the date hereof and such Person may engage in activities on such Property in which it is engaged on the date hereof; and (e) no sublease has a Material Adverse Effect. Any sublease which does not satisfy each of the requirements of the immediately preceding sentence shall be null and void as to the Lessor Parties and their successor and assigns. Except for such permitted subleases, Lessee shall not assign any of its rights or interests under this Agreement to any other Person.

3.09. Utility Charges. Lessee shall pay all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other utilities and services to, on or in connection with the Property during the Term.

3.10. Removal of Property. Lessee shall not remove any Improvements from the Land or any other Property from the Land or Improvements, except that, during the Term, Lessee may remove any Modification or any trade fixture, machinery, equipment, inventory or other personal property if such Modification or property (a) was not financed by an Advance, (b) is not required by any applicable Governmental Rule or Insurance Requirement and (c) is readily removable without impairing the value, utility or remaining useful life of the Property.

3.11. Compliance with Governmental Rules and Insurance Requirements. Lessee, at its sole cost and expense, shall, unless its failure is not reasonably likely to have a Material Adverse Effect, (a) comply, and cause its agents, sublessees, assignees, employees, invitees, licensees, contractors and tenants, and the Property to comply, with all Governmental Rules (including, without limitation, Waste Discharge Requirements order No. 85-80 (Ca. Regional Water Quality Control Board, San Francisco Region) and Consent Order Docket No. HAS 89/90-002 (Ca. Department of Toxic Substances Control), including all the attached and ancillary documents thereto) and Insurance Requirements relating to the Property (including the construction, use, operation, maintenance, repair and restoration thereof, whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of the Property), and (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Property and for the use, operation, maintenance, repair and restoration of the Improvements.

3.12. Permitted Contests. Lessee, at its sole cost and expense, may contest any alleged Lien or easement on any of the Property or any alleged Governmental Charge, Indebtedness or other obligation which is payable by Lessee hereunder to Persons other than the Lessor Parties or which, if unpaid, would give rise to a Lien on any of the Property, provided that (a) each such contest is diligently pursued in good faith by appropriate proceedings; (b) the commencement and continuation of such proceedings suspends the enforcement of such Lien or easement or the collection of such Governmental Charge, Indebtedness or obligation; (c) Lessee has established adequate reserves for the discharge of such Lien or easement or the payment of such Governmental Charge, Indebtedness or obligation in accordance with GAAP and, if the failure to discharge such Lien or easement or the failure to pay such Governmental Charge, Indebtedness or obligation might result in any civil liability for any Lessor Party, Lessee has provided to such Lessor Party a bond or other security satisfactory to such Lessor Party; (d) the failure to discharge such Lien or easement or the failure to pay such Governmental Charge, Indebtedness

or obligation could not result in any criminal liability for any Lessor Party; (e) the failure to discharge such Lien or easement or the failure to pay such Governmental Charge, Indebtedness or obligation is not otherwise reasonably likely to have a Material Adverse Effect; and (f) unless Lessee currently is exercising either the Term Purchase Option or the Expiration Date Purchase Option, any such contest is completed and such Lien or easement is discharged (either pursuant to such proceedings or otherwise) or such Governmental Charge, Indebtedness or obligation is declared invalid, paid or otherwise satisfied not later than six (6) months prior to the Scheduled Expiration Date.

3.13. Lessor Obligations; Right to Perform Lessee Obligations. No Lessor Party shall have any obligation to (a) maintain, repair or make any improvements to the Property, (b) maintain any insurance on the Property, (c) perform any other obligation of Lessee under this Agreement or any other Lessee Obligation, (d) make any expenditure on account of the Property (except to make Advances as required by the Participation Agreement) or (e) take any other action in connection with the Property, this Agreement or any other Operative Document, except as expressly provided herein or in another Operative Document; provided however, that Lessor may, in its sole discretion and without any obligation to do so, perform any Lessee Obligation not performed by Lessee when required. Lessor may enter the Property or exercise any other right of Lessee under this Agreement or any other Operative Document to the extent Lessor determines in good faith that such entry or exercise is reasonably necessary for Lessor to perform any such Lessee Obligation not performed by Lessee when required. Lessee shall reimburse Lessor and the other Lessor Parties, within five (5) Business Days after demand, for all fees, costs and expenses incurred by them in performing any such obligation or curing any Default.

3.14. Inspection Rights. During the Term, Lessee shall permit any Person designated by Lessor, upon reasonable notice and during normal business hours, to visit and inspect any of the Property.

#### SECTION 4. EXPIRATION DATE.

4.01. Termination by Lessee Prior to Scheduled Expiration Date. Subject to the terms and conditions of the Purchase Agreement, Lessee may, at any time prior to the Scheduled Expiration Date, terminate this Agreement and purchase the Property pursuant to Section 2 of the Purchase Agreement. Lessee shall notify Lessor of Lessee's election so to terminate this Agreement and purchase the Property by delivering to Agent a Notice of Term Purchase Option Exercise pursuant to and in accordance with the provisions of Paragraph 2.02 of the Purchase Agreement.

4.02. Surrender of Property. Unless Lessee purchases the Property on the Expiration Date pursuant to the Purchase Agreement, Lessee shall vacate and surrender the Property to Lessor on the Expiration Date in its then-current condition, subject to compliance by Lessee on or prior to such date of its obligations under this Agreement and the other Operative Documents (including the completion of the New Improvements and all Modifications, the completion of all permitted contests and the removal of all Liens which are not Permitted Property Liens of the types described in clauses (i), (ii) (iii) or (vi) of Subparagraph 3.07(a)).

4.03. Holding Over. If Lessee does not purchase the Property on the Expiration Date pursuant to the Purchase Agreement but continues in possession of any portion of the Property after the Expiration Date, Lessee shall pay rent for each day it so continues in possession, payable upon demand of Lessor, at a per annum rate equal to the Alternate Rental Rate plus two percent (2.0%) and shall pay and perform all of its other Lessee Obligations under this Agreement and the other Operative Documents in the same manner as though the Term had not ended; provided, however, that this Paragraph 4.03 shall not be interpreted to permit such holding over or to limit any right or remedy of Lessor for such holding over.

SECTION 5. DEFAULT.

5.01. Events of Default. The occurrence or existence of any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Non-Payment. Lessee shall (i) fail to pay on the Expiration Date any amount payable by Lessee under this Agreement or any other Operative Document on such date, (ii) fail to pay within five (5) Business Days after any Scheduled Rent Payment Date any Base Rent payable on such Scheduled Rent Payment Date (other than the Base Rent payable on the Expiration Date) or (iii) fail to pay within ten (10) Business Days after the same becomes due, any Supplemental Rent or other amount required under the terms of this Agreement or any other Operative Document (other than any such amount payable on the Expiration Date or Base Rent); or

(b) Specific Defaults. Lessee or any of its Subsidiaries shall fail to observe or perform any covenant, obligation, condition or agreement set forth in Subparagraph 3.01(d), Paragraph 3.03 or Subparagraph 3.07(a) hereof, in Subparagraph 2.01(c), Paragraph 5.02 or Paragraph 5.03 of the Participation Agreement or in Paragraph 3.01 of the Construction Agency Agreement; or

(c) Other Defaults. Lessee or any of its Subsidiaries shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Agreement or any other Operative Document and such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor; provided, however, that in the event that such failure cannot reasonably be cured within such thirty (30) day period, such failure shall not constitute an Event of Default hereunder so long as Lessee shall have commenced to cure such failure within such thirty (30) day period and shall thereafter diligently pursue such cure to completion, provided further that such failure shall in all events be cured by the earlier of (i) the Expiration Date and (ii) one hundred and eighty days (180) days after Lessor's notice thereof; or

(d) Representations and Warranties. Any representation, warranty, certificate, information or other statement (financial or otherwise) made or furnished by or on behalf of Lessee or any of its Subsidiaries to any Lessor Party in or in connection with this Agreement or any other Operative Document, or as an inducement to any Lessor Party to enter into this Agreement or any other Operative Document, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished and Lessee

shall not have cured the facts or circumstances causing such representation, warranty, certificate or other statement to be false, incorrect, incomplete or misleading within thirty (30) days of notice thereof from Lessor; or

(e) Cross-Default. Lessee or any of its Subsidiaries (i) shall fail to make any payment when due on account of any Indebtedness or Contingent Obligation of such Person (excluding the Lessee Obligations but including all other Indebtedness and Contingent Obligations of Lessee or any of its Subsidiaries to any Lessor Party) and such failure shall continue beyond any period of grace provided with respect thereto, if the amount of such payment exceeds \$5,000,000 or the effect of such failure is to cause, or permit the holder or holders thereof to cause, Indebtedness and/or Contingent Obligations in an aggregate amount exceeding \$5,000,000 to become due or (ii) shall default in the observance or performance of any other agreement, term or condition contained in any agreement or instrument evidencing such Indebtedness or Contingent Obligation, if the effect of such default is to cause, or permit the holder or holders thereof to cause, Indebtedness and/or Contingent Obligations in an aggregate amount exceeding \$5,000,000 to become due; or

(f) Insolvency, Voluntary Proceedings. Lessee or any of its Subsidiaries shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated in full or in part, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any action for the purpose of effecting any of the foregoing; or

(g) Involuntary Proceedings. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Lessee or any of its Subsidiaries or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Lessee or any of its Subsidiaries or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within sixty (60) days of commencement; or

(h) Judgments. (i) A final judgment or order for the payment of money in excess of \$5,000,000 (exclusive of amounts covered by insurance issued by an insurer not an Affiliate of Lessee and otherwise satisfying the requirements set forth in Subparagraph 5.01(d)) shall be rendered against Lessee or any of its Subsidiaries and the same shall remain undischarged for a period of sixty (60) days during which execution shall not be effectively stayed or (ii) any judgment, writ, assessment, warrant of attachment, tax lien or execution or similar process shall be issued or levied against a

substantial part of the property of Lessee or any of its Subsidiaries and such judgment, writ, or similar process shall not be released, stayed, vacated or otherwise dismissed within sixty (60) days after issue or levy; or

(i) Operative Documents. Any Operative Document or any material term thereof shall cease to be, or be asserted by Lessee or any of its Subsidiaries not to be, a legal, valid and binding obligation of Lessee or any of its Subsidiaries enforceable in accordance with its terms; or

(j) ERISA. Any Reportable Event which constitutes grounds for the termination of any Employee Benefit Plan by the PBGC or for the appointment of a trustee by the PBGC to administer any Employee Benefit Plan shall occur, or any Employee Benefit Plan shall be terminated within the meaning of Title IV of ERISA or a trustee shall be appointed by the PBGC to administer any Employee Benefit Plan; or

(k) Change of Control. Any Change of Control shall occur; or

(l) Major Casualty or Condemnation. Any Major Casualty or Major Condemnation affecting the Property shall occur; or

(m) Material Adverse Effect. Any event(s) or condition(s) which has a Material Adverse Effect shall occur or exist.

