

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 10-K

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[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF  
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED JUNE 30, 2002

COMMISSION FILE NUMBER  
0-26038

RESMED INC  
(Exact name of Registrant as specified in its Charter)

DELAWARE  
(State or other jurisdiction of incorporation or organization)

98-0152841  
(IRS Employer Identification No.)

14040 DANIELSON STREET  
POWAY, CA 92064-6857  
UNITED STATES OF AMERICA  
(Address of principal executive offices)

(858) 746-2400  
(Registrant's telephone number, including area code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

TITLE OF EACH CLASS:  
Common Stock, \$.004 Par Value  
Rights to Purchase Series A Junior  
Participating Preferred Stock

NAME OF EACH EXCHANGE UPON WHICH REGISTERED:

New York Stock Exchange

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 filing requirements for the past 90 days. Yes [ X ] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulations S-K (S 229.405 of this Chapter) 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 the Form 10-K or any amendment to this Form 10-K [ ].

The aggregate market value of the voting stock held by non-affiliates of registrant as of September 6, 2002, computed by reference to the closing sale price of such stock on the New York Stock Exchange, was approximately \$834,476,000. (All directors, executive officers, and 10% stockholders of Registrant are considered affiliates.)

At September 6, 2002, registrant had 32,912,599 shares of Common Stock, \$.004 par value, issued and outstanding. This number excludes 360,347 shares held by the registrant as treasury shares.

Portions of registrant's definitive Proxy Statement for its November 11, 2002 meeting of stockholders are incorporated by reference into Part III of this report.

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<CAPTION>

RESMED INC

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Sullivan, VPAP, AutoSet, Bubble Mask, Bubble Cushion, SmartStart, ResCap, Mirage, HumidAire, Aero-Click, minni Max nCPAP, Moritz II biLEVEL, Aero-Fix, Twister remove, SELFSET, MESAMIV; Poly-MESAM, MEPAL, Auto VPAP, AutoScan, AutoSet CS, AutoSet T, AutoView, IPAP MAX, ResControl, SCAN, S6, Ultra Mirage, VPAP MAX, AutoSet.com, AutoSet-CS.com, and ResMed are our trademarks.

As used in this 10-K, the terms "we," "us," and "our" refer to ResMed Inc., a Delaware corporation, and its subsidiaries, on a consolidated basis, unless otherwise stated.

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## PART I

### ITEM 1 BUSINESS

#### GENERAL

We are a leading developer, manufacturer and distributor of medical equipment for treating, diagnosing, and managing sleep disordered breathing, or SDB. SDB includes obstructive sleep apnea, or OSA, and other respiratory disorders that occur during sleep. When we were formed in 1989, our primary purpose was to commercialize a treatment for OSA developed by Professor Colin Sullivan of the University of Sydney, the current Chairman of our Medical Advisory Board. This treatment, nasal Continuous Positive Airway Pressure, or CPAP, was the first successful noninvasive treatment for OSA. CPAP systems deliver pressurized air, typically through a nasal mask, to prevent collapse of the upper airway during sleep.

Since the development of nasal CPAP, we have developed a number of innovative products for SDB, including flow generators, diagnostic products, mask systems, headgear and other accessories. Our growth has been fuelled by geographic expansion, increased awareness of SDB as a significant health concern among physicians and patients, and our research and product development effort.

We employ approximately 1,250 people and sell our products in over 60 countries through a combination of wholly owned subsidiaries and independent distributors.

#### CORPORATE HISTORY

ResMed Inc., a Delaware corporation, was formed in March 1994 as the ultimate holding company for our domestic, Australian and European operating subsidiaries. On June 1, 1995, we completed an initial public offering of

common stock and on June 2, 1995 our common stock commenced trading on The NASDAQ National Market. On September 30, 1999 we transferred our principal public listing to the New York Stock Exchange, trading under the ticker symbol RMD. On November 25, 1999, we established a secondary listing of our shares via Chess Depository Instruments, or CDIs, on the Australian Stock Exchange, also under the symbol RMD. Ten CDIs on the ASX represent one share of our common stock on the NYSE. On July 1, 2002, we converted our ASX listing status from a foreign exempt listing to a full listing.

Our Australian subsidiary, ResMed Holdings Limited, was originally organized in 1989 by Dr. Peter Farrell to acquire from Baxter Center for Medical Research Pty Limited, or Baxter, the rights to certain technology relating to CPAP treatment as well as Baxter's existing CPAP device business. Baxter had sold CPAP devices in Australia since 1988, having acquired the rights to the technology in 1987 from Dr. Colin Sullivan.

Since formation we have acquired a number of operating businesses with both Labhardt Ag and Servo Magnetics Inc acquired during fiscal 2002, on November 15, 2001 and May 14, 2002 respectively. Previously we have acquired MAP Medizin Technologie GmbH, Dieter W. Priess Medtechnik, Premium Medical SARL, Innovmedics Pte Ltd and EINAR Egnell AB, our German, French, Singaporean and Swedish distributors, on February 16, 2001, February 7, 1996, June 12, 1996, November 1, 1997 and January 31, 2000, respectively. During the 1999 fiscal year we made an equity investment in Flaga hf, based in Iceland. We now market Flaga's polysomnographic products under the Embla and Embletta label in the United States and selected other markets.

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## THE MARKET

Sleep is a complex neurological process that includes two distinct states: rapid eye movement, or REM, sleep and non-rapid eye movement, or non-REM, sleep. REM sleep, which is about 20-25% of total sleep experienced by adults, is characterized by a high level of brain activity, bursts of rapid eye movement, increased heart and respiration rates, and paralysis of many muscles. Non-REM sleep is subdivided into four stages that generally parallel sleep depth; stage 1 is the lightest and stage 4 is the deepest.

The upper airway has no rigid support and is held open by active contraction of upper airway muscles. Normally, during REM sleep and deeper levels of non-REM sleep, upper airway muscles relax and the airway narrows. Individuals with narrow upper airways or poor muscle tone are prone to temporary collapses of the upper airway during sleep, or apneas, or near closures of the upper airways, or hypopneas. These breathing irregularities result in a lowering of blood oxygen concentration, causing the central nervous system to react to the lack of oxygen or increased carbon dioxide and signaling the body to respond. Typically, the individual subconsciously arouses from sleep, causing the throat muscles to contract, opening the airway. After a few gasping breaths, blood oxygen levels increase and the individual can resume a deeper sleep until the cycle repeats itself. Sufferers of OSA typically experience ten or more such cycles per hour. While these awakenings greatly impair the quality of sleep, the individual is not normally aware of these disruptions.

In its "Wake Up America" report to Congress in 1993, the National Commission on Sleep Disorders Research estimated that approximately 40 million individuals in the United States suffer from chronic disorders of sleep and wakefulness, such as sleep apnea, insomnia and narcolepsy. According to this report, sleep apnea is the most common sleep disorder, affecting approximately 20 million individuals in the United States. Despite the high prevalence of OSA, there is a general lack of awareness of OSA among both the medical community and the general public. It is estimated that less than 10% of those afflicted by OSA know the cause of their fatigue or other symptoms. Health care professionals are often unable to diagnose OSA because they are unaware that such non-specific symptoms as fatigue, snoring and irritability are characteristic of OSA.

While OSA has been diagnosed in a broad cross-section of the population, it is predominant among middle-aged men and those who are obese, smoke, consume alcohol in excess or use muscle-relaxing drugs. In addition, patients who are being treated for certain other conditions, including those undergoing dialysis treatment or suffering from diabetes, may have an increased incidence of OSA. Recent studies have also shown that SDB is associated with hypertension, the leading risk factor for the development of stroke and heart disease, and that over 50% of post stroke patients and patients with congestive heart failure have SDB.

## SLEEP DISORDERED BREATHING AND OBSTRUCTIVE SLEEP APNEA

Sleep disordered breathing, or SDB, encompasses all physiological processes that cause detrimental breathing patterns during sleep. Manifestations include OSA, central sleep apnea, or CSA, and hypoventilation syndromes that occur during sleep. Hypoventilation syndromes are generally associated with obesity, chronic obstructive lung disease, neuromuscular disease and upper airway resistance

changes. OSA is the most common form of SDB.

Sleep fragmentation and the loss of the deeper levels of sleep caused by OSA can lead to excessive daytime sleepiness, reduced cognitive function, including memory loss and lack of concentration, depression and irritability. OSA sufferers also may experience an increase in heart rate and an elevation of

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blood pressure during the cycle of apneas. Several studies indicate that the oxygen desaturation, increased heart rate and elevated blood pressure caused by OSA may be associated with increased risk of cardiovascular morbidity and mortality due to angina, stroke and heart attack. Patients with OSA have been shown to have impaired daytime performance in a variety of cognitive functions including problem solving, response speed and visual motor coordination, and studies have linked OSA to increased occurrences of traffic and workplace accidents.

Generally, an individual seeking treatment for the symptoms of OSA is referred by a general practitioner to a specialist for further evaluation. The diagnosis of OSA typically requires monitoring the patient during sleep at either a sleep clinic or the patient's home. During overnight testing, respiratory parameters and sleep patterns are monitored along with other vital signs such as heart rate and blood oxygen levels. These tests allow sleep clinicians to detect any sleep disturbances such as apneas, hypopneas or subconscious awakenings. We estimate that there are currently more than 2,000 sleep clinics in the United States, a substantial portion of which are affiliated with hospitals. The number of sleep clinics has expanded significantly from approximately 100 such facilities in 1985.

#### EXISTING THERAPIES

Prior to 1981, the primary treatment for OSA was a tracheotomy, a surgical procedure to cut a hole in the patient's windpipe to create a channel for airflow. Most recently, surgery has involved either uvulopalatopharyngoplasty ('UPPP'), in which surgery is performed on the upper airway to remove excess tissue and to streamline the shape of the airway, or mandibular advancement, in which the lower jaw is moved forward to widen the patient's airway. UPPP alone has a poor success rate; however, when performed in conjunction with mandibular advancement, a greater success rate has been claimed. This combined procedure, performed by highly specialized surgeons, is expensive and involves prolonged and often painful recovery periods.

Nasal CPAP, by contrast, is a non-invasive means of treating OSA. Nasal CPAP was first used as a treatment for OSA in 1980 by Dr. Colin Sullivan, the Chairman of our Medical Advisory Board. CPAP systems were commercialized for treatment of OSA in the United States in the mid 1980's. Today, use of nasal positive airway pressure is generally acknowledged as the most effective and least invasive therapy for managing OSA.

During nasal CPAP treatment, a patient sleeps with a nasal mask connected to a small portable air flow generator that delivers room air at a positive pressure. The patient breathes in air from the flow generator and breathes out through an exhaust port in the mask. Continuous air pressure applied in this manner acts as a pneumatic splint to keep the upper airway open and unobstructed.

CPAP is not a cure but a therapy for managing OSA, and therefore, must be used on a daily basis as long as treatment is required. Patient compliance has been a major factor in the efficacy of CPAP treatment. Early generations of CPAP units provided limited patient comfort and convenience. Patients experienced soreness from the repeated use of nasal masks and had difficulty falling asleep with the CPAP device operating at the prescribed pressure. In more recent years, product innovations to improve patient comfort and compliance have been developed. These include more comfortable mask systems; delay timers which gradually raise air pressure allowing the patient to fall asleep more easily; bilevel flow generators, including VPAP systems, which provide different air pressures for inhalation and exhalation; heated humidification systems to make the airflow more comfortable; and auto titration devices which reduce the average pressure delivered during the night.

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#### BUSINESS STRATEGY

We believe that the SDB market will continue to grow in the future due to a number of factors including increasing awareness of OSA, improved understanding of the role of SDB treatment in the management of cardiac, neurologic and related disorders, and an increase in home-based diagnosis. Our strategy for expanding our business operations and capitalizing on the growth of the SDB market consists of the following key elements.

CONTINUE PRODUCT DEVELOPMENT AND INNOVATION. We are committed to ongoing innovation in developing products for the diagnosis and treatment of SDB. We have been a leading innovator of products designed to more effectively treat



VPAP	Bilevel portable device providing different pressure levels for inhalation and exhalation, improved pressure switching and reduced noise output and spontaneous breath triggering.	March 1996
VPAP II	Bilevel portable device providing different pressure levels for inhalation and exhalation with integrated humidifier.	October
Moritz S# 2001*	Bilevel device with limited features.	March 1996
COMFORT	Bilevel portable device with spontaneous and spontaneous/timed breath triggering modes of operation.	April 1996
VPAP II ST	Bilevel device with power failure alarms.	August 1998
VPAP II ST A	Bilevel ST device with spontaneous and spontaneous/timed breath triggering modes of operation, and with power failure alarms, system with integrated humidifier.	October
Moritz ST# 2001*	Bilevel ventilatory support system for the treatment of adult patients with respiratory insufficiency or respiratory failure.	November
VPAP MAX+ 1998	Modular, autotitrating device with optional integrated humidifier.	September
AUTOSET	Autotitrating device, which continually adjusts CPAP treatment pressure based on patient airway resistance.	March 1999
AutoSet Spirit 2001	Delivers varying degrees of ventilatory assistance to stabilize breathing and reduce cheyne stokes respiration in congestive heart failure patients.	December
AutoSet T	Continuous Positive Pressure flow generator.	July 2002
AutoSet CS# 1998	Quiet, compact CPAP device with various comfort features.	June 2000
CPAP	Continuous Positive Pressure flow generator available with or without integrated humidifier. Features low noise and reduced pressure swings.	April 1997*
ResMed S7 series+	CPAP device with integrated and attachable humidifier and low noise levels.	March 2000*
ResMed S6 series		
Max II nCPAP#		
Minni Max nCPAP#		

</TABLE>

\*MAP product, not approved for marketing in the United States.

+ Sold in USA only

# Sold outside USA only

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#### MASK SYSTEMS

Mask systems are one of the most important elements of an OSA treatment system. Masks are a primary determinant of patient comfort and as such may drive or impede patient compliance with therapy. We have been a consistent innovator in masks, improving patient comfort while minimizing size and weight. Masks, accessories and motors accounted for approximately 42%, 43% and 40% of our net revenues in fiscal years 2002, 2001 and 2000, respectively.

<TABLE>

<CAPTION>

Date of Mask Products Commercial	Description
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Introduction

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Mirage Mask  
August 1997

Proprietary mask design with a contoured nasal cushion that adjusts to patient's facial contours. Quiet, light and low profile.

Mirage Full Face Mask Series 2  
October 2001

Mirage-based full face mask system. Provides an effective method of applying ventilatory assist Noninvasive Positive Pressure Ventilation therapy. Can be used to address mouth- breathing problems in conventional bilevel or CPAP therapy.

Ultra Mirage Mask  
June 2000

Advanced version of the Mirage system with reduced noise characteristics and improved forehead bridge.

Protege Mask+  
May 2002

Market entry mask. Upgradable to Ultra Mirage technology.

Papillon Mask#  
April 2002\*

Nasal mask with only four major parts, allows simplified handling for patients and distributors.

</TABLE>

\* MAP product, not approved for marketing in the United States.

+ Sold in USA only

DIAGNOSTIC PRODUCTS

We market sleep recorders for the diagnosis, titration and treatment of SDB in sleep clinics and hospitals. These diagnostic systems record relevant respiratory and sleep data, which can be analyzed by a sleep specialist or physician who can then tailor an appropriate OSA treatment regimen for the patient.

<TABLE>  
<CAPTION>

Diagnostic Products	Description	Date of Commercial
Introduction		
<S>	<C> Device to permit remote monitoring and adjustment of ResMed CPAP, VPAP, and AutoSet T Flow generators. An internal pressure transducer enables the clinician to interface with polysomnography to monitor airflow in both titration and diagnostic studies.	<C> September
ResControl 1999	Digital sleep recorder that provides comprehensive sleep diagnosis in a sleep laboratory.	October
Embla+ 1999	Pocket-size digital recorder that performs ambulatory sleep studies.	November 2000
MESAM IV Portable+ Diagnostic System+ 1989*	Portable diagnostic system that measures snore, heart rate, body position, and oxygen saturation in conjunction with computer assisted analysis.	December
Poly-MESAM Portable+ Diagnostic System+ 1995*	Configurable cardio-respiratory polygraphy system up to 8 channels, includes ECG, thorax and abdomen belts, PLMS sensor.	February
MEPAL Diagnostic+ System 1999*	Polysomnography system designed for use in the sleep laboratory.	February
MEPAL mobil+ Diagnostic System	Ambulatory polysomnography system.	March 2001*

</TABLE>  
\*MAP product, not approved for marketing in the United States.  
+Not manufactured by ResMed.

ACCESSORIES AND OTHER PRODUCTS

To enhance patient comfort, convenience and compliance, we market a variety of other products and accessories. These products include humidifiers, such as the SULLIVAN HumidAire, which connect directly with the CPAP, VPAP and AutoSet T flow generators to humidify and heat the air delivered to the patient. Their use prevents the drying of nasal passages that can cause discomfort. Other optional accessories include a cold passover humidifier, carry bags and breathing circuits. MAP also offers a range of accessories, including the Twister remote, an intelligent remote control for use in the sleep lab environment to set and monitor flow generators, the Aero-Click connection system, which allows a quick, simple connect/disconnect between the mask and CPAP air delivery source and the AeroFix headgear, for the comfortable adjustment of masks for CPAP therapy. Since the May 2002 acquisition of Servo Magnetics Inc., we have sold custom electric motors for use in data storage and aerospace applications.

PRODUCT DEVELOPMENT AND CLINICAL TRIALS

We have a strong track record in innovation in the sleep market. In 1989, we introduced our first nasal CPAP device. Since then we have been committed to an ongoing program of product advancement and development. Currently, our product development efforts are focused on not only improving our current product offerings, but also expanding into new product applications. For example, in 1997, we introduced the Mirage Mask. This mask was based on the innovative Bubble Mask technology introduced in 1991, which used the principle of air inflation of the mask cushion to create a more comfortable and better seal by better conforming to patient facial contours. Additionally, in 1999, we introduced the AutoSet T Flow generator, an autotitrating device that adapts to the patient's breathing patterns to effectively prevent apneas.

We continually seek to identify new applications of our technology for significant unmet medical needs. SDB is associated with a number of symptoms beyond fatigue and irritability. Recent studies have established a clinical association between SDB and hypertension, stroke, and congestive heart failure. For example, we are currently developing a device, which has not been approved

for sale in the United States, for the treatment of Cheyne-Stokes breathing in patients with congestive heart failure. We also support clinical trials in the United States, Germany, France, the United Kingdom and Australia.

We consult with physicians at major sleep centers throughout the world to identify technological trends in the treatment of SDB. Some of these physicians currently serve on our Medical Advisory Board. New product ideas are also identified by our marketing staff, direct sales force, network of distributors, manufacturers' representatives, customers, and patients. Typically, our internal development staff then performs new product development.

In fiscal years 2002, 2001 and 2000, we invested \$14,910,000, \$11,146,000 and \$8,499,000, respectively, on research and development.

#### SALES AND MARKETING

Our products are typically purchased by a home healthcare dealer who then sells the products to the patient. The decision to purchase our products, as opposed to those of our competitors, is made or influenced by one or more of the following individuals or organizations: the prescribing physician and his or her staff, the home healthcare dealer, the insurer and the patient.

We currently market our products in over 60 countries using a network of distributors, independent manufacturers' representatives and our direct sales force. We attempt to tailor our marketing approach to each national market, based on regional awareness of SDB as a health problem, physician referral patterns, consumer preferences and local reimbursement policies.

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**NORTH AMERICA AND LATIN AMERICA.** In the United States, our sales and marketing activities are conducted through a field sales organization made up of regional territory representatives, program development specialists and diagnostic system specialists, regional sales directors, and independent manufacturers' representatives. Our United States field sales organization markets and sells products to more than 4,000 home health care dealer branch locations throughout the United States. Our direct sales force receives a base salary, plus commissions, while our independent sales representatives receive higher commissions, but no base salary.

We also promote and market our products directly to sleep clinics. Patients who are diagnosed with OSA and prescribed CPAP treatment are typically referred by the diagnosing sleep clinic to a home health care dealer to fill the prescription. The home health care dealer, in consultation with the referring physician, will assist the patient in selecting the equipment, fit the patient with the appropriate mask and set the flow generator pressure to the prescribed level. In the United States, our sales employees and manufacturers' representatives are managed by two regional Sales Managers and our Vice President of Sales.

Our Canadian and Latin American sales are conducted through independent distributors. Sales in North America and Latin America accounted for 49%, 52% and 54% of our net revenues for fiscal years 2002, 2001 and 2000, respectively.

**EUROPE.** We market our products in most major European countries. We have wholly owned subsidiaries in the United Kingdom, Germany, France, Netherlands, Austria, Sweden and Switzerland and we use independent distributors to sell our products in other areas of Europe. Distributors are selected in each country based on their knowledge of respiratory medicine and a commitment to SDB therapy. In each country in which we have a subsidiary, a local senior manager is responsible for direct national sales.

Our Executive Vice President is responsible for coordination of all European activities and, in conjunction with local management, the direct sales activity in Europe. Sales in Europe accounted for 42%, 39% and 35% of our total net revenues for fiscal years 2002, 2001 and 2000, respectively.

**AUSTRALIA/REST OF WORLD.** Marketing in Australia and the rest of the world is the responsibility of our Executive Vice President. Sales in Australia and the rest of the world accounted for 9%, 9% and 11% of our total net revenues for the fiscal years ended June 30, 2002, 2001 and 2000, respectively.

**OTHER MARKETING EFFORTS.** In addition to our sales efforts, we work with the following cardiovascular disease associations (CVD includes Coronary Artery Disease, Congestive Heart Failure, Hypertension, Stroke, and Transient Ischemic Attacks) to raise awareness of the co-morbidity of SDB in cardiovascular disease patients:

(1) National Stroke Association: We have developed a strategic alliance with the National Stroke Association to increase awareness about the high prevalence of SDB in the stroke survivor population.

(2) American Heart Association: We are working closely with the Western Affiliates of the American Heart Association on a number of local programs to increase awareness and education about SDB. We are also in discussions with the



national American Heart/American Stroke associations regarding national programs initially targeting clinicians on the impact of SDB on both heart disease and stroke patients, as well as its role in the development of hypertension, a major risk factor for both heart disease and stroke.

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(3) National Sleep Foundation: The National Sleep Foundation is a non profit organization dedicated to improving public health and safety by raising the level of awareness and education toward sleep related programs and research. We have been an active corporate partner and have supported the National Sleep Foundation for a number of years.

We believe that our affiliations and continued work with these organizations raises the awareness of SDB as a significant health concern.

#### MANUFACTURING

Our principal manufacturing facilities are located in Sydney, Australia and comprise a 120,000 square foot manufacturing and research and development facility. Our manufacturing operations consist primarily of assembly and testing of our flow generators, masks and accessories. Of the numerous raw materials, parts and components purchased for assembly of our therapeutic and diagnostic sleep disorder products, most are off-the-shelf items available from multiple vendors. We generally manufacture to our internal sales forecasts and fill orders as received. Over the last two years the manufacturing processes have been transformed along world class manufacturing guidelines to flow lines staffed by dedicated teams. Each team is responsible for manufacture and quality of their product group and decisions are based on performance and quality measures including customer feedback.

Our quality management system is based upon the requirements of ISO 9001, EN46001 (European Medical Standards), FDA Quality System Regulations for medical devices (21 CFR part 820) and the Medical Device Directive (93/42/EEC). Our Sydney, Australia facility is accredited to ISO 9001 and EN46001 and our San Diego, California facility is accredited to ISO 9002 and EN46002. These two sites have third party audits conducted by the ISO certification bodies at regular intervals.

Our German manufacturing operation based in Munich operates in a facility of approximately 24,000 square feet. This facility is accredited to ISO 9001 and EN46001 and primarily assembles and tests flow generators for sale by our subsidiary MAP GmbH. Appropriate quality controls monitor and measure product assembly and performance.

In addition to our Australian and German manufacturing operations we also manufacture high quality electric motors for both our flow generator devices and external customers, primarily in the data storage and aerospace sectors, at our Servo Magnetics Incorporated (SMI) facility at Canoga Park, California. The SMI facility is approximately 35,500 square feet .

#### THIRD-PARTY REIMBURSEMENT

The cost of medical care in many of the countries in which we operate is funded in substantial part by government and private insurance programs. Although we do not generally receive payments for our products directly from these payers, our success in major markets is dependent upon the ability of patients to obtain adequate reimbursement for our products.

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In the United States, our products are purchased primarily by home health care dealers, hospitals or sleep clinics, which then invoice third-party payers directly. Domestic third-party payers include Medicare, Medicaid, and corporate health insurance plans. These payers may deny reimbursement if they determine that a device is not used in accordance with cost-effective treatment methods, or is experimental, unnecessary or inappropriate. The long-term trend towards managed health care, or legislative proposals to reform health care, could control or significantly influence the purchase of health care services and products and could result in lower prices for our products.

In the United States, we sell our products primarily to home health care dealers and to sleep clinics; we do not file claims and bill governmental programs and other third-party payers directly for reimbursement for our products. Nevertheless, we are still subject to laws and regulations relating to governmental programs, and any violation of these laws and regulations could result in civil and criminal penalties, including fines.

In particular, the federal Anti-Kickback Law prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a Federal healthcare program such as the Medicare and Medicaid

programs. The government has interpreted this law broadly to apply to the marketing and sales activities of manufacturers and distributors like us. Many states have adopted laws similar to the federal Anti-Kickback Law. We are also subject to other federal and state fraud laws applicable to payment from any third-party payer. These laws prohibit persons from knowingly and willfully filing false claims or executing a scheme to defraud any healthcare benefit program, including private third-party payers. These laws may apply to manufacturers and distributors who provide information on coverage, coding and reimbursement of their products to persons who bill third-party payers. We continuously strive to comply with these laws and believe that our arrangements do not violate these laws. Liability may still arise from the intentions or actions of the parties with whom we do business or from a different governmental agency interpretation of the laws.

In some foreign markets, such as Spain, France and Germany, government reimbursement is currently available for purchase or rental of our products subject, however, to constraints such as price controls or unit sales limitations. In Australia and in some other foreign markets, there is currently limited or no reimbursement for devices that treat OSA.

#### SERVICE AND WARRANTY

We generally offer one-to-two year limited warranties on our flow generator products. Warranties on mask systems are for 90 days. In most markets, we rely on our distributors to repair our products with parts supplied by us. In the United States, home health care dealers generally arrange shipment of products to our San Diego facility for repair.

We receive returns of our products from the field for various reasons. We believe that the level of returns experienced to date is consistent with levels typically experienced by manufacturers of similar devices. We provide for warranties and returns based on historical data.

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#### COMPETITION

The markets for our products are highly competitive. We believe that the principal competitive factors in all of our markets are product features, reliability and price. Reputation and efficient distribution are also important factors.

We compete on a market-by-market basis with various companies, some of which have greater financial, research, manufacturing and marketing resources than ourselves. In the United States, our principal market, Respironics, Inc., DeVilbiss, a division of Sunrise Medical Inc., and Nellcor Puritan Bennett, a subsidiary of Tyco Inc., are the primary competitors for our CPAP products. Our principal European competitors are also Respironics, DeVilbiss, and Nellcor Puritan Bennett, as well as regional European manufacturers. The disparity between our resources and those of our competitors may increase as a result of the recent trend towards consolidation in the health care industry. In addition, our products compete with surgical procedures and dental appliances designed to treat OSA and other SDB related respiratory conditions. The development of new or innovative procedures or devices by others could result in our products becoming obsolete or noncompetitive, resulting in a material adverse effect on our business, financial condition and results of operations.

Any product developed by us that gains regulatory clearance will have to compete for market acceptance and market share. An important factor in such competition may be the timing of market introduction of competitive products. Accordingly, the relative speed with which we can develop products, complete clinical testing and regulatory clearance processes and supply commercial quantities of the product to the market are expected to be important competitive factors. In addition, our ability to compete will continue to be dependent on the extent to which we are successful in protecting our patents and other intellectual property.

#### PATENTS AND PROPRIETARY RIGHTS AND RELATED LITIGATION

Through our subsidiaries ResMed Limited and MAP Medizintechnik fur Arzt und Patient GmbH, we own or have licensed rights to 72 issued United States patents (including 15 design patents) and 116 issued foreign patents. In addition, there are 90 pending United States patent applications (including 9 design patent applications) and 218 pending foreign patent applications. Some of these patents and patent applications relate to significant aspects and features of our products. These include U.S. patents relating to CPAP devices, delay timer system, the Bubble Mask, and an automated means of varying air pressure based upon a patient's changing needs during nightly use, such as that employed in our AutoSet device.

Of our patents, two United States patents and three foreign patents are due to expire in the next five years, with one foreign patent due to expire in each of the years 2004, 2005 and 2007 and two United States patents in 2007. We believe

that the expiration of these patents will not have a material adverse impact on our competitive position.

We rely on a combination of patents, trade secrets, trade marks and non-disclosure agreements to protect our proprietary technology and rights. ResMed Limited is pursuing infringement actions against two of its competitors and is investigating possible infringement by others. See Item 3 - "Legal Proceedings".

Additional litigation may be necessary to attempt to enforce patents issued to us, to protect our rights, or to defend third-party claims of infringement by us of the proprietary rights of others. Patent laws regarding the enforceability of patents vary from country to country. Therefore, there can be no assurance that patent issues will be uniformly resolved, or that local laws will provide us with consistent rights and benefits.

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#### GOVERNMENT REGULATIONS

Our products are subject to extensive regulation particularly as to safety, efficacy and adherence to FDA Quality System Regulation, or QSR, and related manufacturing standards. Medical device products are subject to rigorous FDA and other governmental agency regulations in the United States and regulations of relevant foreign agencies abroad. The FDA regulates the introduction, manufacture, advertising, labeling, packaging, marketing, distribution, and record keeping for such products, in order to ensure that medical products distributed in the United States are safe and effective for their intended use. In addition, the FDA is authorized to establish special controls to provide reasonable assurance of the safety and effectiveness of most devices. Non compliance with applicable requirements can result in import detentions, fines, civil penalties, injunctions, suspensions or losses of regulatory approvals, recall or seizure of products, operating restrictions, refusal of the government to approve product export applications or allow us to enter into supply contracts, and criminal prosecution.

The FDA requires that a manufacturer introducing a new medical device or a new indication for use of an existing medical device obtain either a Section 510(k) premarket notification clearance or a premarket approval, or PMA, prior to it being introduced into the U.S. market. Our products currently marketed in the United States are marketed in reliance on 510(k) pre-marketing clearances as either Class I or Class II devices. The process of obtaining a Section 510(k) clearance generally requires the submission of performance data and often clinical data, which in some cases can be extensive, to demonstrate that the device is "substantially equivalent" to a device that was on the market prior to 1976 or to a device that has been found by the FDA to be "substantially equivalent" to such a pre-1976 device. As a result, FDA approval requirements may extend the development process for a considerable length of time. In addition, in some cases, the FDA may require additional review by an advisory panel, which can further lengthen the process. The PMA process, which is reserved for new devices that are not substantially equivalent to any predicate device and for high risk devices or those that are used to support or sustain human life, may take several years and requires the submission of extensive performance and clinical information.

As a medical device manufacturer, all of our domestic and Australian manufacturing facilities are subject to inspection on a routine basis by the FDA. We believe that our design, manufacturing and quality control procedures are in substantial compliance with the FDA's regulatory requirements. MAP's facilities are not subject to FDA regulation, because none of MAP's products is currently marketed in the United States.

Sales of medical devices outside the United States are subject to regulatory requirements that vary widely from country to country. Approval for sale of our medical devices in Europe is through the CE mark process. Where appropriate, our products are CE marked to the European Union's Medical Device Directive. Under the CE marketing scheme, our products are classified as either Class I or Class II; our devices are listed in the United States with FDA; in Australia with the Therapeutic Goods Administration, or TGA; and in Canada with Health Canada.

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#### EMPLOYEES

As of June 30, 2002, we had 1,250 employees or full time consultants, of which 503 persons were employed in warehousing and manufacturing, 178 in research and development, 337 in sales and marketing and 232 in administration. Of our employees and consultants, 597 were located in Australia, 317 in the United States, 318 in Europe and 18 in Asia.

We believe that the success of our business will depend, in part, on our ability to attract and retain qualified personnel. None of our employees is covered by

a collective bargaining agreement. We believe that our relationship with our employees is good.

#### MEDICAL ADVISORY BOARD

Our Medical Advisory Board, or MAB, consists of physicians specializing in the field of sleep disordered breathing. MAB members meet as a group twice a year with members of our senior management and members of our research and marketing departments to advise us on technology trends in SDB and other developments in sleep disorders medicine. MAB members are also available to consult on an as-needed basis with our senior management. In alphabetical order, MAB members include:

CLAUDIO BASSETTI, Dr. Claudio Bassetti is a Professor in the Faculty of Medicine, University of Zurich, where he is the Director and Vice-Chairman of the Neurological Clinic. A member of the American Academy of Neurology and the American Sleep Disorders Association, Dr. Bassetti is also a member of the scientific board of the European Sleep Research Society, and an associate editor of 'Sleep Medicine'. He is on the editorial board of 'Swiss Archives of Neurology and Psychiatry' and has produced over 100 publications. Dr. Bassetti is a leader in studying the implications of sleep disordered breathing on stroke.

MICHAEL COPPOLA, MD, is a leading pulmonary critical care and sleep disorders physician in private practice in Massachusetts. He is an attending physician at Baystate Medical Center and Mercy Hospital in Springfield, MA and a Fellow of the American College of Chest Physicians. He is Chairman of the Massachusetts Sleep Breathing Disorders Society. He is also the Medical Director of Winmar Diagnostics, a sleep disordered breathing specialty company, and Associate Clinical Professor of Medicine at Tufts University School of Medicine.

TERENCE M. DAVIDSON, MD, FACS, is Professor of Surgery in the Division of Otolaryngology - Head and Neck Surgery at the University of California, San Diego, School of Medicine. He is Section Chief of Head and Neck Surgery at the Veterans Administration San Diego Healthcare System and Associate Dean for Continuing Medical Education at UCSD. He is also director of the UCSD Head and Neck Surgery Sleep Clinic in La Jolla, CA.

ANTHONY N. DEMARIA, MD is Professor of Medicine and Chief, Division of Cardiology at the University of California, San Diego, specializing in cardiac imaging techniques, particularly echocardiography. He is a Diplomate in the American Board of Internal Medicine and is board certified by the Subspecialty Board in Cardiovascular Disease. He is Past President of both the American College of Cardiology and the American Society of Echocardiography. Dr. DeMaria is currently the Editor-in-Chief Elect of the Journal of the American College of Cardiology and has authored or co-authored over 400 articles for medical journals.

NEIL J. DOUGLAS, MD, FRCP, is Professor of Respiratory and Sleep Medicine, University of Edinburgh, an Honorary Consultant Physician, Royal Infirmary of Edinburgh and Director of the Scottish National Sleep Laboratory. He is Dean of the Royal College of Physicians of Edinburgh and Vice Chairman of the UK Royal Colleges Committee of CME Directors and a member of the Working Party on Sleep Apnea of the Royal College of Physicians of London. He is a past Chairman of the British Sleep Society and past Secretary of the British Thoracic Society. He has published over 200 papers on breathing during sleep.

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NICHOLAS HILL, MD, is Professor of Medicine at Brown University and Director of Critical Care Services at Rhode Island Hospital and Pulmonary Medicine at the Miriam Hospital, both in Providence. He is a Fellow of the American College of Chest Physicians and a member of the Planning Committee for the American Thoracic Society.

BARRY J. MAKE, MD, is Director, Emphysema Center and Pulmonary Rehabilitation National Jewish Medical and Research Center, and Professor of Pulmonary Sciences and Critical Care Medicine of the University of Colorado School of Medicine. He has served on numerous national and international committees for respiratory and cardiovascular diseases. His research and clinical work has resulted in a large number of publications on mechanisms, treatment and rehabilitation of chronic respiratory disease.

BARBARA PHILLIPS, MD, MSPH, FCCP, is Professor of Pulmonary, Critical Care, and Sleep Medicine at the University of Kentucky College of Medicine. She directs the Sleep Center, Sleep Clinics, and Sleep Fellowship at the Samaritan Sleep Center in Lexington, KY. She is a Board member of the American Academy of Sleep Medicine, a recipient of a Sleep Academic Award from the National Institutes of Health, past president of the American Board of Sleep Medicine, and a past member of the Advisory Board to the National Center of Sleep Disorders Research. Her research interests are the epidemiology of sleep-disordered breathing and sleep disorders in the aged.

COLIN SULLIVAN, MD, PhD, FRACP, FAA is Chairman of the MAB and the inventor of nasal CPAP for treating obstructive sleep apnea. He is Professor of Medicine and Director of the David Read Research Laboratory and Director of the Australian Centre for Advanced Medical Technology at the Sydney University Medical School. He is Head of the Centre for Respiratory Failure and Sleep Disorders, as well as a thoracic physician at the Royal Prince Alfred Hospital. He is also Academic head of the Pediatric Sleep Laboratory, New Children's Hospital, and Sydney Children's Hospital. Dr. Sullivan is a Fellow of the Royal Australian College of Physicians, and Fellow of the Australian Academy of Science.

HELMUT TESCHLER, MD, is Associate Professor and Head of the Department of Respiratory Medicine and Sleep Medicine, Ruhrlandklinik, Medical Faculty, University of Essen, Germany. He is a Fellow of each of the following Associations: German Pneumology Society, American Thoracic Society, European Respiratory Society and American Sleep Disorders Association.

J. WOODROW WEISS, MD, is Associate Professor of Medicine and Co-Chairman of the Division of Sleep Medicine at Harvard Medical School, as well as Chief, Pulmonary & Critical Care Medicine, Beth Israel Deaconess Medical Center, Boston, MA.

B. TUCKER WOODSON, MD, FACS, is an Associate Professor of Otolaryngology and Communication Sciences at the Medical College of Wisconsin. He is a Fellow of the American Academy of Otolaryngology - Head and Neck Surgery and the American College of Surgeons. Dr. Woodson is the Director of the Medical College of Wisconsin/Froedert Memorial Lutheran Hospital Center for Sleep. He is active on multiple committees for the American Academy of Sleep Medicine and American Academy of Otolaryngology.

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## ITEM 2 PROPERTIES

Our principal executive offices and U.S. distribution facilities, consisting of approximately 144,000 square feet, are located in Poway (North San Diego County), California in a building we own. We lease facilities for our manufacturing operations in Sydney, Australia in a 120,000 square foot facility and in Canoga Park, California in a 35,500 square foot facility.

Sales and warehousing facilities are leased in Oxford, England; Moenchengladbach, Germany; Lyon, France; Trollhaettan, Sweden and Singapore. Prior to moving our executive offices and distribution facilities to Poway, California, we leased space for this purpose in San Diego, California. Our lease on those premises expires in 2005. In August 2000, we began subleasing those premises to another company.

MAP's principal offices are located in Munich Germany in a 45,000 square foot facility leased by us. MAP's subsidiaries also lease sales and warehouse facilities in Lyss, Switzerland; Villach, Austria and s'Hertogenbosch, The Netherlands.

## ITEM 3 LEGAL PROCEEDINGS

We are currently engaged in litigation relating to the enforcement and defense of certain of our patents.

In January 1995, we filed a complaint in the United States District Court for the Southern District of California seeking monetary damages from and injunctive relief against Respironics for alleged infringement of three of our patents. In February 1995, Respironics filed a complaint in the United States District Court for the Western District of Pennsylvania against us seeking a declaratory judgment that Respironics does not infringe claims of these patents and that our patents are invalid and unenforceable. The two actions were combined and are proceeding in the United States District Court for the Western District of Pennsylvania. In June 1996, we filed an additional complaint against Respironics for infringement of a fourth ResMed patent, and that complaint was consolidated with the earlier action. As of this date, Respironics has brought three partial summary judgment motions for non-infringement of the ResMed patents; the Court has granted each of the motions. In December 1999, in response to the Court's ruling on Respironics' third summary judgment motion, the parties jointly stipulated to a dismissal of charges of infringement under the fourth ResMed patent, with us reserving the right to reassert the charges in the event of a favorable ruling on appeal. It is our intention to appeal the summary judgment rulings after a final judgment in the consolidated litigation has been entered in the District Court proceedings.

In January 2001, MAP Medizin-Technologie GmbH filed a lawsuit in the Civil Chamber of Munich Court against Hofrichter GmbH seeking actual and exemplary monetary damages for the unauthorized and infringing use of our trademarks and patents. An initial decision has been made in favor of MAP. Hofrichter has filed an appeal and has sought Court determination that the MAP patents do not apply to certain Hofrichter products.

On August 26, 2002, ResMed filed a lawsuit in Federal District Court in San Diego against Fisher & Paykel Healthcare. The ResMed complaint seeks a judgment that selected Fisher & Paykel Healthcare mask products (ACLAIM and ACLAIM 2 masks) infringe patents held by ResMed. The complaint further charges the defendant with the copying of ResMed proprietary mask technology and alleges trade dress and common law violations relating to the appearance of ResMed mask products.

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While we are prosecuting the above actions, there can be no assurance that we will be successful.

ITEM 4 SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS  
None.

PART II

ITEM 5 MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our Common Stock commenced trading on June 2, 1995 on The NASDAQ National Market under the symbol "RESM". On September 30, 1999, we transferred our primary listing to the New York Stock Exchange (NYSE) under the symbol "RMD". The following table sets forth for the fiscal periods indicated the high and low closing prices for the Common Stock as reported by the New York Stock Exchange.

<TABLE>  
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	2002		2001	
	High	Low	High	Low
<S>	<C>	<C>	<C>	<C>
Quarter One, ended September 30,	\$60.95	\$45.90	\$38.38	\$24.63
Quarter Two, ended December 31,	61.75	50.47	41.50	25.50
Quarter Three, ended March 31,	53.15	36.36	47.00	36.65
Quarter Four, ended June 30,	40.34	24.70	57.68	37.91

</TABLE>

As of September 6, 2002, there were 85 holders of record of our Common Stock. We have not paid any cash dividends on our common stock since prior to the initial public offering of our common stock and we do not currently intend to pay cash dividends in the foreseeable future. We anticipate that all of our earnings and other cash resources, if any, will be retained for the operation and expansion of our business and for general corporate purposes.

SALE OF UNREGISTERED SECURITIES

On June 20, 2001, we issued \$150.0 million of 4% convertible subordinated notes due 2006 to initial purchasers including Merrill Lynch, Pierce Fenner & Smith Incorporated, Deutsche Banc Alex. Brown Inc., William Blair & Company, LLC, Macquarie Bank, and UBS Warburg LLC. The discount to the initial purchasers on their purchase of the notes was \$4.7 million. On July 3, 2001, we issued an additional \$30.0 million in notes to the initial purchasers upon exercise of the initial purchasers' over allotment option, with an additional discount to the initial purchasers of \$0.9 million. This increased the total amount of convertible subordinated notes issued to \$180.0 million, with a total discount to the initial purchasers of \$5.6 million.

During fiscal 2002, we repurchased \$56.8 million face value of our convertible subordinated notes. The total purchase price of the notes was \$49.1 million, including \$0.6 million in accrued interest. We recognized a gain of \$4.0 million, net of tax of \$2.5 million, on these transactions. As at June 30, 2002, we had convertible subordinated notes outstanding of \$123.3 million.

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The notes and the common stock issuable upon conversion of the notes (the "Securities") were not registered under the Securities Act or any other state or foreign securities laws at the time of issue. The notes were offered and sold only to "qualified institutional buyers" as defined in Rule 144A or in offshore transactions outside the United States that met the requirements of Rule 903 of Regulation S under the Securities Act.

The Securities were subsequently registered for resale under the Securities Act (Registration No. 333-70500) effective October 9, 2001; and consequently the Securities may be resold in accordance with the prospectus that is part of the registration statement by the selling security holders named in the prospectus or a supplement to the prospectus. Other sales of the Securities may only be made in compliance with the registration requirements of the Securities Act and all other applicable securities laws, or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act

and any other applicable securities laws.

The notes are subject to an indenture between us and American Stock Transfer & Trust Company, as trustee. The notes are convertible, at the option of the holder, at any time on or prior to maturity, into shares of our common stock at a conversion price of \$60.60 per share, which is equal to a conversion rate of 16.5017 shares per \$1,000 principal amount of notes. The conversion price is subject to adjustment. The notes bear interest at 4% per year, payable semiannually on June 20 and December 20 of each year, beginning December 20, 2001.

We may redeem some or all of the notes at any time before June 20, 2004 at a redemption price of \$1,000 per \$1,000 principal amount of notes, plus accrued and unpaid interest, if any, to the redemption date, if (a) the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the provisional redemption notice and (b) a shelf registration statement covering resale of the notes and the common stock issuable upon conversion of the notes is effective and available for use and expected to remain effective and available for use for the 30 days following the provisional redemption date. Upon any such provisional redemption, we will make an additional payment in cash equal to \$166.67 per \$1,000 principal amount of notes, less the amount of any interest actually paid on the notes before the provisional redemption date.

We may also redeem some or all of the notes at any time on or after June 22, 2004, but prior to June 20, 2005, at a redemption price equal to 101.6% of the principal amount of notes redeemed and at any time after June 19, 2005, at a redemption price equal to 100.8% of the principal amount of notes redeemed, plus in any case, accrued and unpaid interest, if any, to the redemption date, if the closing price of our common stock has exceeded 130% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the optional redemption notice.

The notes are general unsecured obligations and are subordinated to all of our existing and future senior indebtedness and will be effectively subordinated to all of the indebtedness and liabilities of our subsidiaries. The indenture governing the notes will not limit the incurrence by us or our subsidiaries of senior indebtedness or other indebtedness. The notes mature on June 20, 2006.

On May 14, 2002, we issued 853,448 shares of our common stock to one individual as partial consideration for our acquisition of Servo Magnetics Incorporated. We relied on the exemption from registration provided under Section 4(2) of the Securities Act of 1933, as amended. No solicitation was made in connection with this issuance, other than negotiation of the acquisition, and we obtained representations from the recipient regarding his investment intent, experience and sophistication.

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ITEM 6 SELECTED FINANCIAL DATA

The following table summarizes certain selected consolidated financial data for, and as of the end of, each of the fiscal years in the five-year period ended June 30, 2002. The data set forth below should be read in conjunction with the Consolidated Financial Statements and related Notes included elsewhere in this Report.