5.02. General Remedies. In all cases, upon the occurrence or existence of any Event of Default and at any time thereafter unless such Event of Default is waived, Lessor may, with the consent of the Required Participants, or shall, upon instructions from the Required Participants, exercise any one or more of the following rights and remedies (except that the remedy set forth in the first sentence of Subparagraph 5.02(a) shall be automatic):

(a) Termination of Commitments. If such Event of Default is an Event of Default of the type described in Subparagraph 5.01(f) or Subparagraph 5.01(g) affecting Lessee, immediately and without notice the obligation of Lessor to make Advances and the obligations of the Participants to fund Advances shall automatically terminate. If such Event of Default is any other Event of Default, Lessor may by written notice to Lessee, terminate the obligation of Lessor to make Advances and the obligations of the Participants to fund Advances.

(b) Appointment of a Receiver. Lessor may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Specific Performance. Lessor may bring an action in any court of competent jurisdiction to obtain specific enforcement of any of the covenants or agreements of Lessee in this Agreement or any of the other Operative Documents.

(d) Collection of Issues and Profits. Lessor may collect Issues and Profits as provided in Subparagraph 2.07(c) and apply the proceeds to pay Lessee Obligations.

(e) Protection of Property. Lessor may enter, take possession of, manage and operate all or any part of the Property or take any other actions which it reasonably determines are necessary to protect the Property and the rights and remedies of the Lessor Parties under this Agreement and the other Operative Documents, including (i) taking and possessing all of Lessee's books and records relating to the Property; (ii) entering into, enforcing, modifying, or canceling subleases on such terms and conditions as Lessor may consider proper; (iii) obtaining and evicting tenants; (iv) fixing or modifying sublease rents; (v) collecting and receiving any payment of money owing to Lessee; (vi) completing any unfinished Improvements; and/or (vii) contracting for and making repairs and alterations.

(f) Termination of Agency. Lessor may terminate all or any portion of the authority of Lessee, as agent, under the Construction Agency Agreement.

(g) Other Rights and Remedies. In addition to the specific rights and remedies set forth above in this Paragraph 5.02 and in Paragraph 5.03 and Paragraph 5.04, Lessor may exercise any other right, power or remedy permitted to it by any applicable Governmental Rule, either by suit in equity or by action at law, or both.

5.03. Lease Remedies. If the transaction evidenced by this Agreement and the other Operative Documents is treated as a lease, upon the occurrence or existence of any Event of Default and at any time thereafter unless such Event of Default is waived, Lessor may, with the consent of the Required Participants, or shall, upon instructions from the Required Participants, exercise any one or more of the following rights and remedies in addition to those rights and remedies set forth in Paragraph 5.02:

(a) Termination of Lease. Lessor may, by written notice to Lessee, terminate this Agreement on a Termination Date which is prior to the Scheduled Expiration Date, subject to Subparagraph 3.02(1) of the Purchase Agreement. Such Termination Date shall be the last day of a Rental Period unless Required Participants shall otherwise direct. On such Termination Date (which shall then be the Expiration Date), Lessee shall pay all unpaid Base Rent accrued through such date, all Supplemental Rent due and payable on or prior to such date and all other amounts payable by Lessee on the Expiration Date pursuant to this Agreement and the other Operative Documents. Lessee also shall pay to Lessor, in addition to all accrued Base Rent, the worth at the time of such payment of the amount by which the unpaid Base Rent through the Scheduled Expiration Date exceeds the amount of such rental loss for the same period that Lessee proves could reasonably be avoided.

(b) Continuation of Lease. Lessor may exercise the rights and remedies provided by California Civil Code Section 1951.4, including the right to continue this Agreement in effect after Lessee's breach and abandonment and recover Rent as it becomes due. Acts of maintenance or preservation, efforts to relet the Property, the appointment of a receiver upon Lessor's initiative to protect its interest under this Agreement or withholding consent to or terminating a sublease shall not of themselves constitute a termination of Lessee's right to possession.

(c) Removal and Storage of Property. Lessor may enter the Property and remove therefrom all Persons and property, store such property in a public warehouse or elsewhere at the cost of and for the account of Lessee and sell such property and apply the proceeds therefrom pursuant to applicable California law.

5.04. Loan Remedies. If the transaction evidenced by this Agreement and the other Operative Documents is treated as a loan, upon the occurrence or existence of any Event of Default and at any time thereafter unless such Event of Default is waived, Lessor may, with the consent of the Required Participants, or shall, upon instructions from the Required Participants, exercise any one or more of the following rights and remedies in addition to those rights and remedies set forth in Paragraph 5.02:

(a) Acceleration of Lessee Obligations. Lessor may, by written notice to Lessee, terminate this Agreement on a Termination Date which is prior to the Scheduled Expiration Date, subject to Subparagraph 3.02(1) of the Purchase Agreement, and declare all unpaid Lessee Obligations due and payable on such Termination Date. Such Termination Date shall be the last day of a Rental Period unless Required Participants shall otherwise direct. On such Termination Date (which shall then be the Expiration Date), Lessee shall pay all unpaid Base Rent accrued through such date, all Supplemental Rent due and payable on or prior to such date and all other amounts payable by Lessee on the Expiration Date pursuant to this Agreement and the other Operative Documents.

(b) Uniform Commercial Code Remedies. Lessor may exercise any or all of the remedies granted to a secured party under the California Uniform Commercial Code.

(c) Judicial Foreclosure. Lessor may bring an action in any court of competent jurisdiction to foreclose the security interest in the Property granted to Lessor by this Agreement or any of the other Operative Documents.

(d) Power of Sale. Lessor may cause some or all of the Property, including any Personal Property Collateral, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable Governmental Rules.

(i) Sales of Personal Property. Lessor may dispose of any Personal Property Collateral separately from the sale of Real Property Collateral, in any manner permitted by Division 9 of the California Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable Governmental Rule. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Lessee Obligation for purposes of Section 2912c of the California Civil Code. In connection with any such sale or other disposition, Lessee agrees that the following procedures constitute a commercially reasonable sale:

(A) Lessor shall mail written notice of the sale to Lessee not later than thirty (30) days prior to such sale.



(B) Once per week during the three (3) weeks immediately preceding such sale, Lessor will publish notice of the sale in a local daily newspaper of general circulation.

(C) Upon receipt of any written request, Lessor will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours.

(D) Notwithstanding, Lessor shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale.

(E) If Lessor so requests, Lessee shall assemble all of the Personal Property Collateral and make it available to Lessor at the site of the Land. Regardless of any provision of this Agreement or any other Operative Document, Lessor shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any Lessee Obligation, unless Lessor has given express written notice of its election of that remedy in accordance with California Uniform Commercial Code Section 9505.

The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) Lessor's Sales of Real Property or Mixed Collateral. Lessor may choose to dispose of some or all of the Property which consists solely of Real Property Collateral in any manner then permitted by applicable Governmental Rules. In its discretion, Lessor may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both Real Property Collateral and Personal Property Collateral, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9501(4) of the California Uniform Commercial Code (ORS Section 79.5010(4)). Lessee agrees that such a sale of Personal Property Collateral together with Real Property Collateral constitutes a commercially reasonable sale of the Personal Property Collateral. (For purposes of this power of sale, either a sale of Real Property Collateral alone, or a sale of both Real Property Collateral and Personal Property Collateral together in accordance with California Uniform Commercial Code Section 9501(4), will sometimes be referred to as a "Lessor's Sale.")

(A) Before any Lessor's Sale, Lessor shall give such notice of default and election to sell as may then be required by applicable Governmental Rules.

(B) When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been

given, Lessor shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale.

(C) Neither Lessor nor Agent shall have any obligation to make demand on Lessee before any Lessor's Sale.

(D) From time to time in accordance with then applicable law, Lessor may postpone any Lessor's Sale by public announcement at the time and place noticed for that sale.

(E) At any Lessor's Sale, Lessor shall sell to the highest bidder at public auction for cash in lawful money of the United States.

(F) Lessor shall execute and deliver to the purchaser(s) a deed or deeds conveying the Property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Lessor's Sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited in it.

(e) Foreclosure Sales.

(i) Single or Multiple. If the Property consists of more than one lot, parcel or item of property, Lessor may:

(A) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(B) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted in Subparagraph 5.04(d), or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Lessor may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales").

If Lessor chooses to have more than one Foreclosure Sale, Lessor at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the security interests granted to Lessor in the Property by this Agreement on any part of the Property which has not been sold, until all of the Lessee Obligations have been paid in full.

(ii) Credit Bids. At any Foreclosure Sale, any Person, including any Lessor Party, may bid for and acquire the Property or any part of it to the extent permitted by then applicable Governmental Rules. Instead of paying cash for that

property, Lessor may settle for the purchase price by crediting the sales price of the Property against the Lessee Obligations in any order and proportions as Lessor in its sole discretion may choose.

5.05. Remedies Cumulative. The rights and remedies of Lessor under this Agreement and the other Operative Documents are cumulative and may be exercised singularly, successively, or together.

5.06. No Cure or Waiver. Neither the performance by Lessor of any of Lessee's obligations pursuant to Paragraph 3.13 nor the exercise by Lessor of any of its other rights and remedies under this Agreement or any other Operative Document (including the collection of Issues and Profits and the application thereof to the Lessee Obligations) shall constitute a cure or waiver of any Default or nullify the effect of any notice of default or sale, unless and until all Lessee Obligations are paid in full.

5.07. Exercise of Rights and Remedies. The rights and remedies provided to Lessor under this Agreement may be exercised by Lessor itself, by Agent pursuant to Subparagraph 2.02(c) of the Participation Agreement, by a court-appointed receiver or by any other Person appointed by any of the foregoing to act on its behalf. All of the benefits afforded to Lessor under this Agreement and the other Operative Documents shall accrue to the benefit of Agent to the extent provided in Subparagraph 2.02(c) of the Participation Agreement.

#### SECTION 6. MISCELLANEOUS.

6.01. Notices. Except as otherwise specified herein, all notices, requests, demands, consents, instructions or other communications to or upon Lessee or Lessor under this Agreement shall be given as provided in Subparagraph 2.02(c) and Paragraph 7.01 of the Participation Agreement.

6.02. Waivers; Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only as provided in the Participation Agreement. No failure or delay by any Lessor Party in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in any such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

6.03. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Lessor Parties and Lessee and their permitted successors and assigns; provided, however, that the Lessor Parties and Lessee shall not sell, assign or delegate their respective rights and obligations hereunder except as provided in the Participation Agreement.

6.04. No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the Lessor Parties and Lessee and their permitted successors and assigns, any benefit or legal or equitable

right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein. 6.05. Partial Invalidity. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

6.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules.

6.07. Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

6.08. Nature of Lessee's Obligations.

(a) Independent Obligation. The obligation of Lessee to pay the amounts payable by Lessee under this Agreement and the other Operative Documents and to perform the other Lessee Obligation are absolute, unconditional and irrevocable obligations which are separate and independent of the obligations of the Lessor Parties under this Agreement and the other Operative Documents and all other events and circumstances, including the events and circumstances set forth in Subparagraph 6.08(c).

(b) No Termination or Abatement. This Agreement and the other Operative Documents and Lessee's obligation to pay Rent and to pay and perform all other Lessee Obligations shall continue in full force and effect without abatement notwithstanding the occurrence or existence of any event or circumstance, including any event or circumstance set forth in Subparagraph 6.08(c).

(c) Full Payment and Performance. Lessee shall make all payments under this Agreement and the other Operative Documents in the full amounts and at the times required by the terms of this Agreement and the other Operative Documents without setoff, deduction or reduction of any kind and shall perform all other Lessee Obligations as and when required, without regard to any event or circumstances whatsoever, including (i) the condition of the Property (including any Improvements to the Property made prior to the Commencement Date or during the Term); (ii) title to the Property (including possession of the Property by any Person or the existence of any Lien or any other right, title or interest in or to any of the Property in favor of any Person); (iii) the value, habitability, usability, design, operation or fitness for use of the Property; (iv) the availability or adequacy of utilities and other services to the Property; (v) any latent, hidden or patent defect in the Property; (vi) the zoning or status of the Property or any other restrictions on the use of the Property; (g) the economics of the Property; (vii) any Casualty or Condemnation; (viii) the compliance of the Property with any applicable Governmental Rule or Insurance Requirement; (ix) any failure by any Lessor Party to perform any of its obligations under this Agreement or any other Operative Document; or

(x) the exercise by any Lessor Party of any of its remedies under this Agreement or any other Operative Document; provided, however, that this Paragraph 6.08 shall not abrogate any right which Lessee may have to recover damages from any Lessor Party for any material breach by such Lessor Party of its obligations under this Agreement or any other Operative Document to the extent permitted hereunder or thereunder.

IN WITNESS WHEREOF, Lessee and Lessor have caused this Agreement to be executed as of the day and year first above written.

LESSEE:

FAIR, ISAAC AND COMPANY, INC.,  
a Delaware corporation

By: \_\_\_\_\_

Name: Michael C. Gordon  
Title: Vice President - Facilities  
Administration

Fair, Isaac and Company, Inc.  
120 North Redwood Drive  
San Rafael, CA 94903-1996  
Attn: Peter L. McCorkell,  
General Counsel  
Tel. No: 415-472-2211  
Fax. No: 415-444-5029

LESSOR:

LEASE PLAN NORTH AMERICA, INC.,  
an Illinois corporation

By: \_\_\_\_\_

Name: Jamie Dillon  
Title: Attorney-in-fact

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
135 South LaSalle Street, Suite 711  
Chicago, IL 60603  
Attn: David M. Shipley  
Tel. No: (312) 904-2183  
Fax. No: (312) 904-6217

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

ss

On \_\_\_\_\_, 1998, before me, \_\_\_\_\_ a Notary Public in and for the State of California, personally appeared , personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity on behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

[SEAL]

\_\_\_\_\_





EXHIBIT A

LAND

PART 1 - PROPERTY PURCHASED FROM PG&E

A-1



EXHIBIT B  
RELATED GOODS

B-1

EXHIBIT B(1)  
SUPPLEMENT TO EXHIBIT B TO LEASE AGREEMENT

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndication Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to that certain Lease Agreement, Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated as of \_\_\_\_\_, 1998 (the "Lease Agreement"), between Fair, Isaac and Company, Inc. ("Lessee") and Lease Plan North America, Inc. ("Lessor").

2. Lessee hereby agrees that the description of "Related Goods" set forth in Exhibit B to the Lease Agreement shall be supplemented by adding thereto the Related Goods described in Attachment 1 hereto. Lessee hereby accepts all such Related Goods and agrees that such Related Goods constitute part of the Property subject to the Lease Agreement.

IN WITNESS WHEREOF, Lessee has executed this Supplement to Exhibit B on the date set forth above.

LESSEE:

FAIR, ISAAC AND COMPANY, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

B(1)-1

ATTACHMENT 1  
TO  
SUPPLEMENT TO EXHIBIT B

C-1

EXHIBIT C

NOTICE OF RENTAL PERIOD SELECTION

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to that certain Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"). Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. [Insert one of the following as appropriate]

[Pursuant to Subparagraph 2.03(a) of the Lease Agreement, Lessee hereby irrevocably selects a new Rental Period for a Portion of the Outstanding Lease Amount as follows:

(a) The Portion for which a new Rental Period is to be selected is the Portion in the amount of \$\_\_\_\_\_ with a current Rental Period which began on \_\_\_\_\_, \_\_\_\_ and ends on \_\_\_\_\_, \_\_\_\_; and

(b) The next Rental Period for such Portion shall be \_\_\_\_\_ month[s].]

[Pursuant to Subparagraph 2.03(a) of the Lease Agreement, Lessee hereby irrevocably elects to divide a Portion of the Outstanding Lease Amount into further Portions as follows:

(a) The Portion which is to be divided is the Portion in the amount of \$\_\_\_\_\_ with a current Rental Period which began on \_\_\_\_\_, \_\_\_\_ and ends on \_\_\_\_\_, \_\_\_\_; and

(b) On the last day of the current Rental Period for such Portion, such Portion is to be divided into the following Portions with the following initial Rental Periods:

Portion -----	Rental Period -----
\$ _____	_____ month[s]
\$ _____	_____ month[s]
\$ _____	_____ month[s]
\$ _____	_____ month[s]

[Pursuant to Subparagraph 2.03(a) of the Lease Agreement, Lessee hereby irrevocably elects to combine into a single Portion certain Portions of the Outstanding Lease Amount as follows:

(a) The Portions which are to be combined are the Portions in the amounts of \$\_\_\_\_\_, \$\_\_\_\_\_ and \$\_\_\_\_\_, each with a current Rental Period which ends on \_\_\_\_\_, \_\_\_\_; and

(b) The initial Rental Period for such newly created Portion shall be \_\_\_\_\_ month[s].]

[Pursuant to Subparagraph 2.03(a) of the Lease Agreement, Lessee hereby elects the Fixed Rate option for a Rental Period of \_\_\_\_\_ months with respect to a Portion equal to \$\_\_\_\_\_. Lessee hereby requests that Lessor to provide a Fixed Rate.]

3. Lessee hereby certifies to the Lessor Parties that, on the date of this Notice of Rental Period Selection and after giving effect to the selections described above:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing; and

(c) All of the Operative Documents are in full force and effect.

IN WITNESS WHEREOF, Lessee has executed this Notice of Rental Period Selection on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

PURCHASE AGREEMENT

Between

FAIR, ISAAC AND COMPANY, INC.

And

LEASE PLAN NORTH AMERICA, INC.

May 15, 1998

TABLE OF CONTENTS

	Page
SECTION 1. INTERPRETATION.....	1
1.01. Definitions.....	1
1.02. Rules of Construction.....	2
SECTION 2. OPTIONAL PURCHASE BY LESSEE DURING THE TERM.....	2
2.01. Term Purchase Option.....	2
2.02. Partial Purchase Option.....	3
SECTION 3. OBLIGATIONS OF LESSEE ON THE EXPIRATION DATE.....	4
3.01. Alternative.....	4
3.02. Marketing Option.....	4
3.03. Expiration Date Purchase Option.....	9
SECTION 4. TERMS OF ALL PURCHASES.....	10
4.01. Representations and Warranties of Parties.....	10
4.02. "As Is" Purchase.....	12
4.03. Release.....	12
4.04. Permits, Approvals, Etc. ....	13
4.05. Costs.....	13
4.06. Lessee's Expiration Date and Partial Purchase Date Payment Obligations.....	13
4.07. Lessor Liens.....	14
4.08. Transfer Documents.....	14
4.09. Casualty and Condemnation Proceeds.....	14
4.10. Payments.....	15
4.11. Environmental Reports.....	15
4.12. Further Assurances.....	15
SECTION 5. MISCELLANEOUS.....	15
5.01. Notices.....	15
5.02. Waivers, Amendments.....	15
5.03. Successors and Assigns.....	15
5.04. No Third Party Rights.....	16
5.05. Partial Invalidity.....	16
5.06. Governing Law.....	16
5.07. Counterparts.....	16



TABLE OF CONTENTS  
(continued)

	Page
5.08. Nature of Lessee's Obligations.....	16

TABLE OF CONTENTS

EXHIBITS

A(1)	Notice of Term Purchase Option Exercise (2.02)
A(2)	Notice of Partial Purchase Option Exercise (2.02)
B	Notice of Marketing Option Exercise (3.01)
C	Notice of Expiration Date Purchase Option Exercise (3.02)
D	Deed (Lessor) (4.08(a))
E	Bill of Sale (Lessor) (4.08(a))

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement" herein), dated as of May 15, 1998, is entered into by and between:

(1) FAIR, ISAAC AND COMPANY, INC., a Delaware corporation ("Lessee"); and

(2) LEASE PLAN NORTH AMERICA, INC., an Illinois corporation ("Lessor").

RECITALS

A. Lessee has requested Lessor and the financial institutions which are "Participants" under the Participation Agreement referred to in Recital B below (such financial institutions to be referred to collectively as the "Participants") to provide to Lessee a lease facility pursuant to which:

(1) Lessor would (a) purchase certain property designated by Lessee, (b) lease such property to Lessee, (c) appoint Lessee as Lessor's agent to make certain improvements to such property, (d) make advances to finance such improvements and to pay certain related expenses, and (e) grant to Lessee the right to purchase such property; and

(2) The Participants would participate in such lease facility by (a) funding the purchase price and other advances to be made by Lessor, and (b) acquiring participation interests in the rental and certain other payments to be made by Lessee.

B. Pursuant to a Participation Agreement dated as of May 15, 1998 (the "Participation Agreement") among Lessee, Lessor, the Participants and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"), Lessor and the Participants have agreed to provide such lease facility upon the terms and subject to the conditions set forth therein, including without limitation the execution and delivery of this Agreement setting forth the terms for the purchase of the Property by Lessee from Lessor.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. INTERPRETATION.

1.01. Definitions. Unless otherwise indicated in this Agreement or any other Operative Document, each term set forth in Schedule 1.01 to the Participation Agreement, when used in

EXHIBIT 10.40

this Agreement or any other Operative Document, shall have the respective meaning given to that term in such Schedule 1.01 or in the provision of this Agreement or other document, instrument or agreement referenced in such Schedule 1.01.

1.02. Rules of Construction. Unless otherwise indicated in this Agreement or any other Operative Document, the rules of construction set forth in Schedule 1.02 to the Participation Agreement shall apply to this Agreement and the other Operative Documents.

## SECTION 2. OPTIONAL PURCHASE BY LESSEE DURING THE TERM.

2.01. Term Purchase Option. Subject to the terms and conditions of this Agreement and the other Operative Documents (including those set forth below in this Paragraph 2.01), Lessee may, at its option on any Business Day prior to the Scheduled Expiration Date of the Lease Agreement, terminate the Lease Agreement and purchase all of the Property (the "Term Purchase Option").