<TABLE>

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CONSOLIDATED STATEMENT OF INCOME DATA:	Years Ended June 30,				
	2002	2001	2000	1999	1998
	(In thousands, except per share data)				
<S>	<C>	<C>	<C>	<C>	<C>
Net revenues	\$204,076	\$155,156	\$115,615	\$88,627	\$66,519
Cost of sales	70,827	50,377	36,991	29,416	23,069
Gross profit	133,249	104,779	78,624	59,211	43,450
Selling, general and administrative expenses	64,481	49,364	36,987	27,414	21,093
Provision for restructure	-	550	-	-	-
In-process research and development write off	350	17,677	-	-	-
Research and development expenses	14,910	11,146	8,499	6,542	4,994
Donations to Research Foundations	2,349	-	-	-	-
Total operating expenses	82,090	78,737	45,486	33,956	26,087
Income from operations	51,159	26,042	33,138	25,255	17,363
Other income (expenses):					
Interest income (expense), net	(3,224)	(762)	801	779	1,011
Government grants	-	72	279	833	611

Other, net	108	1,962	(52)	(2,290)	(2,873)
Gain on extinguishment of debt	6,549	-	-	-	-
Total other income (expenses)	3,433	1,272	1,028	(678)	(1,251)
Income before income taxes	54,592	27,314	34,166	24,577	16,112
Income taxes	17,086	15,684	11,940	8,475	5,501
Net income	\$ 37,506	\$ 11,630	\$ 22,226	\$16,102	\$10,611
Basic earnings per share	\$ 1.17	\$ 0.37	\$ 0.74	\$ 0.55	\$ 0.37
Diluted earnings per share	\$ 1.10	\$ 0.35	\$ 0.69	\$ 0.52	\$ 0.35
Basic shares outstanding	32,174	31,129	30,153	29,416	29,000
Diluted shares outstanding	34,080	33,484	32,303	31,068	30,044

<TABLE>  
<CAPTION>

CONSOLIDATED BALANCE SHEET DATA	2002	As of June 30,			
		2001	2000	1999	1998
		(In thousands)			
<S>	<C>	<C>	<C>	<C>	<C>
Working capital	\$144,666	\$144,272	\$ 47,550	\$32,529	\$32,759
Total assets	376,191	288,090	115,594	89,889	64,618
Long-term debt, less current maturities	123,250	150,000	-	-	-
Total stockholders' equity	192,930	100,366	93,972	71,647	50,773

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ITEM 7 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

Management's discussion and analysis of financial condition and results of operations should be read in conjunction with selected financial data and consolidated financial statements and notes, included herein.

We design, manufacture and market equipment for the diagnosis and treatment of sleep disordered breathing conditions, including obstructive sleep apnea. Our net revenues are generated from the sale of our various flow generator devices, nasal mask systems, accessories and other products, and, to a lesser extent from royalties and sales of custom motors.

We have invested significant resources in research and development and product enhancement. Since 1989, we have developed several innovations to the original CPAP device to increase patient comfort and to improve ease of product use. We have been developing products for automated treatment, titration and monitoring of OSA, such as the AutoSet T and AutoSet Spirit flow generators. Our research and development expenses have been subsidized in part by grants and tax incentives from the Australian federal government.

LABHARDT ACQUISITION

On November 15, 2001, we acquired all the common stock of Labhardt Ag, our Swiss distributor, for total cash consideration, including acquisition costs, of \$5.5 million.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of Labhardt Ag have been included in our consolidated financial statements from November 15, 2001. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$1.3 million has been recorded as goodwill.

SMI ACQUISITION

On May 14, 2002, we acquired all of the common stock of Servo Magnetics Incorporated ("SMI") through a merger with our wholly-owned subsidiary, Servo Magnetics Acquisitions Inc, for total consideration, including acquisition costs, of \$32.6 million. Consideration included the issue of 853,448 shares for fair value of \$24.8 million with the balance of the acquisition price paid in cash. Upon consummation of the merger, the surviving corporation, Servo Magnetics Acquisition Inc., changed its name to Servo Magnetics Inc.



The acquisition has been accounted for as a purchase and accordingly, the results of operations of SMI have been included in our consolidated financial statements from May 14, 2002. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$1.9 million has been recorded as goodwill.

Purchased in-process research and development of \$350,000 was expensed upon acquisition of SMI because technological feasibility of the products under development had not been established and no further alternative uses existed. The value of in process technology was calculated by identifying research projects in areas for which technological feasibility had not been established, estimating the costs to develop the purchased in process technology into commercially viable products, estimating the resulting net cash flows from such products, discounting the net cash flows to present value, and applying the reduced percentage completion of the projects thereto. The discount rate used in the analysis was 19% and was based on the risk profile of the acquired assets.

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Purchased research and development projects related to electrical motor systems used in medical devices and health equipment. Key assumptions used in the analysis included gross margins of approximately 34%. As of the date of acquisition, new motor systems for use in these devices are expected to be completed and commercially available by fiscal 2004. These projects have estimated costs to complete totalling approximately \$450,000.

We believe that the assumptions used to value the acquired intangible assets were reasonable at the time of acquisition. No assurance can be given, however, that the underlying assumptions used to estimate expected project revenues, development costs or profitability, or events associated with such projects, will transpire as estimated. For these reasons, among others, actual results may vary from the projected results.

#### TAX EXPENSE

Our income tax rate is governed by the laws of the regions in which our income is recognized. To date, a substantial portion of our income has been subject to income tax in Australia where the statutory rate was 30% in fiscal 2002 and was 34% in fiscal 2001 and 2000 respectively. During fiscal 2002, 2001 and 2000, our effective tax rate has fluctuated between approximately 31% and approximately 35%. These fluctuations have resulted from, and future effective tax rates will depend upon, numerous factors, including the amount of research and development expenditures for which a 125% Australian tax deduction is available, the level of non-deductible expenses, and the use of available net operating loss carryforward deductions and other tax credits or benefits available to us under applicable tax laws.

#### FISCAL YEAR ENDED JUNE 30, 2002, COMPARED TO FISCAL YEAR ENDED JUNE 30, 2001

NET REVENUES. Net revenue increased in fiscal 2002 to \$204.1 million from \$155.2 million in fiscal 2001, an increase of \$48.9 million or 32%. This increase was primarily attributable to an increase in unit sales of our flow generators and accessories in both domestic and international markets and also to the acquisition on February 16, 2001 of MAP Medizin-Technologie GmbH "MAP".

GROSS PROFIT. Gross profit increased in fiscal 2002 to \$133.2 million from \$104.8 million in fiscal 2001, an increase of \$28.5 million or 27%. Gross profit as a percentage of net revenue declined in fiscal 2002 to 65% from 68% in fiscal 2001. The decline in gross margins reflects a change in geographical sales mix (after adjusting for MAP sales), with a relatively higher percentage of domestic sales, which achieve lower margins, compared to international markets. The decline also reflects that gross margins in our acquired subsidiary, MAP, are historically lower than the average margins achieved by our Company as a whole.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES. Selling, general and administrative expenses increased in 2002 to \$64.5 million from \$49.4 million for 2001, an increase of \$15.1 million or 31%. As a percentage of net revenue, selling, general and administrative expenses in fiscal 2002 was 32%, consistent with fiscal 2001. The increase in selling, general and administrative expenses was primarily due to the addition of 98 personnel in sales and administration and other expenses related to the increase in our sales. SG&A in fiscal 2002 also included a provision of \$1.0 million against an outstanding receivable from American Home Patient Inc. (AHP), a significant customer, who filed for Chapter 11 Bankruptcy Protection on July 31, 2002. AHP's filing for Chapter 11 Bankruptcy Protection is not expected to materially impact our business.

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PROVISION FOR RESTRUCTURE. In fiscal 2001, subsequent to the purchase of MAP, we restructured MAP's French activities and took a charge of \$0.6 million associated with the closure of MAP's unprofitable French operations. We did not incur any restructure charges in fiscal 2002.

IN PROCESS RESEARCH AND DEVELOPMENT WRITE-OFF. In fiscal 2002, purchased in process research and development of \$0.4 million was expensed upon the acquisition of SMI because technological feasibility of the products under development had not been established and no further alternative uses existed. In fiscal 2001, purchased in process research and development of \$17.7 million was expensed upon acquisition of MAP because technological feasibility of the products under development had not been established and no further alternative uses existed.

DONATIONS TO FOUNDATIONS. In fiscal 2002, we committed \$2.3 million to the establishment of two ResMed Sleep Disordered Breathing Foundations, one in the United States and one in Australia. The Foundations' overall mission is to educate both the public and physicians about the inherent dangers of untreated SDB/OSA, particularly as it relates to traffic and workplace accidents as well as cerebrovascular and cardiovascular disease.

RESEARCH AND DEVELOPMENT EXPENSES. Research and development expenses increased in fiscal 2002 to \$14.9 million from \$11.1 million in fiscal 2001, an increase of \$3.8 million or 34%. As a percentage of net revenue, research and development expenses increased to 7.3% in fiscal 2002 compared to 7.2% in fiscal 2001. The increase in research and development expenses was due to increased salaries associated with an increase in personnel and increased charges for consulting fees, clinical trials and technical assessments incurred to facilitate development of new products and also includes research and development expenditures of MAP.

OTHER INCOME (EXPENSE). Other income (expense), net, increased in fiscal 2002 to a net income of \$3.4 million from net income of \$1.3 million in fiscal 2001. The increase in other income primarily reflects a gain on extinguishment of debt of \$6.5 million partially offset by increased net interest expense associated with our convertible notes and foreign exchange losses.

INCOME TAXES. The Company's effective income tax rate declined to approximately 31.3% in fiscal 2002 from approximately 34.4% (excluding a non-recurring in process research and development write-down of \$17.7 million and restructuring charge of \$0.6 million) in fiscal 2001. The lower tax rate was primarily due to the lowering of the corporate income tax rate in Australia from 34% to 30% effective July 1, 2001. The Company also benefits from a 125% tax deduction on research and development expenditures in Australia, which further reduces the effective tax rate on Australian sourced income.

#### FISCAL YEAR ENDED JUNE 30, 2001 COMPARED TO FISCAL YEAR ENDED JUNE 30, 2000

NET REVENUES. Net revenues increased in fiscal 2001 to \$155.2 million from \$155.6 million in fiscal 2000, an increase of \$39.5 million or 34%. This increase was primarily attributable to an increase in unit sales of our flow generators and accessories in North and Latin America where net revenues increased to \$79.9 million from \$62.7 million and in Europe, where net revenues increased to \$60.5 million from \$40.5 million. Net revenues were unfavorably impacted by a decline in European foreign exchange rates.

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GROSS PROFIT. Gross profit increased in fiscal 2001 to \$104.8 million from \$78.6 million in fiscal 2000, an increase of \$26.2 million or 33%. The increase resulted primarily from increased unit sales during fiscal 2001. Gross profit as a percentage of net revenues was 68%, consistent with fiscal 2000. Lower flow generator selling prices were offset by a decline in the Australian dollar, improved manufacturing efficiencies and increased sales of higher margin mask system units.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES. Selling, general and administrative expenses increased in 2001 to \$49.4 million from \$37.0 million for 2000, an increase of \$12.4 million or 33%. As a percentage of net revenues, selling, general and administrative expenses were steady in fiscal 2001, compared to fiscal 2002 at 32%. The gross increase in expenses was due primarily to an increase to 471 from 281 in the number of sales and administrative personnel and other expenses related to the increase in our sales.

RESEARCH AND DEVELOPMENT EXPENSES. Research and development expenses increased in fiscal 2001 to \$11.1 million from \$8.5 million in fiscal 2001, an increase of \$2.6 million or 31%. As a percentage of net revenues, research and development expenses remained static in fiscal 2001 at 7%. The dollar increase in research and development expenses was due primarily to an increase in clinical trial costs, personnel and external consultancy fees.

OTHER INCOME (EXPENSE). Other income (expense) improved in fiscal 2001 to \$1.3

million from \$1.0 million for fiscal 2000, an increase of \$0.3 million. This improvement was due primarily to foreign currency gains incurred in our foreign currency hedging structures, partially offset by interest expense associated with the purchase of MAP. Net foreign currency gains for fiscal 2001 were \$2.0 million compared to net foreign currency losses of \$0.2 million in 2000.

INCOME TAXES. Our effective income tax rate for fiscal 2001 before MAP acquisition charges of \$0.6 million for restructuring costs and in-process research and development write off of \$17.7 million was 34.4% down from 34.9% for fiscal 2000. This reduction was primarily due to the reduction in Australian corporate tax rates from 36% to 34% on July 1, 2000 and to additional research and development expenses in Australia for which we received a 125% deduction for income tax purposes.

#### LIQUIDITY AND CAPITAL RESOURCES

As of June 30, 2002 and June 30, 2001, we had cash and cash equivalents and marketable securities available-for-sale of approximately \$92.8 million and \$102.8 million, respectively. Working capital approximated \$144.7 million and \$144.3 million at June 30, 2002 and June 30, 2001 respectively.

During the year ended June 30, 2002, we generated cash of \$35.6 million from operations, primarily as a result of increased profit from operations offset by increases in inventory and accounts receivable balances. During the year ended June 30, 2001 approximately \$29.5 million of cash was generated by operations.

Capital expenditures for the year ended June 30, 2002 and 2001 aggregated \$28.2 million and \$27.5 million respectively. The majority of the expenditures for the year ended June 30, 2002 related to the purchase of land in Sydney described below, a computer system upgrade and acquisition of production tooling and equipment. The capital expenditures in the year ended June 30, 2001 primarily reflected the capital expenditure of \$17.2 million on the company's US headquarters in Poway, California in July 2000. As a result of these capital expenditures, our balance sheet reflects net property plant and equipment of approximately \$79.3 million at June 30, 2002 compared to \$55.1 million at June 30, 2001.

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On July 3, 2001, we issued \$30.0 million in over allotments for our 4% convertible subordinated notes issue, increasing the total amount of convertible subordinated notes then outstanding to \$180.0 million. During fiscal 2002, we repurchased \$56.8 million face value of our convertible subordinated notes. The total purchase price of the notes was \$49.1 million, including \$0.6 million in accrued interest. We recognized a gain of \$4.0 million, net of tax of \$2.5 million, on these transactions. As at June 30, 2002, we had convertible subordinated notes outstanding of \$123.3 million.

We may from time to time seek to retire our convertible subordinated notes through cash purchases and/or exchanges for equity securities in open market purchases, privately negotiated transactions, or otherwise. Such repurchases or exchanges, if any, will depend on prevailing market conditions, our liquidity requirements, and current or future contractual obligations of the Company, if any, that may directly or indirectly apply to such transactions.

On November 15, 2001, we acquired all of the common stock of Labhardt Ag, our Swiss distributor, for total cash consideration, including acquisition costs, of \$5.5 million. The acquisition has been accounted for as a purchase and, accordingly, the results of operations of Labhardt Ag have been included in our consolidated financial statements from November 15, 2001. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$1.3 million has been recorded as goodwill.

On May 14, 2002 we acquired all of the common stock of Servo Magnetics Inc. ("SMI") for total consideration, including acquisition costs, of \$32.6 million. Consideration included the issue of 853,448 shares for fair value of \$24.8 million, with the balance of the acquisition cost paid in cash. Subsequent to the acquisition, we repaid all SMI's existing bank loans totaling \$3.0 million.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of SMI have been included in the Company's consolidated financial statements from May 14, 2002. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$1.9 million has been recorded as goodwill.

On October 2, 2001, we paid \$1.4 million as final consideration associated with the purchase of MAP on February 16, 2001. The amount has been recorded as goodwill.

On April 26, 2002, we settled our purchase of a 30-acre site at Norwest Business Park, located northwest of Sydney, Australia. The acquisition cost was \$23.6 million, including deferred payments of \$5.7 million due in October 2002 and \$5.7 million due in April 2003. We expect the first building, a manufacturing facility, to be operational on this site in December 2003. New research and

development and office facilities are expected to be completed in 2004. We estimate that the building costs will be approximately \$30.0 million.

On May 8, 2002, we completed a sale and leaseback transaction of our Australian facility located at North Ryde in Sydney, Australia. The property was sold for \$18.5 million with a three-year leaseback and a further one-year option. The profit before tax on sale of the property of \$5.5 million will be amortized over the lease period. The cash made available from the sale will be utilized for the construction of our new facilities at Norwest Business Park also located in Sydney, Australia.

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On June 6, 2002, the Board of Directors authorized the Company to repurchase up to 4 million shares of its outstanding common stock. For fiscal year 2002, we repurchased 290,047 shares at a cost of \$7.9 million. We may continue to repurchase shares of our common stock for cash in the open market, or in negotiated or block transactions, from time to time as market and business conditions warrant.

Details of contractual obligations at June 30, 2002 are as follows:

<TABLE>

<CAPTION>

<S>	Payments Due by Period			
	Less than 1 year <C>	1-3 years <C>	4-5 years <C>	After 5 years <C>
Long-Term Debt	-	123,250	-	-
Operating Leases	4,326	9,523	1,202	-
Unconditional Purchase Obligations	11,552	-	-	-
Total Contractual Cash Obligations	15,878	132,773	1,202	-

</TABLE>

Details of other commercial commitments at June 30, 2002 are as follows:

<TABLE>

<CAPTION>

In \$000's

Total Amounts Committed	Amount of Commitment Expiration Per Period			
	Less than 1 year <C>	1-3 years <C>	4-5 years <C>	Over 5 years <C>
<S>	<C>	<C>	<C>	<C>
Lines of Credit	-	-	-	-
Standby Letters of Credit	-	-	-	-
Guarantees(1)	13,678	11,821	663	1,194
Standby Repurchase Obligations	-	-	-	-
Other Commercial Commitments	-	-	-	-
Total Commercial Commitments	13,678	11,821	663	1,194

</TABLE>

(1) The above guarantees relate to guarantees provided by banks. Guarantees of \$11.8 million relate to deferred payments due on our land purchase at Norwest and have been recorded as a liability in our financial accounts. The guarantees are secured by cash deposits held with the bank. The balance of the guarantees relate to guarantees required by statutory authorities as a pre-requisite to developing our site at Norwest and requirements under contractual obligations with insurance companies transacting with our German subsidiaries.

The results of our international operations are affected by changes in exchange rates between currencies. Changes in exchange rates may negatively affect our consolidated net revenue and gross profit margins from international operations. We are exposed to the risk that the dollar value equivalent of anticipated cash flows will be adversely affected by changes in foreign currency exchange rates. We manage this risk through foreign currency option contracts.

We expect to satisfy all of our short term and long term liquidity requirements through a combination of cash on hand and cash generated from operations.

#### CRITICAL ACCOUNTING PRINCIPLES AND ESTIMATES

In response to the SEC's Release numbers 33-8040 "Cautionary Advice Regarding Disclosure About Critical Accounting Policies" and 33-8056, "Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations," we have identified the following critical accounting policies that affect the more significant judgments and estimates used in the preparation of our financial statements. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and judgments that affect our reported amounts of assets and liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. On an ongoing basis

we evaluate our estimates, including those related to allowance for doubtful accounts, inventory reserves, warranty obligations, impaired assets, intangible assets, income taxes, revenue recognition and contingencies and litigation. We state these accounting policies in the notes to the financial statements and at relevant sections in this discussion and analysis. The estimates are based on the information that is currently available to us and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could vary from those estimates under different assumptions or conditions.

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We believe that the following critical accounting policies affect the more significant judgments and estimates used in the preparation of our financial statements:

(1) Allowance for Doubtful Accounts. We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments, which results in bad debt expense. We determine the adequacy of this allowance by continually evaluating individual customer receivables, considering customer's financial condition, credit history and current economic conditions. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

(2) Inventory Adjustments. Inventories are stated at lower of cost or market and are determined by the first-in, first-out method. We review the components of inventory on a regular basis for excess, obsolete and impaired inventory based on estimated future usage and sales. The likelihood of any material inventory write-downs is dependent on changes in competitive conditions, new product introductions by us or our competitors, or rapid changes in customer demand.

(3) Valuation of Goodwill, Intangible and Other Long-Lived Assets. We use assumptions in establishing the carrying value, fair value and estimated lives of our long-lived assets and goodwill. The criteria used for these evaluations include management's estimate of the asset's continuing ability to generate positive income from operations and positive cash flow in future periods compared to the carrying value of the asset, as well as the strategic significance of any identifiable intangible asset in our business objectives. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying value of the assets exceeds the fair value of the assets. Useful lives and related amortization or depreciation expense are based on our estimate of the period that the assets will generate revenues or otherwise be used by the Company. Factors that would influence the likelihood of a material change in our reported results include significant changes in the asset's ability to generate positive cash flow, loss of legal ownership or title to the asset, a significant decline in the economic and competitive environment on which the asset depends, significant changes in our strategic business objectives, utilization of the asset, and a significant change in the economic and/or political conditions in certain countries.

(4) Valuation of Deferred Income Taxes. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. The likelihood of a material change in our expected realization of these assets is dependent on future taxable income, our ability to deduct tax loss carryforwards against future taxable income, the effectiveness of our tax planning and strategies among the various tax jurisdictions that we operate in, and any significant changes in the tax treatment received on our business combinations.

(5) Provision for Warranty. We provide for the estimated cost of product warranties at the time the related revenue is recognized. The amount of this provision is determined by using a financial model which takes into consideration actual historical expenses and potential risks associated with the Company's different products. This financial model is then used to calculate the future probable expenses related to warranty and the required level of the warranty provision. Although we engage in product improvement programs and processes, our warranty obligation is affected by product failure rates and costs incurred to correct those product failures. Should actual product failure rates or estimated costs to repair those product failures differ from our estimates, revisions to our estimated warranty provision would be required.

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#### NEW ACCOUNTING PRONOUNCEMENTS

In July 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 146, Accounting for Restructuring Costs. SFAS 146 applies to costs associated with an exit activity (including restructuring) or with a disposal of long-lived assets. Those activities can include eliminating or reducing product lines, terminating employees and contracts, and relocating plant facilities or personnel. Under SFAS 146, a company will record a liability for a cost associated with an exit or disposal

activity when that liability is incurred and can be measured at fair value. SFAS 146 will require a company to disclose information about its exit and disposal activities, the related costs, and changes in those costs in the notes to the interim and annual financial statements that include the period in which an exit activity is initiated and in any subsequent period until the activity is completed. SFAS 146 is effective prospectively for exit or disposal activities initiated after December 31, 2002, with earlier adoption encouraged. Under SFAS 146, a company may not restate its previously issued financial statements and the new Statement grandfathered the accounting for liabilities that a company had previously recorded under Emerging Issues Task Force Issue 94-3. The Company believes that it will not have a material impact on the results of operations, financial position and liquidity of the Company.

The FASB issued SFAS No. 145, Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections as of April 2002, which is effective for fiscal years beginning after May 15, 2002, but may be adopted early. SFAS 145 rescinds SFAS 4 and SFAS 64, which required that all gains and losses from debt extinguishment of debt be aggregated, and if material, classified as an extraordinary item. As a result, gains and losses from debt extinguishment are to be classified as extraordinary only if they meet the criteria set forth in Accounting Principles Board Opinion No. 30, Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions. SFAS 145 also requires that sale-leaseback accounting be used for capital lease modifications with economic effects similar to sale-leaseback transactions. The Company has elected to early adopt SFAS No. 145 and has classified gains from the extinguishment of debt as other income in its Consolidated Statements of Income.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." For long-lived assets to be held and used, SFAS No. 144 retains the requirements of SFAS No. 121 to (a) recognize an impairment loss only if the carrying amount of a long-lived asset is not recoverable from its undiscounted cash flows and (b) measure an impairment loss as the difference between the carrying amount and fair value. Further, SFAS No. 144 eliminates the requirement to allocate goodwill to long-lived assets to be tested for impairment, describes a probability-weighted cash flow estimation approach to deal with situations in which alternative courses of action to recover the carrying amount of a long-lived asset are under consideration or a range is estimated for the amount of possible future cash flows, and establishes a "primary-asset" approach to determine the cash flow estimation period. For long-lived assets to be disposed of other than by sale (e.g. assets abandoned, exchanged or distributed to owners in a spin-off), SFAS No. 144 requires that such assets be considered held and used until disposed of. Further, an impairment loss should be recognized at the date an asset is exchanged for a similar productive asset or distributed to owners in a spin-off if the carrying amount exceeds its fair value. The Company believes that it will not have a material impact on the results of operations, financial position and liquidity of the Company.

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In July 2001, the FASB issued SFAS No. 142, Goodwill and Other Intangible Assets. As allowed under the Standard, the Company has adopted SFAS 142 effective July 1, 2001. SFAS 142 requires goodwill and intangible assets with indefinite useful lives to no longer be amortized, but instead be tested for impairment at least annually.

With the adoption of SFAS 142, the Company reassessed the useful lives and residual values of all acquired intangible assets to make any necessary amortization period adjustments. Based on that assessment, only goodwill was determined to have an indefinite useful life and no adjustments were made to the amortization period or residual values of other intangible assets.

In accordance with SFAS 142 the Company has completed its initial assessment of goodwill impairment. The results of the review indicated that no impaired goodwill currently exists.

Effective July 1, 2001, the Company adopted SFAS No. 141, "Business Combinations". SFAS 141 requires that the purchase method of accounting be used for all business combinations initiated after June 30, 2001.

In June 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations," which requires that the fair value of a liability for an asset retirement obligation be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The associated asset retirement costs would be capitalized as part of the carrying amount of the long-lived asset and depreciated over the life of the asset. The liability is accreted at the end of each period through charges to operating expense. If the obligation is settled for other than the carrying amount of the liability, the Company will recognize a gain or loss on settlement. The provisions of SFAS No. 143 are effective for fiscal years beginning after June 15, 2002. The Company believes that it will not have a material impact on the results of operations, financial position and liquidity of the Company.

ITEM 7A QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET AND BUSINESS RISKS

FOREIGN CURRENCY MARKET RISK

Our functional currency is the U.S. dollar, although we transact business in various foreign currencies including a number of major European currencies, as well as the Australian dollar. We have significant foreign currency exposure through both our Australian manufacturing activities and international sales operations.

We have established a foreign currency hedging program using purchased currency options to hedge foreign-currency-denominated financial assets, liabilities and manufacturing expenditure. The goal of this hedging program is to economically guarantee or lock in the exchange rates on our foreign currency exposures denominated in Euro's and the Australian dollar. Under this program, increases or decreases in our foreign-currency-denominated financial assets, liabilities, and firm commitments are partially offset by gains and losses on the hedging instruments.

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The table below provides information (in US dollars) on our foreign-currency denominated financial assets by legal entity functional currency:

<TABLE>  
<CAPTION>

	Foreign Currency Financial Assets						
	AUD	USD	EUR	GBP	SGD	NZD	SEK
CHF	<C>	<C>	<C>	<C>	<C>	<C>	<C>
AUD Functional Currency Entities:							
Assets	\$ -	24,118,963	7,317,495	2,582,023	1,481,516	180,690	505,691
837,331							
Liability	-	(1,793,640)	-	(2,748,233)	-	-	-
-							
Net Total	\$ -	22,325,323	7,317,495	(166,210)	1,481,516	180,690	505,691
837,331							
USD Functional Currency Entities:							
Assets	\$17,297,437	-	-	-	-	-	-
-							
Liability	-	-	-	-	-	-	-
-							
Net Total	\$17,297,437	-	-	-	-	-	-
-							
Euro Functional Currency Entities:							
Assets	\$ 4,773,000	65,504	-	-	-	-	-
1,200,726							
Liability	-	(3,740)	-	-	-	-	-
-							
Net Total	\$ 4,773,000	61,764	-	-	-	-	-
1,200,726							

</TABLE>

The table below provides information about our foreign currency derivative financial instruments and presents such information in U.S. dollar equivalents. The table summarizes information on instruments and transactions that are sensitive to foreign currency exchange rates, including foreign currency call options held at June 30, 2002. The table presents the notional amounts and weighted average exchange rates by contractual maturity dates for our foreign currency derivative financial instruments. These notional amounts generally are used to calculate payments to be exchanged under the options contracts.

<TABLE>  
<CAPTION>

(In thousands except exchange rates)	Fair Value Assets / (Liabilities)			As of June 30,	
	FY 2003	FY 2004	Total	2002	2001
<S>	<C>	<C>	<C>	<C>	<C>
Foreign Exchange Call Options (Receive AUS\$/Pay U.S.\$)					
Option amount	\$ 54,000	\$ 66,000	\$ 120,000	\$2,341	\$ 577
Average contractual exchange rate	AUS \$1 = USD 0.549	AUS\$1=USD 0.591	AUS \$1 = USD 0.571		

(Receive AUS\$/Pay Euro)					
Option amount	\$	40,473	-	\$	40,473 \$ 423 \$ 20
Average contractual exchange rate	AUS \$1 = Euro 0.592			AUS \$1 = Euro 0.592	

#### INTEREST RATE RISK

We are exposed to risk associated with changes in interest rates affecting the return on investments.

At June 30, 2002, we maintained a portion of our cash and cash equivalents in financial instruments with original maturities of three months or less. We maintain a short-term investment portfolio containing financial instruments in which the majority have original maturities of greater than three months but less than twelve months. These financial instruments, principally comprised of corporate obligations, are subject to interest rate risk and will decline in value if interest rates increase. A hypothetical 100 basis point change in interest rates during the twelve months ended June 30, 2002, would have resulted in approximately \$0.3 million change in pretax income. We do not use derivative financial instruments in our investment portfolio.

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#### FORWARD-LOOKING STATEMENTS

This report on Form 10-K contains or may contain certain forward-looking statements and information that are based on the beliefs of our management as well as estimates and assumptions made by, and information currently available to our management. The words "believe," "expect," "anticipate," "estimate," "plan," "future" and other similar expressions generally identify forward-looking statements, including, in particular, statements regarding the development and approval of new products and product applications, market expansion, pending litigation and the development of new markets for the Company's products, such as cardiovascular and stroke markets. These forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. You are cautioned not to place undue reliance on these forward-looking statements. Such forward-looking statements reflect the views of our management at the time such statements are made and are subject to a number of risks, uncertainties, estimates and assumptions, including, without limitation, and in addition to those identified in the text surrounding such statements, those identified below and elsewhere in this report. In addition, important factors to consider in evaluating such forward-looking statements include changes or developments in social, economic, market, legal or regulatory circumstances, changes in our business or growth strategy or an inability to execute our strategy due to changes in our industry or the economy generally, the emergence of new or growing competitors, the actions or omissions of third parties, including suppliers, customers, competitors and governmental authorities, and various other factors. Should any one or more of these risks or uncertainties materialize, or the underlying estimates or assumptions prove incorrect, actual results may vary significantly from those expressed in such forward-looking statements, and there can be no assurance that the forward-looking statements contained in this report will in fact occur.

#### RISK FACTORS

The risks and uncertainties that may affect our business, financial condition or results of operations include the following:

##### OUR INABILITY TO COMPETE SUCCESSFULLY IN OUR MARKETS MAY HARM OUR BUSINESS.

The markets for our SDB products are highly competitive and are characterized by frequent product improvements and evolving technology. Our ability to compete successfully depends, in part, on our ability to develop innovative new products and to be the first to market with those products. The development of innovative new products by our competitors or the discovery of alternative treatments or potential cures for the conditions that our products treat could result in our products becoming noncompetitive or obsolete.

Additionally, some of our competitors have greater financial, research and development, manufacturing and marketing resources than we do. The past several years have seen a trend towards consolidation in the health care industry and in the markets for our products. Industry consolidation could result in greater competition if our competitors combine their resources or if our competitors are acquired by other companies with greater resources than ours. This competition could increase pressure on us to reduce the selling prices of our products or could cause us to increase our spending on research and development and sales and marketing. If we are unable to develop innovative new products, maintain competitive pricing, and offer products that consumers perceive to be as reliable as those of our competitors, our sales or gross margins could decrease which would harm our business.



OUR BUSINESS DEPENDS ON OUR ABILITY TO MARKET EFFECTIVELY TO DEALERS OF HOME HEALTH CARE PRODUCTS AND SLEEP CLINICS.

We market our products primarily to home health care dealers and to sleep clinics that diagnose OSA and other sleep disorders. We believe that home health care dealers and sleep clinics play a significant role in determining which brand of product a patient will use. For example, in the United States, when a physician at a sleep clinic prescribes the use of a product, the patient typically purchases the product from a home health care dealer. The physician may or may not prescribe a specific brand of product. If a specific brand is prescribed, we believe the brand prescribed depends upon the brand of product that is used in the sleep clinic. If a specific brand is not prescribed, the home health care dealer may recommend a specific brand. Occasionally, even if the physician prescribes a specific brand, a home health care dealer may substitute a competitive product for the patient. We have limited resources to market to the more than 2,000 U.S. sleep clinics and the more than 4,000 home health care dealer branch locations, most of which use, sell or recommend several brands of products. In addition, home health care dealers have experienced price pressures as government and third-party reimbursement have declined for home care products, and home health care dealers are requiring price discounts and longer periods of time to pay for products purchased from us. We cannot assure you that sleep clinic physicians will continue to prescribe our products, or that home health care dealers or patients will not substitute competing products when a prescription specifying our products has been written. The success of our business depends on our ability to market effectively to home health care dealers and sleep clinics and to ensure that our products are properly marketed and sold by these third parties.

We intend to expand our marketing activities to target the population with a predisposition to SDB as well as primary care physicians and specialists. We cannot assure you that these marketing efforts will be successful in increasing awareness of our products.

IF WE ARE UNABLE TO SUPPORT OUR CONTINUED GROWTH, OUR BUSINESS COULD SUFFER.

We have experienced rapid and substantial growth. As we continue to grow, the complexity of our operations increases, placing greater demands on our management. Our ability to manage our growth effectively depends upon our ability to implement and improve our financial and management information systems on a timely basis and to effect other changes in our business. Unexpected difficulties during expansion, the failure to attract and retain qualified employees, the failure to successfully replace or upgrade our management information systems, the failure to manage costs or our inability to respond effectively to growth or plan for future expansion could cause our growth to stop. If we fail to manage our growth, our business could suffer.

IF WE FAIL TO INTEGRATE OUR RECENT ACQUISITION IN GERMANY WITH OUR OPERATIONS, OUR BUSINESS COULD SUFFER.

On February 16, 2001, we acquired all of the outstanding shares of MAP located near Munich, Germany. We are currently in the process of integrating our operations with those of MAP. The integration requires significant efforts from each company. We may find it difficult to integrate the operations of MAP. MAP personnel may leave MAP because of the acquisition and MAP licensees, distributors or suppliers may terminate their arrangements with MAP, or demand amended terms to these arrangements. Additionally, our management may have their attention diverted while trying to integrate the two companies. This diversion or these difficulties in integration could have an adverse impact on us. If we are not able to successfully integrate the operations of MAP, we may not realize the anticipated benefits of the MAP acquisition.

WE MANUFACTURE SUBSTANTIALLY ALL OF OUR PRODUCTS OUTSIDE THE UNITED STATES AND SELL A SIGNIFICANT PORTION OF OUR PRODUCTS IN NON-U.S. MARKETS, SUBJECTING US TO VARIOUS RISKS RELATING TO INTERNATIONAL ACTIVITIES THAT COULD ADVERSELY AFFECT OUR OVERALL PROFITABILITY.

Sales outside North and Latin America accounted for approximately 51%, 48%, and 46% of our net revenues in fiscal years 2002, 2001 and 2000, respectively. We expect that sales within these areas will account for approximately 50% of our net revenues in the foreseeable future. Our sales outside of North America and our operations in Europe, Australia and Asia are subject to several difficulties and risks that are separate and distinct from those we face in our domestic operations, including:

- - fluctuations in currency exchange rates;
- - tariffs and other trade barriers;
- - compliance with foreign medical device manufacturing regulations;
- - reduction in third party payer reimbursement for our products;
- - inability to obtain import licenses;

- - changes in trade policies and in domestic and foreign tax policies;
- - possible changes in export or import restrictions; and
- - the modification or introduction of other governmental policies with potentially adverse effects.

FLUCTUATIONS IN FOREIGN CURRENCY EXCHANGE RATES COULD RESULT IN DECLINES IN OUR REPORTED SALES AND EARNINGS.

Since our international sales and a significant portion of our manufacturing costs are denominated in local currencies and not in U.S. dollars, our reported sales and earnings are subject to fluctuations in foreign exchange rates. We had foreign currency transaction losses in recent periods and may have further losses in the future. We expect that international sales will continue to be a significant portion of our business and that a significant portion of our manufacturing costs will continue to be denominated in Australian dollars.

GOVERNMENT AND PRIVATE INSURANCE PLANS MAY NOT REIMBURSE PATIENTS FOR OUR PRODUCTS, WHICH COULD RESULT IN REDUCTIONS IN SALES OR SELLING PRICES FOR OUR PRODUCTS.

Our ability to sell our products depends in large part on the extent to which reimbursement for the cost of our products will be available from government health administration authorities, private health insurers and other organizations. These third party payors are increasingly challenging the prices charged for medical products and services. Therefore, even if a product is approved for marketing, we cannot assure you that reimbursement will be allowed for such product or that the reimbursement amount will be adequate or, if adequate, will not subsequently be reduced. For example, in some markets, such as Spain, France and Germany, government reimbursement is currently available for purchase or rental of our products but is subject to constraints such as price controls or unit sales limitations. In other markets, such as Australia and the United Kingdom, there is currently limited or no reimbursement for devices that treat sleep disordered breathing related respiratory conditions. Additionally, future legislation or regulation concerning the health care industry or third party or governmental coverage and reimbursement, particularly, legislation or regulation limiting consumers' reimbursement rights may harm our business. As we continue to develop new products, those products will generally not qualify for reimbursement, if at all, until they are approved for marketing. In the United States, we sell our products primarily to home health care dealers and to sleep clinics. We do not file claims and bill governmental programs and other third party payors directly for reimbursement for our products. However, we are still subject to laws and regulations relating to governmental reimbursement programs, particularly Medicaid and Medicare.

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In particular, the federal Anti-Kickback Law prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. The government has interpreted this law broadly to apply to the marketing and sales activities of manufacturers and distributors like us. Many states have adopted laws similar to the federal Anti-Kickback Law. We are also subject to other federal and state fraud laws applicable to payment from any third party payer. These laws prohibit persons from knowingly and willfully filing false claims or executing a scheme to defraud any healthcare benefit program, including private third party payors. These laws may apply to manufacturers and distributors who provide information on coverage, coding, and reimbursement of their products to persons who do bill third party payors. Any violation of these laws and regulations could result in civil and criminal penalties, including fines.

COMPLYING WITH FDA AND OTHER REGULATIONS IS AN EXPENSIVE AND TIME-CONSUMING PROCESS, AND ANY FAILURE TO COMPLY COULD RESULT IN SUBSTANTIAL PENALTIES.

We are subject to various federal, state, local and international regulations regarding the testing, manufacture, distribution, marketing, promotion, record keeping and reporting of our products. In particular, our failure to comply with FDA regulations could result in, among other things, recalls of our products, substantial fines and/or criminal charges against us and our employees.

PRODUCT SALES, INTRODUCTIONS OR MODIFICATIONS MAY BE DELAYED OR CANCELED AS A RESULT OF THE FDA OR SIMILAR FOREIGN REGULATIONS, WHICH COULD CAUSE OUR SALES TO DECLINE.

Before we can market or sell a new medical device in the United States, we must obtain FDA clearance, which can be a lengthy and time-consuming process. We generally receive clearance from the FDA to market our products in the United States under Section 510(k) of the Federal Food, Drug, and Cosmetic Act or our products are exempt from the 510(k) clearance process. We have modified some of our 510(k) approved products without submitting new 510(k) notices, which we do not believe were required. However, if the FDA disagrees with us and requires us to submit new 510(k) notifications for modifications to our existing products,

we may be required to stop marketing the products while the FDA reviews the 510(k) notification. Any new product introduction or existing product modification could be subjected to a lengthier, more rigorous FDA examination process. For example, in certain cases we may need to conduct clinical trials of a new product prior to submitting a 510(k) notice. Additionally, we may be required to obtain premarket approvals for our products. The requirements of these more rigorous processes could delay product introductions and increase the costs associated with FDA compliance. Marketing and sale of our products outside the United States are also subject to regulatory clearances and approvals, and if we fail to obtain these regulatory approvals, our sales could suffer. We cannot assure you that any new products we develop will receive required regulatory approvals from U.S. or foreign regulatory agencies.

#### OFF LABEL MARKETING OF OUR PRODUCTS COULD RESULT IN SUBSTANTIAL PENALTIES.

Clearance under Section 510(k) only permits us to market our products for the uses indicated on the labeling cleared by the FDA. We may request additional label indications for our current products, and the FDA may deny those requests outright, require additional expensive clinical data to support any additional indications or impose limitations on the intended use of any cleared products as a condition of clearance. If the FDA determines that we have marketed our products for off label use, we could be subject to fines, injunctions or other penalties.

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#### DISRUPTIONS IN THE SUPPLY OF COMPONENTS FROM OUR SINGLE SOURCE SUPPLIERS COULD RESULT IN A SIGNIFICANT REDUCTION IN SALES AND PROFITABILITY.

We purchase uniquely configured components for our devices from single-source suppliers. We cannot assure you that a replacement supplier would be able to configure its components for our devices on a timely basis or, in the alternative, that we would be able to reconfigure our devices to integrate the replacement part. A reduction or stoppage in supply while a replacement supplier reconfigures its components, or while we reconfigure our components for the replacement part, would limit our ability to manufacture our devices, which could result in a significant reduction in sales and profitability. We cannot assure you that our inventories would be adequate to meet our production needs during any prolonged interruption of supply.

#### OUR INTELLECTUAL PROPERTY MAY NOT PROTECT OUR PRODUCTS, AND OUR PRODUCTS MAY INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

We rely on a combination of patents, trade secrets and non-disclosure agreements to protect our intellectual property. Our success depends, in part, on our ability to obtain and maintain United States and foreign patent protection for our products, their uses and our processes to preserve our trade secrets and to operate without infringing on the proprietary rights of third parties. We have a number of pending patent applications, and we do not know whether any patents will issue from any of these applications. We do not know whether any of the claims in our issued patents or pending applications will provide us with any significant protection against competitive products or otherwise be commercially valuable. Legal standards regarding the validity of patents and the proper scope of their claims are still evolving, and there is no consistent law or policy regarding the valid breadth of claims. Additionally, there may be third party patents, patent applications and other intellectual property relevant to our products and technology which are not known to us and that block or compete with our products.

We face the risks that:

- - third parties will infringe our intellectual property rights;
- - our non-disclosure agreements will be breached;
- - we will not have adequate remedies for infringement;
- - our trade secrets will become known to or independently developed by our competitors; or
- - any third parties will be issued patents that may prevent the sale of our products or require us to license and pay fees or royalties in order for us to be able to market some of our products.

We are currently engaged in litigation relating to the enforcement and defense of a number of our patents. Additional litigation may be necessary to enforce patents issued to us, to protect our proprietary rights, or to defend third party claims that we have infringed upon proprietary rights of others. The defense and prosecution of patent claims, including these pending claims, as well as participation in other inter-party proceedings, can be expensive and time consuming, even in those instances in which the outcome is favorable to us. If the outcome of any litigation or proceeding brought against us were adverse, we could be subject to significant liabilities to third parties, could be required to obtain licenses from third parties or could be required to cease sales of the affected products. Additionally, the laws regarding the enforceability of patents vary from country to country, and we cannot assure you that any patent issues we face will be uniformly resolved, or that local laws will provide us with consistent rights and benefits.

WE ARE SUBJECT TO PRODUCT LIABILITY CLAIMS THAT MAY EXCEED THE SCOPE AND AMOUNT OF OUR INSURANCE COVERAGE, WHICH WOULD EXPOSE US TO LIABILITY FOR UNINSURED CLAIMS.

We are subject to potential product liability claims as a result of the design, manufacture and marketing of medical devices. Any product liability claim brought against us, with or without merit, could result in the increase of our product liability insurance rates. In addition, we would have to pay any amount awarded by a court in excess of our policy limits. Our insurance policies have various exclusions, and thus we may be subject to a product liability claim for which we have no insurance coverage, in which case, we may have to pay the entire amount of any award. We cannot assure you that our insurance coverage will be adequate or that all claims brought against us will be covered by our insurance. Insurance varies in cost and can be difficult to obtain, and we cannot assure you that we will be able to obtain insurance in the future on terms acceptable to us or at all. A successful product liability claim brought against us in excess of our insurance coverage, if any, may require us to pay substantial amounts, which could harm our business.

OUR BUSINESS COULD SUFFER IF WE LOSE THE SERVICES OF KEY MEMBERS OF OUR MANAGEMENT.

We are dependent upon the continued services of key members of our senior management and a limited number of key employees and consultants. The loss of the services of any one of these individuals could significantly disrupt our operations. Additionally, our future success will depend, among other factors, on our ability to continue to hire and retain the necessary qualified scientific, technical and managerial personnel. We compete for such personnel with numerous other companies, academic institutions and organizations.

OUR QUARTERLY OPERATING RESULTS ARE SUBJECT TO FLUCTUATION FOR A VARIETY OF REASONS.

Our operating results have, from time to time, fluctuated on a quarterly basis and may be subject to similar fluctuations in the future. These fluctuations may result from a number of factors, including:

- - the introduction of new products by us or our competitors;
- - the geographic mix of product sales;
- - the success of our marketing efforts in new regions;
- - changes in third party reimbursement;
- - timing of regulatory clearances and approvals;
- - timing of orders by distributors;
- - expenditures incurred for research and development;
- - competitive pricing in different regions;
- - seasonality;
- - the cost and effect of promotional and marketing programs; and
- - the effect of foreign currency transaction gains or losses.

IF A NATURAL OR MAN MADE DISASTER STRIKES OUR MANUFACTURING FACILITIES, WE WILL BE UNABLE TO MANUFACTURE OUR PRODUCTS FOR A SUBSTANTIAL AMOUNT OF TIME AND OUR SALES WILL DECLINE.

We manufacture a significant portion of our products in our facilities in Australia. These facilities and the manufacturing equipment we use to produce our products would be costly to replace and could require substantial lead time to repair or replace. The facilities may be affected by natural or man made disasters and in the event it was affected by a disaster, we would be forced to rely on third party manufacturers. Although we believe we possess adequate insurance for damage to our property and the disruption of our business from casualties, such insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all.

DELAWARE LAW, PROVISIONS IN OUR CHARTER AND OUR SHAREHOLDER RIGHTS PLAN COULD MAKE THE ACQUISITION OF OUR COMPANY BY ANOTHER COMPANY MORE DIFFICULT.

Provisions of our certificate of incorporation may have the effect of delaying or preventing changes in control or management which might be beneficial to us or our securityholders. In particular, our board of directors is divided into three classes, serving for staggered three-year terms. Because of this classification it will require at least two annual meetings to elect directors constituting a majority of our board of directors.

Additionally, our board of directors has the authority to issue up to 2,000,000 shares of preferred stock and to determine the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without further vote or action by the stockholders. Under our stockholder rights plan, we have also issued purchase rights to the holders of our common stock that entitle those holders to purchase our Series A Junior Participating Preferred Stock at a discount, under certain circumstances. The rights of the holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control, may discourage bids for our common stock at a premium over the market price of our common stock and may adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock.

YOU MAY NOT BE ABLE TO ENFORCE THE JUDGMENTS OF U.S. COURTS AGAINST SOME OF OUR ASSETS OR OFFICERS AND DIRECTORS

A substantial portion of our assets are located outside the United States. Additionally, two of our seven directors and three of our eight officers reside outside the United States, along with all or a substantial portion of the assets of these persons. As a result, it may not be possible for investors to enforce judgments of U.S. courts relating to any liabilities under U.S. securities laws against our assets, those persons or their assets. In addition, we have been advised by our Australian counsel that some doubt exists as to the ability of investors to pursue claims based on U.S. securities laws against these assets or these persons in Australian courts.