(a) Notice of Term Purchase Option Exercise. Lessee shall notify Lessor of Lessee's exercise of the Term Purchase Option by delivering to Lessor an irrevocable written notice in the form of Exhibit A(1), appropriately completed (the "Notice of Term Purchase Option Exercise"), which states that Lessee is exercising its right to terminate the Lease Agreement prior to the Scheduled Expiration Date thereof pursuant to Paragraph 4.01 of the Lease Agreement and purchase all of the Property pursuant to this Paragraph 2.01 and specifies the Business Day on which such termination and purchase are to occur (which date, after the delivery of such notice, shall be the Expiration Date). Lessee shall give the Notice of Term Purchase Option Exercise to Lessor at least ten (10) Business Days prior to the Business Day on which such termination and purchase are to occur. The Notice of Term Purchase Option Exercise shall be delivered as required by Subparagraph 2.02(c) and Paragraph 7.01 of the Participation Agreement; provided, however, that Lessee shall promptly deliver the original of any Notice of Term Purchase Option Exercise initially delivered by facsimile.

(b) Term Purchase Option Purchase Price. Lessee shall pay to Lessor on the Expiration Date, as the purchase price for the Property, an amount equal to the Outstanding Lease Amount on such date.

(c) Effect of Certain Events. Lessee may exercise the Term Purchase Option as provided in this Paragraph 2.01, notwithstanding (i) the prior election by Lessee to exercise the Partial Purchase Option pursuant to Paragraph 2.02, the Marketing Option pursuant to Paragraph 3.01 and Paragraph 3.02 or the Expiration Date Purchase Option pursuant to Paragraph 3.01 and Paragraph 3.03, provided that Lessor completes the purchase of the Property pursuant to the Term Purchase Option and this Agreement prior to the Scheduled Expiration Date and Lessor has not previously entered into an agreement with a Designated Purchaser or an Assignee Purchaser to sell the Property or (ii) the occurrence of any Event of Default or the exercise by the Lessor Parties of any of their rights or remedies under the Operative Documents following the occurrence of such Event of Default, provided that such exercise by Lessee of the Term Purchase Option

after the occurrence of any Event of Default shall not require the Lessor Parties to cease exercising such rights and remedies unless and until Lessee completes the purchase of the Property pursuant to the Term Purchase Option and this Agreement.

2.02. Partial Purchase Option. Subject to the terms and conditions of this Agreement and the other Operative Documents (including those set forth below in this Paragraph 2.02), Lessee may from time to time, at its option on any Business Day prior to the Scheduled Expiration Date of the Lease Agreement, without terminating the Lease Agreement, purchase one or more legal parcels of property included in any Tract (a "Sub-Tract Parcel") of the Property (the "Partial Purchase Option").

(a) Notice of Partial Purchase Option Exercise. Lessee shall notify Lessor of Lessee's exercise of the Partial Purchase Option by delivering to Lessor an irrevocable written notice in the form of Exhibit A(2), appropriately completed (the "Notice of Partial Purchase Option Exercise"), which states that Lessee is exercising its right to purchase one or more Sub-Tract Parcels of the Property (but less than all of the Property) prior to the Scheduled Expiration Date pursuant to this Paragraph 2.02 and specifies (i) the Sub-Tract(s) so to be purchased and (ii) the Business Day on which such purchase is to occur (a "Partial Purchase Date"). Lessee shall give each Notice of Partial Purchase Option Exercise to Lessor at least ten (10) Business Days prior to the Partial Purchase Date on which a purchase is to occur. Each Notice of Partial Purchase Option Exercise shall be delivered as required by Subparagraph 2.02(c) and Paragraph 7.01 of the Participation Agreement; provided, however, that Lessee shall promptly deliver the original of any Notice of Partial Purchase Option Exercise initially delivered by facsimile.

(b) Partial Purchase Option Purchase Price. Lessee shall pay to Lessor on each Partial Purchase Date, as the purchase price for each Sub-Tract of Property to be purchased on such date, an amount equal to the purchase price of such Sub-Tract, as set forth on Schedule 1 to Exhibit A(2) (the "Sub-Tract Purchase Price")

(c) Conditions to Exercise of Partial Purchase Option. The purchase by Lessee on any Partial Purchase Date of any Sub-Tract of Property pursuant to this Paragraph 2.02 is subject to receipt by Lessor, on or prior to such Partial Purchase Date, of new Expiration Date Appraisals for all Sub-Tracts and Tracts of Property that are to remain subject to the Lease Agreement after such Partial Purchase Date, which appraisals (i) each shall be dated a recent date prior to such Partial Purchase Date and (ii) together shall assess the aggregate Fair Market Value of all such remaining Sub-Tracts and Tracts of Property at not less than the Outstanding Lease Amount that will remain after application of all amounts to be applied thereto on such Partial Purchase Date.

(d) Limitations to Exercise of Partial Purchase Option as to the Tract 2 Land. Such other limitations with respect to the exercise of the Partial Purchase Option on the Sub-Tracts within the Tract 2 Land as Lessor may reasonably request prior to the Tract 2 Acquisition Date.

(e) Upon delivery of any revised Expiration Date Appraisal pursuant to Subparagraph 5.01(h) of the Participation Agreement, Schedule 1 to Exhibit A-2 shall be

revised in accordance with such revised Expiration Date Appraisal.

SECTION 3. OBLIGATIONS OF LESSEE ON THE EXPIRATION DATE.

3.01. Alternative. Unless Lessee has exercised the Term Purchase Option, on the Expiration Date of the Lease Agreement, Lessee shall either:

(a) Marketing Option. Cause another Person to complete the purchase of the Property pursuant to Paragraph 3.02 (the "Marketing Option"); or

(b) Expiration Date Purchase Option. Purchase the Property itself pursuant to Paragraph 3.03 (the "Expiration Date Purchase Option").

Lessee shall elect either the Marketing Option or the Expiration Date Purchase Option by delivering to Lessor, not less than six (6) months prior to the Scheduled Expiration Date for the Lease Agreement, either (i) a written notice in the form of Exhibit B, appropriately completed (the "Notice of Marketing Option Exercise"), or (ii) a written notice in the form of Exhibit C, appropriately completed (the "Notice of Expiration Date Purchase Option Exercise"); provided, however, that (A) Lessee shall be deemed to have elected the Expiration Date Purchase Option if it fails to deliver either notice as required by this sentence; (B) Lessee's election of the Expiration Date Purchase Option (whether expressly by a notice so delivered or implicitly by the failure to deliver any notice) shall be irrevocable; and (C) Lessee may not elect the Marketing Option if (1) the Expiration Date has been accelerated to an earlier Termination Date following a Marketing Option Event of Default under the Lease Agreement or (2) the conditions set forth in Paragraph 3.03 of the Participation Agreement are not satisfied on the date Lessee delivers its election notice or on the Expiration Date of the Lease Agreement (unless, in each case, the only event or condition causing such conditions not to be so satisfied is the occurrence of a Non-Marketing Option Event of Default under the Lease Agreement). The Notice of Marketing Option Exercise or the Notice of Expiration Date Purchase Option Exercise shall be delivered as required by Subparagraph 2.02(c) and Paragraph 7.01 of the Participation Agreement; provided, however, that Lessee shall promptly deliver to Lessor the original of any such notice initially delivered by facsimile.

3.02. Marketing Option.

(a) General. If Lessee elects to exercise the Marketing Option by delivering to Lessor a Notice of Marketing Option Exercise pursuant to Paragraph 3.01, Lessee shall (i) locate a purchaser which satisfies the requirements set forth in this Paragraph 3.02, (ii) arrange for such purchaser to purchase the Property on the Expiration Date for a purchase price which is not less than the lesser of (A) the sum of the total Tranche B Proportionate Share and total Tranche C Proportionate share of the Outstanding Lease Amount and (B) the Fair Market Value of the Property, and (iii) otherwise comply, or cause compliance with, the requirements of this Paragraph 3.02 and the other applicable provisions of this Agreement.

(b) Lessee's Marketing Obligations.

(i) Initial Marketing Period. During the period beginning on the date Lessee delivers the Notice of Marketing Option Exercise and ending on the date which is four (4) months prior to the Expiration Date of the Lease Agreement (the "Initial Marketing Period"), Lessee shall use reasonable efforts to solicit Conforming Bids from potential purchasers of the Property. On or prior to the last day of the Initial Marketing Period, Lessee shall deliver to Lessor any Conforming Bid selected by Lessee (the "Initial Bid"). If the purchase price specified in the Initial Bid is equal to or greater than the sum of the total Tranche B Proportionate Share and the total Tranche C Proportionate Share of the Outstanding Lease Amount, Lessor shall accept such bid and Lessee shall have no further obligations to solicit additional bids.

(ii) Secondary Marketing Period. If Lessee does not submit an Initial Bid or if the purchase price specified in the Initial Bid is less than the sum of the total Tranche B Proportionate Share and the total Tranche C Proportionate Share of the Outstanding Lease Amount, Lessor may reject such bid and Lessee shall, during the period which begins on the day following the Initial Marketing Period and ends on the date two (2) months prior to the Expiration Date of the Lease Agreement (the "Secondary Marketing Period"):

(A) Use its best efforts to solicit additional Conforming Bids, including the engagement of experienced and knowledgeable brokers;

(B) Furnish to each Lessor Party copies of all bids and otherwise provide each Lessor Party with such information relating to the marketing of the Property as such Person may reasonably request in writing;

(C) Agree to provide to all potential purchasers all customary seller's indemnities (including environmental indemnities), representations and warranties regarding the Property (including the title to, except for Lessor Liens, and condition of the Property);

(D) Furnish to each Lessor Party copies of environmental reports, architect's certificates, licenses, permits and other evidence reasonably requested by such Person to establish that no Default has occurred and is continuing under the Lease Agreement;

(E) Permit any Lessor Party or potential purchaser to inspect the Property and the maintenance records for the Property upon reasonable prior written notice and during normal business hours and provide to each such Person all information regarding the Property reasonably requested by such Person in writing;

(F) Take all other commercially reasonable steps to secure the best price for the Property; and

(G) Submit to Lessor on or prior to the last day of the Secondary Marketing Period any Conforming Bid selected by Lessee with a purchase price which is equal to or greater than the sum of the total Tranche B Proportionate Share and the total Tranche C Proportionate Share of the Outstanding Lease Amount or, if no such Conforming Bid was received by Lessee, the highest Conforming Bid received by Lessee during the Secondary Marketing Period.

During the Secondary Marketing Period, any Lessor Party shall have the right to submit one or more bids or solicit bids from other Persons.

(c) Conforming Bids. Each bid must meet each of the following requirements (each such bid to be referred to herein as a "Conforming Bid"):

(i) The bid may be submitted by any Person other than (A) a Person which is an Affiliate of Lessee or (B) a Person which has an agreement (whether express or implied) with Lessee or any of its Affiliates to sell, lease or otherwise make available to Lessee or any of its Affiliates any portion of the Property;

(ii) The bidder must agree in writing to purchase the Property on the Expiration Date of the Lease Agreement for a purchase price to be paid in cash which is not less than the lesser of (A) the sum of the total Tranche B Proportionate Share and the Tranche C Proportionate Share of the Outstanding Lease Amount on such date and (B) the Fair Market Value of the Property on such date;

(iii) The bidder must agree to purchase the Property "as is" without any representations, warranties or indemnities, except for (A) any representations, warranties or indemnities provided by Lessor and Lessee pursuant to Subparagraph 4.01(b) and (B) any representations, warranties or indemnities provided by Lessee pursuant to clause (ii)(C) of Subparagraph 3.02(b); and

(iv) The bidder must agree to be bound by the other terms and conditions of this Agreement applicable to bidders.

(d) Lessor's Obligation to Accept Bids. If, at any time on or prior to the last day of the Secondary Marketing Period, Lessee submits to Lessor a Conforming Bid under this Paragraph 3.02 with a purchase price which is equal to or greater than the sum of the total Tranche B Proportionate Share and the Tranche C Proportionate Share of the Outstanding Lease Amount, Lessor shall accept such bid. If Lessee submits to Lessor a Conforming Bid under this Paragraph 3.02 with a purchase price which is less than the sum of the total Tranche B Proportionate Share and the Tranche C Proportionate Share of the Outstanding Lease Amount, Lessor shall not accept such bid unless approved by Lessor and Required Participants. If Lessee fails to submit a bid to Lessor on or prior to the last day of the Secondary Marketing Period which Lessor is so required to accept, Lessor shall retain the Property after the Expiration Date of the Lease Agreement; provided, however, that Lessee's payment obligations on such Expiration Date shall be



limited to the amounts payable pursuant to clause (iii) of Subparagraph 4.06(a) if (i) Lessor retains the Property after Lessee submits a Conforming Bid on or prior to the last day of the Secondary Marketing Period in accordance with clause (ii) of Subparagraph 3.02(b) and (ii) the Marketing Option has not terminated prior to such Expiration Date pursuant to Subparagraph 3.02(f). Lessor shall notify Lessee of Lessor's election to retain the Property by delivering to Lessee, at least ten (10) days prior to the Expiration Date of the Lease Agreement, a written notice of such election.

(e) Purchase Price. If Lessor accepts any bid by any Person, such Person (the "Designated Purchaser") shall pay to Lessor on the Expiration Date of the Lease Agreement, as the purchase price for the Property, the amount set forth in such bid as the purchase price.

(f) Termination of the Marketing Option. Lessee's right to exercise the Marketing Option shall immediately terminate and Lessee shall purchase the Property on the Expiration Date of the Lease Agreement pursuant to Paragraph 3.03 if (i) Lessee fails to comply with any of its obligations under this Paragraph 3.02; (ii) a Marketing Option Event of Default under the Lease Agreement occurs after Lessee delivers the Notice of Marketing Option Exercise; (iii) the conditions precedent set forth in Paragraph 3.03 of the Participation Agreement are not satisfied on the Expiration Date of the Lease Agreement (unless the only event or condition causing such conditions not to be so satisfied is the occurrence of a Non-Marketing Option Event of Default under the Lease Agreement); or (iv) the Designated Purchaser fails to consummate the purchase of the Property on the Expiration Date of the Lease Agreement in accordance with its accepted bid and this Agreement, without regard to the reason for such failure (except as otherwise provided in the following proviso); provided, however, that, if the Designated Purchaser fails to consummate the purchase of the Property on the Expiration Date solely due to Lessor's failure to remove Lessor Liens or deliver the required deed and bill of sale or other documents required to be delivered by Lessor hereunder, Lessee's right to exercise the Marketing Option shall not terminate, Lessee shall not be required to purchase the Property on the Expiration Date and Lessee's payment obligations on the Expiration Date shall be limited to the amounts set forth in clause (ii) of Subparagraph 4.06(a) (determined as if the purchase by the Designated Purchaser had been consummated).

(g) Residual Value Guaranty Amount and Indemnity Amount. Unless Lessee's right to exercise the Marketing Option has terminated and Lessee is required to purchase the Property on the Expiration Date of the Lease Agreement pursuant to Paragraph 3.03, Lessee shall pay to Lessor on such Expiration Date the following:

(i) An amount (the "Residual Value Guaranty Amount") equal to the total Tranche A Proportionate Share of the Outstanding Lease Amount on such date; and

(ii) An amount (the "Indemnity Amount") equal to the decrease, if any, between the Commencement Date and the Expiration Date of the Lease Agreement in the Fair Market Value of the Property caused by (A) any representation or warranty of Lessee or any of its Affiliates regarding the Property

set forth in any of the Operative Documents proving to be false or inaccurate when made, (B) the existence of, or the failure of Lessee to pay any Governmental Charge, Indebtedness or other obligation which might give rise to, any Liens in the Property (other than Permitted Property Liens), (C) the failure of Lessee to complete any New Improvements or any Modifications or (D) any other failure of Lessee to comply with any of its obligations regarding the Property set forth in any of the Operative Documents;

Provided, however, that (A) Lessee shall not be obligated to pay any Residual Value Guaranty Amount or Indemnity Amount if the purchase price paid to Lessor equals or exceeds the Outstanding Lease Amount on such date and (B) the sum of any Residual Value Guaranty Amount and Indemnity Amount payable to Lessor on the Expiration Date of the Lease Agreement shall not exceed the deficiency, if any, between such Outstanding Lease Amount and such purchase price.

(h) Determination of Fair Market Value and Indemnity Amount. If the purchase price specified in the Initial Bid is less than the sum of the total Tranche B Proportionate Share and the total Tranche C Proportionate Share of the Outstanding Lease Amount, Lessor may, on or prior to the last day of the Secondary Marketing Period (if Lessee has not previously delivered to Lessor a Conforming Bid with a purchase price equal to or greater than the sum of the total Tranche B Proportionate Share and the total Tranche C Proportionate Share of the Outstanding Lease Amount), deliver to Lessee a written notice of Lessor's determination of the current Fair Market Value of the Property and the Indemnity Amount. To determine such amounts, Lessor shall obtain Appraisals of the Property which set forth:

(i) A current Appraisal of the Fair Market Value of the Property in its then existing condition (the "Current Appraisal"); and

(ii) An Appraisal of the Fair Market Value of the Property which assumes that (A) all representations and warranties regarding the Property made by Lessee or any of its Affiliates in any of the Operative Documents were true and correct when made; (B) Lessee has maintained the Property in compliance with all applicable Governmental Rules, Insurance Requirements and the Operative Documents; (C) Lessee has completed all Modifications and any other New Improvements in a good and workmanlike manner and otherwise as required by the Operative Documents; (D) Lessee has repaired the Property as required by the Operative Documents following any Casualty; (E) Lessee has restored the Property as required by the Operative Documents following any Condemnation; (F) Lessee has paid all Governmental Charges, Indebtedness and other obligations which, if unpaid, might give rise to a Lien (other than a Lessor Lien) on the Property; (G) Lessee has removed all Liens on the Property except for Permitted Property Liens and Lessor Liens; and (H) Lessee has performed all of its other obligations as required by the Operative Documents (the "Assumed Appraisal").

In the absence of manifest error, (A) the Current Appraisal shall constitute the current Fair Market Value of the Property and (B) the difference between the Current Appraisal

and the Assumed Appraisal shall constitute the Indemnity Amount if the Current Appraisal is less than the Assumed Appraisal.

(i) Lessee not an Agent. Lessee shall not be an agent for any of the Lessor Parties in arranging for a purchaser of the Property. No Lessor Party shall be bound by any acts of Lessee.

(j) Excess Proceeds. If, on the Expiration Date of the Lease Agreement, after the application by Lessor of all amounts received by Lessor on such date to the Outstanding Lease Amount, all unpaid Rent accrued through or due and payable on or prior to such date and all other amounts, if any, due and payable by Lessee under the Operative Documents on or prior to such date, any excess amount remains, Lessor promptly shall pay such excess amount to Lessee.

(k) Creditworthiness of Designated Purchaser. Lessee assumes all responsibility for determining the creditworthiness of any potential purchaser on any bid submitted by Lessee to Lessor hereunder. If, after any purchase by a Designated Purchaser hereunder, the purchase price paid by such Designated Purchaser is recovered from any Lessor Party, Lessee shall reimburse such Lessor Party for such recovery unless such recovery is due solely to a material misrepresentation or covenant breach by such Lessor Party.

(l) Exercise of Marketing Option After Non-Marketing Option Event of Default. If Lessor notifies Lessee pursuant to Subparagraph 5.03(a) or Subparagraph 5.04(a) of the Lease Agreement that Lessor is terminating the Lease Agreement on a Termination Date which is prior to the Scheduled Expiration Date of the Lease Agreement and the only basis for such early termination is the occurrence of a Non-Marketing Option Event of Default, Lessee may, subject to Paragraph 3.01, elect to exercise the Marketing Option if, not later than five (5) Business Days after it receives from Lessor such notice of early termination, it (i) delivers to Lessor a Notice of Marketing Option Exercise, (ii) delivers to Agent or Participants Cash Collateral as required by clause (ii) of Subparagraph 2.11(a) of the Participation Agreement, (iii) delivers to Lessor an opinion of its counsel as required by clause (ii) of Subparagraph 2.11(a) of the Participation Agreement, and (iv) takes such other actions as may be necessary to grant to Agent first priority perfected security interests in such Cash Collateral in accordance with the Cash Collateral Agreement. Upon the delivery by Lessee to Lessor of a Notice of Marketing Option Exercise and satisfaction of the Cash Collateral requirements set forth in the preceding sentence of this Subparagraph 3.02(l), the Expiration Date of the Lease Agreement shall, if the conditions to the exercise of the Marketing Option set forth in Paragraph 3.01 are satisfied, be extended to the first Business Day that is six (6) months after the date of receipt by Lessor of such Notice of Marketing Option Exercise. Any exercise by Lessee of the Marketing Option pursuant to this Subparagraph 3.02(l) shall be subject to the terms and conditions otherwise set forth in this Agreement.

3.03. Expiration Date Purchase Option.

(a) General. If (i) Lessee elects to exercise the Expiration Date Purchase Option by delivering to Lessor a Notice of Expiration Date Purchase Option Exercise pursuant to Paragraph 3.01; (ii) Lessee elects to exercise the Marketing Option by delivering to Lessor a Notice of Marketing Option Exercise pursuant to Paragraph 3.01 but the Marketing Option terminates pursuant to Subparagraph 3.02(f); or (iii) Lessee fails to deliver to Lessor either notice as required by Paragraph 3.01; Lessee shall purchase the Property on the Expiration Date of the Lease Agreement and otherwise comply, or cause compliance with, the requirements of this Paragraph 3.03 and the other applicable provisions of this Agreement.

(b) Purchase Price. If Lessee is purchasing the Property pursuant to the Expiration Date Purchase Option, Lessee shall pay to Lessor on the Expiration Date of the Lease Agreement, as the purchase price for the Property, an amount equal to the Outstanding Lease Amount on such date.

#### SECTION 4. TERMS OF ALL PURCHASES.

##### 4.01. Representations and Warranties of Parties.

(a) Representations and Warranties of Purchaser. The purchaser of the Property, whether Lessee, an Assignee Purchaser or a Designated Purchaser ("Purchaser") shall represent and warrant to Lessor on the Expiration Date of the Lease Agreement (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the applicable Partial Purchase Date) as follows:

(i) Such Person is a legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization or an individual with legal capacity to purchase the Property (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the applicable Partial Purchase Date).