The information contained in this section is not intended to be an exhaustive description of the risks and uncertainties inherent in our business or in our strategic plans. Please see Item 1 "Business" and Item 3 "Legal Proceedings".

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<CAPTION>

ITEM 8 CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

a) Index to Consolidated Financial Statements

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	----
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Independent Auditors' Report	F1
Consolidated Balance Sheets as of June 30, 2002 and 2001	F2
Consolidated Statements of Income for the years ended June 30, 2002, 2001 and 2000	F3
Consolidated Statements of Stockholders' Equity for the years ended June 30, 2002, 2001 and 2000	F4
Consolidated Statements of Cash Flows for the years ended June 30, 2002, 2001 and 2000	F5
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Schedule II - Valuation and Qualifying Accounts and Reserves	42
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b) Supplementary Data

Quarterly Financial Information (unaudited). The quarterly results for the years ended June 30, 2002 and 2001 are summarized below (in thousands, except per share amounts):

<TABLE>  
<CAPTION>

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Fiscal Year
2002					
-----					
<S>	<C>	<C>	<C>	<C>	<C>
Net revenues	\$ 46,129	\$ 48,924	\$ 52,776	\$ 56,247	\$204,076
Gross profit	30,833	31,837	33,771	36,808	133,249
Net income	8,538	8,779	10,379	9,810	37,506
Basic earnings per share	\$ 0.27	\$ 0.27	\$ 0.32	\$ 0.30	\$ 1.17
Diluted earnings per share	\$ 0.25	\$ 0.26	\$ 0.31	\$ 0.29	\$ 1.10
-----					
2001					
-----					
Net revenues	\$ 31,082	\$ 34,366	\$ 42,680	\$ 47,028	\$155,156
Gross profit	21,087	23,021	28,923	31,748	104,779

Net income (loss)		6,580	6,898	(10,194)	8,346	11,630
Basic earnings (loss) per share	\$	0.21	\$ 0.22	(\$0.33)	\$ 0.27	\$ 0.37
Diluted earnings (loss) per share	\$	0.20	\$ 0.21	(\$0.30)	\$ 0.25	\$ 0.35

NB. Per share amounts for each quarter are computed independently, and, due to the computation formula, the sum of the four quarters may not equal the year.

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

Incorporated by reference to our definitive Proxy Statement for our November 11, 2002, meeting of stockholders, which will be filed with the Securities and Exchange Commission within 120 days after June 30, 2002.

On August 21, 2002, Dana Voien was appointed Senior Vice President, New Business, Marketing and Clinical Education Affairs and replaced Dr Deirdre Stewart as an Officer of the Company. Dr Stewart has been appointed to the new position of Vice President, Strategic Clinical Initiatives.

On September 1, 2002, David Pendarvis was appointed Vice President, Global General Counsel and an Officer of the Company. Norman DeWitt, ResMed's former General Counsel and former officer, will be leaving full-time employment with ResMed by the end of this calendar year.

ITEM 11 EXECUTIVE COMPENSATION

Incorporated by reference to our definitive Proxy Statement for our November 11, 2002, meeting of stockholders, which will be filed with the Securities and Exchange Commission within 120 days after June 30, 2002.

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ITEM 12 SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Incorporated by reference to our definitive Proxy Statement for our November 11, 2002, meeting of stockholders, which will be filed with the Securities and Exchange Commission within 120 days after June 30, 2002.

ITEM 13 CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

No material transactions.

PART IV

ITEM 14 EXHIBITS, CONSOLIDATED FINANCIAL STATEMENTS, SCHEDULE, AND REPORTS ON FORM 8-K

- a) The following documents are filed as part of this report:
1. CONSOLIDATED FINANCIAL STATEMENTS AND SCHEDULE  
The consolidated financial statements and schedule of the Company and its consolidated subsidiaries are set forth in the "Index to Consolidated Financial Statements" under Item 8 of this report.
  2. EXHIBITS
    - 2.1 Sale and Assignment Agreement, dated as of February 16, 2001 between ResMed Inc, ResMed Beteiligungs GmbH and the shareholders of MAP Medizin-Technologie GmbH\*
    - 2.2 Agreement and Plan of Merger dated as of May 14, 2002 among ResMed Inc., Servo Magnetics Acquisition Inc., Servo Magnetics Incorporated and Mr Leslie Hoffman.
    - 3.1 Certificate of Incorporation of Registrant, as amended\*\*
    - 3.2 By-laws of Registrant\*\*
    - 4.1 Form of certificate evidencing shares of Common Stock\*\*
    - 4.2 Rights agreement dated as of April 23, 1997\*\*\*
    - 4.3 Indenture dated as of June 20, 2001, between ResMed Inc and American Stock Transfer & Trust Company\*\*\*\*\*
    - 4.4 Registration Rights Agreement dated as of June 20, 2001, by and between ResMed Inc., Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Banc Alex Brown Inc., William Blair & Company, L.L.C., Macquarie Bank Limited and UBS Warburg LLC\*\*\*\*\*
    - 4.5 Registration Rights Agreement dated as of May 14, 2002 between ResMed Inc., and Mr Leslie Hoffman
    - 10.1 1995 Stock Option Plan\*\*
    - 10.2 1997 Equity Participation Plan\*\*\*\*
    - 10.3 Licensing Agreement between the University of Sydney and ResMed Limited dated May 17, 1991, as amended\*\*
    - 10.4 Consulting Agreement between Colin Sullivan and ResMed Limited

effective from 1 January 1998\*\*\*\*\*

10.5 Loan Agreement between the Australian Trade Commission and ResMed Limited dated May 3, 1994\*\*

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ITEM 14 EXHIBITS, CONSOLIDATED FINANCIAL STATEMENTS, SCHEDULE, AND REPORTS ON FORM 8-K (CONTINUED)

10.6 Lease for 10121 Carroll Canyon Road, San Diego CA 92131-1109, USA\*\*\*\*\*  
10.7 Sale and Leaseback Agreements for 97 Waterloo Rd, North Ryde, Australia  
10.8 Employment Agreement dated as of May 14, 2002, between Servo Magnetics Acquisition Inc., and Mr Leslie Hoffman.  
10.9 Agreement for the purchase of Lot 6001, Norwest Boulevard, Norwest Business Park, Baulkham Hills, Australia  
11.1 Computation of Earnings per Common Share  
21.1 Subsidiaries of the Registrant  
23.1 Independent Auditors' Consent and Report on Schedule

\*Incorporated by reference to the Registrant's Report on Form 8-K dated March 2, 2001.

\*\*Incorporated by reference to the Registrant's Registration Statement on Form S-1 (No. 33-91094) declared effective on June 1, 1995.

\*\*\*Incorporated by reference to the Registrant's Registration Statement on Form 8-A12G filed on April 25, 1997.

\*\*\*\*Incorporated by reference to the Registrant's 1997 Proxy Statement.

\*\*\*\*\*Incorporated by reference to the Registrant's Report on Form 10-K dated June 30, 1998.

\*\*\*\*\*Incorporated by reference to the Registrant's Report on Form 10-K dated June 30, 2001.

b) Reports on Form 8-K  
None.

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#### INDEPENDENT AUDITORS' REPORT

The Board of Directors and Stockholders  
ResMed Inc:

We have audited the accompanying consolidated balance sheets of ResMed Inc and subsidiaries as of June 30, 2002, and 2001, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the years in the three-year period ended June 30, 2002. 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 auditing standards generally accepted in the United States of America. 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 ResMed Inc. and subsidiaries as of June 30, 2002 and 2001, and the results of their operations and their cash flows for each of the years in the three-year period ended June 30, 2002, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 6 to the consolidated financial statements, the Company has adopted the provisions of SFAS No. 142 "Accounting for Goodwill and Other Intangible Assets" and accordingly has changed its method of accounting for goodwill.

/S/ KPMG LLP  
San Diego, California  
August 9, 2002

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<TABLE>  
<CAPTION>

RESMED INC AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS  
JUNE 30, 2002 AND 2001  
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	June 30, 2002	June 30, 2001
	<C>	<C>
<S>		
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 72,860	\$ 40,136
Marketable securities available for sale (note 3)	19,979	62,616
Accounts receivable, net of allowance for doubtful accounts of \$1,938 and \$892 at June 30, 2002 and 2001, respectively	46,199	32,248
Inventories, net (note 4)	41,173	29,994
Deferred income taxes (note 11)	9,289	4,152
Prepaid expenses and other current assets	4,213	8,736
Total current assets	193,713	177,882
	-----	-----
Property, plant and equipment, net of accumulated depreciation of 31,084 at June 30, 2002 and \$19,930 at June 30, 2001 (note 5)	79,279	55,092
Patents, net of accumulated amortization of \$1,862 and \$1,030 at June 30, 2002 and 2001, respectively	2,653	1,390
Goodwill (note 6)	92,536	47,870
Other assets	8,010	5,856
Total non current assets	182,478	110,208
	-----	-----
Total assets	\$376,191	\$288,090
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 11,605	\$ 7,971
Accrued expenses (note 7)	17,052	16,751
Income taxes payable	6,905	8,888
Payable for property purchase	11,552	-
Current portion of deferred profit on sale-leaseback	1,933	-
Total current liabilities	49,047	33,610
Non current liabilities:		
Deferred revenue	7,259	4,114
Convertible subordinated notes (note 8)	123,250	150,000
Deferred profit on sale-leaseback	3,705	-
Total non current liabilities	134,214	154,114
Total liabilities	183,261	187,724
Stockholders' equity: (note 9)		
Preferred stock, \$.01 par value, 2,000,000 shares authorized; none issued	-	-
Series A Junior Participating preferred stock, \$.01 par value, 250,000 shares authorized; none issued	-	-
Common stock, \$.004 par value, 100,000,000 shares authorized; Issued and outstanding 33,108,207 at June 30, 2002 and 31,478,780 at June 30, 2001	132	126
Additional paid-in capital	94,153	52,675
Retained earnings	114,643	77,137
Treasury stock	(7,873)	-
Accumulated other comprehensive loss	(8,125)	(29,572)
Total stockholders' equity	192,930	100,366
Commitments and contingencies (notes 14 and 17)	-	-
	-----	-----
Total liabilities and stockholders' equity	\$376,191	\$288,090
	=====	=====

</TABLE>

See accompanying notes to consolidated financial statements.

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<TABLE>  
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RESMED INC AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF INCOME  
YEARS ENDED JUNE 30, 2002, 2001 AND 2000  
(IN THOUSANDS, EXCEPT PER SHARE DATA)

June 30,	June 30,	June 30,
2002	2001	2000



<S>	<C>	<C>	<C>
Net revenues	\$204,076	\$155,156	\$115,615
Cost of sales	70,827	50,377	36,991
Gross profit	133,249	104,779	78,624
Operating expenses:			
Selling, general and administrative	64,481	49,364	36,987
Provision for restructure (note 7)	-	550	-
In-process research and development write off (note 15)	350	17,677	-
Research and development	14,910	11,146	8,499
Donations to Research Foundations	2,349	-	-
Total operating expenses	82,090	78,737	45,486
Income from operations	51,159	26,042	33,138
Other income (expenses):			
Gain on extinguishment of debt	6,549	-	-
Interest income (expense), net	(3,224)	(762)	801
Government grants	-	72	279
Other, net (note 10)	108	1,962	(52)
Total other income (expenses), net	3,433	1,272	1,028
Income before income taxes	54,592	27,314	34,166
Income taxes (note 11)	17,086	15,684	11,940
Net income	\$ 37,506	\$ 11,630	\$ 22,226
Basic earnings per share	\$ 1.17	\$ 0.37	\$ 0.74
Diluted earnings per share	\$ 1.10	\$ 0.35	\$ 0.69
Basic shares outstanding	32,174	31,129	30,153
Diluted shares outstanding	34,080	33,484	32,303

See accompanying notes to consolidated financial statements.

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<TABLE>  
<CAPTION>

RESMED INC AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY  
YEARS ENDED JUNE 30, 2002, 2001 AND 2000  
(IN THOUSANDS)

		Common Stock	Additional	Treasury Stock	Retained	Accumulated
		-----	Paid-in	-----	Earnings	Other
(loss)	Total	Shares	Capital	Shares	Amount	Income
-----						
<S>	<C>	<C>	<C>	<C>	<C>	<C>
<C>						
BALANCE, JUNE 30, 1999		29,616	\$118	\$33,677	\$ 43,281	(\$5,429)
\$ 71,647						
Common stock issued to consultants		10	-	126	-	-
126						
Common stock issued on exercise of options (note 9)		968	4	6,376	-	-
6,380						
Tax benefit from exercise of options		-	-	1,316	-	-
1,316						
Comprehensive income:						
Net income		-	-	-	22,226	-
22,226						
Other comprehensive income						
Foreign currency translation adjustments						(7,723)
(7,723)						
Comprehensive income						

BALANCE, JUNE 30, 2000	30,594	122	41,495		65,507	(13,152)
93,972						
Common stock issued on exercise of options (note 9)	885	4	7,939		-	-
7,943						
Tax benefit from exercise of options	-	-	3,241		-	-
3,241						
Comprehensive income:						
Net income	-	-	-		11,630	-
11,630						
Other comprehensive income						
Foreign currency translation adjustments	-	-	-		-	(16,420)
(16,420)						
Comprehensive income/(loss)						
BALANCE, JUNE 30, 2001	31,479	126	52,675		77,137	(29,572)
100,366						
Common stock issued on exercise of options (note 9)	776	3	9,778		-	
9,781						
Common stock issued for acquisitions	853	3	24,781			
24,784						
Treasury stock purchases				(290)	(7,873)	
(7,873)						
Tax benefit from exercise of options	-	-	6,919		-	
6,919						
Comprehensive income:						
Net income					37,506	
37,506						
Other comprehensive income						
Foreign currency translation adjustments						21,342
21,342						
Unrealized gains on marketable securities						105
105						
Comprehensive income/(loss)						
BALANCE, JUNE 30, 2002	33,108	\$132	\$94,153	(290)	\$(7,873)	\$114,643
\$192,930						\$(8,125)

(TABLE CONTINUED)

	Comprehensive Income	
<S>	<C>	
BALANCE, JUNE 30, 1999		
Common stock issued to consultants		
Common stock issued on exercise of options (note 9)		
Tax benefit from exercise of options		
Comprehensive income:		
Net income	\$ 22,226	
Other comprehensive income		
Foreign currency translation adjustments	(7,723)	
Comprehensive income	\$ 14,503	
BALANCE, JUNE 30, 2000		
Common stock issued on exercise of options (note 9)		
Tax benefit from exercise of options		
Comprehensive income:		
Net income	\$ 11,630	
Other comprehensive income		
Foreign currency translation adjustments	(16,420)	
Comprehensive income/(loss)	\$ (4,790)	
BALANCE, JUNE 30, 2001		
Common stock issued on exercise of options (note 9)		
Common stock issued for acquisitions		
Treasury stock purchases		
Tax benefit from exercise of options		

Comprehensive income:	
Net income	37,506
Other comprehensive income	
Foreign currency translation adjustments	21,342
Unrealized gains on marketable securities	105
Comprehensive income/(loss)	\$ 58,953

-----  
BALANCE, JUNE 30, 2002  
-----

</TABLE>

See accompanying notes to consolidated financial statements.

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<TABLE>  
<CAPTION>

RESMED INC AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
YEARS ENDED JUNE 30, 2002, 2001 AND 2000  
(IN THOUSANDS)

	June 30, 2002	June 30, 2001	June 30, 2000
	<C>	<C>	<C>
<S>			
Cash flows from operating activities:			
Net income:	\$ 37,506	\$ 11,630	\$ 22,226
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	9,972	7,015	6,248
Goodwill amortization	-	1,430	690
Provision for service warranties	(85)	174	184
Deferred income taxes	(6,153)	(2,306)	77
Foreign currency options revaluation	767	2,766	2,158
Deferred borrowing costs	1,254	-	-
Tax benefit from stock options exercised	6,919	3,241	1,316
Gain on extinguishment of debt	(6,549)	-	-
Other, net	(162)	-	126
Restructuring provision	-	550	-
Purchased in-process research and development write off	350	17,677	-
Changes in operating assets and liabilities, net of effect of acquisitions:			
Accounts receivable, net	(9,765)	(5,531)	(7,394)
Inventories, net	(7,063)	(8,130)	(6,027)
Prepaid expenses and other current assets	4,785	(3,470)	(1,572)
Accounts payable, accrued expenses and other liabilities	3,864	4,474	2,243
Net cash provided by operating activities	35,640	29,520	20,275
	-----	-----	-----
Cash flows from investing activities:			
Purchases of property, plant and equipment	(28,185)	(27,459)	(16,168)
Purchases of marketable securities - available for sale	(393,072)	(79,879)	(36,804)
Proceeds from sale of marketable securities - available for sale	435,871	20,976	38,717
Patent registration costs	(1,720)	(516)	(961)
Business acquisitions, net of cash acquired of \$812 (note 15)	(13,871)	(55,070)	(576)
Purchases of investments	(3,987)	(2,602)	(2,732)
Proceeds from sale-leaseback	18,500	-	-
Net cash provided by (used in) investing activities	13,536	(144,550)	(18,524)
	-----	-----	-----
Cash flows from financing activities:			
Proceeds from issuance of common stock, net	9,781	7,943	6,380
Repayment of borrowings	(3,022)	(82,854)	-
Proceeds from borrowings, net of borrowing costs	28,402	213,937	-
Redemption of borrowings	(48,454)	-	-
Purchases of treasury stock	(7,873)	-	-
Net cash provided by (used in) financing activities	(21,166)	139,026	6,380
	-----	-----	-----
Effect of exchange rate changes on cash	4,714	(2,110)	(989)
Net increase in cash and cash equivalents	32,724	21,886	7,142
Cash and cash equivalents at beginning of the year	40,136	18,250	11,108
Cash and cash equivalents at end of the year	\$ 72,860	\$ 40,136	\$ 18,250
	-----	-----	-----
Supplemental disclosure of cash flow information:			
Income taxes paid	\$ 18,328	\$ 12,908	\$ 9,716
Interest paid	6,557	1,439	-
Fair value of assets acquired in acquisitions	\$ 9,060	\$ 33,139	\$ 383
Liabilities assumed	(5,872)	(24,821)	(36)
Goodwill on acquisition	36,279	47,119	229
Fair value of shares issued for acquisitions	(24,784)	-	-

Cash paid for acquisition, including acquisition costs	\$ 14,683	\$ 55,437	\$ 576
	-----	-----	-----

</TABLE>

See accompanying notes to consolidated financial statements.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

1. ORGANIZATION AND BASIS OF PRESENTATION

ResMed Inc (the "Company") is a Delaware corporation formed in March 1994 as a holding company for ResMed Holdings Ltd (RHL), a company resident in Australia. The Company designs, manufactures and markets devices for the evaluation and treatment of sleep disordered breathing, primarily obstructive sleep apnea. The Company's corporate offices are based in San Diego, California with its principal manufacturing operation located in Australia. Other major distribution and sales sites are located in the United States, United Kingdom, France, Germany, Sweden, Switzerland and Singapore.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of Consolidation

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

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. Actual results could differ from management's estimates.

(b) Revenue Recognition

Revenue on product sales is recorded at the time of shipment. Royalty revenue from license agreements is recorded when earned. Service revenue received in advance from service contracts is initially capitalized and progressively recognized as revenue over the life of the service contract. Revenue from sale of marketing or distribution rights is initially capitalized and progressively recognized as revenue over the life of the contract.

(c) Cash and Cash Equivalents

Cash equivalents including certificates of deposit, commercial paper and other highly liquid investments are stated at cost, which approximates market. Investments with original maturities of 90 days or less are considered to be cash equivalents for purposes of the consolidated statements of cash flows.

(d) Inventories

Inventories are stated at the lower of cost or market, determined principally by the first-in, first-out method.

(e) Property, Plant and Equipment

Property, plant and equipment is recorded at cost. Depreciation expense is computed using the straight-line method over the estimated useful lives of the assets, generally two to ten years. Straight-line and accelerated methods of depreciation are used for tax purposes. Maintenance and repairs are charged to expense as incurred.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(f) Patents

The registration costs for new patents are capitalized and amortized over the estimated useful life of the patent, generally five years. In the event of a patent being superseded, the unamortized costs are written off

immediately.

(g) Goodwill

In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 142, Goodwill and Other Intangible Assets. As allowed under the Standard, the Company has adopted SFAS 142 effective July 1, 2001. SFAS 142 requires goodwill and intangible assets with indefinite useful lives to no longer be amortized, but instead be tested for impairment at least annually.

With the adoption of SFAS 142, the Company reassessed the useful lives and residual values of all acquired intangible assets to make any necessary amortization period adjustments. Based on that assessment, only goodwill was determined to have an indefinite useful life and no adjustments were made to the amortization period or residual values of other intangible assets.

In accordance with SFAS 142 the Company has completed its initial assessment of goodwill impairment. The results of the review indicated that no impaired goodwill currently exists.

Amortization expense of goodwill was \$nil, \$1,430,000 and \$690,000 for the years ended June 30, 2002, 2001 and 2000, respectively.

(h) Government Grants

Government grants revenue is recognized when earned. Grants have been obtained by the Company from the Australian Federal Government to support the continued development of the Company's proprietary positive airway pressure technology and to assist development of export markets. Grants have been recognized in the amount of \$nil, \$72,000 and \$279,000 for the years ended June 30, 2002, 2001 and 2000, respectively.

(i) Foreign Currency

The consolidated financial statements of the Company's non-U.S. subsidiaries, whose functional currencies are other than U.S. dollars, are translated into U.S. dollars for financial reporting purposes. Assets and liabilities of non-U.S. subsidiaries whose functional currencies are other than the U.S. dollar are translated at year end exchange rates, and revenue and expense transactions are translated at average exchange rates for the year. Cumulative translation adjustments are recognized as part of comprehensive income, as described in Note 16, and are included in accumulated other comprehensive loss in the consolidated balance sheet until such time as the subsidiary is sold or substantially or completely liquidated. Gains and losses on transactions, denominated in other than the functional currency of the entity, are reflected in operations.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(j) Research and Development

Research and development costs are expensed in the period incurred.

(k) Earnings Per Share

The weighted average shares used to calculate basic earnings per share were 32,174,000, 31,129,000, and 30,153,000 for the years ended June 30, 2002, 2001 and 2000, respectively. The difference between basic earnings per share and diluted earnings per share is attributable to the impact of outstanding stock options during the periods presented. Stock options had the effect of increasing the number of shares used in the calculation (by application of the treasury stock method) by 1,906,000, 2,355,000 and 2,150,000 for the years ended June 30, 2002, 2001 and 2000, respectively.

(l) Financial Instruments

The carrying value of financial instruments, such as of cash and cash equivalents, marketable securities - available for sale, accounts receivable, government grants receivable and accounts payable approximate their fair value because of their short term nature. The estimated fair value of the Company's long-term debt at June 30, 2002 approximates \$102.5 million compared with the carrying value of \$123.3 million. Foreign currency option contracts are marked to market and therefore reflect their fair value. The Company does not hold or issue financial instruments for trading purposes.

The fair value of financial instruments is defined as the amount at which the instrument could be exchanged in a current transaction between willing parties.

(m) Foreign Exchange Risk Management

The Company enters into various types of foreign exchange contracts in managing its foreign exchange risk, including derivative financial instruments encompassing forward exchange contracts and foreign currency options.

The purpose of the Company's foreign currency hedging activities is to protect the Company from adverse exchange rate fluctuations with respect to net cash movements resulting from the sales of products to foreign customers and Australian manufacturing activities. The Company enters into foreign currency option contracts to hedge anticipated sales and manufacturing costs, principally denominated in Australian dollars and Euros. The terms of such foreign currency option contracts generally do not exceed three years.

Unrealized gains or losses are recognized as incurred in the consolidated balance sheets as either other assets or other liabilities and are recorded within other income, net on the Company's consolidated statements of income. Unrealized gains and losses on currency derivatives are determined based on dealer quoted prices.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(m) Foreign Exchange Risk Management (continued)

The Company is exposed to credit-related losses in the event of non-performance by counterparties to financial instruments. The credit exposure of foreign exchange options at June 30, 2002 was \$2.8 million, which represents the positive fair value of options held by the Company.

The Company held foreign currency option contracts with notional amounts totaling \$160.5 million and \$223.8 million at June 30, 2002 and 2001, respectively to hedge foreign currency items. These contracts mature at various dates prior to July 2004.

(n) Income Taxes

The Company accounts for income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

(o) Marketable Securities

Management determines the appropriate classification of its investments in debt and equity securities at the time of purchase and re-evaluates such determination at each balance sheet date. Debt securities for which the Company does not have the intent or ability to hold to maturity are classified as available for sale. Securities available for sale are carried at fair value, with the unrealized gains and losses, net of tax, reported in accumulated other comprehensive income (loss). Realized gains and losses are included in other income or expense.

At June 30, 2002 and 2001, the Company's investments in debt securities were classified on the accompanying consolidated balance sheet as marketable securities available for sale. These investments are diversified among high credit quality securities in accordance with the Company's investment policy.

(p) Warranty

Estimated future warranty obligations related to certain products are provided by charges to operations in the period in which the related revenue is recognized.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(g) Impairment of Long-Lived Assets

The Company periodically evaluates the carrying value of long-lived assets to be held and used, including certain identifiable intangible assets, when events and circumstances indicate that the carrying amount of an asset may not be recovered. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceed the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value, less costs to sell.

(r) Capitalized Software Production Costs

Software development costs have been capitalized and will be amortized to the cost of product revenues over the estimated economic lives (generally three to five years) of the products that include such software. Total net capitalized software production costs were \$1,132,000 and \$nil at June 30, 2002 and 2001 respectively.

3. MARKETABLE SECURITIES

The estimated fair value of marketable securities available for sale as of June 30, 2002 and 2001, was \$19,979,000 and \$62,616,000, respectively.

Expected maturities may differ from contractual maturities because the issuers of the securities may have the right to prepay obligations without prepayment penalties.

4. INVENTORIES

Inventories, net were comprised of the following as of June 30, 2002 and 2001 (in thousands):

<TABLE>  
<CAPTION>

	2002	2001
<S>	<C>	<C>
Raw materials	\$ 8,130	\$ 7,584
Work in progress	2,057	98
Finished goods	30,986	22,312
	\$41,173	\$29,994
	-----	-----

</TABLE>

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

5. PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment is comprised of the following as of June 30, 2002 and 2001 (in thousands):

<TABLE>  
<CAPTION>

	2002	2001
<S>	<C>	<C>
Machinery and equipment	\$ 19,381	\$ 10,930
Computer equipment	20,520	12,829
Furniture and fixtures	9,204	8,667
Vehicles	1,531	1,219
Clinical, demonstration and rental equipment	11,651	8,194
Leasehold improvements	685	663
Land	27,121	5,333
Buildings	19,188	27,187
Construction in Progress	1,082	-
	110,363	75,022
	-----	-----
Accumulated depreciation and amortization	(31,084)	(19,930)
	\$ 79,279	\$ 55,092
	-----	-----

</TABLE>

6. GOODWILL AND OTHER INTANGIBLE ASSETS

The Company adopted SFAS 142 on July 1, 2001. The following table reconciles the prior year's reported operating income and net income to their respective pro-forma balances adjusted to exclude goodwill amortization expense which is no longer recorded under SFAS 142, for the years ended June 30, 2002, 2001 and 2000, (In \$ thousands, except per share amounts).

<TABLE>

<CAPTION>

	2002	2001	2000
<S>	<C>	<C>	<C>
OPERATING INCOME:			
Reported income from operations	\$51,159	\$26,042	\$33,138
Add back: goodwill amortization	-	1,430	690
Adjusted income from operations	\$51,159	\$27,472	\$33,828
	-----	-----	-----
NET INCOME:			
Reported net income	\$37,506	\$11,630	\$22,226
Add back: goodwill amortization after tax	-	1,430	690
Adjusted net income	\$37,506	\$13,060	\$22,916
	-----	-----	-----
BASIC EARNINGS PER SHARE:			
Reported basic earnings per share	\$ 1.17	\$ 0.37	\$ 0.74
Goodwill amortization after tax	-	\$ 0.05	\$ 0.02
Adjusted basic earnings per share	\$ 1.17	\$ 0.42	\$ 0.76
	-----	-----	-----
DILUTED EARNINGS PER SHARE:			
Reported diluted earnings per share	\$ 1.10	\$ 0.35	\$ 0.69
Goodwill amortization after tax	-	\$ 0.04	\$ 0.02
Adjusted diluted earnings per share	\$ 1.10	\$ 0.39	\$ 0.71
	-----	-----	-----

</TABLE>

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

6. GOODWILL AND OTHER INTANGIBLE ASSETS (CONTINUED)

Changes in the carrying amount of goodwill for the year ended June 30, 2002, were as follows:

<TABLE>

<CAPTION>

In US\$ thousands)	2002
<S>	<C>
Balance at June 30, 2001	\$47,870
Foreign currency translation adjustments	8,387
Goodwill on acquisition of Labhardt Ag (Note 15)	4,161
Goodwill on acquisition of Servo Magnetics Inc (Note 15)	30,701
Contingent payment for MAP (Note 15)	1,417
Balance at June 30, 2002	\$92,536
	-----

</TABLE>

Other intangible assets amounted to \$2.7 million (net of accumulated amortization of \$1.9 million) and \$1.4 million (net of accumulated amortization of \$1.0 million) at June 30, 2002 and 2001, respectively. These intangible assets consist of patents and are amortized over the estimated useful life of the patent, generally five years. There are no expected residual values related to these intangible assets.

7. ACCRUED EXPENSES

Accrued expenses at June 30, 2002 and 2001 consist of the following (in thousands):

<TABLE>

<CAPTION>

	2002	2001
<S>	<C>	<C>
Service warranties	\$ 744	\$ 739
Consulting and professional fees	596	809



Royalties	55	290
Value added taxes due	847	6,033
Employee related costs	6,817	4,687
Deferred revenue	1,779	1,388
Research foundation grants	1,344	-
Convertible note interest	137	164
Provision for restructure	-	375
Promotional programs	2,746	1,198
Other	1,987	1,068
	\$17,052	\$16,751
	-----	-----

</TABLE>

During the year ended June 30, 2001, the Company took a restructuring charge of \$550,000 associated with the sale and closure of MAP's unprofitable French operation. At June 30, 2002 and 2001, the provision for restructure was \$nil and \$375,000, respectively.

8. LONG-TERM DEBT

<TABLE>  
<CAPTION>

Long-term debt at June 30, 2002 and 2001 consists of the following (in thousands):

	2002	2001
<S>	<C>	<C>
Outstanding at beginning of year	\$150,000	\$ -
Issued	30,000	150,000
Repurchased	(56,750)	-
Outstanding at end of year	\$123,250	\$150,000
	-----	-----

</TABLE>

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

8. LONG-TERM DEBT (CONTINUED)

On June 20, 2001 the Company issued \$150.0 million of 4% convertible subordinated notes that are due to mature on June 20, 2006. On July 3, 2001, the Company received an additional \$30.0 million in over allotments. This increased the total amount of convertible subordinated notes issued to \$180.0 million.

The Company may redeem some or all of the notes at any time before June 20, 2004 at a redemption price of \$1,000 per \$1,000 principal amount of notes, plus accrued and unpaid interest, if any, to the redemption date, if the closing price of the Company's common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the provisional redemption notice. Upon any such provisional redemption, the Company will make an additional payment in cash equal to \$166.67 per \$1,000 principal amount of notes, less the amount of any interest actually paid on the notes before the provisional redemption date.

The Company may also redeem some or all of the notes at any time on or after June 22, 2004, but prior to June 20, 2005, at a redemption price equal to 101.6% of the principal amount of notes redeemed, and at any time after June 19, 2005, at a redemption price of 100.8% of the principal amount of notes, plus in any case accrued and unpaid interest, if any, to the redemption date, if the closing price of the Company's common stock has exceeded 130% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the optional redemption notice.

The notes are general unsecured obligations and are subordinated to all of the Company's existing and future senior indebtedness and will be effectively subordinated to all of the indebtedness and liabilities of the Company's subsidiaries. The indenture governing the notes does not limit the Company or its subsidiaries from incurring senior indebtedness or other indebtedness.

During fiscal 2002, the Company repurchased \$56.8 million face value of its convertible subordinated notes. The total purchase price of the notes was \$49.1 million, including \$0.6 million in accrued interest. The Company recognized a gain of \$4.0 million, net of tax of \$2.5 million on these transactions. As at June 30, 2002, the Company had convertible subordinated notes outstanding of \$123.3 million.

The notes are convertible, at the option of the holder, at any time on or prior to maturity, into shares of common stock of ResMed Inc. The notes are

convertible at a conversion price of \$60.60 per share, which is equal to a conversion rate of 16.5017 shares per \$1,000 principal amount of notes, subject to adjustment.

Interest is to be paid on the notes on June 20 and December 20 of each year.

The notes are general unsecured obligations and are subordinated to all of the Company's existing and future senior indebtedness and will be effectively subordinated to all of the indebtedness and liabilities of the Company's subsidiaries. The indenture governing the notes will not limit the Company or its subsidiaries from incurring senior indebtedness or other indebtedness.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

9. STOCKHOLDERS' EQUITY

STOCK OPTIONS - The Company has granted stock options to personnel, including officers and directors in accordance with both the 1995 Option Plan and the 1997 Equity Participation Plan (collectively the "Plans"). These options have expiration dates of ten years from the date of grant and vest over three years. The Company granted these options with the exercise price equal to the market value as determined at the date of grant.

In August 1997 as part of the introduction of the 1997 Equity Participation Plan, the Company cancelled 43,880 options, being all non-issued options remaining under the 1995 Option Plan.

The following table summarizes option activity:

<TABLE>

<CAPTION>

	2002	Weighted Average Exercise Price	2001	Weighted Average Exercise Price (\$)	2000	Weighted Average Exercise Price (\$)
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Outstanding at beginning of year	3,852,818	\$17.14	3,298,022	\$ 10.12	3,142,272	\$ 7.32
Granted	1,328,600	50.18	1,569,690	27.27	1,336,900	14.14
Exercised	(775,803)	12.61	(884,859)	8.98	(967,985)	6.59
Forfeited	(204,617)	26.75	(130,035)	17.78	(213,165)	10.04
Outstanding at end of year	4,200,998	\$27.94	3,852,818	\$ 17.14	3,298,022	\$ 10.12
Price range of granted options	\$33.15-\$52.20		\$ 24-\$40		\$ 13-\$27	
Options exercisable at end of year	1,631,044	13.76	1,240,427	\$ 8.02	1,368,286	\$ 6.92

The total number of shares of Common Stock authorized for issuance upon exercise of options and other awards, or upon vesting of restricted or deferred stock awards, under the 1997 Plan was initially established at 1,000,000 and increases at the beginning of each fiscal year, commencing on July 1, 1998, by an amount equal to 4% of the outstanding Common Stock on the last day of the preceding fiscal year. The maximum number of shares of Common Stock issuable upon exercise of incentive stock options granted under the 1997 Plan, however, cannot exceed 8,000,000. Furthermore, the maximum number of shares which may be subject to options, rights or other awards granted under the 1997 Plan to any individual in any calendar year cannot exceed 300,000.

The following table summarizes information about stock options outstanding at June 30, 2002.

<TABLE>

<CAPTION>

Exercise Prices	Number Outstanding at June 30, 2002	Weighted Average Remaining Contractual Life	Number Exercisable at June 30,
<S>	<C>	<C>	<C>
0 - \$10	508,810	4.01	508,810
11 - \$20	1,107,355	6.75	747,166
21 - \$30	973,803	8.43	267,121
31 - \$40	357,330	8.88	104,446
41 - \$50	50,300	9.37	3,501
51 - \$60	1,203,400	9.09	0
	4,200,998	7.69	1,631,044

</TABLE>

RESMED INC AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 JUNE 30, 2002 AND 2001

9. STOCKHOLDERS' EQUITY (CONTINUED)

<TABLE>  
 <CAPTION>

The following table summarizes outstanding stock option plan balances as at June 30, 2002

Plan Category <S>	Number of securities to be issued upon exercise of outstanding options <C>	Weighted-average exercise price of outstanding option <C>	Number of securities remaining available for future issuance under equity compensation plans <C>
Equity compensation plans approved by security holders	4,200,998	\$27.94	763,491
Equity compensation plans not approved by security holders	-	-	-
Total	4,200,998	\$27.94	763,491

The Company applies APB Opinion No. 25 in accounting for its Plans and as all stock options are issued at market price on date of issue, no compensation cost has been recognized for its stock options. Had the Company determined compensation cost under SFAS 123, the fair value at the grant date for its stock options would have reduced the Company's net income to the pro forma amounts indicated below:

<TABLE>  
 <CAPTION>

	2002 <C>	2001 <C>	2000 <C>
Net income (in thousands):			
As reported	\$37,506	\$11,630	\$22,226
Pro forma	18,531	2,859	17,511
Basic earnings per common share:			
As reported	\$ 1.17	\$ 0.37	\$ 0.74
Pro forma	\$ 0.58	\$ 0.09	\$ 0.58
Diluted income per common and common equivalent share:			
As reported	\$ 1.10	\$ 0.35	\$ 0.69
Pro forma	\$ 0.54	\$ 0.09	\$ 0.54

The fair value of each stock option grant was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions: weighted average risk-free interest rates of 4.8% for fiscal 2002, and 6.0% and 6.5% for fiscal 2001 and 2000, respectively; no dividend yield; expected option lives of 5.5 years for fiscal 2002 and 4.8 and 3.8 years for fiscal 2001 and 2000, respectively; and volatility of 60% for 2002 and 61% and 55% for fiscal 2001 and 2000.

Fair Value of compensation costs by period of Grant are noted below (in thousands except per share data):

<TABLE>  
 <CAPTION>

RESMED INC AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 JUNE 30, 2002 AND 2001

Year of Grant <S>	FY02 <C>	FY01 <C>	FY00 <C>	Average Exercise Price <C>	Fair Value at Date of Grant <C>	Fair Value at June 30, 2002 <C>
2002	\$21,074	\$ -	\$ -	\$50.18	\$26.10	\$11.98
2001	7,142	10,272	-	27.27	13.41	14.96
2000	971	2,540	5,201	14.14	6.56	18.59
1999	5	682	1,803	11.31	5.27	19.80
1998	-	-	250	6.08	2.13	24.95

Compensation Cost	\$29,192	\$13,494	\$7,254
Tax Effected	\$18,975	\$ 8,771	\$4,715

</TABLE>

The following table summarizes stock option grants by recipient, with executive employees as defined pursuant to Section 16(b) of Securities Exchange Act of 1934 separately disclosed. As at June 30, 2002, the Company has 8 executive employees.

<TABLE>  
<CAPTION>

	June 30, 2002	June 30, 2001	June 30, 2000
<S>	<C>	<C>	<C>
Directors	73,000	21,000	48,000
Executives	167,000	167,500	166,770
Staff	1,088,600	1,381,190	1,122,130
Gross Options Issued	1,328,600	1,569,690	1,336,900
Employees	1,250	953	605
Average Options per Employee	1,063	1,647	2,210

</TABLE>

PREFERRED STOCK. In April 1997, the board of directors authorized 2,000,000 shares of \$0.01 par value preferred stock. No such shares were issued or outstanding at June 30, 2002.

STOCK PURCHASE RIGHTS. In April 1997, the Company implemented a plan to protect stockholders' rights in the event of a proposed takeover of the Company. Under the plan, each share of the Company's outstanding common stock carries one right to purchase Series A Junior Participating Preferred Stock (the "Right"). The Right enables the holder, under certain circumstances, to purchase common stock of the Company or of the acquiring person at a substantially discounted price ten days after a person or group publicly announces it has acquired or has tendered an offer for 20% or more of the Company's outstanding common stock. The Rights are redeemable at \$0.01 per Right and expire in 2007.

COMMON STOCK. During fiscal 2000, the Board of Directors declared a two-for-one split of the Company's common stock, effective March 31, 2000. Stockholders' equity has been restated for all periods presented to give retroactive recognition to the stock split by reclassifying from additional paid-in capital to common stock, the par value of the additional shares as a result of the stock split.

On June 6, 2002, the Board of Directors authorized the Company to repurchase up to 4.0 million shares of outstanding common stock. During fiscal year 2002, the Company repurchased 290,047 shares at a cost of \$7.9 million. Shares that are repurchased are classified as treasury stock pending future use and reduce the number of shares outstanding used in calculating earnings per share.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

10. OTHER, NET

Other, net is comprised of the following at June 30, 2002, 2001 and 2000 (in thousands):

<TABLE>  
<CAPTION>

	2002	2001	2000
<S>	<C>	<C>	<C>
License fees	\$ 148	\$ 125	\$ 167
Gain/(loss) on foreign currency hedging position	(767)	(2,766)	(1,863)
Gain/(loss) on foreign currency transactions	182	4,747	1,681
Realized gain on sale of marketable securities	301	-	-
Other	244	(144)	(37)
	\$108	\$1,962	\$(52)

11. INCOME TAXES

Income before income taxes for the years ended June 30, 2002, 2001, and 2000, was taxed under the following jurisdictions (in thousands):

	2002	2001	2000
U.S.	\$ 418	\$ 3,482	\$ 4,644
Non-U.S.	54,174	23,832	29,522
	\$54,592	\$27,314	\$34,166

The provision for income taxes is presented below (in thousands):

	2002	2001	2000
Current:			
Federal	\$ 4,962	\$ 2,938	\$ 1,396
State	752	203	77
Non-U.S.	17,525	14,790	10,390
	23,239	17,931	11,863
Deferred:			
Federal	(3,494)	(652)	390
State	(568)	90	14
Non-U.S.	(2,091)	(1,685)	(327)
	(6,153)	(2,247)	77
Provision for income taxes	\$17,086	\$15,684	\$11,940

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

11. INCOME TAXES (CONTINUED)

The provision for income taxes differs from the amount of income tax determined by applying the applicable U.S. federal income tax rate of 35% to pretax income as a result of the following (in thousands):

	2002	2001	2000
Computed "expected" tax expense	\$19,108	\$ 9,287	\$11,616
Increase (decrease) in income taxes resulting from:			
Non-deductible expenses	116	460	715
Research and development credit	(888)	(781)	(430)
Tax effect of intercompany dividends	2,577	(3,885)	(508)
Utilization of net operating loss carryforwards	-	(5)	(4)
Write-off of net operating losses due to business cessation	1,046	-	-
Change in valuation allowance	(2,614)	4,431	22
Effect of non-U.S. tax rates	(3,379)	4	714
State income taxes, net of U.S. tax benefit	363	356	235
In-process research and development write-off	123	6,010	-
Provision for restructure	-	187	-
Other	634	(380)	(420)
	\$17,086	\$15,684	\$11,940
	=====	=====	=====

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities are comprised of the following at June 30, 2002 and 2001 (in thousands):

	2002	2001
Deferred tax assets:		
Employee benefit obligations	\$ 940	\$ 573
Inventory	289	-
Provision for service warranties	195	203
Provision for doubtful debts	648	317
Net operating loss carryforwards	1,088	2,206
Deferred foreign tax credits	7,291	7,193
AMT tax credit	1,675	-
Accrual for legal costs	54	5
Intercompany profit in inventories	5,606	3,492
Property, plant and equipment	-	189

Deferred gain on sale-leaseback	1,740	-
Other accruals	1,679	663
	21,205	14,925
	-----	-----
Less valuation allowance	(2,950)	(5,592)
Deferred tax assets	\$18,255	\$ 9,333
Deferred tax liabilities:		
Patents	(\$74)	(\$382)
Capitalized software	(451)	(495)
Unrealized gain on foreign currency options	(829)	(179)
Unrealized foreign exchange gains	(238)	-
Property, plant and equipment	(1,595)	-
Undistributed German income	(3,355)	(2,104)
Deferred tax deductible goodwill amortization	(2,410)	(1,698)
Other receivables	-	(197)
Other	(14)	(126)
Deferred tax liabilities	(8,966)	(5,181)
Net deferred tax asset	\$ 9,289	\$ 4,152
	-----	-----

</TABLE>

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RESMED INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

11. INCOME TAXES (CONTINUED)

The valuation allowance at June 30, 2002, primarily relates to a provision for uncertainty as to the utilization of deferred foreign tax credits of \$2,787,000 and net operating loss carryforwards of \$163,000 relating to Singapore and Malaysia. The net change in the valuation allowance was a decline of \$2,642,000 for the year ended June 30, 2002, in comparison to an increase of \$5,506,000 and an increase of \$22,000, for the years ended June 30, 2001 and 2000, respectively. The measurement of deferred tax assets and liabilities at June 30 of each year, reflect foreign currency translation adjustments, changes in enacted tax rates and changes in temporary differences. Income taxes in 2002, 2001 and 2000 were reduced by \$nil, \$5,000 and \$4,000 respectively, through the utilization of net operating loss carryforwards.

12. EMPLOYEE RETIREMENT PLANS

The Company contributes to a number of employee retirement plans for the benefit of its employees. These plans are detailed as follows:

(1) Australia. The Company contributes to defined contribution pension plans for each employee resident in Australia. All Australian employees after serving a qualifying period, are entitled to benefits on retirement, disability or death. Employees may contribute additional funds to the plans. The Company contributes to the plans at the rate of 8% of the salaries of all Australian employees. This rate increased to 9% effective July 1, 2002. Total Company contributions to the plans for the years ended June 30, 2002, 2001, and 2000 were \$968,000, \$814,000 and \$632,000, respectively.

(2) United Kingdom. The Company contributes to a defined contribution plan for each permanent United Kingdom employee. All employees, after serving a three month qualifying period, are entitled to benefit on retirement, disability or death. Employees may contribute additional funds to the plan. The Company contributes to the plans at the rate of 3% of the salaries. Total Company contributions to the plan were \$16,000, \$7,000 and \$8,000 in fiscal 2002, 2001, and 2000 respectively.

(3) United States. The Company sponsors a defined contribution pension plan available to substantially all domestic employees. Company contributions to this plan are based on a percentage of employee contributions to a maximum of 3% of employee salaries. The cost of this plan to the Company was \$245,000, \$158,000 and \$123,000 in fiscal 2002, 2001 and 2000 respectively.

13. SEGMENT INFORMATION

The Company operates solely in the sleep disordered breathing sector of the respiratory medicine industry. The Company therefore believes that, given the single market focus of its operations and the inter-dependence of its products that the Company operates as a single operating segment. The Company assesses performance and allocates resources on the basis of a single operating entity.

Financial information by geographic area for the years ended June 30, 2002, 2001 and 2000, is summarized below (in thousands):

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

13. SEGMENT INFORMATION (CONTINUED)

<TABLE>  
<CAPTION>

	U.S.A	Germany	Australia	France	Rest of World	Total
<S>	<C>	<C>	<C>	<C>	<C>	<C>
2002						
Revenue from external customers	\$95,463	35,386	5,569	20,957	46,701	\$204,076
Long lived assets	\$34,127	3,738	46,370	599	2,455	\$ 87,289
2001						
Revenue from external customers	\$74,981	25,646	5,318	17,592	31,619	\$155,156
Long lived assets	\$30,475	3,063	25,130	555	1,725	\$ 60,948
2000						
Revenue from external customers	\$58,419	14,317	4,444	11,949	26,486	\$115,615
Long lived assets	\$ 8,126	1,248	27,595	622	1,863	\$ 39,454

</TABLE>

Net revenues from external customers is based on the location of the customer. Long-lived assets of geographic areas are those assets used in the Company's operations in each geographical area and excludes patents, deferred tax assets and goodwill.