(ii) The execution, delivery and performance by such Person of each document, instrument and agreement executed, or to be executed, by such Person in connection with its purchase of the Property (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the applicable Partial Purchase Date) (the "Purchase Documents") and the consummation of the transactions contemplated thereby (A) are within the power of such Person and (B) have been duly authorized by all necessary actions on the part of such Person.

(iii) Each Purchase Document executed, or to be executed, by such Person has been, or will be, duly executed and delivered by such Person and constitutes, or will constitute, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(iv) Such Person has not (A) made a general assignment for the benefit of creditors, (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by such Person's creditors, (C) suffered the appointment of a receiver to take possession of all, or substantially all, of such Person's assets, (D) suffered the attachment or other judicial seizure of all, or substantially all, of such Person's assets, (E) admitted in writing its inability to pay its debts as they come due, or (F) made an offer of settlement, extension or composition to its creditors generally.

(v) Such Person is not a "party in interest" within the meaning of Section 3(14) of the ERISA, with respect to any investor in or beneficiary of Lessor.

(b) Representations and Warranties of Lessor and Lessee. Each of Lessor and Lessee shall represent and warrant to Purchaser (and Lessee also shall represent and warrant to Lessor if Lessor is to retain the Property) on the Expiration Date of the Lease Agreement as follows:

(i) Such Person is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.

(ii) The execution, delivery and performance by such Person of each Purchase Document executed, or to be executed, by such Person and the consummation of the transactions contemplated thereby (A) are within the power of such Person and (B) have been duly authorized by all necessary actions on the part of such Person.

(iii) Each Purchase Document executed, or to be executed, by such Person has been, or will be, duly executed and delivered by such Person and constitutes, or will constitute, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(iv) Such Person has not (A) made a general assignment for the benefit of creditors, (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by such Person's creditors, (C) suffered the appointment of a receiver to take possession of all, or substantially all, of such Person's assets, (D) suffered the attachment or other judicial seizure of all, or substantially all, of such Person's assets, (E) admitted in writing its inability to pay its debts as they come due, or (F) made an offer of settlement, extension or composition to its creditors generally.

In addition to the foregoing, (A) Lessee shall represent and warrant to the Designated Purchaser (or Lessor if Lessor is to retain the Property) on the Expiration Date of the Lease Agreement that no Liens are attached to the Property, except for Permitted Property Liens, and (B) Lessor shall represent and warrant to Purchaser on the Expiration

Date of the Lease Agreement (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the applicable Partial Purchase Date) that no Lessor Liens are attached to the Property (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the portion to be purchased). Except for the foregoing representations and warranties to be made by Lessor on the Expiration Date of the Lease Agreement (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the applicable Partial Purchase Date), no Lessor Party shall make any representation or warranty regarding the Property or the sale of the Property. Lessee shall make such additional representations and warranties as it may be required to make pursuant to clause (ii) of Subparagraph 3.02(b).

(c) Survival of Representations and Warranties. The representations and warranties of Purchaser, Lessor and Lessee shall survive for a period of twelve (12) months after the Expiration Date of the Lease Agreement (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, on the applicable Partial Purchase Date). Any claim which any such party may have at any time against any other such party for a breach of any such representation or warranty, whether known or unknown, which is not asserted by written notice within such twelve (12) month period shall not be valid or effective, and the party shall have no liability with respect thereto.

4.02. "As Is" Purchase. All purchases of the Property hereunder shall be "as is, with all faults" and without any representations, warranties or indemnities except for any representations, warranties or indemnities provided by Lessee pursuant to clause (ii)(C) of Subparagraph 3.02(b) or by Lessor or Lessee pursuant to Subparagraph 4.01(b). Purchaser shall specifically acknowledge and agree that Lessor is selling and Purchaser is purchasing the Property on an "as is, with all faults" basis and that Purchaser is not relying on any representations or warranties of any kind whatsoever, express or implied, from any Lessor Party, its agents, or brokers as to any matters concerning the Property (except for any representations and warranties provided by Lessor pursuant to Subparagraph 4.01(b)), including (a) the condition of the Property (including any Improvements to the Property made prior to the Commencement Date or during the Term of the Lease Agreement); (b) title to the Property (including possession of the Property by any Person or the existence of any Lien or any other right, title or interest in or to any of the Property in favor of any Person); (c) the value, habitability, useability, design, operation or fitness for use of the Property; (d) the availability or adequacy of utilities and other services to the Property; (e) any latent, hidden or patent defect in the Property; (f) the zoning or status of the Property or any other restrictions on the use of the Property; (g) the economics of the Property; (h) any Casualty or Condemnation; or (i) the compliance of the Property with any applicable Governmental Rule or Insurance Requirement.

4.03. Release. Without limiting the foregoing, Purchaser shall, on behalf of itself and its successors and assigns, waive its right to recover from, and forever release and discharge, Lessor and the other Indemnitees from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property or any Governmental Rule applicable thereto, including any Environment Law. Purchaser shall expressly waive the benefits of Section 1542 of the

California Civil Code, which provides that, "a general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known to him must have materially affected the settlement with the debtor."

4.04. Permits, Approvals, Etc. Lessee shall obtain all permits, licenses and approvals from and make all filings with Governmental Authorities and other Persons, comply and cause compliance with all applicable Governmental Rules and take all other actions required for the marketing, purchase and sale of the Property.

4.05. Costs. Lessee shall pay directly, without deduction from the purchase price or any other amount payable to Lessor hereunder, all costs and expenses of Lessee and Lessor associated with the marketing and sale of the Property, including brokers' fees and commissions; title insurance premiums; survey charges; utility, tax and other prorations; fees and expenses of environmental consultants and attorneys; appraisal costs; escrow fees; recording fees; documentary, transfer and other taxes; and all other fees, costs and expenses which might otherwise be deducted from the purchase price or any other amount payable to Lessor hereunder.

4.06. Lessee's Expiration Date and Partial Purchase Date Payment Obligations.

(a) Expiration Date. On the Expiration Date of the Lease Agreement, Lessee shall pay to Lessor the following:

(i) Purchase by Lessee. If the Property is to be purchased by Lessee or an Assignee Purchaser on such date, (i) the purchase price payable by Lessee, (ii) all unpaid Rent accrued through or due and payable on or prior to such date and (iii) all other amounts, if any, due and payable by Lessee under the Operative Documents on or prior to such date;

(ii) Purchase by a Designated Purchaser. If the Property is to be purchased by a Designated Purchaser on such date, (i) the Residual Value Guaranty Amount (subject to the provisos set forth at the end of Subparagraph 3.02(g)), (ii) the Indemnity Amount (subject to the provisos set forth at the end of Subparagraph 3.02(g)), (iii) all unpaid Rent accrued through or due and payable on or prior to such date and (iv) all other amounts, if any, due and payable by Lessee under the Operative Documents on or prior to such date; or

(iii) Retention by Lessor. If the Property is to be retained by Lessor on such date pursuant to Subparagraph 3.02(d), (i) the Residual Value Guaranty Amount, (ii) the Indemnity Amount, (iii) all unpaid Rent accrued through or due and payable on or prior to such date and (iv) all other amounts, if any, due and payable by Lessee under the Operative Documents on or prior to such date.

(b) Partial Purchase Date. On any Partial Purchase Date, Lessee shall pay to Lessor (i) the purchase price for the Sub-Tract(s) of Property to be purchased on such date, (ii) all unpaid Rent attributable to such Sub-Tract(s) of Property accrued through or due and payable on or prior to such date and (iii) all other amounts attributable to such Sub-Tracts of Property, if any, due and payable by Lessee under the Operative Documents on or prior to such date.

4.07. Lessor Liens. Lessor shall remove all Lessor Liens from the Property on or before the Expiration Date of the Lease Agreement.

4.08. Transfer Documents.

(a) Expiration Date.

(i) Lessor. Subject to receipt by Lessor on the Expiration Date of the Lease Agreement of the full amount of the following, without any setoff, deduction or reduction of any kind:

(A) In the case of a transfer to Lessee or an Assignee Purchaser, all amounts payable by Lessee pursuant to clause (i) of Subparagraph 4.06(a); or

(B) In the case of a transfer to a Designated Purchaser, (A) the purchase price payable by the Designated Purchaser and (B) all amounts payable by Lessee pursuant to clause (ii) of Subparagraph 4.06(a);

Lessor shall transfer its interest in the Property to Purchaser on the Expiration Date of the Lease Agreement (unless Lessor is to retain the Property) by executing and delivering to Purchaser a Deed in substantially the form of Exhibit D and a Bill of Sale in substantially the form of Exhibit E.

(ii) Lessee. On the Expiration Date of the Lease Agreement, unless Lessee is to purchase the Property, Lessee shall transfer its interest in the Property to the Designated Purchaser or the Assignee Purchaser (or Lessor if Lessor is to retain the Property) by executing and delivering to such Person a Deed in substantially the form of Exhibit F, a Bill of Sale in substantially the form of Exhibit G and such other documents, instruments and agreements as such Person may reasonably request.

(b) Partial Purchase Date. Subject to receipt by Lessor on any Partial Purchase Date of all amounts payable by Lessee pursuant to Subparagraph 4.06(b), without any setoff, deduction or reduction of any kind, Lessor shall transfer its interest in the Tracts of Property to be purchased on such date to Lessee by executing and delivering to Lessee a Deed in substantially the form of Exhibit D, a Bill of Sale in substantially the form of Exhibit E and such other documents, instruments and agreements as Lessee may reasonably request

4.09. Casualty and Condemnation Proceeds. If, on the Expiration Date of the Lease Agreement, any Casualty and Condemnation Proceeds are held by Lessor in a Repair and Restoration Account or otherwise, Lessor shall (a) if Lessee is to purchase the Property on the Expiration Date of the Lease Agreement and Lessee shall so direct, apply such proceeds to the purchase price to be paid by Lessee or (b) in all other cases, release such proceeds to Lessee; provided, however, that Lessor shall not have any obligation so to apply or release such proceeds unless Lessee and/or any Designated Purchaser has complied with all of the terms and conditions of this Agreement.



4.10. Payments. Purchaser, Lessor and Lessee shall make all payments in lawful money of the United States and in same day or immediately available funds not later than 12:00 noon on the date due.

4.11. Environmental Reports. Lessee shall obtain and deliver to Lessor, not later than one (1) month prior to the Expiration Date of the Lease Agreement (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, prior to the applicable Partial Purchase Date), copies of all reports or documents (not previously delivered to Lessor) that update the Environmental Reports with respect to the Property (or, in the case of a purchase of a portion of the Property pursuant to the Partial Purchase Option, with respect to the applicable portion thereof) prepared by environmental consultants acceptable to Lessor and a database report prepared by such environmental consultants with respect to the properties adjoining the Property (or the applicable portion thereof).

4.12. Further Assurances. Lessee shall, and shall cause any Designated Purchaser to, execute and deliver such documents, instruments and agreements and take such other actions as Lessor may reasonably request to effect the purposes of this Agreement and comply with the terms hereof. Similarly, Lessor shall execute and deliver such documents, instruments and agreements and take such other actions as Lessee or a Designated Purchaser may reasonably request to effect the purposes of this Agreement and comply with the terms hereof.