14. COMMITMENTS

The Company leases buildings, motor vehicles and office equipment under operating leases. Rental charges for these items are expensed as incurred. At June 30, 2002 the Company had the following future minimum lease payments under non-cancelable operating leases (in thousands):

<TABLE>  
<CAPTION>

Years	Operating Leases	Sub lease rental income	Total net minimum lease payments
<S>	<C>	<C>	<C>
2003	\$ 4,326	\$247	\$ 4,079
2004	4,339	257	4,082
2005	3,967	268	3,699
2006	1,217	68	1,149
2007	991	-	991
Thereafter	211	-	211
Total minimum lease payments	\$15,051	\$840	\$14,211

</TABLE>

Rent expenses under operating leases for the years ended June 30, 2002, 2001 and 2000 were approximately \$2,267,000, \$1,087,000 and \$744,000, respectively.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

15. BUSINESS ACQUISITIONS

FISCAL YEAR ENDED JUNE 30, 2002

SERVO MAGNETICS INC (SMI). On May 14, 2002, the Company acquired all of the common stock of Servo Magnetics Incorporated through a merger with our wholly-owned subsidiary, Servo Magnetics Acquisition Inc., for total consideration, including acquisition costs, of \$32.6 million. Consideration included the issue of 853,448 shares for fair value of \$24.8 million with the balance of the acquisition cost paid in cash. Upon consummation of the merger, the surviving corporation, Servo Magnetics Acquisition Inc., changed its name to Servo Magnetics, Inc.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of SMI have been included in the Company's consolidated financial statements from May 14, 2002. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$1.9 million has been recorded as goodwill.

Purchased in-process research and development of \$350,000 was expensed upon acquisition of SMI because technological feasibility of the products under development had not been established and no further alternative uses existed. The value of in process technology was calculated by identifying research projects in areas for which technological feasibility had not been established, estimating the costs to develop the purchased in process technology into commercially viable products, estimating the resulting net cash flows from such products, discounting the net cash flows to present value, and applying the reduced percentage completion of the projects thereto. The discount rates used in the analysis were 19% and were based on the risk profile of the acquired assets.

Purchased research and development projects related to electrical motor systems used in the company's flow generator devices and other medical and data storage equipment. Key assumptions used in the analysis included gross margins of 34%. As of the date of acquisition, new motor systems for use in medical and health applications are expected to be completed and commercially available by 2004. These projects have estimated costs to complete totaling approximately \$0.5 million.

The Company believes that the assumptions used to value acquired intangible assets noted above were reasonable at the time of acquisition. No assurance can be given, however, that the underlying assumptions used to estimate expected project revenues, development costs or profitability, or events associated with such projects, will transpire as estimated. For these reasons, among others, actual results may vary from the projected results.

LABHARDT AG. On November 15, 2001, the Company's wholly owned subsidiary ResMed International Inc. acquired all the Common Stock of Labhardt Ag, its Swiss distributor for total cash consideration including acquisition costs of \$5.5 million.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of Labhardt have been included in the Company's consolidated financial statements from November 15, 2001. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$1.3 million has been recorded as goodwill.

Pro-forma financial information related to SMI and Labhardt Ag are not included as the effects would not be significant to the consolidated financial statements.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

15. BUSINESS ACQUISITION (CONTINUED)

FISCAL YEAR ENDED JUNE 30, 2001

MAP MEDIZIN-TECHNOLOGIE GMBH (MAP). On February 16, 2001 the Company's fully owned German Subsidiary, ResMed Beteiligungs GmbH, acquired all the common stock of MAP Medizin-Technologie GmbH ("MAP") for total consideration, including acquisition costs, of \$55.4 million. MAP is a leading German designer, manufacturer and distributor of medical devices for the diagnosis and treatment of SDB, with a particular focus on OSA.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of MAP have been included in the Company's consolidated financial statements from February 16, 2001. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$47.1 million has been recorded as goodwill.

Purchased in-process research and development of \$17,677,000 was expensed upon acquisition of MAP because technological feasibility of the products under development had not been established and no further alternative uses existed. The value of in process technology was calculated by identifying research projects in areas for which technological feasibility had not been established, estimating the costs to develop the purchased in process technology into commercially viable products, estimating the resulting net cash flows from such products, discounting the net cash flows to present value, and applying the reduced percentage completion of the projects thereto. The discount rates used in the analysis were between 27% and 33% and were based on the risk profile of the acquired assets.

All purchased research and development projects related to medical equipment for the treatment of sleep disordered breathing, primarily relating to the development of mask interface systems and autotitrating devices for the treatment of obstructive sleep apnea and associated disorders. Key assumptions used in the analysis included gross margins ranging from 70% to 80%. As of the



date of acquisition, the mask interface systems are expected to be completed and commercially available in 2002 and versions of the autotitrating devices between 2003 and 2005. These projects have estimated costs to complete totalling approximately \$2.0 million.

The Company believes that the assumptions used to value the acquired intangible assets were reasonable at the time of acquisition. No assurance can be given, however, that the underlying assumptions used to estimate expected project revenues, development costs or profitability, or events associated with such projects, will transpire as estimated. For these reasons, among others, actual results may vary from the projected results.

The following unaudited pro-forma financial information presents the combined results of operations of the Company and MAP as if the acquisition had occurred as of the beginning of the years ended June 30, 2001 and 2000, respectively and after giving effect to certain adjustments, including amortization of goodwill and increased interest expense associated with debt funding the acquisition. The pro-forma financial information does not necessarily reflect the results of operations that would have occurred had the Company and MAP constituted a single entity during such years.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

15. BUSINESS ACQUISITION (CONTINUED)

<TABLE>  
<CAPTION>

(In thousands except per share data)	2001	2000
<S>	<C>	<C>
Net revenue	\$172,250	\$138,396
Net income	28,556	17,612
Basic earnings per share	\$ 0.92	\$ 0.58
Diluted earnings per share	\$ 0.85	\$ 0.55
Basic shares outstanding	31,129	30,153
Diluted shares outstanding	33,484	32,303

</TABLE>

During the December 2001, the Company paid an amount of \$1.4 million as final consideration associated with the purchase of MAP. The amount has been recorded as goodwill.

EINAR EGNELL AB. On January 31, 2000, the Company's wholly owned Swedish subsidiary, ResMed Sweden AB, acquired the business and associated assets of Einar Egnell AB, its Swedish distributor for \$576,000 in cash. The acquisition has been accounted for as a purchase and accordingly, the results of operations of the Einar Egnell business have been included in the Company's consolidated financial statements from January 31, 2000. The excess of the purchase price over the fair value of the net identifiable assets acquired of \$229,000 has been recorded as goodwill.

16. COMPREHENSIVE INCOME

As of July 1, 1999, the Company adopted Statement of Financial Accounting Standards No. 130, 'Reporting Comprehensive Income' which established standards for the reporting and display of comprehensive income and its components in the financial statements.

Movements in comprehensive income (loss) for the year ended June 30, 2002 are presented below (in thousands):

<TABLE>  
<CAPTION>

	Foreign Currency Items	Unrealized Gains on Securities	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Accumulated Comprehensive Income (Loss)
<S>	<C>	<C>	<C>	<C>	<C>
Beginning balance, July 1, 2001	(\$29,572)	-	(\$29,572)	\$ 77,137	\$ 47,565
Current period change	21,342	105	21,447	37,506	58,953
Ending balance, June 30, 2002	(\$8,230)	105	(\$8,125)	\$114,643	\$106,518

</TABLE>

Comprehensive income/(loss) for the years ended June 30, 2002, June 30, 2001 and June 30, 2000 was \$59.0 million, (\$4.8) million and \$14.5 million, respectively.

The Company does not provide for US income taxes on foreign currency translation adjustments since it does not provide for such taxes on undistributed earnings of foreign subsidiaries. Accumulated other comprehensive loss at June 30, 2002 and June 30, 2001 consisted of foreign currency translation adjustments with net debit balances of \$8.2 million and \$29.6 million, respectively and unrealized gains on securities of \$105,000 (net of tax of \$57,000) and zero, respectively.

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RESMED INC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
JUNE 30, 2002 AND 2001

17. LEGAL ACTIONS

The Company is currently engaged in litigation relating to the enforcement and defense of certain of its patents.

In January 1995, the Company filed a complaint in the United States District Court for the Southern District of California seeking monetary damages from and injunctive relief against Respiroics for alleged infringement of three ResMed patents. In February 1995, Respiroics filed a complaint in the United States District Court for the Western District of Pennsylvania against the Company seeking a declaratory judgment that Respiroics does not infringe claims of these patents and that the Company's patents are invalid and unenforceable. The two actions were combined and are proceeding in the United States District Court for the Western District of Pennsylvania. In June 1996, the Company filed an additional complaint against Respiroics for infringement of a fourth ResMed patent, and that complaint was consolidated with the earlier action. As of this date, Respiroics has brought three partial summary judgment motions for non-infringement of the ResMed patents; the Court has granted each of the motions. In December 1999, in response to the Court's ruling on Respiroics' third summary judgment motion, the parties jointly stipulated to a dismissal of charges of infringement under the fourth ResMed patent, with ResMed reserving the right to reassert the charges in the event of a favorable ruling on appeal. It is ResMed's intention to appeal the summary judgment rulings after a final judgment in the consolidated litigation has been entered in the District Court proceedings.

In January 2001, MAP Medizin-Technologie GmbH filed a lawsuit in the Civil Chamber of Munich Court against Hofrichter GmbH seeking actual and exemplary monetary damages for the unauthorized and infringing use of the Company's trademarks and patents. An initial decision has been made in favor of MAP. Hofrichter has filed an appeal and have sort Court determination that the MAP patents do not apply to certain Hofrichter products.

On August 26, 2002, ResMed filed a lawsuit in Federal District Court in San Diego against Fisher & Paykel Healthcare. The ResMed complaint seeks a judgment that selected Fisher & Paykel Healthcare mask products (ACLAIM and ACLAIM 2 masks) infringe patents held by ResMed. The complaint further charges the defendant with the copying of ResMed proprietary mask technology and alleges trade dress and common law violations relating to the appearance of ResMed mask products.

While the Company is prosecuting the above actions, there can be no assurance that the Company will be successful.

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SIGNATURES

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

DATED September 9, 2002

ResMed Inc

/S/ PETER C. FARRELL

-

Peter C. Farrell  
President and Chief Executive Officer

/S/ ADRIAN M. SMITH

-

Adrian M. Smith  
Vice President Finance and Chief Financial Officer

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

<TABLE>  
<CAPTION>

<S> SIGNATURE	<C> TITLE	<C> DATE
/S/ PETER C. FARRELL Peter C. Farrell	Chief Executive Officer, President, Chairman of the Board (Principal Executive Officer)	September 9, 2002
/S/ CHRISTOPHER G. ROBERTS Christopher G. Roberts	Director	September 9, 2002
/S/ MICHAEL A. QUINN Michael A. Quinn	Director	September 9, 2002
/S/ GARY W. PACE Gary W. Pace	Director	September 9, 2002
/S/ DONAGH MCCARTHY Donagh McCarthy	Director	September 9, 2002
/S/ CHRISTOPHER A. BARTLETT Christopher Bartlett	Director	September 9, 2002
/S/ LOUIS A. SIMPSON Louis Simpson	Director	September 9, 2002

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CERTIFICATIONS

I, Peter C. Farrell, certify that:

1. I have reviewed this annual report on Form 10-K of ResMed Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report.

Date: September 9, 2002

/S/ PETER C. FARRELL  
-----  
Peter C. Farrell  
President and Chief Executive Officer

I, Adrian M. Smith, certify that:

1. I have reviewed this annual report on Form 10-K of ResMed Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material

respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report.

Date: September 9, 2002

/S/ ADRIAN M. SMITH  
-----  
Adrian M. Smith  
Vice President Finance  
and Chief Financial Officer

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SCHEDULE II  
<TABLE>  
<CAPTION>

RESMED INC AND SUBSIDIARIES  
VALUATION AND QUALIFYING ACCOUNTS AND RESERVES  
YEARS ENDED JUNE 30, 2002, 2001 AND 2000  
(IN THOUSANDS)

	Balance at Beginning of Period	Charged to costs and expenses	Other deductions)	Balance at end of period
<S>	<C>	<C>	<C>	<C>
Year ended June 30, 2002:				
Applied against asset account				
Allowance for doubtful accounts	\$892	1,542	(496)	1,938
Year ended June 30, 2001:				
Applied against asset account				
Allowance for doubtful accounts	\$833	681	(622)	892
Year ended June 30, 2000:				
Applied against asset account				
Allowance for doubtful accounts	\$421	632	(220)	833

</TABLE>

See accompanying independent auditor's report.

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EXHIBIT INDEX

2.1 Sale and Assignment Agreement dated as of February 16, 2001, between ResMed Inc, ResMed Beteiligungs GmbH and the shareholders of MAP Medizin-Technologie GmbH\*

2.2 Agreement and Plan of Merger dated as of May 14, 2002 among ResMed Inc., Servo Magnetics Acquisition Inc., Servo Magnetics Incorporated and Mr Leslie Hoffman.

3.1 Certificate of Incorporation of Registrant, as amended\*\*

3.2 By-laws of Registrant\*\*

4.1 Form of certificate evidencing shares of Common Stock\*\*

4.2 Rights agreement dated as of April 23, 1997\*\*\*

4.3 Indenture dated as of June 20, 2001, between ResMed Inc and American Stock Transfer & Trust Company\*\*\*\*\*

4.4 Registration Rights Agreement dated as of June 20, 2001, by and between ResMed Inc, Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Banc Alex Brown Inc., William Blair & Company, L.L.C., Macquarie Bank Limited and UBS Warburg LLC\*\*\*\*\*

4.5 Registration Rights Agreement dated as of May 14, 2002 between ResMed Inc., and Mr Leslie Hoffman.

10.1 1995 Stock Option Plan\*\*

10.2 1997 Equity Participation Plan\*\*\*\*

10.3 Licensing Agreement between the University of Sydney and ResMed Limited dated May 17, 1991, as amended\*\*

10.4 Consulting Agreement between Colin Sullivan and ResMed Limited effective from 1 January 1998\*\*\*\*\*

10.5 Loan Agreement between the Australian Trade Commission and ResMed Limited dated May 3, 1994\*\*

10.6 Lease for 1091 Carroll Canyon Road, San Diego 92131-1109, U.S.A.\*\*\*\*\*

10.7 Sale and Leaseback Agreements for 97 Waterloo Rd, North Ryde, Australia

10.8 Employment Agreement dated as of May 14, 2002, between Servo Magnetics Acquisition Inc., and Mr Leslie Hoffman.

10.9 Agreement for the purchase of Lot 6001, Norwest Boulevard, Norwest

Business Park, Baulkham Hills, Australia  
 11.1 Computation of Earnings per Common Share  
 21.1 Subsidiaries of the Registrant  
 23.1 Independent Auditors' Consent and Report on Schedule

- -----  
 \*Incorporated by reference to the Registrant's Report on Form 8-K dated March 2, 2001.  
 \*\*Incorporated by reference to the Registrant's Registration Statement on Form S-1 (No. 33-91094) declared effective on June 1, 1995.  
 \*\*\*Incorporated by reference to the Registrant's Registration Statement on Form 8-A12G filed on April 25, 1997.  
 \*\*\*\*Incorporated by reference to the Registrant's 1997 Proxy Statement.  
 \*\*\*\*\*Incorporated by reference to the Registrant's Report on Form 10-K dated June 30, 1998.  
 \*\*\*\*\*Incorporated by reference to the Registrant's Report on Form 10-K dated June 30, 2001.

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<TABLE>  
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EXHIBIT 11.1  
 - -----

RESMED INC AND SUBSIDIARIES  
 COMPUTATION OF EARNINGS PER COMMON SHARE  
 (IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	Year	Ended	June 30,
	2002	2001	2000
<S>	<C>	<C>	<C>
<b>BASIC EARNINGS</b>			
Net income	\$37,506	\$11,630	\$22,226
Shares			
Weighted average number of common shares outstanding	32,174	31,99	30,153
Basic earnings per share	\$ 1.17	\$ 0.37	\$ 0.74
<b>DILUTED EARNINGS</b>			
Net income	\$37,506	\$11,630	\$22,226
Shares			
Weighted average number of common shares outstanding	32,174	31,99	30,153
Additional shares assuming conversion of stock options under treasury stock method	1,906	2,355	2,150
Weighted average number of common and common equivalent shares outstanding as adjusted	34,080	33,484	32,303
Diluted earnings per share	\$ 1.10	\$ 0.35	\$ 0.69

See accompanying independent auditor's report.  
 -----

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EXHIBIT 21.1

RESMED INC  
 SUBSIDIARIES OF THE REGISTRANT

ResMed Holdings Limited (incorporated under the laws of New South Wales, Australia)  
 ResMed Limited (incorporated under the laws of New South Wales, Australia)\*  
 ResMed Asia Pacific Limited (incorporated under the laws of New South Wales, Australia)\*

ResMed Corporation (a Minnesota corporation)  
ResMed (UK) Limited (a United Kingdom corporation)\*  
ResMed International Inc (a Delaware corporation)  
ResMed Priess GmbH and Co Kg (a German corporation)\*\*  
ResMed SA (a French corporation)\*\*  
ResMed Priess GmbH (a German corporation)  
ResMed Singapore Pte Ltd (a Singaporean corporation)\*\*  
ResMed (Malaysia) Sdn Bhd (a Malaysian Corporation)\*\*  
ResMed New Zealand Limited (a New Zealand Corporation)\*\*  
ResMed R&D Limited (incorporated under the laws of New South Wales, Australia)\*  
ResMed Sweden AB (a Swedish corporation)\*\*  
ResMed KK (a Japanese corporation)\*\*  
ResMed Beteiligungs GmbH (a German corporation)  
MAP Medizin-Technologie GmbH (a German corporation)\*\*\*  
MAP Medizintechnik f r Arzt und Patient GmbH & Co Kg (a German corporation)\*\*\*\*  
MAP Medizintechnik f r Arzt und Patient GmbH (a Swiss corporation)\*\*\*\*  
MAP Hirsch Medizintechnik f r Arzt und Patient GmbH (an Austrian corporation)\*\*\*\*  
MAP Techniques Avanc es pour M decins et Patients SA (a French corporation)\*\*\*\*  
Blue Medic SA (a French corporation)\*\*\*\*  
MAP Medische Techniek voor Arts en Patient BV (a Dutch corporation)\*\*\*\*  
Labhardt Ag (A Swiss corporation)\*\*  
Servo Magnetics Inc. (a Delaware corporation)  
ResMed Spain SL (a Spanish corporation)\*\*

- -----  
\*A subsidiary of ResMed Holdings Limited  
\*\* A subsidiary of ResMed International Inc  
\*\*\* A subsidiary of ResMed Beteiligungs GmbH  
\*\*\*\* A subsidiary of MAP Medizin-Technologie GmbH

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EXHIBIT 23.1

INDEPENDENT AUDITORS' CONSENT AND REPORT ON SCHEDULE

The Board of Directors and Stockholders  
ResMed Inc:

The audits referred to in our report dated August 9, 2002, included the related financial statement schedule as of June 30, 2002 and for each of the years in the three-year period ended June 30, 2002. 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.

Our report refers to a change in the method of accounting for goodwill.

We consent to incorporation by reference in the registration statements, (Nos. 333-08013 and 333-88231) on Form S-8 and the registration statement (No. 333-70500) on Form S3 of ResMed Inc. of our reports included herein.

/S/ KPMG LLP

San Diego, California

September 9, 2002

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AGREEMENT AND PLAN OF MERGER  
 AMONG  
 RESMED INC.  
 SERVO MAGNETICS ACQUISITION, INC.  
 SERVO MAGNETICS INCORPORATED  
 AND  
 LESLIE HOFFMAN  
 MAY 14, 2002

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AGREEMENT AND PLAN OF MERGER  
-----

THIS AGREEMENT AND PLAN OF MERGER, DATED AS OF MAY 14, 2002 (THIS "AGREEMENT"), BY AND AMONG RESMED INC., A DELAWARE CORPORATION (THE "PARENT"), SERVO MAGNETICS ACQUISITION, INC., A DELAWARE CORPORATION AND A WHOLLY OWNED SUBSIDIARY OF PARENT ("MERGER SUB"), SERVO MAGNETICS INCORPORATED, A CALIFORNIA CORPORATION (THE "TARGET"), AND LESLIE HOFFMAN ( "HOFFMAN"). THE PARENT, MERGER SUB, HOFFMAN AND THE TARGET ARE REFERRED TO COLLECTIVELY HEREIN AS THE "PARTIES."

WHEREAS, THE RESPECTIVE BOARDS OF DIRECTORS OF PARENT, MERGER SUB AND TARGET HAVE EACH DETERMINED THAT THE MERGER (AS DEFINED BELOW) IS IN THE BEST INTERESTS OF THEIR RESPECTIVE SHAREHOLDERS AND HAVE APPROVED THE MERGER UPON THE TERMS AND SUBJECT TO THE CONDITIONS SET FORTH IN THIS AGREEMENT, WHICH INCLUDE THAT THE ISSUED AND OUTSTANDING SHARES OF COMMON STOCK, NO PAR VALUE, OF TARGET ("TARGET COMMON STOCK"), WILL BE CONVERTED INTO THE RIGHT TO RECEIVE A COMBINATION OF COMMON STOCK, PAR VALUE \$.004 PER SHARE, OF PARENT (THE "PARENT COMMON STOCK") AND CASH, AS FURTHER DESCRIBED HEREIN; AND

WHEREAS, HOFFMAN OWNS ALL OF THE OUTSTANDING CAPITAL STOCK OF THE TARGET AND HAS APPROVED THIS AGREEMENT AND THE MERGER IN HIS CAPACITY AS SOLE SHAREHOLDER OF THE TARGET; AND

WHEREAS, IN ORDER TO EFFECTUATE THE FOREGOING, THE TARGET, UPON THE TERMS AND SUBJECT TO THE CONDITIONS OF THIS AGREEMENT AND, IN ACCORDANCE WITH THE CALIFORNIA CORPORATIONS CODE (THE "CCC") AND THE DELAWARE GENERAL CORPORATION

---  
LAW (THE "DGCL"), WILL MERGE WITH AND INTO MERGER SUB (THE "MERGER"). NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL PROMISES HEREIN MADE, AND IN CONSIDERATION OF THE REPRESENTATIONS, WARRANTIES, AND COVENANTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS.

1. DEFINITIONS.  
-----

"ACCREDITED INVESTOR" HAS THE MEANING SET FORTH IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT.  
"ADVERSE CONSEQUENCES" MEANS ALL ACTIONS, SUITS, PROCEEDINGS, HEARINGS,

-----  
INVESTIGATIONS, CHARGES, COMPLAINTS, CLAIMS, DEMANDS, INJUNCTIONS, JUDGMENTS,  
ORDERS, DECREES, RULINGS, DAMAGES, DUES, PENALTIES, FINES, COSTS, LOST TAX  
BENEFITS, AMOUNTS PAID IN SETTLEMENT, LIABILITIES, OBLIGATIONS, TAXES, LIENS,  
LOSSES, EXPENSES, AND FEES, INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES  
AND EXPENSES.

"AGREEMENT OF MERGER" HAS THE MEANING SET FORTH IN 2(C) BELOW.  
-----

"AFFILIATE" HAS THE MEANING SET FORTH IN RULE 12B-2 OF THE REGULATIONS  
-----  
PROMULGATED UNDER THE EXCHANGE ACT.  
-----

"AFFILIATED GROUP" MEANS ANY AFFILIATED GROUP WITHIN THE MEANING OF CODE  
-----  
1504(A) OR ANY SIMILAR GROUP DEFINED UNDER A SIMILAR PROVISION OF STATE, LOCAL  
OR FOREIGN LAW.

1

"BASIS" MEANS ANY PAST OR PRESENT FACT, SITUATION, CIRCUMSTANCE, STATUS,  
-----  
CONDITION, ACTIVITY, PRACTICE, PLAN, OCCURRENCE, EVENT, INCIDENT, ACTION,  
FAILURE TO ACT, OR TRANSACTION THAT FORMS OR WOULD BE REASONABLY LIKELY TO FORM  
THE BASIS FOR ANY SPECIFIED CONSEQUENCE.

"CASH CONSIDERATION" MEANS \$7,625,000, TO BE PAID TO HOFFMAN IN HIS CAPACITY AS  
-----  
THE SOLE SHAREHOLDER OF THE TARGET AS PARTIAL CONSIDERATION FOR THE MERGER.  
"CCC" MEANS THE CALIFORNIA CORPORATIONS CODE, AS AMENDED.

"CERTIFICATE OF MERGER" HAS THE MEANING SET FORTH IN 2(C) BELOW.  
-----

"CLOSING" HAS THE MEANING SET FORTH IN 2(B) BELOW.  
-----

"CLOSING DATE" HAS THE MEANING SET FORTH IN 2(B) BELOW.  
-----

"CLOSING VALUE" MEANS \$29.  
-----

"CODE" MEANS THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.  
-----

"CONFIDENTIAL INFORMATION" MEANS ANY INFORMATION CONCERNING THE BUSINESSES AND  
-----  
AFFAIRS OF THE TARGET THAT IS NOT ALREADY GENERALLY AVAILABLE TO THE PUBLIC.  
"CONSIDERATION" MEANS COLLECTIVELY (I) THE CASH CONSIDERATION AND (II) THE  
-----  
SHARES.

"CONTROLLED GROUP OF CORPORATIONS" HAS THE MEANING SET FORTH IN CODE 1563.  
-----

"DEFERRED INTERCOMPANY TRANSACTION" HAS THE MEANING SET FORTH IN REG.  
-----  
1.1502-13.

"DGCL" MEANS THE DELAWARE GENERAL CORPORATION LAW, AS AMENDED.  
-----

"EFFECTIVE TIME" HAS THE MEANING SET FORTH IN 2(C) BELOW.  
-----

"EMPLOYEE BENEFIT PLAN" MEANS ANY (A) NONQUALIFIED DEFERRED COMPENSATION OR  
-----  
RETIREMENT PLAN OR ARRANGEMENT WHICH IS AN EMPLOYEE PENSION BENEFIT PLAN, (B)  
-----  
QUALIFIED DEFINED CONTRIBUTION RETIREMENT PLAN OR ARRANGEMENT WHICH IS AN  
-----  
EMPLOYEE PENSION BENEFIT PLAN, (C) QUALIFIED DEFINED BENEFIT RETIREMENT PLAN OR  
-----  
ARRANGEMENT WHICH IS AN EMPLOYEE PENSION BENEFIT PLAN (INCLUDING ANY  
MULTIEMPLOYER PLAN), OR (D) EMPLOYEE WELFARE BENEFIT PLAN OR MATERIAL FRINGE  
BENEFIT PLAN OR PROGRAM.

"EMPLOYEE PENSION BENEFIT PLAN" HAS THE MEANING SET FORTH IN ERISA 3(2).  
-----

"EMPLOYEE PENSION DEFINED BENEFIT PLAN" MEANS AN EMPLOYEE PENSION BENEFIT PLAN  
-----  
THAT IS OR WAS SUBJECT TO TITLE IV OF ERISA.

"EMPLOYEE WELFARE BENEFIT PLAN" HAS THE MEANING SET FORTH IN ERISA 3(1).  
-----

"EMPLOYMENT AGREEMENT" HAS THE MEANING SET FORTH IN 2(H) BELOW.  
-----

2

"ENVIRONMENTAL LAWS" MEANS ANY AND ALL APPLICABLE INTERNATIONAL, FEDERAL, STATE,  
-----

OR LOCAL LAWS, STATUTES, ORDINANCES, REGULATIONS, POLICIES, GUIDANCE, RULES, JUDGMENTS, ORDERS, COURT DECISIONS OR RULE OF COMMON LAW, PERMITS, RESTRICTIONS AND LICENSES, WHICH (I) REGULATE OR RELATE TO THE PROTECTION OR CLEAN UP OF THE ENVIRONMENT; THE USE, TREATMENT, STORAGE, TRANSPORTATION, HANDLING, DISPOSAL OR RELEASE OF HAZARDOUS SUBSTANCES, THE PRESERVATION OR PROTECTION OF WATERWAYS, GROUNDWATER, DRINKING WATER, AIR, WILDLIFE, PLANTS OR OTHER NATURAL RESOURCES; OR THE HEALTH AND SAFETY OF PERSONS OR PROPERTY, INCLUDING WITHOUT LIMITATION PROTECTION OF THE HEALTH AND SAFETY OF EMPLOYEES; OR (II) IMPOSE LIABILITY OR RESPONSIBILITY WITH RESPECT TO ANY OF THE FOREGOING, INCLUDING WITHOUT LIMITATION THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. 9601 ET SEQ.), OR ANY OTHER LAW OF SIMILAR EFFECT.

"ENVIRONMENTAL PERMITS" MEANS ANY MATERIAL PERMIT, LICENSE, AUTHORIZATION OR

-----  
APPROVAL REQUIRED UNDER APPLICABLE ENVIRONMENTAL LAWS.

---  
"ERISA" MEANS THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED.

-----  
"ERISA AFFILIATE" MEANS ANY ENTITY WHICH IS (OR AT ANY RELEVANT TIME WAS) A

-----  
MEMBER OF A "CONTROLLED GROUP OF CORPORATIONS" WITH, UNDER "COMMON CONTROL"

---  
WITH, OR A MEMBER OF AN "AFFILIATED SERVICE GROUP" WITH ANY PERSON, AS DEFINED

---  
IN 52(A) OR (B), OR 414(B), (C), (M) OR (O) OF THE CODE, OR UNDER "COMMON CONTROL" WITH ANY PERSON WITHIN THE MEANING OF 4001(B)(1) OF ERISA.

"EXCESS LOSS ACCOUNT" HAS THE MEANING SET FORTH IN REG. 1.1502-19.

-----  
"EXCHANGE ACT" MEANS THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

-----  
"EXTREMELY HAZARDOUS SUBSTANCE" HAS THE MEANING SET FORTH IN 302 OF THE

-----  
EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986, AS AMENDED.

-----  
"FIDUCIARY" HAS THE MEANING SET FORTH IN ERISA 3(21).

-----  
"FINANCIAL STATEMENTS" HAS THE MEANING SET FORTH IN 5(I) BELOW.

-----  
"GAAP" MEANS UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS IN EFFECT

-----  
FROM TIME TO TIME.

"HAZARDOUS SUBSTANCES" MEANS ANY POLLUTANT, CHEMICAL, SUBSTANCE AND ANY TOXIC,

-----  
INFECTIOUS, CARCINOGENIC, REACTIVE, CORROSIVE, IGNITABLE OR FLAMMABLE CHEMICAL, OR CHEMICAL COMPOUND, OR HAZARDOUS SUBSTANCE, MATERIAL OR WASTE, WHETHER SOLID, LIQUID OR GAS, THAT IS SUBJECT TO REGULATION, CONTROL OR REMEDIATION UNDER ANY ENVIRONMENTAL LAWS, INCLUDING WITHOUT LIMITATION, ANY QUANTITY OF ASBESTOS IN ANY FORM, UREA FORMALDEHYDE, PCBS, RADON GAS, CRUDE OIL OR ANY FRACTION THEREOF, ALL FORMS OF NATURAL GAS, PETROLEUM PRODUCTS OR BY-PRODUCTS OR DERIVATIVES.

"HOFFMAN DISCLOSURE SCHEDULE" HAS THE MEANING SET FORTH IN 4(A) BELOW.

-----  
"INDEMNIFIED PARTY" HAS THE MEANING SET FORTH IN 7(D) BELOW.

3

-----  
"INDEMNIFYING PARTY" HAS THE MEANING SET FORTH IN 7(D) BELOW.

-----  
"INTELLECTUAL PROPERTY" MEANS (A) ALL INVENTIONS (WHETHER PATENTABLE OR

-----  
UNPATENTABLE AND WHETHER OR NOT REDUCED TO PRACTICE), ALL IMPROVEMENTS THERETO,

-----  
AND ALL PATENTS, PATENT APPLICATIONS, AND PATENT DISCLOSURES, TOGETHER WITH ALL REISSUANCES, CONTINUATIONS, CONTINUATIONS-IN-PART, REVISIONS, EXTENSIONS, AND REEXAMINATIONS THEREOF, (B) ALL TRADEMARKS, SERVICE MARKS, TRADE DRESS, LOGOS, TRADE NAMES, AND CORPORATE NAMES, TOGETHER WITH ALL TRANSLATIONS, ADAPTATIONS, DERIVATIONS, AND COMBINATIONS THEREOF AND INCLUDING ALL GOODWILL ASSOCIATED THEREWITH, AND ALL APPLICATIONS, REGISTRATIONS, AND RENEWALS IN CONNECTION THEREWITH, (C) ALL COPYRIGHTABLE WORKS, ALL COPYRIGHTS, AND ALL APPLICATIONS, REGISTRATIONS, AND RENEWALS IN CONNECTION THEREWITH, (D) ALL MASK WORKS AND ALL APPLICATIONS, REGISTRATIONS, AND RENEWALS IN CONNECTION THEREWITH, (E) ALL TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION (INCLUDING IDEAS, RESEARCH AND DEVELOPMENT, KNOW-HOW, FORMULAS, COMPOSITIONS, MANUFACTURING AND PRODUCTION PROCESSES AND TECHNIQUES, TECHNICAL DATA, DESIGNS, DRAWINGS, SPECIFICATIONS, CUSTOMER AND SUPPLIER LISTS, PRICING AND COST INFORMATION, AND BUSINESS AND MARKETING PLANS AND PROPOSALS), (F) ALL COMPUTER SOFTWARE (INCLUDING DATA AND RELATED DOCUMENTATION), (G) ALL OTHER PROPRIETARY RIGHTS, AND (H) ALL COPIES AND TANGIBLE EMBODIMENTS THEREOF (IN WHATEVER FORM OR MEDIUM).

"KNOWLEDGE" MEANS ACTUAL KNOWLEDGE AFTER REASONABLE INVESTIGATION.

-----  
"LEASE INDEMNIFICATION OBLIGATION" HAS THE MEANING SET FORTH IN 7(C) BELOW.

-----  
"LIABILITY" MEANS ANY LIABILITY (WHETHER KNOWN OR UNKNOWN, WHETHER ASSERTED OR

-----  
UNASSERTED, WHETHER ABSOLUTE OR CONTINGENT, WHETHER ACCRUED OR UNACCRUED, WHETHER LIQUIDATED OR UNLIQUIDATED, AND WHETHER DUE OR TO BECOME DUE, INCLUDING,

BUT NOT LIMITED TO CONTRACTUAL PERFORMANCE OBLIGATIONS CONTAINED IN THE MATERIAL CONTRACTS), INCLUDING ANY LIABILITY FOR TAXES.

"MATERIAL ADVERSE CHANGE" OR "MATERIAL ADVERSE EFFECT" MEANS, WITH RESPECT TO

-----  
ANY PERSON, ANY CHANGE OR EFFECT THAT IS OR IS REASONABLY LIKELY TO BE  
-  
MATERIALLY ADVERSE TO THE BUSINESS, OPERATIONS, ASSETS, CONDITION (FINANCIAL OR  
-  
OTHERWISE), PROSPECTS OR RESULTS OF OPERATIONS OF THAT PERSON; PROVIDED THAT WITH RESPECT TO PARENT, A CHANGE IN THE MARKET PRICE OF PARENT COMMON STOCK SHALL NOT BE A MATERIAL ADVERSE EFFECT ON PARENT; PROVIDED, FURTHER, THAT ANY EFFECT ARISING SOLELY FROM OR RELATING SOLELY TO THE ANNOUNCEMENT OF (I) THE MERGER OR (II) THE EXECUTION OF THIS AGREEMENT, SHALL NOT BE DEEMED TO CONSTITUTE A MATERIAL ADVERSE EFFECT ON ANY PERSON.

"MATERIAL CONTRACTS" HAS THE MEANING SET FORTH IN 5(R) BELOW.

-----  
"MERGER SUB" HAS THE MEANING SET FORTH IN THE PREFACE ABOVE.

-----  
"MOST RECENT BALANCE SHEET" MEANS THE BALANCE SHEET CONTAINED WITHIN THE MOST  
-----  
RECENT FINANCIAL STATEMENTS.

-----  
"MOST RECENT FINANCIAL STATEMENTS" HAS THE MEANING SET FORTH IN 5(I) BELOW.

-----  
"MOST RECENT FISCAL QUARTER END" HAS THE MEANING SET FORTH IN 5(I) BELOW.

-----  
"MOST RECENT FISCAL YEAR END" HAS THE MEANING SET FORTH IN 5(I) BELOW.

4

-----  
"MULTIEMPLOYER PLAN" HAS THE MEANING SET FORTH IN ERISA 3(37).

-----  
"ORDINARY COURSE OF BUSINESS" MEANS THE ORDINARY COURSE OF BUSINESS CONSISTENT  
-----  
WITH PAST CUSTOM AND PRACTICE (INCLUDING WITH RESPECT TO QUANTITY AND FREQUENCY).

-----  
"PARENT" HAS THE MEANING SET FORTH IN THE PREFACE ABOVE.

-----  
"PARENT COMMON STOCK" MEANS ANY SHARE OF THE COMMON STOCK, PAR VALUE \$.004 PER  
-----  
SHARE, OF THE PARENT.

-----  
"PARENT INDEMNIFIED PARTY" HAS THE MEANING SET FORTH IN 7(B) BELOW.

-----  
"PARENT SEC DOCUMENTS" HAS THE MEANING SET FORTH IN 4(B)(VI) BELOW.

-----  
"PARTY" HAS THE MEANING SET FORTH IN THE PREFACE ABOVE.

-----  
"PBGC" MEANS THE PENSION BENEFIT GUARANTY CORPORATION.

-----  
"PERSON" MEANS AN INDIVIDUAL, A PARTNERSHIP, A CORPORATION, AN ASSOCIATION, A  
-----  
JOINT STOCK COMPANY, A TRUST, A JOINT VENTURE, AN UNINCORPORATED ORGANIZATION,  
-  
OR A GOVERNMENTAL ENTITY (OR ANY DEPARTMENT, AGENCY, OR POLITICAL SUBDIVISION THEREOF).

-----  
"POST-CLOSING PARTIAL PERIOD" HAS THE MEANING SET FORTH IN 7(B)(II) BELOW.

-----  
"PRE-CLOSING PARTIAL PERIOD" HAS THE MEANING SET FORTH IN 7(B)(II) BELOW.

-----  
"PRE-CLOSING PERIODS" HAS THE MEANING SET FORTH IN 7(B)(II) BELOW.

-----  
"PROHIBITED TRANSACTION" HAS THE MEANING SET FORTH IN ERISA 406 AND CODE 4975.

-----  
"PROPERTY TAXES" HAS THE MEANING SET FORTH IN 8(B) BELOW.

-----  
"REGISTRATION RIGHTS AGREEMENT" HAS THE MEANING SET FORTH IN 2(H) BELOW.

-----  
"REPORTABLE EVENT" HAS THE MEANING SET FORTH IN ERISA 4043.

-----  
"SEC" MEANS THE SECURITIES AND EXCHANGE COMMISSION.

-----  
"SECURITIES ACT" MEANS THE SECURITIES ACT OF 1933, AS AMENDED.

-----  
"SECURITY INTEREST" MEANS ANY MORTGAGE, PLEDGE, LIEN, ENCUMBRANCE, CHARGE, OR  
-----  
OTHER SECURITY INTEREST, OTHER THAN (A) MECHANIC'S, MATERIALMEN'S, AND SIMILAR  
-  
LIENS, (B) LIENS FOR TAXES NOT YET DUE AND PAYABLE, (C) PURCHASE MONEY LIENS AND LIENS SECURING RENTAL PAYMENTS UNDER CAPITAL LEASE ARRANGEMENTS, AND (D) OTHER LIENS ARISING IN THE ORDINARY COURSE OF BUSINESS AND NOT INCURRED IN CONNECTION WITH THE BORROWING OF MONEY.

-----  
"SHARES" MEANS 853,448 SHARES OF PARENT COMMON STOCK TO BE ISSUED TO HOFFMAN IN  
-----

HIS CAPACITY AS THE SOLE SHAREHOLDER OF THE TARGET AS PARTIAL CONSIDERATION FOR THE MERGER.

5

"STRADDLE PERIOD" HAS THE MEANING SET FORTH IN 7(B)(II) BELOW.

"SUBSIDIARY" MEANS ANY CORPORATION WITH RESPECT TO WHICH A SPECIFIED PERSON (OR A SUBSIDIARY THEREOF) OWNS A MAJORITY OF THE COMMON STOCK OR HAS THE POWER TO VOTE OR DIRECT THE VOTING OF SUFFICIENT SECURITIES TO ELECT A MAJORITY OF THE DIRECTORS.

"SURVIVING CORPORATION" HAS THE MEANING SET FORTH IN 2(A) BELOW.

"TARGET" HAS THE MEANING SET FORTH IN THE PREFACE ABOVE.

"TARGET COMMON STOCK" MEANS ANY SHARE OF THE COMMON STOCK, NO PAR VALUE, OF THE TARGET.

"TARGET DISCLOSURE SCHEDULE" HAS THE MEANING SET FORTH IN 5 BELOW.

"TAX" MEANS ANY FEDERAL, STATE, LOCAL, OR FOREIGN INCOME, GROSS RECEIPTS, LICENSE, PAYROLL, EMPLOYMENT, EXCISE, SEVERANCE, STAMP, OCCUPATION, PREMIUM, WINDFALL PROFITS, ENVIRONMENTAL (INCLUDING TAXES UNDER CODE 59A), CUSTOMS DUTIES, CAPITAL STOCK, FRANCHISE, PROFITS, WITHHOLDING, SOCIAL SECURITY (OR SIMILAR), UNEMPLOYMENT, DISABILITY, REAL PROPERTY, PERSONAL PROPERTY, SALES, USE, TRANSFER, REGISTRATION, VALUE ADDED, ALTERNATIVE OR ADD-ON MINIMUM, ESTIMATED, OR OTHER TAX OF ANY KIND WHATSOEVER, INCLUDING ANY INTEREST, PENALTY, OR ADDITION THERETO, WHETHER DISPUTED OR NOT.

"TAX RETURN" MEANS ANY RETURN, DECLARATION, REPORT, CLAIM FOR REFUND, OR INFORMATION RETURN OR STATEMENT RELATING TO TAXES, INCLUDING ANY SCHEDULE OR ATTACHMENT THERETO, AND INCLUDING ANY AMENDMENT THEREOF.

"THIRD PARTY CLAIM" HAS THE MEANING SET FORTH IN 7(D) BELOW.

2. THE MERGER.

(A) THE MERGER

. UPON THE TERMS AND SUBJECT TO THE CONDITIONS SET FORTH IN THIS AGREEMENT, AND IN ACCORDANCE WITH THE DGCL AND THE CCC, THE TARGET SHALL BE MERGED WITH AND INTO MERGER SUB AT THE EFFECTIVE TIME (AS DEFINED BELOW). FOLLOWING THE MERGER, THE SEPARATE CORPORATE EXISTENCE OF THE TARGET SHALL CEASE AND MERGER SUB SHALL CONTINUE AS THE SURVIVING CORPORATION (THE "SURVIVING CORPORATION") IN ACCORDANCE WITH THE DGCL AND THE CCC.

(B) THE CLOSING

. THE CLOSING OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (THE "CLOSING") SHALL TAKE PLACE AT THE OFFICES OF LATHAM & WATKINS IN COSTA MESA, CALIFORNIA, CONCURRENTLY WITH THE EXECUTION OF THIS AGREEMENT, OR ON SUCH OTHER DATE AS THE PARTIES MAY MUTUALLY DETERMINE (THE "CLOSING DATE").

(C) EFFECTIVE TIME

. UPON THE CLOSING, THE PARTIES SHALL FILE WITH THE SECRETARY OF STATE OF THE STATE OF DELAWARE A CERTIFICATE OF MERGER IN THE FORM, AND TOGETHER WITH SUCH CERTIFICATES, AS IS REQUIRED UNDER THE DGCL (THE "CERTIFICATE OF MERGER"),

EXECUTED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE DGCL, AND AS SOON AS REASONABLY PRACTICABLE THEREAFTER SHALL FILE A CERTIFIED COPY OF THE CERTIFICATE OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF CALIFORNIA, AS IS REQUIRED UNDER THE CCC, AND SHALL MAKE ALL OTHER FILINGS, RECORDINGS OR PUBLICATIONS REQUIRED UNDER THE DGCL OR THE CCC IN CONNECTION WITH THE MERGER. THE MERGER

6

SHALL BECOME EFFECTIVE AT SUCH TIME AS THE CERTIFICATE OF MERGER IS FILED WITH THE SECRETARY OF STATE OF THE STATE OF DELAWARE, OR AT SUCH OTHER TIME AS THE PARTIES MAY AGREE AND SPECIFY IN THE CERTIFICATE OF MERGER (THE TIME THE MERGER BECOMES EFFECTIVE BEING THE "EFFECTIVE TIME").

(D) EFFECTS OF THE MERGER

-----  
. AT AND AFTER THE EFFECTIVE TIME, THE MERGER WILL HAVE THE EFFECTS SET FORTH IN THE APPLICABLE PROVISIONS OF THE CCC AND THE DGCL. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AT THE EFFECTIVE TIME, UNLESS OTHERWISE PROVIDED HEREIN, ALL THE PROPERTY, RIGHTS, PRIVILEGES, POWERS AND FRANCHISES OF THE TARGET AND MERGER SUB SHALL VEST IN THE SURVIVING CORPORATION, AND ALL DEBTS, LIABILITIES AND DUTIES OF THE TARGET AND MERGER SUB SHALL BECOME THE DEBTS, LIABILITIES AND DUTIES OF THE SURVIVING CORPORATION.

(E) CERTIFICATE OF INCORPORATION

-----  
. THE CERTIFICATE OF INCORPORATION OF MERGER SUB, AS IN EFFECT IMMEDIATELY PRIOR TO THE EFFECTIVE TIME SHALL BE AMENDED AS SET FORTH IN EXHIBIT A ATTACHED

-----  
HERETO, AND, AS SO AMENDED, SHALL BE THE CERTIFICATE OF INCORPORATION OF THE SURVIVING CORPORATION UNTIL THEREAFTER AMENDED AS PROVIDED THEREIN OR BY APPLICABLE LAW.

(F) BYLAWS

-----  
. THE BYLAWS OF MERGER SUB AS IN EFFECT IMMEDIATELY PRIOR TO THE EFFECTIVE TIME SHALL BE THE BYLAWS OF THE SURVIVING CORPORATION UNTIL THEREAFTER CHANGED OR AMENDED AS PROVIDED THEREIN OR BY APPLICABLE LAW.