#### SECTION 5. MISCELLANEOUS.

5.01. Notices. Except as otherwise specified herein, all notices, requests, demands, consents, instructions or other communications to or upon Lessee or Lessor under this Agreement shall be given as provided in Subparagraph 2.02(c) and Paragraph 7.01 of the Participation Agreement.

5.02. Waivers, Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only as provided in the Participation Agreement. No failure or delay by any Lessor Party in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in any such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

#### 5.03. Successors and Assigns.

(a) General. This Agreement shall be binding upon and inure to the benefit of the Lessor Parties and Lessee and their permitted successors and assigns; provided, however, that the Lessor Parties and Lessee shall not sell, assign or delegate their respective rights and obligations hereunder except as provided in the Participation Agreement and in Subparagraph 5.03(b).

(b) Assignment by Lessee of Purchase Rights. Lessee may assign to a third party (an "Assignee Purchaser") its right to purchase the Property pursuant to the Term Purchase Option, the Partial Purchase Option or the Expiration Date Purchase Option;

provided, however, that (i) such an assignment shall not relieve Lessee of its obligations to consummate or cause the consummation of any such purchase in accordance with the terms of this Agreement and (ii) Lessee assumes all responsibility for determining the creditworthiness of any such Assignee Purchaser. If, after any purchase by an Assignee Purchaser hereunder, the purchase price paid by such Assignee Purchaser is recovered from any Lessor Party, Lessee shall reimburse such Lessor Party for such recovery unless such recovery is due solely to a material misrepresentation or covenant breach by such Lessor Party.

5.04. No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the Lessor Parties and Lessee and their permitted successors and assigns, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

5.05. Partial Invalidity. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

5.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules.

5.07. Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

5.08. Nature of Lessee's Obligations.

(a) Independent Obligation. The obligation of Lessee to pay the amounts payable by Lessee under this Agreement and the other Operative Documents and to perform the other Lessee Obligation are absolute, unconditional and irrevocable obligations which are separate and independent of the obligations of the Lessor Parties under this Agreement and the other Operative Documents and all other events and circumstances, including the events and circumstances set forth in Subparagraph 5.08(c).

(b) No Termination or Abatement. This Agreement and the other Operative Documents and Lessee's obligation to pay all amounts hereunder and to pay and perform all other Lessee Obligations shall continue in full force and effect without abatement notwithstanding the occurrence or existence of any event or circumstance, including any event or circumstance set forth in Subparagraph 5.08(c).

(c) Full Payment and Performance. Lessee shall make all payments under this Agreement and the other Operative Documents in the full amounts and at the times required by the terms of this Agreement and the other Operative Documents without setoff, deduction or reduction of any kind and shall perform all other Lessee Obligations as and when required, without regard to any event or circumstances whatsoever,

including (i) the condition of the Property (including any Improvements to the Property made prior to the Commencement Date or during the Term of the Lease Agreement); (ii) title to the Property (including possession of the Property by any Person or the existence of any Lien or any other right, title or interest in or to any of the Property in favor of any Person); (iii) the value, habitability, useability, design, operation or fitness for use of the Property; (iv) the availability or adequacy of utilities and other services to the Property; (v) any latent, hidden or patent defect in the Property; (vi) the zoning or status of the Property or any other restrictions on the use of the Property; (g) the economics of the Property; (vii) any Casualty or Condemnation; (viii) the compliance of the Property with any applicable Governmental Rule or Insurance Requirement; (ix) any failure by any Lessor Party to perform any of its obligations under this Agreement or any other Operative Document; or (x) the exercise by any Lessor Party of any of its remedies under this Agreement or any other Operative Document; provided, however, that this Paragraph 5.08 shall not abrogate any right which Lessee may have to recover damages from any Lessor Party for any material breach by such Lessor Party of its obligations under this Agreement or any other Operative Document to the extent permitted hereunder or thereunder.

[The signature page follows.]

IN WITNESS WHEREOF, Lessee and Lessor have caused this Agreement to be executed as of the day and year first above written.

LESSEE: FAIR, ISAAC AND COMPANY, INC.,  
a Delaware corporation  
By: \_\_\_\_\_  
Name: Michael C. Gordon  
Title: Vice President--Facilities  
Administration

LESSOR: LEASE PLAN NORTH AMERICA, INC.,  
an Illinois corporation  
By: \_\_\_\_\_  
Name: Jamie Dillon  
Title: Attorney-in-Fact

EXHIBIT A(1)

NOTICE OF TERM PURCHASE OPTION EXERCISE

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to the following:

(a) The Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent");

(b) The Lease Agreement, dated as of \_\_\_\_\_, 1998 (the "Lease Agreement"), between Lessee and Lessor; and

(c) The Purchase Agreement, dated as of \_\_\_\_\_, 1998 (the "Lease Agreement"), between Lessee and Lessor.

Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Subparagraph 4.01(a) of the Lease Agreement and Paragraph 2.01 of the Purchase Agreement, Lessee hereby irrevocably notifies Lessor that Lessee is exercising its right to terminate the Lease Agreement prior to the Scheduled Expiration Date of the Lease Agreement and purchase the Property on [\_\_\_\_\_, \_\_\_\_] (which date is a Scheduled Rent Payment Date and which date, after the delivery of this notice, shall be the Expiration Date of the Lease Agreement).

IN WITNESS WHEREOF, Lessee has executed this Notice of Term Purchase Option Exercise on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A(2)

NOTICE OF PARTIAL PURCHASE OPTION EXERCISE

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to the following:

(a) The Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"); and

(b) The Purchase Agreement, dated as of May \_\_, 1998 (the "Purchase Agreement"), between Lessee and Lessor.

Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Paragraph 2.02 of the Purchase Agreement, Lessee hereby irrevocably notifies Lessor that Lessee is exercising its right to purchase a portion of the Property as follows:

(a) The Sub-Tract[s] of Property to be purchased is [are] \_\_\_\_\_; and

(b) The date on which such purchase is to occur is [\_\_\_\_\_, \_\_\_\_] (which date is a Business Day).

3. Lessee hereby certifies to Lessor, Agent and the Participants that, on the date of this notice:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default has occurred and is continuing; and

(c) All of the Operative Documents are in full force and effect.

IN WITNESS WHEREOF, Lessee has executed this Notice of Partial Purchase Option Exercise on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A(2)-2

SCHEDULE 1

TO

EXHIBIT A(2)

SUB-TRACT PURCHASE PRICE

Description of Parcel	Purchase Price

A(2)-3



EXHIBIT B

NOTICE OF MARKETING OPTION EXERCISE

[Date]

Lease Plan North America, Inc.  
c/o ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to the following:

(a) The Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"); and

(b) The Purchase Agreement, dated as of \_\_\_\_\_, 1998 (the "Purchase Agreement"), between Lessee and Lessor.

Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Paragraph 3.01 of the Purchase Agreement, Lessee hereby notifies Lessor that Lessee is electing to exercise the Marketing Option on the Scheduled Expiration Date of the Lease Agreement of [\_\_\_\_, \_\_\_\_].

3. Lessee hereby certifies to Lessor, Agent and the Participants that, on the date of this notice:

(a) The representations and warranties of Lessee set forth in Paragraph 4.01 of the Participation Agreement and in the other Operative Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true as of such date);

(b) No Default (other than a Non-Marketing Option Event of Default under the Lease Agreement) has occurred and is continuing; and

(c) All of the Operative Documents are in full force and effect.

IN WITNESS WHEREOF, Lessee has executed this Notice of Marketing Option Exercise on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C

NOTICE OF EXPIRATION DATE PURCHASE OPTION EXERCISE

[Date]

Lease Plan North America, Inc.  
ABN AMRO Bank N.V.  
as Agent  
Capital Markets-Syndications Group  
1325 Avenue of the Americas, 9th Floor  
New York, NY 10019  
Attn: Linda Boardman

1. Reference is made to the following:

(a) The Participation Agreement, dated as of May 15, 1998 (the "Participation Agreement"), among Fair, Isaac and Company, Inc. ("Lessee"), Lease Plan North America, Inc. ("Lessor"), the financial institutions listed in Schedule I to the Participation Agreement (the "Participants") and ABN AMRO Bank N.V., as agent for the Participants (in such capacity, "Agent"); and

(b) The Purchase Agreement, dated as of \_\_\_\_\_, 1998 (the "Purchase Agreement"), between Lessee and Lessor.

Unless otherwise indicated, all terms defined in the Participation Agreement have the same respective meanings when used herein.

2. Pursuant to Paragraph 3.01 of the Purchase Agreement, Lessee hereby notifies Lessor that Lessee is electing to exercise the Expiration Date Purchase Option on the Scheduled Expiration Date of the Lease Agreement of [\_\_\_\_, \_\_\_\_].

IN WITNESS WHEREOF, Lessee has executed this Notice of Expiration Date Purchase Option Exercise on the date set forth above.

FAIR, ISAAC AND COMPANY, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT D

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO  
AND MAIL TAX STATEMENTS TO:

[Purchaser]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Documentary Transfer Tax is not of public record and is shown on a separate sheet attached to this deed.

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, LEASE PLAN NORTH AMERICA, INC. , a [\_\_\_\_\_] ("Grantor"), hereby releases, remises and forever quitclaims to [PURCHASER], a \_\_\_\_\_ ("Grantee"), the real property located in the City of [\_\_\_\_\_] , County of [\_\_\_\_\_] , State of California, described on Exhibit A attached hereto and made a part hereof (the "Property"). Grantor is selling and Grantee is purchasing the Property on an "as is, with all faults" basis and that Grantee is not relying on any representations or warranties of any kind whatsoever, express or implied, from Grantor, its agents, or brokers as to any matters concerning the Property including (a) the condition of the Property (including any improvements to the Property); (b) title to the Property (including possession of the Property by any individual or entity or the existence of any lien or any other right, title or interest in or to any of the Property in favor of any person); (c) the value, habitability, useability, design, operation or fitness for use of the Property; (d) the availability or adequacy of utilities and other services to the Property; (e) any latent, hidden or patent defect in the Property; (f) the zoning or status of the Property or any other restrictions on the use of the Property; (g) the economics of the Property; (h) any damage to, destruction or, or decrease in the value of all or any portion of the Property or any condemnation or other taking or sale of all or any portion of the Property, by or on account of any actual or threatened eminent domain proceeding or other taking of action by any governmental authority or other person have the power of eminent domain; or (i) the compliance of the Property with any applicable law, rule, regulation, ordinance, order, code, judgment or similar form of decision of any governmental authority or any terms, conditions or requirements imposed by any policies of insurance relating to the Property.

[See Next Page]

Executed as of \_\_\_\_\_, 19\_\_.