(G) OFFICERS AND DIRECTORS OF SURVIVING CORPORATION

-----  
. THE PERSONS LISTED ON SCHEDULE 2(G) SHALL BE THE OFFICERS OF THE SURVIVING CORPORATION, UNTIL THE EARLIER OF THEIR RESIGNATION OR REMOVAL OR OTHERWISE CEASING TO BE AN OFFICER OR UNTIL THEIR RESPECTIVE SUCCESSORS ARE DULY ELECTED AND QUALIFIED, AS THE CASE MAY BE. PETER C. FARRELL, LESLIE HOFFMAN, AND WALTER FLICKER SHALL BE THE DIRECTORS OF THE SURVIVING CORPORATION, UNTIL THE EARLIER OF THEIR RESIGNATION OR REMOVAL OR OTHERWISE CEASING TO BE A DIRECTOR OR UNTIL THEIR RESPECTIVE SUCCESSORS ARE DULY ELECTED AND QUALIFIED, AS THE CASE MAY BE.

(H) DELIVERIES OF HOFFMAN AND TARGET AT CLOSING

-----  
. AT THE CLOSING, HOFFMAN AND TARGET WILL DELIVER TO PARENT AND MERGER SUB:

(I) CERTIFICATES REPRESENTING ALL OUTSTANDING SHARES OF TARGET COMMON STOCK;

(II) AN OPINION FROM TARGET'S COUNSEL WHICH ADDRESSES THE ITEMS SET FORTH IN EXHIBIT D;

-----  
(III) COPIES OF ALL THIRD PARTY CONSENTS LISTED ON SCHEDULE 2(H) ATTACHED

-----  
HERETO;

(IV) AN EMPLOYMENT AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT E (THE "EMPLOYMENT AGREEMENT") EXECUTED BY HOFFMAN;

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(V) ASSIGNMENT OF INVENTIONS, IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT F, EXECUTED BY ALL EMPLOYEES OF TARGET AS OF THE CLOSING DATE;

7

(VI) A REGISTRATION RIGHTS AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT C RELATING TO THE SHARES (THE "REGISTRATION RIGHTS AGREEMENT")

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EXECUTED BY HOFFMAN; AND

(VII) SUCH OTHER CLOSING CERTIFICATES AND INSTRUMENTS AS THE PARENT MAY REASONABLY REQUEST IN CONNECTION WITH THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(I) DELIVERIES OF PARENT AND MERGER SUB AT CLOSING

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. AT THE CLOSING, PARENT AND MERGER SUB WILL DELIVER TO HOFFMAN AND TARGET:

(I) THE CONSIDERATION, AS CONTEMPLATED BY 3;

(II) THE REGISTRATION RIGHTS AGREEMENT EXECUTED BY PARENT;

(III) THE EMPLOYMENT AGREEMENT EXECUTED BY MERGER SUB;

(IV) A FORM OF RELEASE OR TERMINATION AGREEMENT EVIDENCING THAT HOFFMAN HAS BEEN RELEASED FROM ALL PERSONAL GUARANTEES OF INDEBTEDNESS OF THE TARGET UNDER THAT CERTAIN CREDIT AGREEMENT, DATED AS OF APRIL 1, 1999, BY AND BETWEEN TARGET AND WELLS FARGO BANK, N.A., AS AMENDED TO THE DATE HEREOF; AND

(V) SUCH OTHER CLOSING CERTIFICATES AND INSTRUMENTS AS HOFFMAN MAY REASONABLY REQUEST IN CONNECTION WITH THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

3. EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

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. AS OF THE EFFECTIVE TIME, BY VIRTUE OF THE MERGER AND WITHOUT ANY ACTION ON THE PART OF THE HOLDER OF ANY SHARES OF TARGET STOCK OR ANY SHARES OF CAPITAL STOCK OF MERGER SUB:

(A) CAPITAL STOCK OF MERGER SUB

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. EACH ISSUED AND OUTSTANDING SHARE OF CAPITAL STOCK OF MERGER SUB SHALL REMAIN ISSUED AND OUTSTANDING.

(B) CONVERSION OF TARGET SHARES

. AT AND AS OF THE EFFECTIVE TIME, ALL OUTSTANDING SHARES OF TARGET COMMON STOCK, IN AGGREGATE, SHALL BE CONVERTED INTO THE RIGHT TO RECEIVE THE CONSIDERATION, PAYABLE AS SET FORTH BELOW. NO SHARE OF TARGET STOCK SHALL BE DEEMED TO BE OUTSTANDING OR TO HAVE ANY RIGHTS, OTHER THAN THE RIGHT TO RECEIVE THE CONSIDERATION, AFTER THE EFFECTIVE TIME.

(C) CANCELLATION OF TREASURY STOCK AND PARENT-OWNED STOCK  
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. EACH SHARE OF TARGET COMMON STOCK THAT IS OWNED BY TARGET AND EACH SHARE OF TARGET COMMON STOCK THAT IS OWNED BY PARENT, MERGER SUB OR ANY OTHER WHOLLY OWNED SUBSIDIARY OF PARENT SHALL AUTOMATICALLY BE CANCELED AND RETIRED AND SHALL CEASE TO EXIST, AND NO PARENT COMMON STOCK OR OTHER CONSIDERATION SHALL BE DELIVERED IN EXCHANGE THEREFOR.

(D) CONVEYANCE OF CONSIDERATION TO HOFFMAN  
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. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE CLOSING DATE, IN EXCHANGE FOR CERTIFICATES REPRESENTING ALL OF THE OUTSTANDING TARGET COMMON STOCK, PARENT SHALL DELIVER TO HOFFMAN (A) CASH, PAYABLE BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS, IN THE AMOUNT OF THE CASH CONSIDERATION, AND (B) A CERTIFICATE OR CERTIFICATES IN THE NAME OF HOFFMAN REPRESENTING IN THE AGGREGATE 853,448 SHARES.

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4. REPRESENTATIONS AND WARRANTIES CONCERNING THE TRANSACTION.  
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(A) REPRESENTATIONS AND WARRANTIES OF HOFFMAN  
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. HOFFMAN REPRESENTS AND WARRANTS TO THE PARENT AND MERGER SUB THAT THE STATEMENTS CONTAINED IN THIS 4(A) ARE CORRECT AND COMPLETE AS OF THE DATE OF THIS AGREEMENT, EXCEPT AS SET FORTH IN THE DISCLOSURE SCHEDULE DELIVERED BY HOFFMAN TO THE PARENT ON THE DATE HEREOF, INITIALED BY THE PARTIES AND ATTACHED HERETO (THE "HOFFMAN DISCLOSURE SCHEDULE"). NOTHING IN THE HOFFMAN DISCLOSURE

SCHEDULE IS DEEMED ADEQUATE TO DISCLOSE AN EXCEPTION TO A REPRESENTATION OR WARRANTY MADE HEREIN, HOWEVER, UNLESS THE HOFFMAN DISCLOSURE SCHEDULE IDENTIFIES THE EXCEPTION WITH PARTICULARITY AND DESCRIBES THE RELEVANT FACTS IN DETAIL. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE MERE LISTING (OR INCLUSION OF A COPY) OF A DOCUMENT OR OTHER ITEM SHALL NOT BE DEEMED ADEQUATE TO DISCLOSE AN EXCEPTION TO A REPRESENTATION OR WARRANTY MADE HEREIN (UNLESS THE REPRESENTATION OR WARRANTY HAS TO DO WITH THE EXISTENCE OF THE DOCUMENT OR OTHER ITEM ITSELF). THE HOFFMAN DISCLOSURE SCHEDULE WILL BE ARRANGED IN PARAGRAPHS CORRESPONDING TO THE LETTERED AND NUMBERED PARAGRAPHS CONTAINED IN THIS 4(A), AND DISCLOSURE OF ANY MATTER IN ANY SUCH PARAGRAPH IS DEEMED TO BE DISCLOSURE FOR THE PURPOSES OF THE CORRESPONDINGLY NUMBERED PARAGRAPH OF THIS 4(A) ONLY, AND NOT FOR ANY OTHER PARAGRAPH OF THIS 4(A), OR FOR ANY OTHER PURPOSE.

(I) AUTHORIZATION OF TRANSACTION. HOFFMAN HAS FULL POWER AND AUTHORITY TO  
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EXECUTE AND DELIVER THIS AGREEMENT AND TO PERFORM HIS OBLIGATIONS HEREUNDER. THIS AGREEMENT CONSTITUTES THE VALID AND LEGALLY BINDING OBLIGATION OF HOFFMAN, ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AND CONDITIONS. NO NOTICE TO, OR CONSENT OF, HOFFMAN'S SPOUSE IS REQUIRED UNDER ANY LAW, STATUTE, RULE OR REGULATION RELATED TO MARITAL OR COMMUNITY PROPERTY IN ORDER FOR HOFFMAN TO EXECUTE AND DELIVER THIS AGREEMENT AND TO PERFORM HIS OBLIGATIONS HEREUNDER AND CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY, AND NO RIGHTS OF HOFFMAN'S SPOUSE UNDER ANY SUCH LAW, STATUTE, RULE OR REGULATION SHALL BE TRIGGERED BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, THE PERFORMANCE BY HOFFMAN OF HIS OBLIGATIONS HEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY.

(II) NONCONTRAVENTION. NEITHER THE EXECUTION AND THE DELIVERY OF THIS  
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AGREEMENT, NOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY, WILL (A) VIOLATE ANY CONSTITUTION, STATUTE, REGULATION, RULE, INJUNCTION, JUDGMENT, ORDER, DECREE, RULING, CHARGE, OR OTHER RESTRICTION OF ANY GOVERNMENT, GOVERNMENTAL AGENCY, OR COURT TO WHICH HOFFMAN IS SUBJECT OR (B) CONFLICT WITH, RESULT IN A BREACH OF, CONSTITUTE A DEFAULT UNDER, RESULT IN THE ACCELERATION OF, CREATE IN ANY PARTY THE RIGHT TO ACCELERATE, TERMINATE, MODIFY, OR CANCEL, OR REQUIRE ANY NOTICE OR CONSENT UNDER ANY AGREEMENT, CONTRACT, LEASE, LICENSE, INSTRUMENT, OR OTHER ARRANGEMENT TO WHICH HOFFMAN IS A PARTY OR BY WHICH HE IS BOUND OR TO WHICH ANY OF HIS ASSETS IS SUBJECT.

(III) APPROVALS. NO CONSENT, APPROVAL, ORDER OR AUTHORIZATION OF, OR  
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REGISTRATION, DECLARATION OR FILING WITH, OR PERMIT FROM, ANY GOVERNMENTAL ENTITY IS REQUIRED BY OR WITH RESPECT TO HOFFMAN IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS AGREEMENT OR THE CONSUMMATION BY HOFFMAN OF THE TRANSACTIONS CONTEMPLATED HEREBY EXCEPT FOR: (A) THE FILING OF THE CERTIFICATE OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF DELAWARE PURSUANT TO THE DGCL; (B) THE FILING OF THE AGREEMENT OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF CALIFORNIA PURSUANT TO THE CCC; (C) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY APPLICABLE NON-U.S. GOVERNMENTAL ENTITY; (D) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY NON-U.S. PREMERGER NOTIFICATION, SECURITIES, CORPORATE OR OTHER LEGAL REQUIREMENT, AND (E) SUCH CONSENTS, APPROVALS, ORDERS, AUTHORIZATIONS, REGISTRATIONS, DECLARATIONS AND FILINGS THE FAILURE OF WHICH TO MAKE OR OBTAIN COULD NOT REASONABLY BE EXPECTED TO HAVE A MATERIAL ADVERSE EFFECT ON TARGET OR PARENT OR MATERIALLY IMPAIR OR DELAY THE

ABILITY OF THE PARTIES TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

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(IV) BROKERS' FEES. HOFFMAN HAS NO LIABILITY OR OBLIGATION TO PAY ANY FEES

OR COMMISSIONS TO ANY BROKER, FINDER, OR AGENT WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT FOR WHICH THE PARENT OR MERGER SUB COULD BECOME LIABLE OR OBLIGATED.

(V) INVESTMENT. HOFFMAN (A) UNDERSTANDS THAT THE SHARES HAVE NOT BEEN, AND

WILL NOT BE, REGISTERED UNDER THE SECURITIES ACT, OR UNDER ANY STATE SECURITIES LAWS, AND ARE BEING OFFERED AND SOLD IN RELIANCE UPON FEDERAL AND STATE EXEMPTIONS FOR TRANSACTIONS NOT INVOLVING ANY PUBLIC OFFERING, (B) IS ACQUIRING THE SHARES SOLELY FOR HIS OR ITS OWN ACCOUNT FOR INVESTMENT PURPOSES, AND NOT WITH A VIEW TO THE DISTRIBUTION THEREOF, (C) IS A SOPHISTICATED INVESTOR WITH KNOWLEDGE AND EXPERIENCE IN BUSINESS AND FINANCIAL MATTERS, (D) HAS RECEIVED CERTAIN INFORMATION CONCERNING THE PARENT AND HAS HAD THE OPPORTUNITY TO OBTAIN ADDITIONAL INFORMATION AS DESIRED IN ORDER TO EVALUATE THE MERITS AND THE RISKS INHERENT IN HOLDING THE SHARES, (E) IS ABLE TO BEAR THE ECONOMIC RISK AND LACK OF LIQUIDITY INHERENT IN HOLDING THE SHARES, AND (F) IS AN ACCREDITED INVESTOR FOR THE REASONS SET FORTH ON THE ACCREDITED INVESTOR QUESTIONNAIRE ATTACHED TO THE HOFFMAN DISCLOSURE SCHEDULE.

(VI) TARGET SHARES. HOFFMAN HOLDS OF RECORD AND OWNS BENEFICIALLY 4,250,000

SHARES OF TARGET COMMON STOCK, BEING ALL OF THE OUTSTANDING SHARES OF TARGET COMMON STOCK, FREE AND CLEAR OF ANY RESTRICTIONS ON TRANSFER (OTHER THAN ANY RESTRICTIONS UNDER THE SECURITIES ACT AND STATE SECURITIES LAWS), TAXES, SECURITY INTERESTS, OPTIONS, WARRANTS, PURCHASE RIGHTS, CONTRACTS, COMMITMENTS, EQUITIES, CLAIMS, AND DEMANDS. HOFFMAN IS NOT A PARTY TO ANY OPTION, WARRANT, PURCHASE RIGHT, OR OTHER CONTRACT OR COMMITMENT THAT COULD REQUIRE HOFFMAN TO SELL, TRANSFER, OR OTHERWISE DISPOSE OF ANY CAPITAL STOCK OF THE TARGET (OTHER THAN THIS AGREEMENT). HOFFMAN IS NOT A PARTY TO ANY VOTING TRUST, PROXY, OR OTHER AGREEMENT OR UNDERSTANDING WITH RESPECT TO THE VOTING OF ANY CAPITAL STOCK OF THE TARGET, AND HAS FULL AUTHORITY TO VOTE THE SHARES OF TARGET COMMON STOCK HELD BY HIM.

(VII) NO CONTRARY ACTION. HOFFMAN HAS NOT TAKEN OR CAUSED TO BE TAKEN, OR

AGREED TO TAKE OR CAUSE TO BE TAKEN, ANY ACTION, AND HAS NO PLAN OR INTENTION TO TAKE OR CAUSE TO BE TAKEN ANY ACTION THAT WOULD, OR IS REASONABLY LIKELY TO, PREVENT THE MERGER FROM QUALIFYING AS A REORGANIZATION WITHIN THE MEANING OF SECTION 368(A) OF THE CODE, NOR DOES HOFFMAN KNOW OR HAVE REASON TO KNOW OF ANY FACT, AGREEMENT, PLAN OR OTHER CIRCUMSTANCE THAT WOULD, OR IS REASONABLY LIKELY TO, PREVENT THE MERGER FROM QUALIFYING AS A REORGANIZATION WITHIN THE MEANING OF SECTION 368(A) OF THE CODE. FOR PURPOSES OF THIS REPRESENTATION, ANY FAILURE OR OMISSION TO ACT, OR THE CAUSING OF ANY FAILURE OR OMISSION TO ACT, SHALL CONSTITUTE AN ACTION TAKEN, OR CAUSED TO BE TAKEN, AS APPROPRIATE.

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(B) REPRESENTATIONS AND WARRANTIES OF THE PARENT AND MERGER SUB

. PARENT AND MERGER SUB REPRESENT AND WARRANT TO HOFFMAN AND THE TARGET THAT THE STATEMENTS CONTAINED IN THIS 4(B) ARE CORRECT AND COMPLETE AS OF THE DATE OF THIS AGREEMENT.

(I) ORGANIZATION OF THE PARENT AND MERGER SUB. EACH OF PARENT AND MERGER

SUB IS A CORPORATION DULY ORGANIZED, VALIDLY EXISTING, AND IN GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE. EACH OF PARENT AND MERGER SUB HAS ALL REQUISITE CORPORATE POWER AND AUTHORITY TO OWN, LEASE AND OPERATE ITS PROPERTIES AND TO CARRY ON ITS BUSINESS AS NOW BEING CONDUCTED, AND IS DULY QUALIFIED AND IN GOOD STANDING TO DO BUSINESS IN EACH JURISDICTION IN WHICH THE BUSINESS IT IS CONDUCTING, OR THE OPERATION, OWNERSHIP OR LEASING OF ITS PROPERTIES, MAKES SUCH QUALIFICATION NECESSARY, EXCEPT WHERE THE FAILURE TO SO QUALIFY, INDIVIDUALLY, OR IN THE AGGREGATE, WOULD NOT HAVE A MATERIAL ADVERSE EFFECT ON THE BUSINESS, OPERATIONS, ASSETS, FINANCIAL CONDITION OR RESULTS OF OPERATIONS OF THE PARENT AND ITS SUBSIDIARIES TAKEN AS A WHOLE.

(II) AUTHORIZATION OF TRANSACTION. EACH OF PARENT AND MERGER SUB HAS FULL

POWER AND AUTHORITY (INCLUDING FULL CORPORATE POWER AND AUTHORITY) TO EXECUTE AND DELIVER THIS AGREEMENT AND TO PERFORM ITS OBLIGATIONS HEREUNDER. THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY PARENT AND MERGER SUB AND THE CONSUMMATION BY PARENT AND MERGER SUB OF THE TRANSACTIONS CONTEMPLATED HEREBY HAVE BEEN DULY APPROVED BY THE BOARDS OF DIRECTORS OF PARENT AND MERGER SUB AND BY THE SOLE SHAREHOLDER OF MERGER SUB. NO OTHER CORPORATE PROCEEDINGS ON THE PART OF PARENT OR MERGER SUB ARE NECESSARY TO AUTHORIZE THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY. THIS AGREEMENT CONSTITUTES THE VALID AND LEGALLY BINDING OBLIGATION OF THE PARENT AND MERGER SUB, ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AND CONDITIONS.

(III) SHARES. WHEN ISSUED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT,

THE SHARES WILL BE DULY AUTHORIZED, VALIDLY ISSUED, FULLY PAID AND NONASSESSABLE.

(IV) NONCONTRAVENTION. NEITHER THE EXECUTION AND THE DELIVERY OF THIS



AGREEMENT, NOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY, WILL VIOLATE ANY CONSTITUTION, STATUTE, REGULATION, RULE, INJUNCTION, JUDGMENT, ORDER, DECREE, RULING, CHARGE, OR OTHER RESTRICTION OF ANY GOVERNMENT, GOVERNMENTAL AGENCY, OR COURT TO WHICH THE PARENT OR MERGER SUB IS SUBJECT OR ANY PROVISION OF THEIR RESPECTIVE CHARTER OR BYLAWS.

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(V) APPROVALS. NO CONSENT, APPROVAL, ORDER OR AUTHORIZATION OF, OR

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REGISTRATION, DECLARATION OR FILING WITH, OR PERMIT FROM, ANY GOVERNMENTAL ENTITY IS REQUIRED BY OR WITH RESPECT TO PARENT OR MERGER SUB IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS AGREEMENT OR THE CONSUMMATION BY PARENT AND MERGER SUB OF THE TRANSACTIONS CONTEMPLATED HEREBY EXCEPT FOR: (A) THE FILING OF THE CERTIFICATE OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF DELAWARE PURSUANT TO THE DGCL; (B) THE FILING OF THE AGREEMENT OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF CALIFORNIA PURSUANT TO THE CCC; (C) FILINGS WITH THE SEC REQUIRED UNDER THE EXCHANGE ACT; (D) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY APPLICABLE STATE SECURITIES, "BLUE SKY" OR TAKEOVER LAWS; (E) SUCH FILINGS WITH THE SEC UNDER THE SECURITIES ACT AS MAY BE REQUIRED IN CONNECTION WITH THE ISSUANCE OF THE SHARES AND THE SUBSEQUENT REGISTRATION OF THE SHARES PURSUANT TO THE REGISTRATION RIGHTS AGREEMENT REFERRED TO IN 7 BELOW; (F) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY THE RULES AND REGULATIONS OF THE NEW YORK STOCK EXCHANGE; (G) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY APPLICABLE NON-U.S. GOVERNMENTAL ENTITY; (H) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY NON-U.S. PREMERGER NOTIFICATION, SECURITIES, CORPORATE OR OTHER LEGAL REQUIREMENT, AND (I) SUCH CONSENTS, APPROVALS, ORDERS, AUTHORIZATIONS, REGISTRATIONS, DECLARATIONS AND FILINGS THE FAILURE OF WHICH TO MAKE OR OBTAIN COULD NOT REASONABLY BE EXPECTED TO HAVE A MATERIAL ADVERSE EFFECT ON THE BUSINESS, OPERATIONS, ASSETS, FINANCIAL CONDITION OR RESULTS OF OPERATIONS OF THE PARENT AND ITS SUBSIDIARIES TAKEN AS A WHOLE, OR MATERIALLY IMPAIR OR DELAY THE ABILITY OF THE PARTIES TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(VI) PARENT SEC DOCUMENTS. THE PARENT HAS FILED ALL REQUIRED REPORTS,

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SCHEDULES, FORMS, STATEMENTS AND OTHER DOCUMENTS WITH THE SEC SINCE JUNE 30, 2000 (SUCH DOCUMENTS, TOGETHER WITH ALL EXHIBITS AND SCHEDULES THERETO AND DOCUMENTS INCORPORATED BY REFERENCE THEREIN, COLLECTIVELY REFERRED TO HEREIN AS THE "PARENT SEC DOCUMENTS"). AS OF THEIR RESPECTIVE DATES, NONE OF THE PARENT

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SEC DOCUMENTS CONTAINED WHEN FILED ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMITTED TO STATE A MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY TO MAKE THE STATEMENTS THEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. THE CONSOLIDATED FINANCIAL STATEMENTS OF THE PARENT INCLUDED IN THE PARENT SEC DOCUMENTS COMPLIED AS TO FORM IN ALL MATERIAL RESPECTS WITH THE PUBLISHED RULES AND REGULATIONS OF THE SEC WITH RESPECT THERETO, WERE PREPARED IN ACCORDANCE WITH GAAP APPLIED ON A CONSISTENT BASIS DURING THE PERIODS INVOLVED (EXCEPT AS MAY BE INDICATED IN THE NOTES THERETO OR, IN THE CASE OF THE UNAUDITED STATEMENTS, AS PERMITTED BY RULE 10-01 OF REGULATION S-X OF THE SEC) AND FAIRLY PRESENT IN ACCORDANCE WITH APPLICABLE REQUIREMENTS OF GAAP (SUBJECT, IN THE CASE OF THE UNAUDITED STATEMENTS, TO NORMAL YEAR-END ADJUSTMENTS AND OTHER ADJUSTMENTS DISCUSSED THEREIN) THE CONSOLIDATED FINANCIAL POSITION OF THE PARENT AS OF THEIR RESPECTIVE DATES AND THE RESULTS OF OPERATIONS AND THE CONSOLIDATED CASH FLOWS OF THE PARENT AND ITS CONSOLIDATED SUBSIDIARIES FOR THE PERIODS PRESENTED THEREIN.

(VII) BROKERS' FEES. NEITHER PARENT NOR MERGER SUB HAS ANY LIABILITY OR

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OBLIGATION TO PAY ANY FEES OR COMMISSIONS TO ANY BROKER, FINDER, OR AGENT WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT FOR WHICH HOFFMAN OR TARGET COULD BECOME LIABLE OR OBLIGATED.

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(VIII) NO CONTRARY ACTION.

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(A) EXCEPT WITH RESPECT TO (1) OPEN-MARKET PURCHASES OF PARENT COMMON STOCK PURSUANT TO A GENERAL STOCK REPURCHASE PROGRAM OF PARENT THAT HAS NOT BEEN CREATED OR MODIFIED IN CONNECTION WITH THE MERGER, (2) REPURCHASES IN THE ORDINARY COURSE OF BUSINESS OF UNVESTED SHARES, IF ANY, ACQUIRED FROM TERMINATED EMPLOYEES; OR (3) PAYMENTS OF CASH, IF ANY, IN LIEU OF THE ISSUANCE OF FRACTIONAL SHARES, NEITHER PARENT NOR ANY PERSON RELATED TO PARENT WITHIN THE MEANING OF TREAS. REG. 1.368-1(E)(3), (E)(4) AND (E)(5) HAS ANY PLAN OR INTENTION TO, REDEEM OR OTHERWISE ACQUIRE ANY OF THE SHARES FOLLOWING THE MERGER.

(B) NEITHER PARENT NOR, TO THE KNOWLEDGE OF PARENT, ANY PERSON RELATED TO PARENT (WITHIN THE MEANING OF TREAS. REG. 1.368-1(E)(3), (E)(4) AND (E)(5)) HAS ACQUIRED ANY TARGET COMMON STOCK IN CONTEMPLATION OF THE MERGER OR OTHERWISE AS PART OF A PLAN OF WHICH THE MERGER IS A PART.

(C) PARENT HAS NO PLAN OR INTENTION TO CAUSE THE SURVIVING CORPORATION, AFTER THE MERGER, TO ISSUE ADDITIONAL SHARES OF THE COMMON STOCK OF THE SURVIVING CORPORATION THAT WOULD RESULT IN PARENT LOSING CONTROL OF THE SURVIVING CORPORATION WITHIN THE MEANING OF 368(C) OF THE CODE.

(D) EXCEPT FOR TRANSFERS OF STOCK AND ASSETS DESCRIBED IN TREAS. REG.

1.368-2(K) OR TRANSFERS OF SHARES OF COMMON STOCK OF THE SURVIVING CORPORATION TO ANOTHER SUBSIDIARY CONTROLLED BY PARENT WITHIN THE MEANING OF CODE 368(C), PARENT HAS NO PLAN OR INTENTION TO LIQUIDATE THE SURVIVING CORPORATION; TO MERGE THE SURVIVING CORPORATION WITH OR INTO ANOTHER CORPORATION; TO SELL OR OTHERWISE DISPOSE OF THE STOCK OF THE SURVIVING CORPORATION; OR, EXCEPT FOR DISPOSITIONS MADE IN THE ORDINARY COURSE OF BUSINESS, TO CAUSE THE SURVIVING CORPORATION TO SELL OR OTHERWISE DISPOSE OF ANY OF ITS ASSETS.

(E) ASSUMING (1) THE TARGET CURRENTLY CONDUCTS A BUSINESS, AND (2) SUCH BUSINESS IS THE TARGET'S "HISTORIC BUSINESS" WITHIN THE MEANING OF TREAS. REG. 1.368-1(D), AND (3) NO ASSETS OF THE TARGET HAVE BEEN SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF THAT WOULD PREVENT PARENT FROM CONTINUING THE "HISTORIC BUSINESS" OF THE TARGET OR FROM USING A "SIGNIFICANT PORTION" OF THE TARGET'S "HISTORIC BUSINESS ASSETS" IN A BUSINESS FOLLOWING THE MERGER, AS SUCH TERMS ARE USED IN TREAS. REG. 1.368-1(D), PARENT WILL CAUSE THE SURVIVING CORPORATION TO CONTINUE THE TARGET'S HISTORIC BUSINESS OR USE A SIGNIFICANT PORTION OF THE TARGET'S HISTORIC BUSINESS ASSETS IN A BUSINESS. FOR PURPOSES OF THIS REPRESENTATION, PARENT WILL BE DEEMED TO SATISFY THE FOREGOING REPRESENTATION IF (X) THE MEMBERS OF PARENT'S QUALIFIED GROUP (AS DEFINED IN TREAS. REG. 1.368-1(D)(4)(II)), IN THE AGGREGATE, CONTINUE THE HISTORIC BUSINESS OF THE TARGET OR USE A SIGNIFICANT PORTION OF THE TARGET'S HISTORIC BUSINESS ASSETS IN A BUSINESS, OR (Y) THE FOREGOING ACTIVITIES ARE UNDERTAKEN BY A PARTNERSHIP AS CONTEMPLATED BY TREAS. REG. 1.368-1(D)(4) (PROVIDED, HOWEVER, THAT IN THE EVENT THAT ANY ASSUMPTION SET FORTH IN THIS 4(B)(VIII)(E) IS INCORRECT, THIS 4(B)(VIII)(E) SHALL NOT BE CONSIDERED TO BE OR HAVE BEEN BREACHED).

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(F) NEITHER PARENT NOR MERGER SUB IS AN INVESTMENT COMPANY AS DEFINED IN 368(A)(2)(F)(III) AND (IV) OF THE CODE.

(G) ASSUMING THAT, AT THE EFFECTIVE TIME, THE TARGET WILL HOLD AT LEAST 90 PERCENT OF THE FAIR MARKET VALUE OF ITS NET ASSETS AND AT LEAST 70 PERCENT OF THE FAIR MARKET VALUE OF ITS GROSS ASSETS HELD IMMEDIATELY PRIOR TO THE EFFECTIVE TIME, AT THE EFFECTIVE TIME, THE SURVIVING CORPORATION WILL HOLD AT LEAST 90 PERCENT OF THE FAIR MARKET VALUE OF THE TARGET'S NET ASSETS AND AT LEAST 70 PERCENT OF THE FAIR MARKET VALUE OF THE TARGET'S GROSS ASSETS AND AT LEAST 90 PERCENT OF THE FAIR MARKET VALUE OF MERGER SUB'S NET ASSETS AND AT LEAST 70 PERCENT OF THE FAIR MARKET VALUE OF MERGER SUB'S GROSS ASSETS HELD IMMEDIATELY PRIOR TO THE EFFECTIVE TIME. FOR PURPOSES OF THIS REPRESENTATION (INCLUDING THE ASSUMPTION SET FORTH ABOVE), AMOUNTS USED BY THE TARGET TO PAY MERGER EXPENSES, AMOUNTS PAID BY THE TARGET TO REDEEM STOCK, SECURITIES, WARRANTS OR OPTIONS OF THE TARGET AS PART OF ANY OVERALL PLAN OF WHICH THE MERGER IS A PART, AND AMOUNTS DISTRIBUTED BY THE TARGET TO HOFFMAN (EXCEPT FOR ANY REGULAR, NORMAL DIVIDENDS) AS PART OF AN OVERALL PLAN OF WHICH THE MERGER IS A PART, INCLUDING, BUT NOT LIMITED TO, ANY INDEBTEDNESS OWED BY HOFFMAN TO THE TARGET THAT IS FORGIVEN AS PART OF AN OVERALL PLAN OF WHICH THE MERGER IS A PART, IN EACH CASE WILL BE TREATED AS CONSTITUTING ASSETS OF THE TARGET IMMEDIATELY PRIOR TO THE EFFECTIVE TIME (PROVIDED, HOWEVER, THAT IN THE EVENT THAT THE ASSUMPTION SET FORTH IN THIS 4(B)(VIII)(G) IS INCORRECT, THIS 4(B)(VIII)(G) SHALL NOT BE CONSIDERED TO BE OR HAVE BEEN BREACHED).

(H) PARENT AND MERGER SUB WILL PAY THEIR RESPECTIVE EXPENSES, IF ANY, INCURRED IN CONNECTION WITH THE MERGER. IN THE MERGER, NO LIABILITIES OF HOFFMAN WILL BE ASSUMED BY PARENT, AND PARENT WILL NOT ASSUME ANY LIENS, ENCUMBRANCES OR ANY SIMILAR LIABILITIES RELATING TO ANY TARGET COMMON STOCK ACQUIRED BY PARENT IN THE MERGER.

(I) AT THE EFFECTIVE TIME, THERE WILL BE NO INTERCORPORATE INDEBTEDNESS EXISTING BETWEEN PARENT OR MERGER SUB AND THE TARGET THAT WAS ISSUED OR ACQUIRED, OR WILL BE SETTLED, AT A DISCOUNT.

5. REPRESENTATIONS AND WARRANTIES CONCERNING THE TARGET

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. HOFFMAN AND TARGET REPRESENT AND WARRANT TO PARENT AND MERGER SUB THAT THE STATEMENTS CONTAINED IN THIS 5 ARE CORRECT AND COMPLETE AS OF THE DATE OF THIS AGREEMENT, EXCEPT AS SET FORTH IN THE DISCLOSURE SCHEDULE DELIVERED BY TARGET TO THE PARENT ON THE DATE HEREOF, INITIALED BY THE PARTIES AND ATTACHED HERETO (THE "TARGET DISCLOSURE SCHEDULE"). NOTHING IN THE TARGET DISCLOSURE

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SCHEDULE SHALL BE DEEMED ADEQUATE TO DISCLOSE AN EXCEPTION TO A REPRESENTATION OR WARRANTY MADE HEREIN, HOWEVER, UNLESS THE TARGET DISCLOSURE SCHEDULE IDENTIFIES THE EXCEPTION WITH PARTICULARITY AND DESCRIBES THE RELEVANT FACTS IN DETAIL. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE MERE LISTING (OR INCLUSION OF A COPY) OF A DOCUMENT OR OTHER ITEM SHALL NOT BE DEEMED ADEQUATE TO DISCLOSE AN EXCEPTION TO A REPRESENTATION OR WARRANTY MADE HEREIN (UNLESS THE REPRESENTATION OR WARRANTY HAS TO DO WITH THE EXISTENCE OF THE DOCUMENT OR OTHER ITEM ITSELF). THE TARGET DISCLOSURE SCHEDULE IS ARRANGED IN PARAGRAPHS CORRESPONDING TO THE LETTERED AND NUMBERED PARAGRAPHS CONTAINED IN THIS 5, AND DISCLOSURE OF ANY MATTER IN ANY SUCH PARAGRAPH IS DEEMED TO BE DISCLOSURE FOR THE PURPOSES OF THE CORRESPONDINGLY NUMBERED PARAGRAPH OF THIS 5 ONLY, AND NOT FOR ANY OTHER PARAGRAPH OF THIS 5, OR FOR ANY OTHER PURPOSE.

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(A) ORGANIZATION, QUALIFICATION, AND CORPORATE POWER

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. THE TARGET IS A CORPORATION DULY ORGANIZED, VALIDLY EXISTING, AND IN GOOD STANDING UNDER THE LAWS OF THE STATE OF CALIFORNIA. THE TARGET IS DULY AUTHORIZED TO CONDUCT BUSINESS AND IS IN GOOD STANDING UNDER THE LAWS OF EACH

JURISDICTION WHERE SUCH QUALIFICATION IS REQUIRED, EXCEPT WHERE THE FAILURE TO SO QUALIFY, INDIVIDUALLY, OR IN THE AGGREGATE, WOULD NOT HAVE A MATERIAL ADVERSE EFFECT ON THE TARGET. 5(A) OF THE TARGET DISCLOSURE SCHEDULE LISTS THE JURISDICTIONS IN WHICH THE TARGET IS DULY AUTHORIZED TO CONDUCT BUSINESS. THE TARGET HAS FULL CORPORATE POWER AND AUTHORITY AND ALL LICENSES, PERMITS, AND AUTHORIZATIONS NECESSARY TO CARRY ON THE BUSINESSES IN WHICH IT IS ENGAGED AND IN WHICH IT PRESENTLY PROPOSES TO ENGAGE AND TO OWN AND USE THE PROPERTIES OWNED AND USED BY IT. 5(A) OF THE TARGET DISCLOSURE SCHEDULE LISTS THE DIRECTORS AND OFFICERS OF THE TARGET. THE TARGET AND HOFFMAN HAVE DELIVERED TO THE PARENT CORRECT AND COMPLETE COPIES OF THE CHARTER AND BYLAWS OF THE TARGET (AS AMENDED TO DATE). THE MINUTE BOOKS (CONTAINING THE RECORDS OF MEETINGS OF THE SHAREHOLDERS, THE BOARD OF DIRECTORS, AND ANY COMMITTEES OF THE BOARD OF DIRECTORS), THE STOCK CERTIFICATE BOOKS, AND THE STOCK RECORD BOOKS OF THE TARGET PROVIDED TO PARENT ARE CORRECT AND COMPLETE. THE TARGET IS NOT IN DEFAULT UNDER OR IN VIOLATION OF ANY PROVISION OF ITS CHARTER OR BYLAWS.

(B) CAPITALIZATION

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. THE ENTIRE AUTHORIZED CAPITAL STOCK OF THE TARGET CONSISTS OF 15,000,000 TARGET SHARES, OF WHICH 4,250,000 TARGET SHARES ARE ISSUED AND OUTSTANDING AND NO TARGET SHARES ARE HELD IN TREASURY. ALL OF THE ISSUED AND OUTSTANDING TARGET SHARES HAVE BEEN DULY AUTHORIZED, ARE VALIDLY ISSUED, FULLY PAID, AND NONASSESSABLE, AND ARE HELD OF RECORD BY HOFFMAN. THERE ARE NO OUTSTANDING OR AUTHORIZED OPTIONS, WARRANTS, PURCHASE RIGHTS, SUBSCRIPTION RIGHTS, CONVERSION RIGHTS, EXCHANGE RIGHTS, OR OTHER CONTRACTS OR COMMITMENTS THAT COULD REQUIRE THE TARGET TO ISSUE, SELL, OR OTHERWISE CAUSE TO BECOME OUTSTANDING ANY OF ITS CAPITAL STOCK. THERE ARE NO OUTSTANDING OR AUTHORIZED STOCK APPRECIATION, PHANTOM STOCK, PROFIT PARTICIPATION, OR SIMILAR RIGHTS WITH RESPECT TO THE TARGET. THERE ARE NO VOTING TRUSTS, PROXIES, OR OTHER AGREEMENTS OR UNDERSTANDINGS WITH RESPECT TO THE VOTING OF THE CAPITAL STOCK OF THE TARGET.

(C) AUTHORIZATION OF TRANSACTION

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. THE TARGET HAS FULL POWER AND AUTHORITY (INCLUDING FULL CORPORATE POWER AND AUTHORITY) TO EXECUTE AND DELIVER THIS AGREEMENT AND TO PERFORM ITS OBLIGATIONS HEREUNDER. THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE TARGET AND THE CONSUMMATION BY THE TARGET OF THE TRANSACTIONS CONTEMPLATED HEREBY HAVE BEEN DULY APPROVED BY THE BOARD OF DIRECTORS AND THE SOLE SHAREHOLDER OF THE TARGET. NO OTHER CORPORATE PROCEEDINGS ON THE PART OF THE TARGET OR ITS SHAREHOLDER IS NECESSARY TO AUTHORIZE THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY. THIS AGREEMENT CONSTITUTES THE VALID AND LEGALLY BINDING OBLIGATION OF THE TARGET, ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AND CONDITIONS.

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(D) NONCONTRAVENTION

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. NEITHER THE EXECUTION AND THE DELIVERY OF THIS AGREEMENT, NOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY, WILL (I) VIOLATE ANY CONSTITUTION, STATUTE, REGULATION, RULE, INJUNCTION, JUDGMENT, ORDER, DECREE, RULING, CHARGE, OR OTHER RESTRICTION OF ANY GOVERNMENT, GOVERNMENTAL AGENCY, OR COURT TO WHICH THE TARGET IS SUBJECT OR ANY PROVISION OF THE CHARTER OR BYLAWS OF THE TARGET OR (II) CONFLICT WITH, RESULT IN A BREACH OF, CONSTITUTE A DEFAULT UNDER, RESULT IN THE ACCELERATION OF, CREATE IN ANY PARTY THE RIGHT TO ACCELERATE, TERMINATE, MODIFY, OR CANCEL, OR REQUIRE ANY NOTICE OR CONSENT UNDER ANY AGREEMENT, CONTRACT, LEASE, LICENSE, INSTRUMENT, OR OTHER ARRANGEMENT TO WHICH THE TARGET IS A PARTY OR BY WHICH IT IS BOUND OR TO WHICH ANY OF ITS ASSETS IS SUBJECT (OR RESULT IN THE IMPOSITION OF ANY SECURITY INTEREST UPON ANY OF ITS ASSETS).

(E) APPROVALS

-----  
. NO CONSENT, APPROVAL, ORDER OR AUTHORIZATION OF, OR REGISTRATION, DECLARATION OR FILING WITH, OR PERMIT FROM, ANY GOVERNMENTAL ENTITY IS REQUIRED BY OR WITH RESPECT TO TARGET IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS AGREEMENT OR THE CONSUMMATION BY TARGET OF THE TRANSACTIONS CONTEMPLATED HEREBY EXCEPT FOR: (A) THE FILING OF THE CERTIFICATE OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF DELAWARE PURSUANT TO THE DGCL; (B) THE FILING OF THE AGREEMENT OF MERGER WITH THE SECRETARY OF STATE OF THE STATE OF CALIFORNIA PURSUANT TO THE CCC; (C) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY APPLICABLE NON-U.S. GOVERNMENTAL ENTITY; (D) SUCH FILINGS AND APPROVALS AS MAY BE REQUIRED BY ANY NON-U.S. PREMERGER NOTIFICATION, SECURITIES, CORPORATE OR OTHER LEGAL REQUIREMENT, AND (E) SUCH CONSENTS, APPROVALS, ORDERS, AUTHORIZATIONS, REGISTRATIONS, DECLARATIONS AND FILINGS THE FAILURE OF WHICH TO MAKE OR OBTAIN COULD NOT REASONABLY BE EXPECTED TO HAVE A MATERIAL ADVERSE EFFECT ON PARENT OR MATERIALLY IMPAIR OR DELAY THE ABILITY OF THE PARTIES TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(F) BROKERS' FEES

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. THE TARGET HAS NO LIABILITY OR OBLIGATION TO PAY ANY FEES OR COMMISSIONS TO ANY BROKER, FINDER, OR AGENT WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(G) TITLE TO ASSETS

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. THE TARGET HAS GOOD AND MARKETABLE TITLE TO, OR A VALID LEASEHOLD INTEREST IN, THE PROPERTIES AND ASSETS USED BY IT, LOCATED ON ITS PREMISES, OR

SHOWN ON THE MOST RECENT BALANCE SHEET OR ACQUIRED AFTER THE DATE THEREOF, FREE AND CLEAR OF ALL SECURITY INTERESTS, EXCEPT FOR PROPERTIES AND ASSETS DISPOSED OF IN THE ORDINARY COURSE OF BUSINESS SINCE THE DATE OF THE MOST RECENT BALANCE SHEET.

(H) SUBSIDIARIES

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. THE TARGET DOES NOT CONTROL DIRECTLY OR INDIRECTLY OR HAVE ANY DIRECT OR INDIRECT EQUITY PARTICIPATION IN ANY CORPORATION, PARTNERSHIP, TRUST, OR OTHER BUSINESS ASSOCIATION.

(I) FINANCIAL STATEMENTS

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. ATTACHED HERETO AS EXHIBIT B ARE THE FOLLOWING FINANCIAL STATEMENTS

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(COLLECTIVELY THE "FINANCIAL STATEMENTS"): (I) UNAUDITED BALANCE SHEETS AND

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STATEMENTS OF INCOME, STATEMENTS OF SHAREHOLDERS' EQUITY, AND CASH FLOW AS OF AND FOR THE FISCAL YEARS ENDED DECEMBER 31, 1997, DECEMBER 31, 1998, DECEMBER 31, 1999, DECEMBER 31, 2000, AND DECEMBER 31, 2001 (THE "MOST RECENT FISCAL YEAR

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END"), FOR THE TARGET; AND (II) AN UNAUDITED BALANCE SHEET AND STATEMENT OF

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INCOME, STATEMENT OF SHAREHOLDERS' EQUITY, AND CASH FLOW (THE "MOST RECENT

-----  
FINANCIAL STATEMENTS") AS OF AND FOR THE THREE MONTHS ENDED MARCH 31, 2002 (THE

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"MOST RECENT FISCAL QUARTER END"), FOR THE TARGET. THE FINANCIAL STATEMENTS

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(INCLUDING THE NOTES THERETO) HAVE BEEN PREPARED IN ACCORDANCE WITH GAAP APPLIED

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ON A CONSISTENT BASIS THROUGHOUT THE PERIODS COVERED THEREBY, PRESENT FAIRLY THE FINANCIAL CONDITION OF THE TARGET AS OF SUCH DATES AND THE RESULTS OF OPERATIONS OF THE TARGET FOR SUCH PERIODS, ARE CORRECT AND COMPLETE, AND ARE CONSISTENT WITH THE BOOKS AND RECORDS OF THE TARGET (WHICH BOOKS AND RECORDS ARE CORRECT AND COMPLETE); PROVIDED, HOWEVER, THAT THE MOST RECENT FINANCIAL STATEMENTS ARE SUBJECT TO NORMAL YEAR-END ADJUSTMENTS (WHICH WILL NOT BE MATERIAL INDIVIDUALLY OR IN THE AGGREGATE) AND LACK FOOTNOTES AND OTHER PRESENTATION ITEMS.