LEASE PLAN NORTH AMERICA, INC.,  
an Illinois corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

D-2

EXHIBIT A  
LEGAL DESCRIPTION

Assessor's Parcel No.: \_\_\_\_\_

D(A)-1

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,

Date Name, Title of Officer

personally appeared \_\_\_\_\_,

Name(s) of signer(s)

(personally known to me -OR- (proved to me on the basis of satisfactory

evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

Marin County Recorder

Re: Request That Statement of Documentary  
Transfer Tax Not be Recorded

Dear Sir:

Request is hereby made in accordance with Section 11932 of the Revenue and Taxation Code that this statement of tax due not be recorded with the attached deed but be affixed to the deed after recordation and before return as directed on the deed.

The attached deed names LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, as grantor, and [PURCHASER], a \_\_\_\_\_, as grantee.

The property being transferred and described in the attached deed is located in the City of San Rafael and County of Marin, State of California.

The amount of Documentary Transfer Tax due on the attached deed is \$\_\_\_\_\_, computed on full value of the property conveyed.

LEASE PLAN NORTH AMERICA, INC.,  
an Illinois corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT E

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, LEASE PLAN NORTH AMERICA, INC., an Illinois corporation ("Seller") does hereby sell, transfer and convey to [PURCHASER], a \_\_\_\_\_ ("Purchaser"), the personal property owned by Seller in connection with that certain real property commonly known as \_\_\_\_\_, \_\_\_\_\_, California, including, without limitation, the personal property itemized on Schedule 1 attached hereto and incorporated herein by this reference (the "Property").

Seller is selling and Purchaser is purchasing the Property on an "as is, with all faults" basis and Purchaser is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, its agents, or brokers as to any matters concerning the Property including (a) the condition of the Property; (b) title to the Property (including possession of the Property by any individual or entity or the existence of any lien or any other right, title or interest in or to any of the Property in favor of any person); (c) the value, habitability, useability, design, operation or fitness for use of the Property; or (d) any latent, hidden or patent defect in the Property.

Dated: \_\_\_\_\_, 19\_\_

SELLER:

LEASE PLAN NORTH AMERICA, INC.,  
an Illinois corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

PURCHASER:

[PURCHASER]  
a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Schedule 1

Property

EXHIBIT G

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fair, Isaac and Company, Inc., a Delaware corporation ("Seller"), does hereby sell, transfer, and convey unto [PURCHASER] ("Buyer"), the personal property owned by Seller in connection with that certain real property commonly known as \_\_\_\_\_, \_\_\_\_\_, California, which Seller warrants to be free and clear of all liens and encumbrances, including, without limitation, the personal property itemized on Schedule 1 attached hereto and incorporated herein by this reference.

Seller does hereby covenant with Buyer that Seller is the lawful owner of such personal property, and that the undersigned has good right to sell the same as aforesaid and will warrant and defend the title thereto unto Buyer, its successors and assigns, against the claims and demands of all persons whomsoever.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Seller: Fair, Isaac and Company, Inc.,  
a Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Schedule 1

Property

E(1)-1

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE is made and entered into effective as of the 2nd day of December, 1998, between CSM CORPORATION, a Minnesota corporation, ("Landlord") and DYNAMARK, INC., a Minnesota corporation, ("Tenant").

RECITALS

- First: CSM Investors, Inc. ("CSMI"), as landlord, and DynaMark, Inc., as tenant, entered into a lease dated April 28, 1995, covering certain premises located at 4255 Lexington Avenue North, Arden Hills, Minnesota (the "Lease").
- Second: CSMI's interest, as landlord, in the Lease was assigned to CSM Corporation, pursuant to an Assignment and Assumption Agreement dated September 12, 1995, whereupon CSM Corporation became the landlord under the Lease.
- Third: The parties have executed a First Amendment to Lease, dated March 11, 1997, clarifying their respective rights and obligations concerning the "Excess Land" described in the First Amendment.
- Fourth: The parties have executed a Second Amendment to Lease, dated November 25, 1997, extending the Initial Term of the Lease and establishing the rents payable thereunder during such period.
- Fifth: The parties wish to execute this Third Amendment to Lease to further extend the term of the Lease and to establish the rents payable thereunder during such period:

AGREEMENT

In consideration of the above stated premises and the mutual covenants hereinafter contained, the parties hereby agree that the Lease is modified, amended and/or supplemented as follows:

- 1. Premises. The Premises and certain improvements thereupon shall be and are hereby modified as shown on the site plan attached hereto as REVISED EXHIBIT A. REVISED EXHIBIT A replaces and his hereby substituted for Exhibit A attached to the First Amendment to Lease. Tenant acknowledges that the Premises are a part of a development which will include four buildings and associated appurtenant improvements, all as shown on REVISED EXHIBIT A. Tenant acknowledges and agrees that the Premises will be subject to and benefitted by various non-exclusive easements for ingress, egress and access over the private drives serving the Project, and certain exclusive easements for utilities and other purposes, provided that the same shall not interfere with the use and enjoyment of the Premises, as contemplated herein.
- 2. Lease Term. Landlord and Tenant are parties to a lease agreement dated December 2, 1998 (the "New Lease"), covering certain premises and a new building to be constructed thereon located adjacent to the Premises, all as shown on REVISED EXHIBIT A. The parties agree that the term of the Lease shall be adjusted such that the term of the Lease shall be coterminous with the term of the New Lease. More particularly, upon the commencement date of the New Lease, the term of the Lease shall be extended and shall run for a period of one hundred fifty-six (156) months commencing on the commencement date of the New Lease. If the commencement date of the New Lease is other than the first day of a calendar month, then the term of the Lease shall continue in full force and effect for a period of one hundred fifty-six (156) months from and after the first day of the month next succeeding the commencement date of the New Lease. When the commencement date of the New Lease has been established, the parties shall execute an

addendum to this Third Amendment to Lease, confirming the term and expiration date of the Lease.

- 3. Subsection 1.6(A) of the Lease and Section 2 of the Second Amendment to Lease are hereby deleted in their entirety and replaced with the following:

"Base Rent. The Base Rental for the Premises during the remaining term of this Lease shall be as follows:

Period	Monthly Base Rent	Per Square Foot
11/1/98 - 8/31/00	\$23,375.00	\$8.50
09/1/00 - 12/31/06	\$24,750.00	\$9.00
01/1/07 - New Lease expiration date	\$26,125.00	\$9.50

Option Term:

60 months following the New Lease expiration date market market

Landlord and Tenant agree that the as built area of the Premises is 33,000 square feet."

4. Remodeling Allowance. Landlord agrees to provide Tenant with a one time allowance for remodeling the Premises. Landlord's maximum contribution towards the costs of remodeling will be based upon the time that such remodeling occurs, in accordance with the following schedule:

Period of Remodeling Expenditure -----	Maximum Allowance Amount Per Square Foot -----
1/1/01 - 12/31/02	\$3.00
1/1/03 - 12/31/04	\$3.75
1/1/05 - 12/31/06	\$4.50
1/1/07 - 12/31/08	\$5.25

The allowance shall apply towards Tenant's actual remodeling costs and shall be payable to Tenant upon completion of remodeling and receipt by Landlord of evidence of payment under normal and customary construction lending procedures. Landlord shall not be required to provide any allowance on costs submitted for reimbursement after December 31, 2010.

4. Guaranty. Landlord has required, as a condition to its execution of this third Amendment to Lease, that Fair, Isaac and Company, Incorporated unconditionally guarantee the full performance of Tenant's obligations under the Lease, as amended. Tenant agrees to deliver such guaranty, in the form of EXHIBIT C attached hereto and incorporated herein by reference, within ten (10) days following the full execution of this Third Amendment to Lease by Landlord and Tenant. In the event Tenant fails to deliver such guaranty, Landlord may, at its option, terminate this Third Amendment to Lease upon five (5) days written notice to Tenant.

5. Section 14.12 of the Lease is deleted in its entirety and is replaced with the following:

"Option to Extend. Subject to the terms and conditions hereinafter set forth, Tenant shall have the option to extend the term of this Lease for one (1) additional sixty (60) month term ("Option Term") upon and pursuant to the same conditions contained herein. This option may be exercised by written notice of exercise from Tenant to Landlord given not less than one (1) year prior to the expiration of the Lease Term. Tenant may exercise this option only if: (i) no condition of default exists with respect to Tenant's performance of its obligations under the Lease; and (ii) Tenant simultaneously exercises all of its options to extend under the New Lease and under the Existing Lease covering the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota (as defined in Section 14.12 of the New Lease). Base Rent for the Option Term shall be at the fair

market rate for comparable space in the north suburban geographic area. The fair market rent shall be agreed upon by Tenant and Landlord within sixty (60) days of Tenant's notice to Landlord of its irrevocable intent to exercise its option to extend set forth herein. The fair market rental rate shall be determined in accordance with the definition set forth in Section 7 of the Existing Lease dated May 1, 1995 and amended December 30, 1996 for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. In the event that Landlord and Tenant fail to agree to the fair market rental rate in the time period set forth herein, then the fair market rent shall be established in accordance with the arbitration procedures set forth in section 8 of the Existing Lease for the premises located at 4295 Lexington Avenue North in Arden Hills, Minnesota. If Tenant fails to exercise this option as aforesaid, this option shall be null and void and of no further force and effect."

6. Miscellaneous. Except as expressly stated herein, the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Lease to be executed the day and year first above written.

LANDLORD:  
CSM CORPORATION

TENANT:  
DYNAMARK, INC.

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

Subsidiaries of  
Fair, Isaac and Company, Incorporated

Name of Company and Name under which it Does Business	Jurisdiction of Incorporation or Organization
Fair, Isaac International Corporation(1)	California
DynaMark, Inc.(1)	Minnesota
Credit & Risk Management Associates, Inc. (1)	Delaware
Data Research Technologies(1)	Minnesota
Prevision, Inc.(1)	Oregon
Risk Management Technologies(1)	California
Lindaro Office Park, Inc. (1)	California
Fair, Isaac International Germany Corporation(2)	California
Fair, Isaac International Canada Corporation(2)	California
Fair, Isaac International UK Corporation(2)	California
Fair, Isaac International Japan Corporation(2)	California
Fair, Isaac International Ltd(2)	England
Fair, Isaac International France Corporation(2)	California
Fair, Isaac International Mexico Corporation(2)	California
Fair, Isaac Brazil, LLC(2)	Delaware
Radar International, Inc.(3)	Virgin Islands
Fair, Isaac Do Brasil Ltda.(4)	Brazil

(1) 100% owned by Fair, Isaac and Company, Incorporated.

1

Exhibit 21.1

(2) 100% owned by Fair, Isaac International Corporation.

(3) 100% owned by Risk Management Technologies

(4) 99% owned by Fair, Isaac International Corporation and 1% owned by Fair, Isaac Brazil, LLC

2

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE FINANCIAL STATEMENTS IN THE COMPANY'S 1998 ANNUAL REPORT ON FORM 10-K AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

		1,000
12-MOS		
	SEP-30-1998	
	OCT-01-1997	
	SEP-30-1998	12,242
		18,283
		40,191
		1,163
		0
	102,613	75,769
		38,876
		189,614
	47,761	789
		0
		0
		140
		133,311
189,614		0
	245,545	0
		0
		84,980
		37,470
		677
		803
		42,105
		17,778
	24,327	0
		0
		0
		24,327
		1.77
		1.68