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(J) EVENTS SUBSEQUENT TO MOST RECENT FISCAL YEAR END

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. SINCE THE MOST RECENT FISCAL YEAR END, THERE HAS NOT BEEN ANY ADVERSE CHANGE IN THE BUSINESS, FINANCIAL CONDITION, OPERATIONS, RESULTS OF OPERATIONS, OR FUTURE PROSPECTS OF THE TARGET, OTHER THAN AS EXPLICITLY CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SINCE THAT DATE:

(I) THE TARGET HAS NOT SOLD, LEASED, TRANSFERRED, OR ASSIGNED ANY OF ITS ASSETS, TANGIBLE OR INTANGIBLE, OTHER THAN FOR A FAIR CONSIDERATION IN THE ORDINARY COURSE OF BUSINESS;

(II) THE TARGET HAS NOT ENTERED INTO ANY AGREEMENT, CONTRACT, LEASE, OR LICENSE (OR SERIES OF RELATED AGREEMENTS, CONTRACTS, LEASES, AND LICENSES) EITHER INVOLVING MORE THAN \$35,000 OR OUTSIDE THE ORDINARY COURSE OF BUSINESS;

(III) NO PARTY (INCLUDING THE TARGET) HAS ACCELERATED, TERMINATED, MODIFIED, OR CANCELLED ANY AGREEMENT, CONTRACT, LEASE, OR LICENSE (OR SERIES OF RELATED AGREEMENTS, CONTRACTS, LEASES, AND LICENSES) INVOLVING MORE THAN \$35,000 TO WHICH THE TARGET IS A PARTY OR BY WHICH TARGET IS BOUND;

(IV) NO SECURITY INTEREST HAS BEEN IMPOSED UPON ANY OF THE TARGET'S ASSETS, TANGIBLE OR INTANGIBLE;

(V) THE TARGET HAS NOT MADE ANY CAPITAL EXPENDITURE (OR SERIES OF RELATED CAPITAL EXPENDITURES) EITHER INVOLVING MORE THAN \$35,000 OR OUTSIDE THE ORDINARY COURSE OF BUSINESS;

(VI) THE TARGET HAS NOT MADE ANY CAPITAL INVESTMENT IN, ANY LOAN TO, OR ANY ACQUISITION OF THE SECURITIES OR ASSETS OF, ANY OTHER PERSON (OR SERIES OF RELATED CAPITAL INVESTMENTS, LOANS, AND ACQUISITIONS) EITHER INVOLVING MORE THAN \$35,000 OR OUTSIDE THE ORDINARY COURSE OF BUSINESS;

(VII) THE TARGET HAS NOT ISSUED ANY NOTE, BOND, OR OTHER DEBT SECURITY OR CREATED, INCURRED, ASSUMED, OR GUARANTEED ANY INDEBTEDNESS FOR BORROWED MONEY OR CAPITALIZED LEASE OBLIGATION EITHER INVOLVING MORE THAN \$35,000 SINGLY OR \$35,000 IN THE AGGREGATE;

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(VIII) THE TARGET HAS NOT DELAYED OR POSTPONED THE PAYMENT OF ACCOUNTS PAYABLE AND OTHER LIABILITIES OUTSIDE THE ORDINARY COURSE OF BUSINESS;

(IX) THE TARGET HAS NOT CANCELLED, COMPROMISED, WAIVED, OR RELEASED ANY RIGHT OR CLAIM (OR SERIES OF RELATED RIGHTS AND CLAIMS) EITHER INVOLVING MORE THAN \$35,000 OR OUTSIDE THE ORDINARY COURSE OF BUSINESS;

(X) THE TARGET HAS NOT GRANTED ANY LICENSE OR SUBLICENSE OF ANY RIGHTS UNDER OR WITH RESPECT TO ANY INTELLECTUAL PROPERTY;

(XI) THERE HAS BEEN NO CHANGE MADE OR AUTHORIZED IN THE CHARTER OR BYLAWS OF THE TARGET;

(XII) THE TARGET HAS NOT ISSUED, SOLD, OR OTHERWISE DISPOSED OF ANY OF ITS CAPITAL STOCK, OR GRANTED ANY OPTIONS, WARRANTS, OR OTHER RIGHTS TO PURCHASE OR OBTAIN (INCLUDING UPON CONVERSION, EXCHANGE, OR EXERCISE) ANY OF ITS CAPITAL

STOCK;

- (XIII) THE TARGET HAS NOT DECLARED, SET ASIDE, OR PAID ANY DIVIDEND OR MADE ANY DISTRIBUTION WITH RESPECT TO ITS CAPITAL STOCK (WHETHER IN CASH OR IN KIND) OR REDEEMED, PURCHASED, OR OTHERWISE ACQUIRED ANY OF ITS CAPITAL STOCK;
- (XIV) THE TARGET HAS NOT EXPERIENCED ANY DAMAGE, DESTRUCTION, OR LOSS (WHETHER OR NOT COVERED BY INSURANCE) TO ITS PROPERTY;
- (XV) THE TARGET HAS NOT MADE ANY LOAN TO, OR ENTERED INTO ANY OTHER TRANSACTION WITH, ANY OF ITS DIRECTORS, OFFICERS, AND EMPLOYEES OUTSIDE THE ORDINARY COURSE OF BUSINESS;
- (XVI) THE TARGET HAS NOT ENTERED INTO ANY EMPLOYMENT CONTRACT OR COLLECTIVE BARGAINING AGREEMENT, WRITTEN OR ORAL, OR MODIFIED THE TERMS OF ANY EXISTING SUCH CONTRACT OR AGREEMENT;
- (XVII) THE TARGET HAS NOT GRANTED ANY INCREASE IN THE BASE COMPENSATION OF ANY OF ITS DIRECTORS, OFFICERS, AND EMPLOYEES OUTSIDE THE ORDINARY COURSE OF BUSINESS;
- (XVIII) THE TARGET HAS NOT ADOPTED, AMENDED, MODIFIED, OR TERMINATED ANY BONUS, PROFIT-SHARING, INCENTIVE, SEVERANCE, OR OTHER PLAN, CONTRACT, OR COMMITMENT FOR THE BENEFIT OF ANY OF ITS DIRECTORS, OFFICERS, AND EMPLOYEES (OR TAKEN ANY SUCH ACTION WITH RESPECT TO ANY OTHER EMPLOYEE BENEFIT PLAN);
- (XIX) THE TARGET HAS NOT MADE ANY OTHER CHANGE IN EMPLOYMENT TERMS FOR ANY OF ITS DIRECTORS, OFFICERS, AND EMPLOYEES OUTSIDE THE ORDINARY COURSE OF BUSINESS;
- (XX) THE TARGET HAS NOT MADE OR PLEDGED TO MAKE ANY CHARITABLE OR OTHER CAPITAL CONTRIBUTION OUTSIDE THE ORDINARY COURSE OF BUSINESS;

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- (XXI) THERE HAS NOT BEEN ANY OTHER OCCURRENCE, EVENT, INCIDENT, ACTION, FAILURE TO ACT, OR TRANSACTION OUTSIDE THE ORDINARY COURSE OF BUSINESS INVOLVING THE TARGET, OTHER THAN THE ACCRUAL OF PROFESSIONAL FEES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT; AND
  - (XXII) THE TARGET HAS NOT COMMITTED TO ANY OF THE FOREGOING.
- (K) UNDISCLOSED LIABILITIES

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THE TARGET HAS NO LIABILITIES (AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR FINANCIAL MATTERS) OF THE TARGET, THERE IS NO BASIS FOR ANY PRESENT OR FUTURE ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, OR DEMAND AGAINST ANY OF THEM GIVING RISE TO ANY LIABILITY), EXCEPT FOR (I) LIABILITIES SET FORTH ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO) AND (II) LIABILITIES WHICH HAVE ARISEN AFTER THE MOST RECENT FISCAL QUARTER END IN THE ORDINARY COURSE OF BUSINESS (NONE OF WHICH RESULTS FROM, ARISES OUT OF, RELATES TO, IS IN THE NATURE OF, OR WAS CAUSED BY ANY BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, INFRINGEMENT, OR VIOLATION OF LAW).

(L) LEGAL COMPLIANCE

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THE TARGET AND ITS PREDECESSORS AND AFFILIATES HAVE BEEN IN MATERIAL COMPLIANCE WITH ALL APPLICABLE LAWS (INCLUDING RULES, REGULATIONS, CODES, PLANS, INJUNCTIONS, JUDGMENTS, ORDERS, DECREES, RULINGS, AND CHARGES THEREUNDER) OF FEDERAL, STATE, LOCAL, AND FOREIGN GOVERNMENTS (AND ALL AGENCIES THEREOF), AND NO ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, DEMAND, OR NOTICE HAS BEEN FILED OR, TO THE KNOWLEDGE OF HOFFMAN AND THE DIRECTORS AND OFFICERS OF THE TARGET, COMMENCED OR THREATENED AGAINST ANY OF THEM ALLEGING ANY FAILURE SO TO COMPLY.

(M) TAX MATTERS.

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(I) FILING OF TAX RETURNS. THE TARGET HAS DULY AND TIMELY FILED WITH THE APPROPRIATE TAX AUTHORITIES ALL TAX RETURNS REQUIRED TO BE FILED THROUGH THE DATE HEREOF. ALL SUCH TAX RETURNS FILED ARE COMPLETE AND ACCURATE IN ALL RESPECTS. THE TARGET HAS DISCLOSED ON ITS FEDERAL INCOME TAX RETURNS ALL POSITIONS TAKEN THEREIN THAT COULD GIVE RISE TO A SUBSTANTIAL UNDERSTATEMENT OF FEDERAL INCOME TAX WITHIN THE MEANING OF 6662 OF THE CODE. THE TARGET IS NOT CURRENTLY THE BENEFICIARY OF ANY EXTENSION OF TIME WITHIN WHICH TO FILE ANY TAX RETURN. NO CLAIM HAS EVER BEEN MADE BY AN AUTHORITY IN A JURISDICTION WHERE THE TARGET DOES NOT FILE TAX RETURNS THAT IT IS OR MAY BE SUBJECT TO TAXATION BY THAT JURISDICTION.

(II) PAYMENT OF TAXES. ALL TAXES OWED BY THE TARGET (WHETHER OR NOT SHOWN ON ANY TAX RETURN) HAVE BEEN PAID. THE UNPAID TAXES OF THE TARGET (I) DID NOT, AS OF THE MOST RECENT FISCAL QUARTER END, EXCEED THE RESERVE FOR TAX LIABILITY (EXCLUDING ANY RESERVE FOR DEFERRED TAXES ESTABLISHED TO REFLECT TIMING DIFFERENCES BETWEEN BOOK AND TAX INCOME) SET FORTH ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO), AND (II) WILL NOT EXCEED THAT RESERVE AS ADJUSTED FOR OPERATIONS AND TRANSACTIONS THROUGH THE CLOSING DATE IN ACCORDANCE WITH THE PAST CUSTOM AND PRACTICE OF THE TARGET IN FILING ITS TAX RETURNS.

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(III) AUDITS, INVESTIGATIONS, DISPUTES OR CLAIMS. NO DEFICIENCIES FOR TAXES HAVE BEEN CLAIMED, PROPOSED OR ASSESSED BY ANY TAXING OR OTHER GOVERNMENTAL

AUTHORITY AGAINST THE TARGET. THERE ARE NO PENDING OR, TO THE KNOWLEDGE OF ANY OF HOFFMAN, THE TARGET, OR ANY DIRECTOR OR OFFICER (OR EMPLOYEES RESPONSIBLE FOR TAX MATTERS) OF THE TARGET, THREATENED AUDITS, INVESTIGATIONS, DISPUTES OR CLAIMS OR OTHER ACTIONS FOR OR RELATING TO ANY LIABILITY FOR TAXES WITH RESPECT TO THE TARGET, AND THERE ARE NO MATTERS UNDER DISCUSSION WITH ANY GOVERNMENTAL AUTHORITIES, OR OF WHICH ANY OF HOFFMAN, THE TARGET, OR ANY DIRECTOR OR OFFICER (OR ANY EMPLOYEE RESPONSIBLE FOR TAX MATTERS) OF THE TARGET, HAS KNOWLEDGE, WITH RESPECT TO TAXES THAT ARE LIKELY TO RESULT IN AN ADDITIONAL LIABILITY FOR TAXES WITH RESPECT TO THE TARGET. NO AUDITS OF FEDERAL, STATE AND LOCAL TAX RETURNS OF THE TARGET BY THE RELEVANT TAX AUTHORITIES HAVE BEEN INITIATED OR COMPLETED, AND THE TARGET HAS NOT BEEN NOTIFIED THAT ANY TAX AUTHORITY INTENDS TO AUDIT A TAX RETURN FOR ANY PERIOD. THE TARGET HAS DELIVERED TO PARENT COMPLETE AND ACCURATE COPIES OF ALL TAX RETURNS OF THE TARGET FOR THE YEARS ENDED ON OR AFTER DECEMBER 31, 1997, AND COMPLETE AND ACCURATE COPIES OF ALL EXAMINATION REPORTS AND STATEMENTS OF DEFICIENCIES ASSESSED AGAINST OR AGREED TO BY THE COMPANY SINCE DECEMBER 31, 1997. THE TARGET HAS NOT WAIVED ANY STATUTE OF LIMITATIONS IN RESPECT OF TAXES OR AGREED TO ANY EXTENSION OF TIME WITH RESPECT TO A TAX ASSESSMENT OR DEFICIENCY.

(IV) ASSET LIENS. THERE ARE NO LIENS FOR TAXES (OTHER THAN FOR CURRENT TAXES NOT YET DUE AND PAYABLE) ON ANY ASSETS OF THE TARGET OR ON ANY TARGET SHARES.

(V) TAX ELECTIONS. ALL ELECTIONS WITH RESPECT TO TAXES AFFECTING THE TARGET THAT ARE EFFECTIVE AS OF THE DATE HEREOF ARE SET FORTH IN 5(M) OF THE TARGET DISCLOSURE SCHEDULE. THE TARGET: (I) IS NOT A PERSONAL HOLDING COMPANY WITHIN THE MEANING OF 542 OF THE CODE; (II) HAS NOT CONSENTED AT ANY TIME UNDER 341(F)(1) OF THE CODE TO HAVE THE PROVISIONS OF 341(F)(2) OF THE CODE APPLY TO ANY DISPOSITION OF THE TARGET'S ASSETS; (III) HAS NOT AGREED, NOR IS REQUIRED, TO MAKE ANY ADJUSTMENT UNDER 481(A) OF THE CODE BY REASON OF A CHANGE IN ACCOUNTING METHOD OR OTHERWISE, AS A RESULT OF ANY TRANSACTIONS, OPERATIONS OR EVENTS OCCURRING ON OR PRIOR TO THE CLOSING DATE; (IV) HAS NOT MADE AN ELECTION, NOR IS REQUIRED, TO TREAT ANY ASSET OF THE TARGET AS OWNED BY ANOTHER PERSON PURSUANT TO THE PROVISIONS OF 168(F) OF THE INTERNAL REVENUE CODE OF 1954, AS AMENDED AND IN EFFECT IMMEDIATELY PRIOR TO THE ENACTMENT OF THE TAX REFORM ACT OF 1986, OR AS TAX-EXEMPT BOND FINANCED PROPERTY OR TAX-EXEMPT USE PROPERTY WITHIN THE MEANING OF 168 OF THE CODE; AND (V) HAS NOT MADE ANY ELECTIONS WITH RESPECT TO ANY OF THE FOREGOING NOR IS REQUIRED TO APPLY ANY OF THE FOREGOING RULES UNDER ANY COMPARABLE STATE, LOCAL OR FOREIGN TAX PROVISION.

(VI) PRIOR AFFILIATED GROUPS. THE TARGET HAS NEVER BEEN A MEMBER OF AN AFFILIATED GROUP OR ANY GROUP OF CORPORATIONS FILING A CONSOLIDATED, COMBINED, UNITARY OR SIMILAR TAX RETURN. THE TARGET HAS NO LIABILITY FOR THE TAXES OF ANY PERSON OTHER THAN THE TARGET (I) UNDER TREASURY REGULATIONS 1.1502-6 (OR ANY SIMILAR PROVISION OF STATE, LOCAL OR FOREIGN LAW), (II) AS A TRANSFEREE OR SUCCESSOR, (III) BY CONTRACT, OR (IV) OTHERWISE.

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(VII) TAX RULINGS; BINDING AGREEMENTS. THE TARGET HAS NOT REQUESTED OR RECEIVED ANY RULING FROM ANY TAX AUTHORITY, OR SIGNED ANY BINDING AGREEMENT WITH ANY TAX AUTHORITY (INCLUDING, WITHOUT LIMITATION, ANY ADVANCE PRICING AGREEMENT), THAT WOULD AFFECT THE AMOUNT OF TAX LIABILITY OF THE TARGET AFTER THE CLOSING DATE.

(VIII) POWER OF ATTORNEY. THERE IS NO POWER OF ATTORNEY GRANTED BY THE TARGET RELATING TO ANY TAX THAT IS CURRENTLY IN FORCE.

(IX) TAX SHARING AGREEMENTS. THERE ARE NO, AND AT THE CLOSING DATE THERE WILL BE NO, TAX-SHARING AGREEMENTS OR SIMILAR ARRANGEMENTS WITH RESPECT TO OR INVOLVING THE TARGET, AND, AFTER THE CLOSING DATE, THE TARGET SHALL NOT BE BOUND BY ANY SUCH TAX-SHARING AGREEMENTS OR SIMILAR ARRANGEMENTS OR HAVE ANY LIABILITY THEREUNDER FOR AMOUNTS DUE IN RESPECT OF ANY PERIODS.

(X) PARTNERSHIPS AND SINGLE MEMBER LLCs. THE TARGET (I) IS NOT SUBJECT TO ANY JOINT VENTURE, PARTNERSHIP, OR OTHER ARRANGEMENT OR CONTRACT WHICH IS TREATED AS A PARTNERSHIP FOR UNITED STATES FEDERAL INCOME TAX PURPOSES OR (II) DOES NOT OWN A SINGLE MEMBER LIMITED LIABILITY COMPANY WHICH IS TREATED AS A DISREGARDED ENTITY.

(XI) WITHHOLDING. THE TARGET HAS WITHHELD AND PAID ALL TAXES REQUIRED TO HAVE BEEN WITHHELD AND PAID IN CONNECTION WITH AMOUNTS PAID OR OWING TO ANY EMPLOYEE, INDEPENDENT CONTRACTOR, CREDITOR, SHAREHOLDER, OR OTHER THIRD PARTY. THE TARGET IS NOT A "UNITED STATES REAL PROPERTY HOLDING CORPORATION" WITHIN THE MEANING OF 897 OF THE CODE.

(XII) PARACHUTE PAYMENTS. THERE IS NO CONTRACT, AGREEMENT, PLAN OR ARRANGEMENT COVERING ANY EMPLOYEE OR FORMER EMPLOYEE OF THE TARGET (WITH RESPECT TO THEIR RELATIONSHIP WITH THE TARGET) THAT, INDIVIDUALLY OR COLLECTIVELY, PROVIDES FOR THE PAYMENT BY THE TARGET OF ANY AMOUNT (I) THAT IS NOT DEDUCTIBLE UNDER 162(A)(1) OR 404 OF THE CODE OR (II) THAT IS AN "EXCESS PARACHUTE PAYMENT" PURSUANT TO 280G OF THE CODE.

(XIII) TAX-EXEMPT INTEREST. NONE OF THE ASSETS OF THE TARGET DIRECTLY OR INDIRECTLY SECURES ANY DEBT THE INTEREST ON WHICH IS TAX-EXEMPT UNDER 103(A) OF THE CODE.

(XIV) PERMANENT ESTABLISHMENT. THE TARGET DOES NOT HAVE, AND HAS NOT HAD, A  
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PERMANENT ESTABLISHMENT IN ANY FOREIGN COUNTRY, AS DEFINED IN ANY APPLICABLE TAX  
TREATY OR CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND SUCH FOREIGN  
COUNTRY.

(XV) INTERNATIONAL BOYCOTT. THE TARGET HAS NEVER PARTICIPATED IN NOR IS  
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PARTICIPATING IN AN INTERNATIONAL BOYCOTT WITHIN THE MEANING OF 999 OF THE  
CODE.

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(XVI) S CORPORATION ELECTION. THE TARGET HAS BEEN A VALIDLY ELECTING S  
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CORPORATION WITHIN THE MEANING OF SECTIONS 1361 AND 1362 OF THE CODE AT ALL  
TIMES SINCE ITS FORMATION, AND WILL BE AN S CORPORATION UP TO AND INCLUDING THE  
CLOSING DATE.

(XVII) NO SUBSIDIARIES. NONE OF THE TARGET'S ASSETS CONSTITUTE STOCK IN A  
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CORPORATION.

(XVIII) TAX-FREE REORGANIZATION. TARGET HAS NOT TAKEN OR CAUSED TO BE  
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TAKEN, OR AGREED TO TAKE OR CAUSE TO BE TAKEN, ANY ACTION, AND HAS NO PLAN OR  
INTENTION TO TAKE OR CAUSE TO BE TAKEN ANY ACTION THAT WOULD, OR IS REASONABLY  
LIKELY TO, PREVENT THE MERGER FROM QUALIFYING AS A REORGANIZATION WITHIN THE  
MEANING OF SECTION 368(A) OF THE CODE, NOR DOES IT KNOW OR HAVE REASON TO KNOW  
OF ANY FACT, AGREEMENT, PLAN OR OTHER CIRCUMSTANCE THAT WOULD, OR IS REASONABLY  
LIKELY TO, PREVENT THE MERGER FROM QUALIFYING AS A REORGANIZATION WITHIN THE  
MEANING OF SECTION 368(A) OF THE CODE. FOR PURPOSES OF THIS REPRESENTATION, ANY  
FAILURE OR OMISSION TO ACT, OR THE CAUSING OF ANY FAILURE OR OMISSION TO ACT,  
SHALL CONSTITUTE AN ACTION TAKEN, OR CAUSED TO BE TAKEN, AS APPROPRIATE.

(XIX) SECTION 1374 OF THE CODE. THE TARGET WOULD NOT BE LIABLE FOR ANY TAX  
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UNDER SECTION 1374 OF THE CODE IF ITS ASSETS WERE SOLD FOR THEIR FAIR MARKET  
VALUE AS OF THE CLOSING DATE. THE TARGET HAS NOT, IN THE PAST 10 YEARS, (A)  
ACQUIRED ASSETS FROM ANOTHER CORPORATION IN A TRANSACTION IN WHICH THE TARGET'S  
TAX BASIS FOR THE ACQUIRED ASSETS WAS DETERMINED, IN WHOLE OR PART, BY REFERENCE  
TO THE TAX BASIS OF THE ACQUIRED ASSETS (OR ANY OTHER PROPERTY) IN THE HANDS OF  
THE TRANSFEROR OR (B) ACQUIRED THE STOCK OF ANY CORPORATION WHICH IS A QUALIFIED  
SUBCHAPTER S SUBSIDIARY.

(N) REAL PROPERTY.  
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(I) THE TARGET DOES NOT OWN ANY REAL PROPERTY.

(II) 5(N)(II) OF THE TARGET DISCLOSURE SCHEDULE LISTS AND DESCRIBES BRIEFLY  
ALL REAL PROPERTY LEASED TO THE TARGET. THE TARGET AND HOFFMAN HAVE MADE  
AVAILABLE TO THE PARENT CORRECT AND COMPLETE COPIES OF THE LEASES LISTED IN  
5(N)(II) OF THE TARGET DISCLOSURE SCHEDULE (AS AMENDED TO DATE). THE TARGET IS  
NOT PARTY TO ANY SUBLEASE. WITH RESPECT TO EACH LEASE LISTED IN 5(N)(II) OF THE  
TARGET DISCLOSURE SCHEDULE:

(A) THE LEASE IS LEGAL, VALID, BINDING, ENFORCEABLE, AND IN FULL FORCE AND  
EFFECT;

(B) THE LEASE WILL CONTINUE TO BE LEGAL, VALID, BINDING, ENFORCEABLE, AND IN  
FULL FORCE AND EFFECT ON IDENTICAL TERMS FOLLOWING THE CONSUMMATION OF THE  
TRANSACTIONS CONTEMPLATED HEREBY;

(C) THE TARGET IS NOT IN BREACH OR DEFAULT AND, TO THE KNOWLEDGE OF ANY OF  
HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR  
REAL PROPERTY MATTERS) OF THE TARGET, NO OTHER PARTY TO THE LEASE IS IN BREACH  
OR DEFAULT, AND NO EVENT HAS OCCURRED WHICH, WITH NOTICE OR LAPSE OF TIME, WOULD  
CONSTITUTE A BREACH OR DEFAULT OR PERMIT TERMINATION, MODIFICATION, OR  
ACCELERATION THEREUNDER;

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(D) NEITHER THE TARGET NOR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE  
DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR REAL PROPERTY  
MATTERS) OF THE TARGET, ANY OTHER PARTY TO THE LEASE HAS REPUDIATED ANY  
PROVISION THEREOF;

(E) THERE ARE NO DISPUTES, ORAL AGREEMENTS, OR FORBEARANCE PROGRAMS IN  
EFFECT AS TO THE LEASE;

(F) THE TARGET HAS NOT ASSIGNED, TRANSFERRED, CONVEYED, MORTGAGED, DEEDED IN  
TRUST, OR ENCUMBERED ANY INTEREST IN THE LEASEHOLD;

(G) ALL FACILITIES LEASED THEREUNDER HAVE RECEIVED ALL APPROVALS OF  
GOVERNMENTAL AUTHORITIES (INCLUDING LICENSES AND PERMITS) REQUIRED IN CONNECTION  
WITH THE OPERATION OF THE TARGET'S BUSINESS AS CURRENTLY CONDUCTED AND HAVE BEEN  
OPERATED AND MAINTAINED BY TARGET IN SUBSTANTIAL COMPLIANCE WITH APPLICABLE  
LAWS, RULES, AND REGULATIONS;

(H) ALL FACILITIES LEASED THEREUNDER ARE SUPPLIED WITH UTILITIES AND OTHER  
SERVICES NECESSARY FOR THE OPERATION OF SAID FACILITIES; AND

(O) INTELLECTUAL PROPERTY.  
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(I) THE TARGET OWNS OR HAS THE RIGHT TO USE PURSUANT TO LICENSE, SUBLICENSE,  
AGREEMENT, OR PERMISSION ALL INTELLECTUAL PROPERTY NECESSARY FOR THE  
OPERATION OF THE BUSINESSES OF THE TARGET AS PRESENTLY CONDUCTED. EACH ITEM OF

INTELLECTUAL PROPERTY OWNED OR USED BY THE TARGET IMMEDIATELY PRIOR TO THE CLOSING HEREUNDER WILL BE OWNED OR AVAILABLE FOR USE BY THE SURVIVING CORPORATION ON IDENTICAL TERMS AND CONDITIONS IMMEDIATELY SUBSEQUENT TO THE CLOSING HEREUNDER. TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, THE TARGET HAS TAKEN ALL NECESSARY ACTION TO MAINTAIN AND PROTECT EACH ITEM OF INTELLECTUAL PROPERTY THAT IT OWNS OR USES.

(II) THE TARGET HAS NOT INTERFERED WITH, INFRINGED UPON OR MISAPPROPRIATED ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, AND NONE OF HOFFMAN OR THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET HAS EVER RECEIVED ANY CHARGE, COMPLAINT, CLAIM, DEMAND, OR NOTICE ALLEGING ANY SUCH INTERFERENCE, INFRINGEMENT, MISAPPROPRIATION, OR VIOLATION (INCLUDING ANY CLAIM THAT THE TARGET MUST LICENSE OR REFRAIN FROM USING ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY). TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, NO THIRD PARTY HAS INTERFERED WITH, INFRINGED UPON OR MISAPPROPRIATED ANY INTELLECTUAL PROPERTY RIGHTS OF THE TARGET.

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(III) 5(O)(III) OF THE TARGET DISCLOSURE SCHEDULE IDENTIFIES EACH PATENT OR REGISTRATION WHICH HAS BEEN ISSUED TO THE TARGET WITH RESPECT TO ANY OF ITS INTELLECTUAL PROPERTY, IDENTIFIES EACH PENDING PATENT APPLICATION OR APPLICATION FOR REGISTRATION WHICH THE TARGET HAS MADE WITH RESPECT TO ANY OF ITS INTELLECTUAL PROPERTY, AND IDENTIFIES EACH LICENSE, AGREEMENT, OR OTHER PERMISSION WHICH THE TARGET HAS GRANTED TO ANY THIRD PARTY WITH RESPECT TO ANY OF ITS INTELLECTUAL PROPERTY (TOGETHER WITH ANY EXCEPTIONS). THE TARGET AND HOFFMAN HAVE MADE AVAILABLE TO THE PARENT CORRECT AND COMPLETE COPIES OF ALL SUCH PATENTS, REGISTRATIONS, APPLICATIONS, LICENSES, AGREEMENTS, AND PERMISSIONS (AS AMENDED TO DATE) AND CORRECT AND COMPLETE COPIES OF ALL OTHER WRITTEN DOCUMENTATION EVIDENCING OWNERSHIP AND PROSECUTION (IF APPLICABLE) OF EACH SUCH ITEM. 5(O)(III) OF THE TARGET DISCLOSURE SCHEDULE ALSO IDENTIFIES EACH TRADE NAME OR UNREGISTERED TRADEMARK USED BY THE TARGET IN CONNECTION WITH ANY OF ITS BUSINESSES. WITH RESPECT TO EACH ITEM OF INTELLECTUAL PROPERTY REQUIRED TO BE IDENTIFIED IN 5(O)(III) OF THE TARGET DISCLOSURE SCHEDULE:

(A) THE TARGET POSSESS ALL RIGHT, TITLE, AND INTEREST IN AND TO THE ITEM, FREE AND CLEAR OF ANY SECURITY INTEREST, LICENSE, OR OTHER RESTRICTION;  
(B) THE ITEM IS NOT SUBJECT TO ANY OUTSTANDING INJUNCTION, JUDGMENT, ORDER, DECREE, RULING, OR CHARGE;  
(C) NO ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, OR DEMAND IS PENDING OR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, IS THREATENED WHICH CHALLENGES THE LEGALITY, VALIDITY, ENFORCEABILITY, USE, OR OWNERSHIP OF THE ITEM; AND  
(D) THE TARGET HAS NEVER AGREED TO INDEMNIFY ANY PERSON FOR OR AGAINST ANY INTERFERENCE, INFRINGEMENT, MISAPPROPRIATION, OR OTHER CONFLICT WITH RESPECT TO THE ITEM.

(IV) 5(O)(IV) OF THE TARGET DISCLOSURE SCHEDULE IDENTIFIES EACH ITEM OF INTELLECTUAL PROPERTY THAT ANY THIRD PARTY OWNS AND THAT THE TARGET USES PURSUANT TO LICENSE, SUBLICENSE, AGREEMENT, OR PERMISSION. THE TARGET AND HOFFMAN HAVE MADE AVAILABLE TO THE PARENT CORRECT AND COMPLETE COPIES OF ALL SUCH LICENSES, SUBLICENSES, AGREEMENTS, AND PERMISSIONS (AS AMENDED TO DATE). WITH RESPECT TO EACH ITEM OF INTELLECTUAL PROPERTY REQUIRED TO BE IDENTIFIED IN 5(O)(IV) OF THE TARGET DISCLOSURE SCHEDULE:

(A) THE LICENSE, SUBLICENSE, AGREEMENT, OR PERMISSION COVERING THE ITEM IS LEGAL, VALID, BINDING, ENFORCEABLE, AND IN FULL FORCE AND EFFECT;

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(B) THE LICENSE, SUBLICENSE, AGREEMENT, OR PERMISSION WILL CONTINUE TO BE LEGAL, VALID, BINDING, ENFORCEABLE, AND IN FULL FORCE AND EFFECT ON IDENTICAL TERMS FOLLOWING THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY;

(C) THE TARGET IS NOT, AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, NO OTHER PARTY TO THE LICENSE, SUBLICENSE, AGREEMENT, OR PERMISSION IS IN BREACH OR DEFAULT, AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, NO EVENT HAS OCCURRED WHICH WITH NOTICE OR LAPSE OF TIME WOULD CONSTITUTE A BREACH OR DEFAULT OR PERMIT TERMINATION, MODIFICATION, OR ACCELERATION THEREUNDER;

(D) THE TARGET HAS NOT, AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, NO OTHER PARTY TO THE LICENSE, SUBLICENSE, AGREEMENT, OR PERMISSION HAS REPUDIATED ANY PROVISION THEREOF;

(E) WITH RESPECT TO EACH SUBLICENSE, THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SUBSECTIONS (A) THROUGH (D) ABOVE ARE TRUE AND CORRECT WITH RESPECT TO THE UNDERLYING LICENSE;

(F) THE UNDERLYING ITEM OF INTELLECTUAL PROPERTY IS NOT SUBJECT TO ANY OUTSTANDING INJUNCTION, JUDGMENT, ORDER, DECREE, RULING, OR CHARGE;

(G) NO ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, OR DEMAND IS PENDING OR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL



PROPERTY MATTERS) OF THE TARGET, IS THREATENED WHICH CHALLENGES THE LEGALITY, VALIDITY, OR ENFORCEABILITY OF THE UNDERLYING ITEM OF INTELLECTUAL PROPERTY; AND (H) THE TARGET HAS NOT GRANTED ANY SUBLICENSE OR SIMILAR RIGHT WITH RESPECT TO THE LICENSE, SUBLICENSE, AGREEMENT, OR PERMISSION.

(V) TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET, THE TARGET WILL NOT INTERFERE WITH, INFRINGE UPON OR MISAPPROPRIATE ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES AS A RESULT OF THE CONTINUED OPERATION OF ITS BUSINESSES AS PRESENTLY CONDUCTED.

(VI) NONE OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INTELLECTUAL PROPERTY MATTERS) OF THE TARGET IS AWARE OF ANY NEW PRODUCTS, INVENTIONS, PROCEDURES, OR METHODS OF MANUFACTURING OR PROCESSING THAT ANY COMPETITORS OR OTHER THIRD PARTIES HAVE DEVELOPED WHICH REASONABLY COULD BE EXPECTED TO SUPERSEDE OR MAKE OBSOLETE ANY PRODUCT OR PROCESS OF THE TARGET.

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(P) TANGIBLE ASSETS

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THE TARGET OWNS OR LEASES ALL BUILDINGS, MACHINERY, EQUIPMENT, AND OTHER TANGIBLE ASSETS NECESSARY FOR THE CONDUCT OF ITS BUSINESS AS PRESENTLY CONDUCTED. EACH SUCH TANGIBLE ASSET IS FREE FROM DEFECTS (PATENT AND LATENT), HAS BEEN MAINTAINED IN ACCORDANCE WITH NORMAL INDUSTRY PRACTICE, IS IN GOOD OPERATING CONDITION AND REPAIR (SUBJECT TO NORMAL WEAR AND TEAR), AND IS SUITABLE FOR THE PURPOSES FOR WHICH IT PRESENTLY IS USED.

(Q) INVENTORY

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THE INVENTORY OF THE TARGET CONSISTS OF RAW MATERIALS AND SUPPLIES, MANUFACTURED AND PURCHASED PARTS, GOODS IN PROCESS, AND FINISHED GOODS, ALL OF WHICH IS MERCHANTABLE AND FIT FOR THE PURPOSE FOR WHICH IT WAS PROCURED OR MANUFACTURED, AND NONE OF WHICH IS SLOW-MOVING (BASED ON THE PAST EXPERIENCE OF TARGET AS TO THE LENGTH OF TIME INVENTORY IS HELD BY IT PRIOR TO SALE), OBSOLETE, DAMAGED, OR DEFECTIVE, SUBJECT ONLY TO THE RESERVE FOR INVENTORY WRITEDOWN SET FORTH ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO) AS ADJUSTED FOR THE PASSAGE OF TIME THROUGH THE CLOSING DATE IN THE ORDINARY COURSE OF BUSINESS OF THE TARGET.

(R) CONTRACTS

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5(R) OF THE TARGET DISCLOSURE SCHEDULE LISTS THE FOLLOWING CONTRACTS AND OTHER AGREEMENTS TO WHICH THE TARGET IS A PARTY (THE "MATERIAL CONTRACTS"):

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(I) ANY AGREEMENT (OR GROUP OF RELATED AGREEMENTS) FOR THE LEASE OF PERSONAL PROPERTY TO OR FROM ANY PERSON PROVIDING FOR LEASE PAYMENTS IN EXCESS OF \$35,000 PER ANNUM;

(II) ANY AGREEMENT (OR GROUP OF RELATED AGREEMENTS) FOR THE PURCHASE OR SALE OF RAW MATERIALS, COMMODITIES, SUPPLIES, PRODUCTS, OR OTHER PERSONAL PROPERTY, OR FOR THE FURNISHING OR RECEIPT OF SERVICES, THE PERFORMANCE OF WHICH WILL EXTEND OVER A PERIOD OF MORE THAN ONE YEAR, RESULT IN A LOSS TO THE TARGET, OR INVOLVE CONSIDERATION IN EXCESS OF \$35,000;

(III) ANY AGREEMENT CONCERNING A PARTNERSHIP OR JOINT VENTURE;  
(IV) ANY AGREEMENT (OR GROUP OF RELATED AGREEMENTS) UNDER WHICH IT HAS CREATED, INCURRED, ASSUMED, OR GUARANTEED ANY INDEBTEDNESS FOR BORROWED MONEY, OR ANY CAPITALIZED LEASE OBLIGATION, IN EXCESS OF \$35,000 OR UNDER WHICH IT HAS IMPOSED A SECURITY INTEREST ON ANY OF ITS ASSETS, TANGIBLE OR INTANGIBLE;

(V) ANY AGREEMENT CONCERNING CONFIDENTIALITY OR NONCOMPETITION;  
(VI) ANY AGREEMENT WITH ANY OF HOFFMAN AND HIS AFFILIATES (OTHER THAN THE TARGET);

(VII) ANY PROFIT SHARING, STOCK OPTION, STOCK PURCHASE, STOCK APPRECIATION, DEFERRED COMPENSATION, SEVERANCE, OR OTHER PLAN OR ARRANGEMENT FOR THE BENEFIT OF ITS CURRENT OR FORMER DIRECTORS, OFFICERS, AND EMPLOYEES;

(VIII) ANY COLLECTIVE BARGAINING AGREEMENT;

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(IX) ANY AGREEMENT FOR THE EMPLOYMENT OF ANY INDIVIDUAL ON A FULL-TIME, PART-TIME, CONSULTING, OR OTHER BASIS PROVIDING ANNUAL COMPENSATION IN EXCESS OF \$35,000 OR PROVIDING SEVERANCE BENEFITS;

(X) ANY AGREEMENT UNDER WHICH IT HAS ADVANCED OR LOANED ANY AMOUNT TO ANY OF ITS DIRECTORS, OFFICERS, AND EMPLOYEES OUTSIDE THE ORDINARY COURSE OF BUSINESS;

(XI) ANY AGREEMENT UNDER WHICH THE CONSEQUENCES OF A DEFAULT OR TERMINATION COULD HAVE A MATERIAL ADVERSE EFFECT ON THE TARGET; OR

(XII) ANY OTHER AGREEMENT (OR GROUP OF RELATED AGREEMENTS) THE PERFORMANCE OF WHICH INVOLVES CONSIDERATION IN EXCESS OF \$35,000.

THE TARGET AND HOFFMAN HAVE MADE AVAILABLE TO THE PARENT A CORRECT AND COMPLETE COPY OF EACH WRITTEN MATERIAL CONTRACT (AS AMENDED TO DATE) AND A WRITTEN SUMMARY SETTING FORTH THE TERMS AND CONDITIONS OF EACH ORAL MATERIAL CONTRACT. WITH RESPECT TO EACH SUCH AGREEMENT: (A) THE AGREEMENT IS LEGAL, VALID, BINDING, ENFORCEABLE, AND IN FULL FORCE AND EFFECT; (B) THE AGREEMENT WILL CONTINUE TO BE LEGAL, VALID, BINDING, ENFORCEABLE, AND IN FULL FORCE AND EFFECT ON IDENTICAL TERMS FOLLOWING THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY; (C) THE TARGET IS NOT, AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR

CONTRACT MATTERS) OF THE TARGET, NO OTHER PARTY IS IN BREACH OR DEFAULT, AND NO EVENT HAS OCCURRED WHICH WITH NOTICE OR LAPSE OF TIME WOULD CONSTITUTE A BREACH OR DEFAULT, OR PERMIT TERMINATION, MODIFICATION, OR ACCELERATION, UNDER THE AGREEMENT; AND (D) THE TARGET HAS NOT, AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR CONTRACT MATTERS) OF THE TARGET, NO OTHER PARTY HAS REPUDIATED ANY PROVISION OF THE AGREEMENT.

(S) NOTES AND ACCOUNTS RECEIVABLE  
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. ALL NOTES AND ACCOUNTS RECEIVABLE OF THE TARGET ARE REFLECTED PROPERLY ON THEIR BOOKS AND RECORDS, ARE VALID RECEIVABLES SUBJECT TO NO SETOFFS OR COUNTERCLAIMS, ARE CURRENT AND COLLECTIBLE, AND WILL BE COLLECTED IN ACCORDANCE WITH THEIR TERMS AT THEIR RECORDED AMOUNTS, SUBJECT ONLY TO THE RESERVE FOR BAD DEBTS SET FORTH ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO) AS ADJUSTED FOR THE PASSAGE OF TIME THROUGH THE CLOSING DATE IN ACCORDANCE WITH THE PAST CUSTOM AND PRACTICE OF THE TARGET.

(T) POWERS OF ATTORNEY  
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. THERE ARE NO OUTSTANDING POWERS OF ATTORNEY EXECUTED ON BEHALF OF THE TARGET.

(U) INSURANCE  
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. 5(U) OF THE TARGET DISCLOSURE SCHEDULE SETS FORTH THE FOLLOWING INFORMATION WITH RESPECT TO EACH INSURANCE POLICY (INCLUDING POLICIES PROVIDING PROPERTY, CASUALTY, LIABILITY, AND WORKERS' COMPENSATION COVERAGE AND BOND AND SURETY ARRANGEMENTS) TO WHICH THE TARGET HAS BEEN A PARTY, A NAMED INSURED, OR OTHERWISE THE BENEFICIARY OF COVERAGE AT ANY TIME WITHIN THE PAST THREE YEARS:

(I) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE AGENT;

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(II) THE NAME OF THE INSURER, THE NAME OF THE POLICYHOLDER, AND THE NAME OF EACH COVERED INSURED;

(III) THE POLICY NUMBER AND THE PERIOD OF COVERAGE;

(IV) THE SCOPE (INCLUDING AN INDICATION OF WHETHER THE COVERAGE WAS ON A CLAIMS MADE, OCCURRENCE, OR OTHER BASIS) AND AMOUNT (INCLUDING A DESCRIPTION OF HOW DEDUCTIBLES AND CEILINGS ARE CALCULATED AND OPERATE) OF COVERAGE; AND

(V) A DESCRIPTION OF ANY RETROACTIVE PREMIUM ADJUSTMENTS OR OTHER LOSS-SHARING ARRANGEMENTS.

WITH RESPECT TO EACH SUCH INSURANCE POLICY: (A) THE POLICY IS LEGAL, VALID, BINDING, ENFORCEABLE, AND IN FULL FORCE AND EFFECT; (B) NEITHER THE TARGET NOR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR INSURANCE MATTERS) OF THE TARGET, ANY OTHER PARTY TO THE POLICY IS IN BREACH OR DEFAULT (INCLUDING WITH RESPECT TO THE PAYMENT OF PREMIUMS OR THE GIVING OF NOTICES), AND NO EVENT HAS OCCURRED WHICH, WITH NOTICE OR THE LAPSE OF TIME, WOULD CONSTITUTE SUCH A BREACH OR DEFAULT, OR PERMIT TERMINATION, MODIFICATION, OR ACCELERATION, UNDER THE POLICY; AND (C) NO PARTY TO THE POLICY HAS REPUDIATED ANY PROVISION THEREOF. THE TARGET HAS BEEN COVERED DURING THE PAST THREE YEARS BY INSURANCE IN SCOPE AND AMOUNT CUSTOMARY AND REASONABLE FOR THE BUSINESS IN WHICH IT HAS ENGAGED DURING THE AFOREMENTIONED PERIOD. 5(U) OF THE TARGET DISCLOSURE SCHEDULE DESCRIBES ANY SELF-INSURANCE ARRANGEMENTS AFFECTING THE TARGET.

(V) LITIGATION  
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. 5(V) OF THE TARGET DISCLOSURE SCHEDULE SETS FORTH EACH INSTANCE IN WHICH THE TARGET (I) IS SUBJECT TO ANY OUTSTANDING INJUNCTION, JUDGMENT, ORDER, DECREE, RULING, OR CHARGE OR (II) IS A PARTY OR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR LITIGATION MATTERS) OF THE TARGET, IS THREATENED TO BE MADE A PARTY TO ANY ACTION, SUIT, PROCEEDING, HEARING, OR INVESTIGATION OF, IN, OR BEFORE ANY COURT OR QUASI-JUDICIAL OR ADMINISTRATIVE AGENCY OF ANY FEDERAL, STATE, LOCAL, OR FOREIGN JURISDICTION OR BEFORE ANY ARBITRATOR. NONE OF THE ACTIONS, SUITS, PROCEEDINGS, HEARINGS, AND INVESTIGATIONS SET FORTH IN 5(V) OF THE TARGET DISCLOSURE SCHEDULE COULD RESULT IN ANY MATERIAL ADVERSE CHANGE IN THE TARGET, EXCEPT AS DESCRIBED IN 5(V) OF THE TARGET DISCLOSURE SCHEDULE. NONE OF HOFFMAN OR THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR LITIGATION MATTERS) OF THE TARGET HAS ANY REASON TO BELIEVE THAT ANY SUCH ACTION, SUIT, PROCEEDING, HEARING, OR INVESTIGATION MAY BE BROUGHT OR THREATENED AGAINST THE TARGET.

(W) PRODUCT WARRANTY  
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. EACH PRODUCT MANUFACTURED, SOLD, LEASED, OR DELIVERED BY THE TARGET HAS BEEN IN MATERIAL CONFORMITY WITH ALL APPLICABLE CONTRACTUAL COMMITMENTS AND ALL EXPRESS AND IMPLIED WARRANTIES, AND TARGET HAS NO LIABILITY (AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR PRODUCT WARRANTY MATTERS) OF THE TARGET, THERE IS NO BASIS FOR ANY PRESENT OR FUTURE ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, OR DEMAND AGAINST ANY OF THEM GIVING RISE TO ANY LIABILITY) FOR REPLACEMENT OR REPAIR THEREOF OR OTHER DAMAGES IN CONNECTION THEREWITH, SUBJECT ONLY TO THE RESERVE FOR PRODUCT WARRANTY CLAIMS SET FORTH ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO) AS ADJUSTED FOR THE PASSAGE OF TIME THROUGH THE CLOSING DATE IN ACCORDANCE WITH THE PAST CUSTOM AND PRACTICE OF THE TARGET. NO PRODUCT MANUFACTURED, SOLD, LEASED, OR DELIVERED BY THE TARGET IS SUBJECT TO ANY CONTRACTUAL GUARANTY, WARRANTY, OR

OTHER INDEMNITY BEYOND THE APPLICABLE TERMS AND CONDITIONS OF SALE OR LEASE. THE CUSTOMER AGREEMENTS WHICH FORM PART OF THE MATERIAL CONTRACTS (COPIES OF WHICH HAVE BEEN DELIVERED TO THE PARENT) CONTAIN ALL TERMS AND CONDITIONS OF SALE OR LEASE FOR THE TARGET RELATED TO SUCH CUSTOMER AGREEMENTS (INCLUDING ALL APPLICABLE GUARANTY, WARRANTY AND INDEMNITY PROVISIONS).

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(X) PRODUCT LIABILITY

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. THE TARGET HAS NO LIABILITY (AND, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR PRODUCT LIABILITY MATTERS) OF THE TARGET, THERE IS NO BASIS FOR ANY PRESENT OR FUTURE ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, OR DEMAND AGAINST ANY OF THEM GIVING RISE TO ANY LIABILITY) ARISING OUT OF ANY INJURY TO INDIVIDUALS OR PROPERTY AS A RESULT OF THE OWNERSHIP, POSSESSION, OR USE OF ANY PRODUCT MANUFACTURED, SOLD, LEASED, OR DELIVERED BY THE TARGET.

(Y) EMPLOYEES

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. TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYMENT MATTERS) OF THE TARGET, NO EXECUTIVE, KEY EMPLOYEE, OR GROUP OF EMPLOYEES HAS ANY PLANS TO TERMINATE EMPLOYMENT WITH THE TARGET. THE TARGET IS NOT A PARTY TO OR BOUND BY ANY COLLECTIVE BARGAINING AGREEMENT, NOR HAS IT EXPERIENCED ANY STRIKES, GRIEVANCES, CLAIMS OF UNFAIR LABOR PRACTICES, OR OTHER COLLECTIVE BARGAINING DISPUTES. THE TARGET HAS NOT COMMITTED ANY UNFAIR LABOR PRACTICE. NONE OF HOFFMAN OR THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYMENT MATTERS) OF THE TARGET HAS ANY KNOWLEDGE OF ANY ORGANIZATIONAL EFFORT PRESENTLY BEING MADE OR THREATENED BY OR ON BEHALF OF ANY LABOR UNION WITH RESPECT TO EMPLOYEES OF THE TARGET. 5(Y) OF THE TARGET DISCLOSURE SCHEDULE LISTS EACH EMPLOYEE OF THE TARGET AND HIS OR HER (I) TITLE OR JOB DESIGNATION, (II) BASE RATE OF PAY FOR THE YEAR 2002, (III) ANY ANTICIPATED BONUS, PROFIT SHARING OR OTHER CASH COMPENSATION FOR THE YEAR 2002, AND (IV) TOTAL COMPENSATION (INCLUDING ANY BONUS, PROFIT SHARING OR OTHER CASH COMPENSATION) FOR THE YEARS 2000 AND 2001.

(Z) EMPLOYEE BENEFITS.

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(I) 5(Z) OF THE TARGET DISCLOSURE SCHEDULE LISTS EACH EMPLOYEE BENEFIT PLAN THAT THE TARGET MAINTAINS OR TO WHICH THE TARGET CONTRIBUTES.

(A) EACH SUCH EMPLOYEE BENEFIT PLAN (AND EACH RELATED TRUST, INSURANCE CONTRACT, OR FUND) PRESENTLY COMPLIES AND HAS BEEN MAINTAINED IN COMPLIANCE WITH ITS TERMS AND COMPLIES BOTH IN FORM AND IN OPERATION IN ALL RESPECTS WITH THE APPLICABLE REQUIREMENTS OF ERISA, THE CODE, AND OTHER APPLICABLE LAWS.

(B) ALL REQUIRED REPORTS AND DESCRIPTIONS (INCLUDING FORM 5500 ANNUAL REPORTS, SUMMARY ANNUAL REPORTS, PBGC-1'S, AND SUMMARY PLAN DESCRIPTIONS) HAVE BEEN FILED OR DISTRIBUTED APPROPRIATELY WITH RESPECT TO EACH SUCH EMPLOYEE BENEFIT PLAN. TO THE EXTENT APPLICABLE, THE REQUIREMENTS OF PART 6 OF SUBTITLE B OF TITLE I OF ERISA AND OF CODE 4980B HAVE BEEN MET WITH RESPECT TO EACH SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE WELFARE BENEFIT PLAN.

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(C) ALL CONTRIBUTIONS (INCLUDING ALL EMPLOYER CONTRIBUTIONS AND EMPLOYEE SALARY REDUCTION CONTRIBUTIONS) WHICH ARE DUE HAVE BEEN PAID TO EACH SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE PENSION BENEFIT PLAN AND ALL CONTRIBUTIONS FOR ANY PERIOD ENDING ON OR BEFORE THE CLOSING DATE WHICH ARE NOT YET DUE HAVE BEEN PAID TO EACH SUCH EMPLOYEE PENSION BENEFIT PLAN OR ACCRUED IN ACCORDANCE WITH THE PAST CUSTOM AND PRACTICE OF THE TARGET. ALL PREMIUMS OR OTHER PAYMENTS FOR ALL PERIODS ENDING ON OR BEFORE THE CLOSING DATE HAVE BEEN PAID WITH RESPECT TO EACH SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE WELFARE BENEFIT PLAN.

(D) THE TERMS OF EACH SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE PENSION BENEFIT PLAN THAT IS INTENDED TO QUALIFY UNDER CODE 401(A) HAS BEEN DETERMINED BY THE INTERNAL REVENUE SERVICE TO QUALIFY UNDER 401(A) OF THE CODE.

(E) THE MARKET VALUE OF ASSETS UNDER EACH SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE PENSION DEFINED BENEFIT PLAN (OTHER THAN ANY MULTIEMPLOYER PLAN) EQUALS OR EXCEEDS THE PRESENT VALUE OF ALL VESTED AND NONVESTED LIABILITIES THEREUNDER DETERMINED IN ACCORDANCE WITH PBGC METHODS, FACTORS, AND ASSUMPTIONS APPLICABLE TO AN EMPLOYEE PENSION DEFINED BENEFIT PLAN TERMINATING ON THE DATE FOR DETERMINATION.

(F) THE TARGET AND HOFFMAN HAVE MADE AVAILABLE TO THE PARENT CORRECT AND COMPLETE COPIES OF THE PLAN DOCUMENTS AND SUMMARY PLAN DESCRIPTIONS, THE MOST RECENT DETERMINATION LETTER RECEIVED FROM THE INTERNAL REVENUE SERVICE, THE MOST RECENT FORM 5500 ANNUAL REPORT, AND ALL RELATED TRUST AGREEMENTS, INSURANCE CONTRACTS, AND OTHER FUNDING AGREEMENTS WHICH IMPLEMENT EACH SUCH EMPLOYEE BENEFIT PLAN.

(II) WITH RESPECT TO EACH EMPLOYEE BENEFIT PLAN THAT THE TARGET OR ANY OF ITS ERISA AFFILIATES MAINTAINS OR EVER HAS MAINTAINED OR TO WHICH ANY OF THEM CONTRIBUTES, EVER HAS CONTRIBUTED, OR EVER HAS BEEN REQUIRED TO CONTRIBUTE, OR WITH RESPECT TO WHICH TARGET OR ANY OF ITS ERISA AFFILIATES HAVE OR MAY, OR IN THE PAST HAD, OR ARE OR HAVE BEEN DEEMED TO HAVE ANY LIABILITY OR OBLIGATIONS WITH RESPECT THERETO:  
(A) NO SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE PENSION BENEFIT PLAN

(OTHER THAN ANY MULTIEMPLOYER PLAN) HAS BEEN COMPLETELY OR PARTIALLY TERMINATED OR BEEN THE SUBJECT OF A REPORTABLE EVENT (AS DEFINED IN 4043(C) OF ERISA AND THE PBGC REGULATIONS PROMULGATED THEREUNDER) AS TO WHICH NOTICES WOULD BE REQUIRED TO BE FILED WITH THE PBGC. NO PROCEEDING BY THE PBGC TO TERMINATE ANY SUCH EMPLOYEE PENSION BENEFIT PLAN (OTHER THAN ANY MULTIEMPLOYER PLAN) HAS BEEN INSTITUTED OR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYEE BENEFITS MATTERS) OF THE TARGET, THREATENED.

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(B) THERE HAVE BEEN NO TRANSACTIONS IN VIOLATION OF 404 OR 406 OF ERISA OR ANY PROHIBITED TRANSACTIONS WITH RESPECT TO ANY SUCH EMPLOYEE BENEFIT PLAN FOR WHICH NO EXEMPTION EXISTS UNDER 408 OF ERISA OR 4975(C)(2) OR (D) OF THE CODE. TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYEE BENEFITS MATTERS) OF THE TARGET, NO FIDUCIARY HAS ANY LIABILITY FOR BREACH OF FIDUCIARY DUTY OR ANY OTHER FAILURE TO ACT OR COMPLY IN CONNECTION WITH THE ADMINISTRATION OR INVESTMENT OF THE ASSETS OF ANY SUCH EMPLOYEE BENEFIT PLAN. NO ACTION, SUIT, PROCEEDING, HEARING, OR INVESTIGATION WITH RESPECT TO THE ADMINISTRATION OR THE INVESTMENT OF THE ASSETS OF ANY SUCH EMPLOYEE BENEFIT PLAN (OTHER THAN ROUTINE CLAIMS FOR BENEFITS) IS PENDING OR, TO THE KNOWLEDGE OF ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYEE BENEFITS MATTERS) OF THE TARGET, THREATENED. NONE OF HOFFMAN OR THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYEE BENEFITS MATTERS) OF THE TARGET HAS ANY KNOWLEDGE OF ANY BASIS FOR ANY SUCH ACTION, SUIT, PROCEEDING, HEARING, OR INVESTIGATION.

(C) THE TARGET AND ITS ERISA AFFILIATES HAVE NOT INCURRED, AND NONE OF HOFFMAN OR THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR EMPLOYEE BENEFITS MATTERS) OF THE TARGET HAS ANY REASON TO EXPECT THAT THE TARGET OR ANY OF ITS ERISA AFFILIATES WILL INCUR, ANY LIABILITY TO THE PBGC (OTHER THAN PBGC PREMIUM PAYMENTS) OR OTHERWISE UNDER TITLE IV OF ERISA (INCLUDING ANY WITHDRAWAL LIABILITY) OR UNDER THE CODE WITH RESPECT TO ANY SUCH EMPLOYEE BENEFIT PLAN WHICH IS AN EMPLOYEE PENSION BENEFIT PLAN.

(III) NEITHER THE TARGET OR ANY OF ITS ERISA AFFILIATES CONTRIBUTES TO, EVER HAS CONTRIBUTED TO, OR EVER HAS BEEN REQUIRED TO CONTRIBUTE TO ANY MULTIEMPLOYER PLAN OR HAS ANY LIABILITY (INCLUDING WITHDRAWAL LIABILITY) UNDER ANY MULTIEMPLOYER PLAN.

(IV) NEITHER THE TARGET NOR ANY OF ITS ERISA AFFILIATES MAINTAINS OR HAS EVER MAINTAINED OR CONTRIBUTED TO, OR EVER HAS BEEN REQUIRED TO CONTRIBUTE TO ANY EMPLOYEE WELFARE BENEFIT PLAN PROVIDING MEDICAL, HEALTH, OR LIFE INSURANCE OR OTHER WELFARE-TYPE BENEFITS FOR CURRENT OR FUTURE RETIRED OR TERMINATED EMPLOYEES, THEIR SPOUSES, OR THEIR DEPENDENTS (OTHER THAN IN ACCORDANCE WITH CODE 4980B OR SIMILAR STATE LAW).

(AA) GUARANTIES

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THE TARGET IS NOT A GUARANTOR OR OTHERWISE IS LIABLE FOR ANY LIABILITY OR OBLIGATION (INCLUDING INDEBTEDNESS) OF ANY OTHER PERSON.

(BB) ENVIRONMENTAL MATTERS.

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(I) THE TARGET IS NOW AND ALWAYS HAS BEEN IN MATERIAL COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.

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(II) THE TARGET HAS ALL ENVIRONMENTAL PERMITS NECESSARY FOR THE CONDUCT AND OPERATION OF ITS BUSINESS AS PRESENTLY CONDUCTED, AND ALL SUCH PERMITS ARE IN GOOD STANDING.

(III) THERE IS NOT NOW AND HAS NOT BEEN ANY HAZARDOUS SUBSTANCE USED, GENERATED, TREATED, STORED, TRANSPORTED, DISPOSED OF, RELEASED, HANDLED OR OTHERWISE EXISTING ON, UNDER, ABOUT, OR EMANATING FROM OR TO, ANY TARGET OWNED, LEASED OR OPERATED PROPERTY ASSOCIATED WITH THE BUSINESS EXCEPT IN SUBSTANTIAL COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL LAWS.

(IV) THE TARGET HAS NOT RECEIVED ANY NOTICE OF ALLEGED, ACTUAL OR POTENTIAL RESPONSIBILITY FOR, OR ANY INQUIRY OR INVESTIGATION REGARDING, ANY RELEASE OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES OR ALLEGED VIOLATION OF, OR NON-COMPLIANCE WITH, ANY ENVIRONMENTAL LAW, NOR IS ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR ENVIRONMENTAL MATTERS) OF THE TARGET AWARE OF ANY INFORMATION WHICH MIGHT FORM THE BASIS OF ANY SUCH NOTICE OR ANY CLAIM.

(V) THERE IS NO SITE TO WHICH THE TARGET HAS TRANSPORTED OR ARRANGED FOR THE TRANSPORT OF HAZARDOUS SUBSTANCES AS TO WHICH ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR ENVIRONMENTAL MATTERS) OF THE TARGET HAS ANY INFORMATION THAT WOULD REASONABLY LEAD ANY OF THEM TO CONCLUDE THAT ANY SUCH SITE IS OR MAY BECOME THE SUBJECT OF ANY ENVIRONMENTAL ACTION.

(VI) TRUE, COMPLETE AND CORRECT COPIES OF THE WRITTEN REPORTS, AND ALL PARTS THEREOF, OF ALL ENVIRONMENTAL AUDITS OR ASSESSMENTS OF WHICH ANY OF HOFFMAN AND THE DIRECTORS AND OFFICERS (AND EMPLOYEES WITH RESPONSIBILITY FOR ENVIRONMENTAL MATTERS) OF THE TARGET HAS KNOWLEDGE AND THAT HAVE BEEN CONDUCTED AT ANY TARGET OWNED, LEASED OR OPERATED PROPERTY, HAVE BEEN MADE AVAILABLE TO THE PARENT.

(CC) CERTAIN BUSINESS RELATIONSHIPS WITH THE TARGET

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. NONE OF HOFFMAN AND HIS AFFILIATES HAS BEEN INVOLVED IN ANY BUSINESS

ARRANGEMENT OR RELATIONSHIP WITH THE TARGET WITHIN THE PAST 12 MONTHS, AND NONE OF HOFFMAN AND HIS AFFILIATES OWNS ANY ASSET, TANGIBLE OR INTANGIBLE, WHICH IS USED IN THE BUSINESS OF THE TARGET.

(DD) DISCLOSURE  
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. NONE OF (I) THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS 5, OR (II) ANY WRITTEN MATERIALS FURNISHED BY HOFFMAN OR THE TARGET TO THE PARENT, CONTAINS ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMITTS TO STATE ANY MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS AND INFORMATION CONTAINED THEREIN NOT MISLEADING.

6. POST-CLOSING COVENANTS  
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. THE PARTIES AGREE AS FOLLOWS WITH RESPECT TO THE PERIOD FOLLOWING THE CLOSING.

(A) GENERAL  
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. IN CASE AT ANY TIME AFTER THE CLOSING ANY FURTHER ACTION IS NECESSARY OR DESIRABLE TO CARRY OUT THE PURPOSES OF THIS AGREEMENT, EACH OF THE PARTIES WILL TAKE SUCH FURTHER ACTION (INCLUDING THE EXECUTION AND DELIVERY OF SUCH FURTHER INSTRUMENTS AND DOCUMENTS) AS THE OTHER PARTY REASONABLY MAY REQUEST, ALL AT THE SOLE COST AND EXPENSE OF THE REQUESTING PARTY (UNLESS THE REQUESTING PARTY IS ENTITLED TO INDEMNIFICATION THEREFOR UNDER 7 BELOW). HOFFMAN ACKNOWLEDGES AND AGREES THAT FROM AND AFTER THE CLOSING THE PARENT WILL BE ENTITLED TO POSSESSION OF ALL DOCUMENTS, BOOKS, RECORDS (INCLUDING TAX RECORDS), AGREEMENTS, AND FINANCIAL DATA OF ANY SORT RELATING TO THE TARGET. NOTWITHSTANDING THE FOREGOING, PARENT AND MERGER SUB WILL PERMIT HOFFMAN AND HIS REPRESENTATIVES TO HAVE, AT HOFFMAN'S SOLE COST AND EXPENSE, FULL, COMPLETE AND PROMPT ACCESS TO AND THE RIGHT TO MAKE COPIES OF ANY AND ALL DOCUMENTS REASONABLY REQUESTED BY HOFFMAN THAT RELATE IN ANY MANNER TO ANY ADVERSE CONSEQUENCES CLAIMED BY PARENT UNDER 7 BELOW FOR PURPOSES OF EVALUATING THE MERITS OF THE CLAIMED ADVERSE CONSEQUENCES IN CONNECTION WITH HOFFMAN'S INDEMNIFICATION OBLIGATIONS UNDER 7 BELOW OR DEFENDING AGAINST ANY SUCH ADVERSE CONSEQUENCES; PROVIDED, HOWEVER, THAT HOFFMAN SHALL HAVE AGREED IN WRITING TO USE ANY DOCUMENTS REQUESTED PURSUANT TO THIS SENTENCE ONLY FOR THE PURPOSES SET FORTH HEREIN. FOR THE PURPOSES OF THIS 6(A), WITHOUT LIMITING THE FOREGOING, IT SHALL NOT BE DEEMED REASONABLE FOR HOFFMAN TO REQUEST ACCESS TO DOCUMENTS SUBJECT TO ATTORNEY-CLIENT OR OTHER SIMILAR PRIVILEGE.

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(B) LITIGATION SUPPORT  
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. IN THE EVENT AND FOR SO LONG AS ANY PARTY ACTIVELY IS CONTESTING OR DEFENDING AGAINST ANY ACTION, SUIT, PROCEEDING, HEARING, INVESTIGATION, CHARGE, COMPLAINT, CLAIM, OR DEMAND IN CONNECTION WITH (I) ANY TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT OR (II) ANY FACT, SITUATION, CIRCUMSTANCE, STATUS, CONDITION, ACTIVITY, PRACTICE, PLAN, OCCURRENCE, EVENT, INCIDENT, ACTION, FAILURE TO ACT, OR TRANSACTION ON OR PRIOR TO THE CLOSING DATE INVOLVING THE TARGET, THE OTHER PARTY WILL COOPERATE WITH HIM OR IT AND HIS OR ITS COUNSEL IN THE CONTEST OR DEFENSE, MAKE AVAILABLE THEIR PERSONNEL, AND PROVIDE SUCH TESTIMONY AND ACCESS TO THEIR BOOKS AND RECORDS AS SHALL BE NECESSARY IN CONNECTION WITH THE CONTEST OR DEFENSE, ALL AT THE SOLE COST AND EXPENSE OF THE CONTESTING OR DEFENDING PARTY (SUBJECT TO THE RIGHT, IF ANY, OF THE CONTESTING OR DEFENDING PARTY TO OBTAIN INDEMNIFICATION THEREFOR UNDER 7 BELOW).

(C) TRANSITION  
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. HOFFMAN WILL NOT TAKE ANY ACTION THAT IS DESIGNED OR INTENDED TO HAVE THE EFFECT OF DISCOURAGING ANY LESSOR, LICENSOR, CUSTOMER, SUPPLIER, OR OTHER BUSINESS ASSOCIATE OF THE TARGET FROM MAINTAINING THE SAME BUSINESS RELATIONSHIPS WITH THE TARGET AFTER THE CLOSING AS IT MAINTAINED WITH THE TARGET PRIOR TO THE CLOSING. HOFFMAN WILL REFER ALL CUSTOMER INQUIRIES RELATING TO THE BUSINESSES OF THE TARGET TO THE PARENT FROM AND AFTER THE CLOSING.

(D) CONFIDENTIALITY  
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. HOFFMAN WILL TREAT AND HOLD AS SUCH ALL OF THE CONFIDENTIAL INFORMATION, REFRAIN FROM USING ANY OF THE CONFIDENTIAL INFORMATION EXCEPT IN CONNECTION WITH THIS AGREEMENT, AND DELIVER PROMPTLY TO THE PARENT OR DESTROY, AT THE REQUEST AND OPTION OF THE PARENT, ALL TANGIBLE EMBODIMENTS (AND ALL COPIES) OF THE CONFIDENTIAL INFORMATION WHICH ARE IN HIS OR ITS POSSESSION. IN THE EVENT THAT HOFFMAN IS REQUESTED OR REQUIRED (BY ORAL QUESTION OR REQUEST FOR INFORMATION OR DOCUMENTS IN ANY LEGAL PROCEEDING, INTERROGATORY, SUBPOENA, CIVIL INVESTIGATIVE DEMAND, OR SIMILAR PROCESS) TO DISCLOSE ANY CONFIDENTIAL INFORMATION, HOFFMAN WILL NOTIFY THE PARENT PROMPTLY OF THE REQUEST OR REQUIREMENT SO THAT THE PARENT MAY SEEK AN APPROPRIATE PROTECTIVE ORDER OR WAIVE COMPLIANCE WITH THE PROVISIONS OF THIS 6(D). IF, IN THE ABSENCE OF A PROTECTIVE ORDER OR THE RECEIPT OF A WAIVER HEREUNDER, HOFFMAN IS, ON THE ADVICE OF COUNSEL, COMPELLED TO DISCLOSE ANY CONFIDENTIAL INFORMATION TO ANY TRIBUNAL OR ELSE STAND LIABLE FOR CONTEMPT, THAT SELLER MAY DISCLOSE THE CONFIDENTIAL INFORMATION TO THE TRIBUNAL; PROVIDED,

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HOWEVER, THAT HOFFMAN SHALL USE HIS BEST EFFORTS TO OBTAIN, AT THE REQUEST OF

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THE PARENT, AN ORDER OR OTHER ASSURANCE THAT CONFIDENTIAL TREATMENT WILL BE

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ACCORDED TO SUCH PORTION OF THE CONFIDENTIAL INFORMATION REQUIRED TO BE

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DISCLOSED AS THE PARENT SHALL DESIGNATE. THE FOREGOING PROVISIONS SHALL NOT  
- - -  
APPLY TO ANY CONFIDENTIAL INFORMATION WHICH IS GENERALLY AVAILABLE TO THE PUBLIC  
- - -  
IMMEDIATELY PRIOR TO THE TIME OF DISCLOSURE.

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(E) COVENANT NOT TO COMPETE  
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. FOR A PERIOD OF THREE YEARS FROM AND AFTER THE CLOSING DATE, HOFFMAN WILL NOT, AND WILL NOT PERMIT ANY AFFILIATE OF HOFFMAN TO, ENGAGE DIRECTLY OR INDIRECTLY IN ANY BUSINESS THAT THE TARGET CONDUCTS AS OF THE CLOSING DATE IN ANY GEOGRAPHIC AREA IN WHICH THE TARGET CONDUCTS THAT BUSINESS AS OF THE CLOSING DATE; PROVIDED, HOWEVER, THAT NO OWNER OF LESS THAN 1% OF THE OUTSTANDING STOCK

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OF ANY PUBLICLY TRADED CORPORATION SHALL BE DEEMED TO ENGAGE SOLELY BY REASON THEREOF IN ANY OF ITS BUSINESSES. IF THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION DECLARES THAT ANY TERM OR PROVISION OF THIS 6(E) IS INVALID OR UNENFORCEABLE, THE PARTIES AGREE THAT THE COURT MAKING THE DETERMINATION OF INVALIDITY OR UNENFORCEABILITY SHALL HAVE THE POWER TO REDUCE THE SCOPE, DURATION, OR AREA OF THE TERM OR PROVISION, TO DELETE SPECIFIC WORDS OR PHRASES, OR TO REPLACE ANY INVALID OR UNENFORCEABLE TERM OR PROVISION WITH A TERM OR PROVISION THAT IS VALID AND ENFORCEABLE AND THAT COMES CLOSEST TO EXPRESSING THE INTENTION OF THE INVALID OR UNENFORCEABLE TERM OR PROVISION, AND THIS AGREEMENT SHALL BE ENFORCEABLE AS SO MODIFIED AFTER THE EXPIRATION OF THE TIME WITHIN WHICH THE JUDGMENT MAY BE APPEALED.

(F) NON-SOLICITATION  
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. FOR A PERIOD OF THREE YEARS FROM AND AFTER THE CLOSING DATE, HOFFMAN SHALL NOT, DIRECTLY OR INDIRECTLY, AND WILL NOT PERMIT ANY AFFILIATE OF HOFFMAN TO, (I) OFFER EMPLOYMENT TO OR SEEK TO OFFER EMPLOYMENT TO ANY PERSON WHO IS EMPLOYED BY THE PARENT OR ANY OF ITS AFFILIATES ON OR AFTER THE CLOSING DATE, UNLESS THE PARENT OR AFFILIATE FIRST TERMINATES THE EMPLOYMENT OF SUCH EMPLOYEE OR GIVES ITS WRITTEN CONSENT TO SUCH EMPLOYMENT OR OFFER OF EMPLOYMENT, (II) INDUCE OR ATTEMPT TO INDUCE ANY PERSON WHO IS EMPLOYED BY THE PARENT OR ANY OF ITS AFFILIATES ON OR AFTER THE CLOSING DATE TO LEAVE THE EMPLOY OF THE PARENT OR ANY OF ITS AFFILIATES OR (III) INDUCE OR ATTEMPT TO INDUCE ANY CUSTOMER, SUPPLIER, VENDOR, LICENSEE OR BUSINESS RELATION OF THE PARENT OR ANY OF ITS AFFILIATES TO CEASE DOING BUSINESS WITH THE PARENT OR ANY OF ITS AFFILIATES OR IN ANY WAY INTERFERE WITH THE RELATIONSHIP BETWEEN ANY CUSTOMER, SUPPLIER, VENDOR, LICENSEE OR BUSINESS RELATION OF THE PARENT OR ANY OF ITS AFFILIATES. HOFFMAN SHALL NOT BE PRECLUDED FROM HIRING ANY SUCH PERSON WHO (I) INITIATES DISCUSSIONS REGARDING SUCH EMPLOYMENT OR (II) RESPONDS TO ANY PUBLIC ADVERTISEMENT PLACED BY HOFFMAN.

(G) SHARE CERTIFICATES  
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. EACH CERTIFICATE EVIDENCING SHARES WILL BE IMPRINTED WITH A LEGEND SUBSTANTIALLY IN THE FOLLOWING FORM:  
THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED FOR

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SALE, SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FILED UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS.

EACH HOLDER DESIRING TO TRANSFER SHARES FIRST MUST FURNISH THE PARENT WITH A WRITTEN OPINION SATISFACTORY TO THE PARENT IN FORM AND SUBSTANCE FROM COUNSEL SATISFACTORY TO THE PARENT BY REASON OF EXPERIENCE TO THE EFFECT THAT THE HOLDER MAY TRANSFER THE SHARES AS DESIRED WITHOUT REGISTRATION UNDER THE SECURITIES ACT.

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(H) NEW YORK STOCK EXCHANGE LISTING  
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. THE PARENT SHALL USE ITS REASONABLE BEST EFFORTS TO CAUSE THE SHARES TO BE APPROVED FOR QUOTATION ON THE NEW YORK STOCK EXCHANGE, SUBJECT TO OFFICIAL NOTICE OF ISSUANCE.

(I) FINANCIAL STATEMENTS.  
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(I) IF REQUESTED IN WRITING BY PARENT, HOFFMAN SHALL PREPARE, AT PARENT'S EXPENSE, AND DELIVER TO THE PARENT AS SOON AS PRACTICABLE BUT NOT LATER THAN FORTY-FIVE (45) DAYS AFTER THE CLOSING DATE FINANCIAL STATEMENTS FOR THE TARGET AUDITED BY KPMG LLP FOR THE YEARS ENDED DECEMBER 31, 1999, DECEMBER 31, 2000 AND DECEMBER 31, 2001, INCLUDING YEAR END BALANCE SHEETS AND RELATED STATEMENTS OF INCOME AND CASH FLOWS FOR THE BUSINESS FOR THE YEARS THEN ENDED. HOFFMAN SHALL USE HIS BEST EFFORTS TO PROVIDE ALL ASSISTANCE REQUESTED BY PARENT AND THE SURVIVING CORPORATION IN CONNECTION WITH THE PREPARATION OF SUCH AUDITED FINANCIAL STATEMENTS.

(II) IN THE EVENT THAT THE PARENT CONCLUDES THAT IT IS NECESSARY OR

ADVISABLE TO PREPARE FINANCIAL STATEMENTS OF THE TARGET FOR ANY OTHER PERIODS PRIOR TO CLOSING, HOFFMAN AGREES TO COOPERATE WITH THE PARENT, PROVIDE IT WITH REASONABLE ACCESS TO APPROPRIATE FINANCIAL RECORDS AND PERSONNEL AND DIRECT THE TARGET'S INDEPENDENT ACCOUNTANTS TO ASSIST THE PARENT. ANY FEES AND EXPENSES OF THE OUTSIDE INDEPENDENT ACCOUNTANTS SHALL BE PAID BY THE PARENT.

7. REMEDIES FOR BREACHES OF THIS AGREEMENT.

(A) SURVIVAL OF REPRESENTATIONS AND WARRANTIES

. ALL OF THE REPRESENTATIONS AND WARRANTIES OF EACH PARTY CONTAINED IN THIS AGREEMENT SHALL SURVIVE THE CLOSING HEREUNDER (EVEN IF PARENT OR HOFFMAN KNEW OR HAD REASON TO KNOW OF ANY MISREPRESENTATION OR BREACH OF WARRANTY OR COVENANT AT THE TIME OF CLOSING; PROVIDED, HOWEVER, THAT PARENT OR HOFFMAN, AS APPLICABLE, HAS DISCLOSED TO HOFFMAN OR PARENT, AS APPLICABLE, IN WRITING SUCH KNOWLEDGE AS SOON AS REASONABLY PRACTICABLE AFTER IT BECAME KNOWN TO THE PARENT OR HOFFMAN, AS APPLICABLE) AND CONTINUE IN FULL FORCE AND EFFECT FOR TWELVE (12) MONTHS FOLLOWING THE CLOSING DATE; PROVIDED, HOWEVER, THAT THE REPRESENTATIONS AND WARRANTIES CONTAINED IN 4(A) (I), 4(A) (IV), 4(A) (VI), 4(B) (II), 4(B) (III), 4(B) (VII), 5(B), 5(C), 5(F), 5(H), 5(M), 5(Z) AND 5(BB) SHALL CONTINUE IN FULL FORCE AND EFFECT THEREAFTER (SUBJECT TO ANY APPLICABLE STATUTES OF LIMITATIONS).

(B) INDEMNIFICATION PROVISIONS FOR BENEFIT OF THE PARENT.

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(I) IN THE EVENT HOFFMAN OR THE TARGET BREACHES (OR IN THE EVENT ANY THIRD PARTY ALLEGES FACTS THAT, IF TRUE, WOULD MEAN HOFFMAN OR THE TARGET HAS BREACHED) ANY OF THEIR RESPECTIVE REPRESENTATIONS, WARRANTIES, AND COVENANTS CONTAINED HEREIN, THEN HOFFMAN AGREES TO INDEMNIFY THE PARENT, THE SURVIVING CORPORATION, AND THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNEES (EACH A "PARENT

INDEMNIFIED PARTY") FROM AND AGAINST THE ENTIRETY OF ANY ADVERSE CONSEQUENCES

SUCH INDEMNIFIED PARTY MAY SUFFER THROUGH AND AFTER THE DATE OF THE CLAIM FOR INDEMNIFICATION (INCLUDING ANY ADVERSE CONSEQUENCES SUCH INDEMNIFIED PARTY MAY SUFFER AFTER THE END OF ANY APPLICABLE SURVIVAL PERIOD) RESULTING FROM, ARISING OUT OF, RELATING TO, IN THE NATURE OF, OR CAUSED BY THE BREACH (OR THE ALLEGED BREACH).

(II) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, HOFFMAN SHALL INDEMNIFY, SAVE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL ADVERSE CONSEQUENCES INCURRED IN CONNECTION WITH, ARISING OUT OF, RESULTING FROM OR RELATING OR INCIDENT TO: (X) ANY AND ALL TAXES (A) OF THE TARGET (1) WITH RESPECT TO ALL PERIODS ENDING ON OR PRIOR TO THE CLOSING DATE (THE "PRE-CLOSING PERIODS") AND (2) WITH RESPECT TO ANY PERIOD BEGINNING BEFORE

THE CLOSING DATE AND ENDING AFTER THE CLOSING DATE (A "STRADDLE PERIOD"), BUT

ONLY WITH RESPECT TO THE PORTION OF SUCH PERIOD UP TO AND INCLUDING THE CLOSING DATE (SUCH PORTION SHALL BE REFERRED TO HEREIN AS THE "PRE-CLOSING PARTIAL

PERIOD" AND THE PORTION OF SUCH PERIOD AFTER THE CLOSING DATE SHALL BE REFERRED

TO HEREIN AS THE "POST-CLOSING PARTIAL PERIOD"), OR (B) FOR WHICH THE TARGET IS

LIABLE UNDER TREASURY REGULATIONS 1.1502-6 (OR ANY SIMILAR PROVISION OF STATE, LOCAL OR FOREIGN LAW), AS A TRANSFEREE OR SUCCESSOR, BY CONTRACT, OR OTHERWISE; AND (Y) ANY UNTRUTH OR INACCURACY OF ANY REPRESENTATION OR WARRANTY OF OR BY HOFFMAN OR THE TARGET CONTAINED IN 5(M) (TAX MATTERS); IN EACH CASE TO THE EXTENT SUCH TAXES ARE NOT REFLECTED IN THE RESERVE FOR TAX LIABILITY (RATHER THAN ANY RESERVE FOR DEFERRED TAXES ESTABLISHED TO REFLECT TIMING DIFFERENCES BETWEEN BOOK AND TAX INCOME) SHOWN ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO). FOR PURPOSES OF THIS SECTION, TAXES REQUIRED TO BE APPORTIONED AS PROVIDED IN CLAUSE (I) (A) OF THIS SUBSECTION SHALL BE APPORTIONED BETWEEN THE PRE-CLOSING PARTIAL PERIOD AND POST-CLOSING PARTIAL PERIOD OF ANY STRADDLE PERIOD IN ACCORDANCE WITH THE PROVISIONS DESCRIBED IN 8(B) OF THIS AGREEMENT

(C) INDEMNIFICATION PROVISIONS FOR BENEFIT OF HOFFMAN

. IN THE EVENT PARENT OR MERGER SUB BREACHES (OR IN THE EVENT ANY THIRD PARTY ALLEGES FACTS THAT, IF TRUE, WOULD MEAN PARENT OR MERGER SUB HAS BREACHED) ANY OF THEIR RESPECTIVE REPRESENTATIONS, WARRANTIES, AND COVENANTS CONTAINED HEREIN, THEN PARENT AGREES TO INDEMNIFY HOFFMAN FROM AND AGAINST THE ENTIRETY OF ANY ADVERSE CONSEQUENCES HOFFMAN MAY SUFFER THROUGH AND AFTER THE DATE OF THE CLAIM FOR INDEMNIFICATION (INCLUDING ANY ADVERSE CONSEQUENCES HOFFMAN MAY SUFFER AFTER THE END OF ANY APPLICABLE SURVIVAL PERIOD) RESULTING FROM, ARISING OUT OF, RELATING TO, IN THE NATURE OF, OR CAUSED BY THE BREACH (OR THE ALLEGED BREACH). PARENT FURTHER AGREES TO INDEMNIFY HOFFMAN FROM AND AGAINST THE ENTIRETY OF ANY ADVERSE CONSEQUENCES HOFFMAN MAY SUFFER ARISING OUT OF, OR RELATING TO HOFFMAN'S PERSONAL GUARANTY OF THE OBLIGATIONS OF TARGET UNDER THAT CERTAIN STANDARD COMMERCIAL/INDUSTRIAL SINGLE-TENANT LEASE BY AND BETWEEN EJM DEVELOPMENT CO. AND TARGET, DATED DECEMBER 14, 1994, AS AMENDED AND MODIFIED IN WRITING TO THE DATE HEREOF (THE "GUARANTEED LEASE"), TO THE EXTENT THAT SUCH ADVERSE CONSEQUENCES

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ARISE AFTER THE CLOSING DATE DUE TO ANY FAILURE OF THE SURVIVING CORPORATION TO  
PERFORM ITS OBLIGATIONS AS ASSIGNEE UNDER THE GUARANTEED LEASE (THE "LEASE  
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INDEMNIFICATION OBLIGATION").  
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(D) MATTERS INVOLVING THIRD PARTIES.  
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(I) IF ANY THIRD PARTY SHALL NOTIFY A PARENT INDEMNIFIED PARTY OR HOFFMAN  
(EACH, AN "INDEMNIFIED PARTY") WITH RESPECT TO ANY MATTER (A "THIRD PARTY  
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CLAIM") WHICH MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION AGAINST HOFFMAN OR  
PARENT (EACH, AS APPLICABLE, THE "INDEMNIFYING PARTY") UNDER THIS 7, THEN THE  
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INDEMNIFIED PARTY SHALL PROMPTLY NOTIFY THE INDEMNIFYING PARTY THEREOF IN  
WRITING; PROVIDED, HOWEVER, THAT NO DELAY ON THE PART OF THE INDEMNIFIED PARTY  
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IN NOTIFYING THE INDEMNIFYING PARTY SHALL RELIEVE THE INDEMNIFYING PARTY FROM  
ANY OBLIGATION HEREUNDER UNLESS (AND THEN SOLELY TO THE EXTENT) THE INDEMNIFYING  
PARTY THEREBY IS PREJUDICED.

(II) THE INDEMNIFYING PARTY WILL HAVE THE RIGHT TO DEFEND THE INDEMNIFIED  
PARTY AGAINST THE THIRD PARTY CLAIM WITH COUNSEL MUTUALLY SATISFACTORY TO THE  
INDEMNIFIED PARTY AND THE INDEMNIFYING PARTY SO LONG AS (A) THE INDEMNIFYING  
PARTY NOTIFIES THE INDEMNIFIED PARTY IN WRITING WITHIN THIRTY (30) DAYS AFTER  
THE INDEMNIFIED PARTY HAS GIVEN NOTICE OF THE THIRD PARTY CLAIM THAT THE  
INDEMNIFYING PARTY WILL INDEMNIFY THE INDEMNIFIED PARTY FROM AND AGAINST THE  
ENTIRETY OF ANY ADVERSE CONSEQUENCES THE INDEMNIFIED PARTY MAY SUFFER RESULTING  
FROM, ARISING OUT OF, RELATING TO, IN THE NATURE OF, OR CAUSED BY THE THIRD  
PARTY CLAIM, (B) THE INDEMNIFYING PARTY PROVIDES THE INDEMNIFIED PARTY WITH  
EVIDENCE REASONABLY ACCEPTABLE TO THE INDEMNIFIED PARTY THAT THE INDEMNIFYING  
PARTY WILL HAVE THE FINANCIAL RESOURCES TO DEFEND AGAINST THE THIRD PARTY CLAIM  
AND FULFILL ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, (C) THE THIRD PARTY CLAIM  
INVOLVES ONLY MONEY DAMAGES AND DOES NOT SEEK AN INJUNCTION OR OTHER EQUITABLE  
RELIEF, (D) SETTLEMENT OF, OR AN ADVERSE JUDGMENT WITH RESPECT TO, THE THIRD  
PARTY CLAIM IS NOT, IN THE GOOD FAITH JUDGMENT OF THE INDEMNIFIED PARTY, LIKELY  
TO ESTABLISH A PRECEDENTIAL CUSTOM OR PRACTICE ADVERSE TO THE CONTINUING  
BUSINESS INTERESTS OF THE INDEMNIFIED PARTY, AND (E) THE INDEMNIFYING PARTY  
CONDUCTS THE DEFENSE OF THE THIRD PARTY CLAIM ACTIVELY AND DILIGENTLY.

(III) SO LONG AS THE INDEMNIFYING PARTY IS CONDUCTING THE DEFENSE OF THE  
THIRD PARTY CLAIM IN ACCORDANCE WITH 7(D)(II) ABOVE, (A) THE INDEMNIFIED PARTY  
MAY RETAIN SEPARATE CO-COUNSEL AT ITS SOLE COST AND EXPENSE AND PARTICIPATE IN  
THE DEFENSE OF THE THIRD PARTY CLAIM, (B) THE INDEMNIFIED PARTY WILL NOT CONSENT  
TO THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO THE  
THIRD PARTY CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFYING PARTY,  
AND (C) THE INDEMNIFYING PARTY WILL NOT CONSENT TO THE ENTRY OF ANY JUDGMENT OR  
ENTER INTO ANY SETTLEMENT WITH RESPECT TO THE THIRD PARTY CLAIM WITHOUT THE  
PRIOR WRITTEN CONSENT OF THE INDEMNIFIED PARTY (NOT TO BE WITHHELD  
UNREASONABLY).

(IV) IN THE EVENT ANY OF THE CONDITIONS IN 7(D)(II) ABOVE IS OR BECOMES  
UNSATISFIED, HOWEVER, (A) THE INDEMNIFIED PARTY MAY DEFEND AGAINST, AND CONSENT  
TO THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO, THE  
THIRD PARTY CLAIM IN ANY MANNER IT MAY DEEM APPROPRIATE, (B) THE INDEMNIFYING  
PARTY WILL REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE  
COSTS OF DEFENDING AGAINST THE THIRD PARTY CLAIM (INCLUDING REASONABLE  
ATTORNEYS' FEES AND EXPENSES), AND (C) SUBJECT TO THE LIMITATIONS SET FORTH IN  
7(D)(V) BELOW, THE INDEMNIFYING PARTY WILL REMAIN RESPONSIBLE FOR ANY ADVERSE  
CONSEQUENCES THE INDEMNIFIED PARTY MAY SUFFER RESULTING FROM, ARISING OUT OF,  
RELATING TO, IN THE NATURE OF, OR CAUSED BY THE THIRD PARTY CLAIM TO THE FULLEST  
EXTENT PROVIDED IN THIS 7.

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(V) IN THE EVENT THAT AN INDEMNIFIED PARTY DOES NOT PERMIT THE INDEMNIFYING  
PARTY TO DEFEND THE INDEMNIFIED PARTY AGAINST A THIRD PARTY CLAIM DUE TO THE  
FAILURE OF A CONDITION IN CLAUSE (C) OR (D) OF 7(D)(II) ABOVE, THE PARTIES  
AGREE THAT (A) THE INDEMNIFIED PARTY WILL CONDUCT THE DEFENSE WITH COUNSEL  
MUTUALLY SATISFACTORY TO THE INDEMNIFYING PARTY AND THE INDEMNIFIED PARTY, AND  
(B) THE INDEMNIFYING PARTY SHALL ONLY BE REQUIRED TO INDEMNIFY SUCH INDEMNIFIED  
PARTY FOR FIFTY PERCENT (50%) OF THE AMOUNT OF ANY ADVERSE CONSEQUENCES  
RESULTING FROM SUCH THIRD PARTY CLAIM. NOTWITHSTANDING THE FOREGOING, ONLY THE  
AMOUNT OF THE ADVERSE CONSEQUENCES ACTUALLY PAID BY THE INDEMNIFYING PARTY SHALL  
BE CONSIDERED FOR PURPOSES OF APPLYING THE INDEMNITY DEDUCTIBLE AND THE MAXIMUM  
INDEMNIFICATION AMOUNT FOR SUCH INDEMNIFYING PARTY.

(VI) WITH RESPECT TO ANY THIRD PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER  
THIS SECTION 7: (I) BOTH THE INDEMNIFIED PARTY AND THE INDEMNIFYING PARTY, AS  
THE CASE MAY BE, SHALL KEEP THE OTHER PARTY FULLY INFORMED OF THE STATUS OF SUCH  
THIRD PARTY CLAIM AND ANY RELATED PROCEEDINGS AT ALL STAGES THEREOF WHERE SUCH  
PARTY IS NOT REPRESENTED BY ITS OWN COUNSEL, AND (II) THE PARTIES AGREE (AT THE  
EXPENSE OF THE INDEMNIFYING PARTY) TO RENDER TO EACH OTHER SUCH ASSISTANCE AS  
THEY MAY REASONABLY REQUIRE OF EACH OTHER AND TO COOPERATE IN GOOD FAITH WITH



EACH OTHER IN ORDER TO ENSURE THE PROPER AND ADEQUATE DEFENSE OF ANY THIRD PARTY CLAIM. IN FURTHERANCE THEREOF, THE PARTY NOT CONDUCTING THE DEFENSE OF THE THIRD PARTY CLAIM SHALL MAKE AVAILABLE TO THE PARTY THAT IS CONDUCTING THE DEFENSE ALL BOOKS, RECORDS AND OTHER DOCUMENTS AND MATERIALS THAT ARE UNDER THE DIRECT OR INDIRECT CONTROL OF SUCH PARTY OR ANY OF ITS AFFILIATES AND THAT THE PARTY CONDUCTING THE DEFENSE REASONABLY CONSIDERS NECESSARY OR DESIRABLE FOR THE DEFENSE OF THE THIRD PARTY CLAIM; PROVIDED, HOWEVER, THAT THE PARTY NOT CONDUCTING THE DEFENSE MAY WITHHOLD BOOKS, RECORDS OR OTHER DOCUMENTS AND MATERIALS THAT ARE SUBJECT TO ATTORNEY-CLIENT OR OTHER SIMILAR PRIVILEGE.

(E) DETERMINATION OF ADVERSE CONSEQUENCES  
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. ALL INDEMNIFICATION PAYMENTS UNDER THIS 7 SHALL BE DEEMED ADJUSTMENTS TO THE PURCHASE PRICE.

(F) LIMITATIONS ON INDEMNIFICATION.  
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(I) EXCEPT AS SET FORTH BELOW, HOFFMAN SHALL NOT HAVE ANY LIABILITY UNDER 7(B)(I) ABOVE FOR ADVERSE CONSEQUENCES TO THE EXTENT THAT THE AGGREGATE AMOUNT OF ADVERSE CONSEQUENCES INDEMNIFIED BY HOFFMAN HEREUNDER EXCEEDS \$10,683,750 (THE "MAXIMUM INDEMNIFICATION AMOUNT"). EXCEPT AS SET FORTH BELOW, HOFFMAN SHALL

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NOT HAVE ANY LIABILITY UNDER 7(B)(I) ABOVE FOR ANY ADVERSE CONSEQUENCES UNTIL THE AGGREGATE AMOUNT OTHERWISE DUE TO ALL PARENT INDEMNIFIED PARTIES EXCEEDS AN ACCUMULATED TOTAL OF THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) (THE "INDEMNITY DEDUCTIBLE") AND THEN ONLY FOR THE AMOUNT BY WHICH THE AGGREGATE

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AMOUNT OF ALL SUCH ADVERSE CONSEQUENCES OTHERWISE DUE TO ALL PARENT INDEMNIFIED PARTIES EXCEEDS THE INDEMNITY DEDUCTIBLE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS IMPOSED BY THE MAXIMUM INDEMNIFICATION AMOUNT AND THE INDEMNITY DEDUCTIBLE SHALL NOT APPLY WITH RESPECT TO (I) ANY CLAIM FOR INDEMNIFICATION UNDER 7(B)(II) ABOVE, (II) ANY ADVERSE CONSEQUENCES ARISING OUT OF FRAUD OR INTENTIONAL VIOLATION OF ANY REPRESENTATION, WARRANTY OR COVENANT OR (III) ANY ADVERSE CONSEQUENCES ARISING OUT OF A BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN 4(A)(I), 4(A)(IV), 4(A)(VI), 5(B), 5(C), 5(F), 5(H), 5(M), 5(Z), 5(BB), 6(D), 6(E), 6(F) AND 8.

(II) EXCEPT AS SET FORTH BELOW, PARENT SHALL NOT HAVE ANY LIABILITY UNDER 7(C) ABOVE FOR ADVERSE CONSEQUENCES TO THE EXTENT THAT THE AGGREGATE AMOUNT OF ADVERSE CONSEQUENCES INDEMNIFIED BY PARENT HEREUNDER EXCEEDS THE MAXIMUM INDEMNIFICATION AMOUNT. EXCEPT AS SET FORTH BELOW, PARENT SHALL NOT HAVE ANY LIABILITY UNDER 7(C) ABOVE FOR ANY ADVERSE CONSEQUENCES UNTIL THE AGGREGATE AMOUNT OTHERWISE DUE TO HOFFMAN EXCEEDS THE INDEMNITY DEDUCTIBLE AND THEN ONLY FOR THE AMOUNT BY WHICH THE AGGREGATE AMOUNT OF ALL SUCH ADVERSE CONSEQUENCES OTHERWISE DUE TO HOFFMAN EXCEEDS THE INDEMNITY DEDUCTIBLE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS IMPOSED BY THE MAXIMUM INDEMNIFICATION AMOUNT AND THE INDEMNITY DEDUCTIBLE SHALL NOT APPLY WITH RESPECT TO (I) ANY ADVERSE CONSEQUENCES ARISING OUT OF FRAUD OR INTENTIONAL VIOLATION OF ANY REPRESENTATION, WARRANTY OR COVENANT, (II) ANY ADVERSE CONSEQUENCES ARISING OUT OF A BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN 4(B)(II), 4(B)(III), OR 4(B)(VII) OR (III) ANY ADVERSE CONSEQUENCES ARISING OUT OF THE LEASE INDEMNIFICATION OBLIGATION DESCRIBED IN 7(C).

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(G) OTHER INDEMNIFICATION PROVISIONS  
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. THE FOREGOING INDEMNIFICATION PROVISIONS ARE IN ADDITION TO, AND NOT IN DEROGATION OF, ANY STATUTORY, EQUITABLE, OR COMMON LAW REMEDY ANY PARTY MAY HAVE FOR BREACH OF REPRESENTATION, WARRANTY, OR COVENANT; PROVIDED, HOWEVER, THAT THE FOREGOING INDEMNIFICATION PROVISIONS SHALL BE THE SOLE REMEDY FOR MONETARY DAMAGES FOR ANY SUCH BREACH OF REPRESENTATION, WARRANTY OR COVENANT. HOFFMAN HEREBY AGREES THAT HE WILL NOT MAKE ANY CLAIM FOR INDEMNIFICATION AGAINST THE TARGET BY REASON OF THE FACT THAT HE OR IT WAS A DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF TARGET OR WAS SERVING AT THE REQUEST OF TARGET AS A PARTNER, TRUSTEE, DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF ANOTHER ENTITY (WHETHER SUCH CLAIM IS FOR JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, AMOUNTS PAID IN SETTLEMENT, LOSSES, EXPENSES, OR OTHERWISE AND WHETHER SUCH CLAIM IS PURSUANT TO ANY STATUTE, CHARTER DOCUMENT, BYLAW, AGREEMENT, OR OTHERWISE) WITH RESPECT TO ANY ACTION, SUIT, PROCEEDING, COMPLAINT, CLAIM, OR DEMAND BROUGHT BY THE PARENT AGAINST HOFFMAN (WHETHER SUCH ACTION, SUIT, PROCEEDING, COMPLAINT, CLAIM, OR DEMAND IS PURSUANT TO THIS AGREEMENT, APPLICABLE LAW, OR OTHERWISE).

8. TAX MATTERS  
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. THE FOLLOWING PROVISIONS SHALL GOVERN THE ALLOCATION OF RESPONSIBILITY AS BETWEEN PARENT AND HOFFMAN FOR CERTAIN TAX MATTERS FOLLOWING THE CLOSING DATE:

(A) TAX PERIODS ENDING ON OR BEFORE THE CLOSING DATE  
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. PARENT SHALL PREPARE OR CAUSE TO BE PREPARED AND FILE OR CAUSE TO BE FILED ALL TAX RETURNS FOR THE TARGET FOR ALL PERIODS ENDING ON OR PRIOR TO THE CLOSING DATE WHICH ARE FILED AFTER THE CLOSING DATE. PARENT SHALL PERMIT HOFFMAN TO REVIEW AND COMMENT ON EACH SUCH TAX RETURN DESCRIBED IN THE PRECEDING SENTENCE PRIOR TO FILING. HOFFMAN SHALL REIMBURSE PARENT FOR ANY TAXES OF THE TARGET WITH RESPECT TO SUCH PERIODS WITHIN FIFTEEN (15) DAYS AFTER PAYMENT BY PARENT OR THE TARGET OF SUCH TAXES TO THE EXTENT SUCH TAXES ARE NOT REFLECTED IN THE RESERVE FOR TAX LIABILITY (RATHER THAN ANY RESERVE FOR DEFERRED TAXES

(B) STRADDLE PERIODS

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. PARENT SHALL PREPARE AND TIMELY FILE OR SHALL CAUSE TO BE PREPARED AND TIMELY FILED, WITH THE APPROPRIATE AUTHORITIES ALL TAX RETURNS OF THE TARGET FOR ALL STRADDLE PERIODS, AND SHALL PAY ALL TAXES DUE WITH RESPECT TO SUCH TAX RETURNS; PROVIDED, HOWEVER, THAT HOFFMAN SHALL REIMBURSE PARENT FOR ANY TAXES OF THE TARGET TO THE EXTENT ALLOCABLE TO ANY PRE-CLOSING PARTIAL PERIOD OF A STRADDLE PERIOD WITHIN FIFTEEN (15) DAYS AFTER PAYMENT BY PARENT OR THE TARGET OF SUCH TAXES TO THE EXTENT SUCH TAXES ARE NOT REFLECTED IN THE RESERVE FOR TAX LIABILITY (RATHER THAN ANY RESERVE FOR DEFERRED TAXES ESTABLISHED TO REFLECT TIMING DIFFERENCES BETWEEN BOOK AND TAX INCOME) SHOWN ON THE FACE OF THE MOST RECENT BALANCE SHEET (RATHER THAN IN ANY NOTES THERETO). FOR PURPOSES OF ALLOCATING TAXES BETWEEN A PRE-CLOSING PARTIAL PERIOD AND A POST-CLOSING PARTIAL PERIOD, TO THE EXTENT PERMITTED BY LAW AND ADMINISTRATIVE PRACTICE, THE STRADDLE PERIOD SHALL BE TREATED AS CLOSING ON (AND INCLUDING) THE CLOSING DATE. IN THE CASE OF ANY TAXES THAT ARE PAYABLE FOR A STRADDLE PERIOD THAT IS NOT TREATED UNDER THE PRECEDING SENTENCE AS CLOSING ON THE CLOSING DATE, THE PORTION OF SUCH TAX RELATED TO THE PRE-CLOSING PARTIAL PERIOD: (I) IN THE CASE OF REAL, PERSONAL AND INTANGIBLE PROPERTY TAXES ("PROPERTY TAXES") OF THE TARGET FOR THE

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PRE-CLOSING PARTIAL PERIOD, SHALL BE EQUAL TO THE AMOUNT OF SUCH PROPERTY TAXES FOR THE ENTIRE STRADDLE PERIOD MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF DAYS DURING THE STRADDLE PERIOD THAT ARE IN THE PRE-CLOSING PARTIAL PERIOD AND THE DENOMINATOR OF WHICH IS THE NUMBER OF DAYS IN THE STRADDLE PERIOD, AND (II) IN THE CASE OF ANY TAXES OF THE TARGET OTHER THAN PROPERTY TAXES, SHALL BE COMPUTED AS IF SUCH TAXABLE PERIOD ENDED AS OF THE CLOSE OF THE BUSINESS ON THE CLOSING DATE.

(C) COOPERATION ON TAX MATTERS.

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(I) PARENT, THE TARGET AND HOFFMAN SHALL COOPERATE FULLY, AS AND TO THE EXTENT REASONABLY REQUESTED BY THE OTHER PARTY, IN CONNECTION WITH THE FILING OF TAX RETURNS PURSUANT TO THIS AGREEMENT AND ANY AUDIT, LITIGATION OR OTHER PROCEEDING WITH RESPECT TO TAXES. SUCH COOPERATION SHALL INCLUDE THE RETENTION AND (UPON THE OTHER PARTY'S REQUEST) THE PROVISION OF RECORDS AND INFORMATION WHICH ARE REASONABLY RELEVANT TO ANY SUCH AUDIT, LITIGATION OR OTHER PROCEEDING AND MAKING EMPLOYEES AVAILABLE ON A MUTUALLY CONVENIENT BASIS TO PROVIDE ADDITIONAL INFORMATION AND EXPLANATION OF ANY MATERIAL PROVIDED HEREUNDER. THE TARGET AND HOFFMAN AGREE (A) TO RETAIN ALL BOOKS AND RECORDS IN THEIR RESPECTIVE POSSESSION WITH RESPECT TO TAX MATTERS PERTINENT TO THE TARGET RELATING TO ANY TAXABLE PERIOD BEGINNING BEFORE THE CLOSING DATE UNTIL THE EXPIRATION OF THE STATUTE OF LIMITATIONS (AND, TO THE EXTENT NOTIFIED BY PARENT OR HOFFMAN, ANY EXTENSIONS THEREOF) OF THE RESPECTIVE TAX PERIODS, AND TO ABIDE BY ALL RECORD RETENTION AGREEMENTS ENTERED INTO WITH ANY TAX AUTHORITY, AND (B) TO GIVE THE OTHER PARTY REASONABLE WRITTEN NOTICE PRIOR TO TRANSFERRING, DESTROYING OR DISCARDING ANY SUCH BOOKS AND RECORDS AND, IF THE OTHER PARTY SO REQUESTS, THE TARGET OR HOFFMAN, AS THE CASE MAY BE, SHALL ALLOW THE OTHER PARTY TO TAKE POSSESSION OF SUCH BOOKS AND RECORDS

(II) PARENT AND HOFFMAN FURTHER AGREE, UPON REQUEST, TO USE THEIR REASONABLE BEST EFFORTS TO OBTAIN ANY CERTIFICATE OR OTHER DOCUMENT FROM ANY GOVERNMENTAL AUTHORITY OR ANY OTHER PERSON AS MAY BE NECESSARY TO MITIGATE, REDUCE OR ELIMINATE ANY TAX THAT COULD BE IMPOSED (INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREBY).

(D) CERTAIN TAXES

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. ALL TRANSFER, DOCUMENTARY, SALES, USE, STAMP, REGISTRATION AND OTHER SUCH TAXES AND FEES (INCLUDING ANY PENALTIES AND INTEREST) INCURRED IN CONNECTION WITH THIS AGREEMENT SHALL BE PAID BY HOFFMAN WHEN DUE, AND HOFFMAN WILL, AT ITS OWN EXPENSE, FILE ALL NECESSARY TAX RETURNS AND OTHER DOCUMENTATION WITH RESPECT TO ALL SUCH TRANSFER, DOCUMENTARY, SALES, USE, STAMP, REGISTRATION AND OTHER TAXES AND FEES, AND, IF REQUIRED BY APPLICABLE LAW, PARENT WILL, AND WILL CAUSE ITS AFFILIATES TO, JOIN IN THE EXECUTION OF ANY SUCH TAX RETURNS AND OTHER DOCUMENTATION.

(E) CHARACTERIZATION OF PAYMENTS

-----  
. ANY PAYMENTS MADE TO THE MERGER SUB OR PARENT PURSUANT TO THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT SHALL CONSTITUTE AN ADJUSTMENT OF THE CONSIDERATION PAID FOR THE STOCK OF THE TARGET FOR TAX PURPOSES AND SHALL BE TREATED AS SUCH BY PARENT, MERGER SUB, THE TARGET AND HOFFMAN ON THEIR TAX RETURNS TO THE EXTENT PERMITTED BY LAW.

(F) S CORPORATION STATUS

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. NEITHER HOFFMAN NOR THE TARGET WILL REVOKE THE TARGET'S ELECTION TO BE TAXED AS AN S CORPORATION WITHIN THE MEANING OF 1361 AND 1362 OF THE CODE. NEITHER HOFFMAN NOR THE TARGET WILL TAKE, CAUSE TO BE TAKEN, OR ALLOW ANY ACTION THAT WOULD RESULT IN THE TERMINATION OF THE TARGET'S STATUS AS A VALIDLY ELECTING S CORPORATION WITHIN THE MEANING OF 1361 AND 1362 OF THE CODE AT ANY

TIME PRIOR TO THE CLOSING.  
9. REORGANIZATION MATTERS.

(A) INTENDED TREATMENT

. THE PARTIES INTEND THE MERGER TO QUALIFY AS A REORGANIZATION UNDER 368(A) OF THE CODE. HOWEVER, NONE OF PARENT, MERGER SUB, HOFFMAN OR THE TARGET MAKES ANY REPRESENTATION OR WARRANTY TO THE OTHER REGARDING THE TAX TREATMENT OF THE MERGER OR WHETHER THE MERGER WILL QUALIFY AS A REORGANIZATION UNDER THE CODE. EACH OF HOFFMAN, THE TARGET, MERGER SUB AND PARENT ACKNOWLEDGES THAT IT IS RELYING ON ITS OWN ADVISORS IN CONNECTION WITH THE TAX TREATMENT OF THE MERGER AND THE OTHER TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF HOFFMAN, THE TARGET, MERGER SUB AND PARENT AGREE TO USE THEIR RESPECTIVE REASONABLE BEST EFFORTS TO CAUSE THE MERGER TO QUALIFY, AND WILL NOT TAKE ANY ACTIONS WHICH WOULD REASONABLY BE EXPECTED TO PREVENT THE MERGER FROM QUALIFYING, AS A REORGANIZATION UNDER 368(A) OF THE CODE.

(B) REPORTING

. EACH OF HOFFMAN, THE TARGET, MERGER SUB AND PARENT SHALL REPORT THE MERGER AS A REORGANIZATION WITHIN THE MEANING OF 368(A) OF THE CODE, UNLESS OTHERWISE REQUIRED PURSUANT TO A "DETERMINATION" WITHIN THE MEANING OF 1313(A) OF THE CODE.

10. MISCELLANEOUS.

(A) PRESS RELEASES AND PUBLIC ANNOUNCEMENTS

. NO PARTY SHALL ISSUE ANY PRESS RELEASE OR MAKE ANY PUBLIC ANNOUNCEMENT RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE OTHER PARTY; PROVIDED, HOWEVER, THAT ANY PARTY MAY MAKE ANY

PUBLIC DISCLOSURE IT BELIEVES IN GOOD FAITH IS REQUIRED BY APPLICABLE LAW OR ANY LISTING OR TRADING AGREEMENT CONCERNING ITS PUBLICLY-TRADED SECURITIES (IN WHICH CASE THE DISCLOSING PARTY WILL USE ITS REASONABLE BEST EFFORTS TO PROVIDE A COPY OF SUCH DISCLOSURE TO THE OTHER PARTY PRIOR TO MAKING THE DISCLOSURE).

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(B) NO THIRD-PARTY BENEFICIARIES

. THIS AGREEMENT SHALL NOT CONFER ANY RIGHTS OR REMEDIES UPON ANY PERSON OTHER THAN THE PARTIES AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

(C) ENTIRE AGREEMENT

. THIS AGREEMENT (INCLUDING THE DOCUMENTS REFERRED TO HEREIN) CONSTITUTES THE ENTIRE AGREEMENT AMONG THE PARTIES AND SUPERSEDES ANY PRIOR UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS BY OR AMONG THE PARTIES, WRITTEN OR ORAL, TO THE EXTENT THEY RELATED IN ANY WAY TO THE SUBJECT MATTER HEREOF.

(D) SUCCESSION AND ASSIGNMENT

. THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE PARTIES NAMED HEREIN AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS. NO PARTY MAY ASSIGN EITHER THIS AGREEMENT OR ANY OF HIS OR ITS RIGHTS, INTERESTS, OR OBLIGATIONS HEREUNDER WITHOUT THE PRIOR WRITTEN APPROVAL OF THE OTHER PARTY; PROVIDED, HOWEVER, THAT THE PARENT MAY (I) ASSIGN ANY OR ALL OF ITS RIGHTS AND

INTERESTS HEREUNDER TO ONE OR MORE OF ITS AFFILIATES AND (II) DESIGNATE ONE OR MORE OF ITS AFFILIATES TO PERFORM ITS OBLIGATIONS HEREUNDER (IN ANY OR ALL OF WHICH CASES THE PARENT NONETHELESS SHALL REMAIN RESPONSIBLE FOR THE PERFORMANCE OF ALL OF ITS OBLIGATIONS HEREUNDER).

(E) COUNTERPARTS

. THIS AGREEMENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL BUT ALL OF WHICH TOGETHER WILL CONSTITUTE ONE AND THE SAME INSTRUMENT.

(F) HEADINGS

. THE SECTION HEADINGS CONTAINED IN THIS AGREEMENT ARE INSERTED FOR CONVENIENCE ONLY AND SHALL NOT AFFECT IN ANY WAY THE MEANING OR INTERPRETATION OF THIS AGREEMENT.

(G) NOTICES

. ALL NOTICES, REQUESTS, DEMANDS, CLAIMS, AND OTHER COMMUNICATIONS HEREUNDER WILL BE IN WRITING. ANY NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION HEREUNDER SHALL BE DEEMED DULY GIVEN IF (AND THEN TWO BUSINESS DAYS AFTER) IT IS SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, AND ADDRESSED TO THE INTENDED RECIPIENT AS SET FORTH BELOW:

IF TO HOFFMAN:

-----  
LESLIE HOFFMAN  
6660 VARIEL AVENUE  
CANOGA PARK, CA 91203  
TELECOPY: (818) 346-6294  
COPY TO:  
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FULBRIGHT & JAWORSKI L.L.P.  
865. S. FIGUEROA STREET, 29TH FLOOR  
LOS ANGELES, CALIFORNIA 90017

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ATTN: DAVID A. EBERSHOFF, ESQ.  
TELECOPY: (213) 680-4518  
IF TO THE PARENT OR MERGER SUB:

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RESMED INC.  
14040 DANIELSON STREET  
POWAY, CALIFORNIA 92064  
ATTN: LEGAL DEPARTMENT  
TELECOPY: (858) 746-2830  
COPY TO:

-----  
LATHAM & WATKINS  
650 TOWN CENTER DRIVE,  
20TH FLOOR,  
COSTA MESA, CALIFORNIA 92626  
ATTN: PATRICK T. SEAVER, ESQ.  
TELECOPY: (714) 755-8290

ANY PARTY MAY SEND ANY NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION  
HEREUNDER TO THE INTENDED RECIPIENT AT THE ADDRESS SET FORTH ABOVE USING ANY  
OTHER MEANS (INCLUDING PERSONAL DELIVERY, EXPEDITED COURIER, MESSENGER SERVICE,  
TELECOPY, TELEX, ORDINARY MAIL, OR ELECTRONIC MAIL), BUT NO SUCH NOTICE,  
REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION SHALL BE DEEMED TO HAVE BEEN DULY  
GIVEN UNLESS AND UNTIL IT ACTUALLY IS RECEIVED BY THE INTENDED RECIPIENT. ANY  
PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICES, REQUESTS, DEMANDS, CLAIMS, AND  
OTHER COMMUNICATIONS HEREUNDER ARE TO BE DELIVERED BY GIVING THE OTHER PARTIES  
NOTICE IN THE MANNER HEREIN SET FORTH.

(H) GOVERNING LAW

-----  
. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE  
DOMESTIC LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ANY CHOICE OR  
CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF CALIFORNIA OR ANY  
OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY  
JURISDICTION OTHER THAN THE STATE OF CALIFORNIA.

(I) AMENDMENTS AND WAIVERS

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. NO AMENDMENT OF ANY PROVISION OF THIS AGREEMENT SHALL BE VALID UNLESS  
THE SAME SHALL BE IN WRITING AND SIGNED BY THE PARENT AND HOFFMAN. NO WAIVER BY  
ANY PARTY OF ANY DEFAULT, MISREPRESENTATION, OR BREACH OF WARRANTY OR COVENANT  
HEREUNDER, WHETHER INTENTIONAL OR NOT, SHALL BE DEEMED TO EXTEND TO ANY PRIOR OR  
SUBSEQUENT DEFAULT, MISREPRESENTATION, OR BREACH OF WARRANTY OR COVENANT  
HEREUNDER OR AFFECT IN ANY WAY ANY RIGHTS ARISING BY VIRTUE OF ANY PRIOR OR  
SUBSEQUENT SUCH OCCURRENCE. NO FAILURE OR DELAY ON THE PART OF ANY PARTY IN  
EXERCISING ANY RIGHT, POWER OR PRIVILEGE HEREUNDER SHALL OPERATE AS A WAIVER  
THEREOF, NOR SHALL ANY WAIVER ON THE PART OF ANY PARTY OF ANY RIGHT, POWER OR  
PRIVILEGE HEREUNDER OPERATE AS A WAIVER OF ANY OTHER RIGHT, POWER OR PRIVILEGE  
HEREUNDER, NOR SHALL ANY SINGLE OR PARTIAL EXERCISE OF ANY RIGHT, POWER OR  
PRIVILEGE HEREUNDER PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF OR THE  
EXERCISE OF ANY OTHER RIGHT, POWER OR PRIVILEGE HEREUNDER.

(J) SEVERABILITY

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. ANY TERM OR PROVISION OF THIS AGREEMENT THAT IS INVALID OR UNENFORCEABLE  
IN ANY SITUATION IN ANY JURISDICTION SHALL NOT AFFECT THE VALIDITY OR  
ENFORCEABILITY OF THE REMAINING TERMS AND PROVISIONS HEREOF OR THE VALIDITY OR  
ENFORCEABILITY OF THE OFFENDING TERM OR PROVISION IN ANY OTHER SITUATION OR IN  
ANY OTHER JURISDICTION.

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(K) EXPENSES

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. EACH OF THE PARTIES WILL BEAR HIS OR ITS OWN COSTS AND EXPENSES  
(INCLUDING LEGAL FEES AND EXPENSES) INCURRED IN CONNECTION WITH THIS AGREEMENT  
AND THE TRANSACTIONS CONTEMPLATED HEREBY. HOFFMAN REPRESENTS AND AGREES THAT THE  
TARGET HAS NOT BORNE AND SHALL NOT BEAR ANY OF HOFFMAN'S COSTS AND EXPENSES  
(INCLUDING ANY OF HIS LEGAL FEES AND EXPENSES) IN CONNECTION WITH THIS AGREEMENT  
OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND TARGET HAS NOT BORNE AND  
SHALL NOT BEAR MORE THAN \$50,000 IN COSTS AND EXPENSES (INCLUDING ANY OF ITS  
LEGAL FEES AND EXPENSES) IN AGGREGATE IN CONNECTION WITH THIS AGREEMENT OR ANY  
OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND THAT ANY COSTS AND EXPENSES BEYOND  
\$50,000 IN AGGREGATE INCURRED BY TARGET IN CONNECTION WITH THIS AGREEMENT OR ANY  
OF THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BORNE BY HOFFMAN.

(L) CONSTRUCTION

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. THE PARTIES HAVE PARTICIPATED JOINTLY IN THE NEGOTIATION AND DRAFTING OF  
THIS AGREEMENT. IN THE EVENT AN AMBIGUITY OR QUESTION OF INTENT OR  
INTERPRETATION ARISES, THIS AGREEMENT SHALL BE CONSTRUED AS IF DRAFTED JOINTLY  
BY THE PARTIES AND NO PRESUMPTION OR BURDEN OF PROOF SHALL ARISE FAVORING OR  
DISFAVORING ANY PARTY BY VIRTUE OF THE AUTHORSHIP OF ANY OF THE PROVISIONS OF  
THIS AGREEMENT. ANY REFERENCE TO ANY FEDERAL, STATE, LOCAL, OR FOREIGN STATUTE  
OR LAW SHALL BE DEEMED ALSO TO REFER TO ALL RULES AND REGULATIONS PROMULGATED

THEREUNDER, UNLESS THE CONTEXT REQUIRES OTHERWISE. THE WORD "INCLUDING" SHALL MEAN INCLUDING WITHOUT LIMITATION. THE PARTIES INTEND THAT EACH REPRESENTATION, WARRANTY, AND COVENANT CONTAINED HEREIN SHALL HAVE INDEPENDENT SIGNIFICANCE. IF ANY PARTY HAS BREACHED ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED HEREIN IN ANY RESPECT, THE FACT THAT THERE EXISTS ANOTHER REPRESENTATION, WARRANTY, OR COVENANT RELATING TO THE SAME SUBJECT MATTER (REGARDLESS OF THE RELATIVE LEVELS OF SPECIFICITY) WHICH THE PARTY HAS NOT BREACHED SHALL NOT DETRACT FROM OR MITIGATE THE FACT THAT THE PARTY IS IN BREACH OF THE FIRST REPRESENTATION, WARRANTY, OR COVENANT.

(M) INCORPORATION OF EXHIBITS AND SCHEDULES

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. THE EXHIBITS, ANNEXES, AND SCHEDULES IDENTIFIED IN THIS AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE AND MADE A PART HEREOF.

(N) SPECIFIC PERFORMANCE

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. EACH OF THE PARTIES ACKNOWLEDGES AND AGREES THAT THE OTHER PARTIES WOULD BE DAMAGED IRREPARABLY IN THE EVENT ANY OF THE PROVISIONS OF THIS AGREEMENT ARE NOT PERFORMED IN ACCORDANCE WITH THEIR SPECIFIC TERMS OR OTHERWISE ARE BREACHED. ACCORDINGLY, EACH OF THE PARTIES AGREES THAT THE OTHER PARTIES SHALL BE ENTITLED TO AN INJUNCTION OR INJUNCTIONS TO PREVENT BREACHES OF THE PROVISIONS OF THIS AGREEMENT AND TO ENFORCE SPECIFICALLY THIS AGREEMENT AND THE TERMS AND PROVISIONS HEREOF IN ANY ACTION INSTITUTED IN ANY COURT OF THE UNITED STATES OR ANY STATE THEREOF HAVING JURISDICTION OVER THE PARTIES AND THE MATTER (SUBJECT TO THE PROVISIONS SET FORTH IN 10(P) BELOW), IN ADDITION TO ANY OTHER REMEDY TO WHICH THEY MAY BE ENTITLED, AT LAW OR IN EQUITY.

(O) SUBMISSION TO JURISDICTION

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. SUBJECT TO COMPLIANCE WITH 10(P) BELOW, EACH OF THE PARTIES SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN ORANGE COUNTY, CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF THE ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT. EACH PARTY ALSO AGREES NOT TO BRING ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY OTHER COURT. EACH OF THE PARTIES WAIVES ANY DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING SO BROUGHT AND WAIVES ANY BOND, SURETY, OR OTHER SECURITY THAT MIGHT BE REQUIRED OF ANY OTHER PARTY WITH RESPECT THERETO. ANY PARTY MAY MAKE SERVICE ON ANY OTHER PARTY BY SENDING OR DELIVERING A COPY OF THE PROCESS TO THE PARTY TO BE SERVED AT THE ADDRESS AND IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES IN 10(G) ABOVE. NOTHING IN THIS 10(O), HOWEVER, SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AT EQUITY. EACH PARTY AGREES THAT A FINAL JUDGMENT IN ANY ACTION OR PROCEEDING SO BROUGHT SHALL BE CONCLUSIVE AND MAY BE ENFORCED BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW OR AT EQUITY.

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(P) ALTERNATIVE DISPUTE RESOLUTION.

-----  
(I) THE PARTIES WILL ATTEMPT IN GOOD FAITH TO RESOLVE THROUGH NEGOTIATION ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT. ANY PARTY MAY INITIATE NEGOTIATIONS BY PROVIDING WRITTEN NOTICE TO THE OTHER PARTIES, SETTING FORTH THE SUBJECT OF THE DISPUTE AND THE RELIEF REQUESTED. THE RECIPIENT OF SUCH NOTICE WILL RESPOND IN WRITING WITHIN FIVE DAYS WITH A STATEMENT OF ITS POSITION ON AND RECOMMENDED SOLUTION TO THE DISPUTE. IF THE DISPUTE IS NOT RESOLVED BY THIS EXCHANGE OF CORRESPONDENCE, THEN REPRESENTATIVES OF EACH PARTY WITH FULL SETTLEMENT AUTHORITY WILL MEET AT A MUTUALLY AGREEABLE TIME AND PLACE WITHIN TEN (10) DAYS OF THE DATE OF THE INITIAL NOTICE IN ORDER TO EXCHANGE RELEVANT INFORMATION AND PERSPECTIVES, AND TO ATTEMPT TO RESOLVE THE DISPUTE. IF THE DISPUTE IS NOT RESOLVED BY THESE NEGOTIATIONS, THE MATTER WILL BE SUBMITTED TO JAMS, OR ITS SUCCESSOR, FOR MEDIATION IN ACCORDANCE WITH 10(P)(II) BELOW.

(II) THE PARTIES AGREE THAT ANY AND ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE SUBMITTED TO JAMS, OR ITS SUCCESSOR, FOR MEDIATION, AND IF THE MATTER IS NOT RESOLVED THROUGH MEDIATION, THEN IT SHALL BE SUBMITTED TO JAMS, OR ITS SUCCESSOR, FOR FINAL AND BINDING ARBITRATION IN ORANGE COUNTY, CALIFORNIA. ANY PARTY MAY COMMENCE MEDIATION BY PROVIDING TO JAMS AND THE OTHER PARTIES A WRITTEN REQUEST FOR MEDIATION, SETTING FORTH THE SUBJECT OF THE DISPUTE AND THE RELIEF REQUESTED. THE PARTIES WILL COOPERATE WITH JAMS AND WITH ONE ANOTHER IN SELECTING A MEDIATOR FROM JAMS' PANEL OF NEUTRALS, AND IN SCHEDULING THE MEDIATION PROCEEDINGS. THE PARTIES COVENANT THAT THEY WILL PARTICIPATE IN THE MEDIATION IN GOOD FAITH, AND THAT HOFFMAN AND PARENT WILL SHARE EQUALLY IN ITS COSTS. ALL OFFERS, PROMISES, CONDUCT AND STATEMENTS, WHETHER ORAL OR WRITTEN, MADE IN THE COURSE OF THE MEDIATION BY ANY OF THE PARTIES, THEIR AGENTS, EMPLOYEES, EXPERTS AND ATTORNEYS, AND BY THE MEDIATOR OR ANY JAMS EMPLOYEES, ARE CONFIDENTIAL, PRIVILEGED AND INADMISSIBLE FOR ANY PURPOSE, INCLUDING IMPEACHMENT, IN ANY ARBITRATION OR OTHER PROCEEDING INVOLVING THE PARTIES, PROVIDED THAT EVIDENCE THAT IS OTHERWISE ADMISSIBLE OR DISCOVERABLE SHALL NOT BE RENDERED INADMISSIBLE OR NON-DISCOVERABLE AS A RESULT OF ITS USE IN THE MEDIATION. ANY PARTY MAY INITIATE ARBITRATION WITH RESPECT TO THE MATTERS SUBMITTED TO MEDIATION BY FILING A WRITTEN DEMAND FOR ARBITRATION AT ANY TIME FOLLOWING THE INITIAL MEDIATION SESSION OR 45 DAYS AFTER THE DATE OF FILING THE WRITTEN REQUEST FOR MEDIATION, WHICHEVER OCCURS FIRST. THE MEDIATION MAY CONTINUE AFTER THE COMMENCEMENT OF ARBITRATION IF THE PARTIES SO DESIRE. UNLESS OTHERWISE AGREED BY THE PARTIES, THE MEDIATOR SHALL BE DISQUALIFIED FROM SERVING AS ARBITRATOR IN

THE CASE. THE PROVISIONS OF THIS CLAUSE MAY BE ENFORCED BY ANY COURT OF COMPETENT JURISDICTION, AND THE PARTY SEEKING ENFORCEMENT SHALL BE ENTITLED TO AN AWARD OF ALL COSTS, FEES AND EXPENSES, INCLUDING ATTORNEYS FEES, TO BE PAID BY THE PARTY AGAINST WHOM ENFORCEMENT IS ORDERED.

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(III) THE PARTIES AGREE THAT ANY AND ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT THAT ARE NOT RESOLVED BY THEIR MUTUAL AGREEMENT THROUGH MEDIATION PURSUANT TO 10(P)(II) ABOVE SHALL BE SUBMITTED TO FINAL AND BINDING ARBITRATION BEFORE JAMS, OR ITS SUCCESSOR, IN ORANGE COUNTY, CALIFORNIA, PURSUANT TO THE UNITED STATES ARBITRATION ACT, 9 U.S.C. SEC. 1 ET SEQ. ANY PARTY MAY COMMENCE THE ARBITRATION PROCESS CALLED FOR IN THIS AGREEMENT BY FILING A WRITTEN DEMAND FOR ARBITRATION WITH JAMS, WITH A COPY TO THE OTHER PARTY. THE ARBITRATION WILL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF JAMS' COMPREHENSIVE ARBITRATION RULES AND PROCEDURES IN EFFECT AT THE TIME OF FILING OF THE DEMAND FOR ARBITRATION. THE PARTIES WILL COOPERATE WITH JAMS AND WITH ONE ANOTHER IN SELECTING AN ARBITRATOR FROM JAMS' PANEL OF NEUTRALS, AND IN SCHEDULING THE ARBITRATION PROCEEDINGS. THE PARTIES COVENANT THAT THEY WILL PARTICIPATE IN THE ARBITRATION IN GOOD FAITH, AND THAT HOFFMAN AND PARENT WILL SHARE EQUALLY IN ITS COSTS. THE PROVISIONS OF THIS CLAUSE MAY BE ENFORCED BY ANY COURT OF COMPETENT JURISDICTION, AND THE PARTY SEEKING ENFORCEMENT SHALL BE ENTITLED TO AN AWARD OF ALL COSTS, FEES AND EXPENSES, INCLUDING ATTORNEYS FEES, TO BE PAID BY THE PARTY AGAINST WHOM ENFORCEMENT IS ORDERED.

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IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AND PLAN OF MERGER ON THE DATE FIRST ABOVE WRITTEN.

RESMED INC.,  
A DELAWARE CORPORATION

BY: /S/ PETER C FARRELL  
-----  
NAME: PETER C. FARRELL  
TITLE: CEO

SERVO MAGNETICS ACQUISITION, INC.,  
A DELAWARE CORPORATION

BY: /S/ LESLIE HOFFMAN  
-----  
NAME: LESLIE HOFFMAN  
TITLE: CEO

SERVO MAGNETICS INCORPORATED,  
A CALIFORNIA CORPORATION

BY: /S/ LESLIE HOFFMAN  
-----  
NAME: LESLIE HOFFMAN  
TITLE: CEO

LESLIE HOFFMAN,  
AN INDIVIDUAL  
/S/ LESLIE HOFFMAN  
-----

RESMED INC.

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (THE "AGREEMENT") IS MADE AS OF MAY 14, 2002, BETWEEN RESMED INC., A DELAWARE CORPORATION (THE "PARENT") AND LESLIE HOFFMAN, AN INDIVIDUAL ("HOFFMAN").

WHEREAS:

A. PURSUANT TO THE TERMS OF THE AGREEMENT AND PLAN OF MERGER DATED AS OF EVEN DATE HEREWITH (THE "MERGER AGREEMENT"), BY AND AMONG PARENT, SERVO MAGNETICS INCORPORATED, A CALIFORNIA CORPORATION ("TARGET"), SERVO MAGNETICS ACQUISITION, INC., A DELAWARE CORPORATION AND WHOLLY OWNED SUBSIDIARY OF PARENT ("MERGER SUB"), AND HOFFMAN, TARGET IS BEING MERGED WITH AND INTO MERGER SUB (THE "MERGER").

B. IN CONNECTION WITH THE MERGER, HOFFMAN SHALL RECEIVE FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF PARENT, PAR VALUE \$.004 PER SHARE.

C. THE MERGER AGREEMENT PROVIDES FOR THE EXECUTION AND DELIVERY OF THIS AGREEMENT AT THE CLOSING OF THE TRANSACTIONS CONTEMPLATED THEREBY WHICH GRANTS HOFFMAN CERTAIN RIGHTS TO HAVE THE SHARES REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1

RESTRICTIONS ON TRANSFERABILITY OF SECURITIES;

COMPLIANCE WITH SECURITIES ACT; REGISTRATION RIGHTS

1.1 CERTAIN DEFINITIONS

UNLESS OTHERWISE INDICATED, THE TERMS IN THIS AGREEMENT SHALL HAVE THE SAME MEANINGS AS THOSE TERMS IN THE MERGER AGREEMENT. AS USED IN THIS AGREEMENT, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING RESPECTIVE MEANINGS: "COMMON STOCK" SHALL MEAN PARENT'S COMMON STOCK, PAR VALUE \$.004 PER SHARE.

"HOLDER" SHALL MEAN (I) HOFFMAN AND (II) ANY PERSON HOLDING REGISTRABLE SECURITIES TO WHOM THE RIGHTS UNDER THIS SECTION 1 HAVE BEEN TRANSFERRED IN ACCORDANCE WITH SECTION 1.8 HEREOF.

"REGISTRABLE SECURITIES" MEANS THE SHARES UNTIL SUCH TIME THAT SUCH SECURITIES

HAVE BEEN (I) EFFECTIVELY REGISTERED UNDER THE SECURITIES ACT AND DISPOSED OF PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, OR (II) SOLD IN A SINGLE TRANSACTION EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE SECURITIES ACT SO THAT ALL TRANSFER RESTRICTIONS AND RESTRICTIVE LEGENDS WITH RESPECT THERETO ARE REMOVED UPON THE CONSUMMATION OF SUCH SALE. THE TERMS "REGISTER," "REGISTERED" AND "REGISTRATION" REFER TO A REGISTRATION

EFFECTED BY PREPARING AND FILING A REGISTRATION STATEMENT IN COMPLIANCE WITH THE SECURITIES ACT, AND THE DECLARATION OR ORDERING OF THE EFFECTIVENESS OF SUCH REGISTRATION STATEMENT.

"REGISTRATION EXPENSES" SHALL MEAN ALL EXPENSES, EXCEPT AS OTHERWISE STATED

BELOW, INCURRED BY PARENT IN COMPLYING WITH SECTION 1.2 HEREOF, INCLUDING,

WITHOUT LIMITATION, ALL REGISTRATION, QUALIFICATION AND FILING FEES, INCLUDING

NASD FILING FEES, PRINTING EXPENSES (INCLUDING EXPENSES OF PRINTING CERTIFICATES FOR REGISTRABLE SECURITIES AND OF PRINTING PRELIMINARY AND FINAL PROSPECTUSES), ESCROW FEES, FEES AND DISBURSEMENTS OF COUNSEL FOR PARENT, BLUE SKY FEES AND EXPENSES, THE EXPENSE OF ANY SPECIAL AUDITS INCIDENT TO OR REQUIRED BY ANY SUCH REGISTRATION.

"SEC" SHALL MEAN THE SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER FEDERAL AGENCY AT THE TIME ADMINISTERING THE SECURITIES ACT.

"SECURITIES ACT" SHALL MEAN THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY

SIMILAR FEDERAL STATUTE AND THE RULES AND REGULATIONS OF THE SEC THEREUNDER, ALL

AS THE SAME SHALL BE IN EFFECT AT THE TIME.

"SELLING EXPENSES" SHALL MEAN ALL UNDERWRITING DISCOUNTS, SELLING COMMISSIONS

AND STOCK TRANSFER TAXES APPLICABLE TO THE SECURITIES REGISTERED BY HOLDER AND

ALL REASONABLE FEES AND DISBURSEMENTS OF COUNSEL FOR HOLDER.  
"SHARES" SHALL MEAN THE SHARES OF COMMON STOCK OF PARENT, PAR VALUE \$.004 PER  
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SHARE, ISSUED TO HOFFMAN PURSUANT TO THE MERGER AGREEMENT AND ANY OTHER  
-  
SECURITIES ISSUED IN RESPECT OF SUCH SECURITIES UPON ANY STOCK SPLIT, STOCK  
-  
DIVIDEND, RECAPITALIZATION, MERGER, CONSOLIDATION OR SIMILAR EVENT.  
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#### 1.2 MANDATORY REGISTRATION

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. PARENT SHALL PREPARE AND FILE WITH THE SEC, WITHIN 180 CALENDAR DAYS FOLLOWING THE CLOSING DATE (AS DEFINED IN THE MERGER AGREEMENT), EXCEPT AS A RESULT OF DELAYS THAT ARE CAUSED BY THE ACTIONS OR INACTIONS OF HOLDER, A REGISTRATION STATEMENT (THE "REGISTRATION STATEMENT") ON FORM S-3 (OR ANY

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SIMILAR OR SUCCESSOR SHORT FORM OF REGISTRATION STATEMENT AS IS THEN AVAILABLE TO EFFECT A REGISTRATION FOR RESALE OF THE REGISTRABLE SECURITIES) COVERING THE RESALE OF THE SHARES BY HOLDER. PARENT SHALL USE ITS COMMERCIALY REASONABLE EFFORTS TO CAUSE THE REGISTRATION STATEMENT TO BE DECLARED EFFECTIVE AS PROMPTLY AS IS REASONABLY PRACTICAL AFTER THE FILING THEREOF. IN NO EVENT SHALL PARENT BE REQUIRED HEREUNDER TO PREPARE AND FILE WITH THE SEC A REGISTRATION STATEMENT ON FORM S-1 (OR ANY SIMILAR OR SUCCESSOR LONG FORM OF REGISTRATION STATEMENT).

#### 1.3 EXPENSES OF REGISTRATION

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. ALL REGISTRATION EXPENSES INCURRED IN CONNECTION WITH ALL REGISTRATIONS PURSUANT TO SECTION 1.2 SHALL BE BORNE BY PARENT. UNLESS OTHERWISE STATED,  
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HOLDER SHALL BEAR ITS OWN SELLING EXPENSES.

#### 1.4 REGISTRATION PROCEDURES

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. IN CONNECTION WITH THE MANDATORY REGISTRATION UNDER SECTION 1.2, PARENT

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WILL:

(A) PREPARE AND FILE WITH THE SEC THE REGISTRATION STATEMENT WITH RESPECT TO THE SHARES AND USE REASONABLE EFFORTS TO CAUSE SUCH REGISTRATION STATEMENT TO BECOME EFFECTIVE AS SOON AS IS REASONABLY PRACTICAL AFTER THE FILING THEREOF, AND TO KEEP THE REGISTRATION STATEMENT EFFECTIVE UNTIL THE EARLIER OF: (I) THE SALE OF ALL REGISTRABLE SECURITIES HAS BEEN COMPLETED; OR (II) THE EARLIEST TIME AT WHICH ALL REGISTRABLE SECURITIES THEN HELD BY HOLDER MAY BE RESOLD OVER A THREE MONTH PERIOD PURSUANT TO RULE 144 OR ANY SIMILAR OR SUCCESSOR RULE OR EXEMPTION UNDER THE SECURITIES ACT;

(B) PREPARE AND FILE WITH THE SEC SUCH AMENDMENTS (INCLUDING POST-EFFECTIVE AMENDMENTS) TO SUCH REGISTRATION STATEMENT, AND SUCH SUPPLEMENTS TO THE RELATED PROSPECTUS, AS MAY BE REQUIRED BY THE RULES, REGULATIONS OR INSTRUCTIONS APPLICABLE TO THE SECURITIES ACT DURING THE APPLICABLE PERIOD IN ACCORDANCE WITH THE INTENDED METHODS OF DISPOSITION SPECIFIED BY THE HOLDERS OF THE REGISTRABLE SECURITIES COVERED BY SUCH REGISTRATION STATEMENT, AND CAUSE THE RELATED PROSPECTUS AS SO SUPPLEMENTED TO BE FILED PURSUANT TO RULE 424 UNDER THE SECURITIES ACT;

(C) NOTIFY HOLDER PROMPTLY AND (IF REQUESTED) CONFIRM SUCH NOTICE IN WRITING, (I) WHEN A PROSPECTUS OR ANY PROSPECTUS SUPPLEMENT OR POST-EFFECTIVE AMENDMENT HAS BEEN FILED, AND, WITH RESPECT TO SUCH REGISTRATION STATEMENT OR ANY POST-EFFECTIVE AMENDMENT, WHEN THE SAME HAS BECOME EFFECTIVE, (II) OF ANY REQUEST BY THE SEC FOR AMENDMENTS OR SUPPLEMENTS TO SUCH REGISTRATION STATEMENT OR THE RELATED PROSPECTUS OR FOR ADDITIONAL INFORMATION REGARDING HOLDER, (III) OF THE ISSUANCE BY THE SEC OF ANY STOP ORDER SUSPENDING THE EFFECTIVENESS OF SUCH REGISTRATION STATEMENT OR THE INITIATION OF ANY PROCEEDINGS FOR THAT PURPOSE, (IV) OF THE RECEIPT BY PARENT OF ANY NOTIFICATION WITH RESPECT TO THE SUSPENSION OF THE QUALIFICATION OR EXEMPTION FROM QUALIFICATION OF ANY OF THE REGISTRABLE SECURITIES FOR SALE IN ANY JURISDICTION OR THE INITIATION OR THREATENING OF ANY PROCEEDING FOR SUCH PURPOSE, AND (V) OF THE HAPPENING OF ANY EVENT THAT REQUIRES THE MAKING OF ANY CHANGES IN SUCH REGISTRATION STATEMENT, PROSPECTUS OR DOCUMENTS INCORPORATED OR DEEMED TO BE INCORPORATED THEREIN BY REFERENCE SO THAT THEY WILL NOT CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE ANY MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY TO MAKE THE STATEMENTS THEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING;

(D) USE COMMERCIALY REASONABLE EFFORTS TO OBTAIN THE WITHDRAWAL OF ANY ORDER SUSPENDING THE EFFECTIVENESS OF SUCH REGISTRATION STATEMENT, OR THE LIFTING OF ANY SUSPENSION OF THE QUALIFICATION OR EXEMPTION FROM QUALIFICATION OF ANY REGISTRABLE SECURITIES FOR SALE IN ANY JURISDICTION IN THE UNITED STATES;

(E) FURNISH TO HOLDER, COUNSEL FOR HOLDER AND EACH MANAGING UNDERWRITER, IF ANY, WITHOUT CHARGE, ONE CONFORMED COPY OF SUCH REGISTRATION STATEMENT, AS DECLARED EFFECTIVE BY THE SEC, AND OF EACH POST-EFFECTIVE AMENDMENT THERETO, IN EACH CASE INCLUDING FINANCIAL STATEMENTS AND SCHEDULES AND ALL EXHIBITS AND REPORTS INCORPORATED OR DEEMED TO BE INCORPORATED THEREIN BY REFERENCE; AND DELIVER, AT HOLDER'S EXPENSE, SUCH NUMBER OF COPIES OF THE PRELIMINARY PROSPECTUS, ANY AMENDED PRELIMINARY PROSPECTUS, EACH FINAL PROSPECTUS AND ANY POST-EFFECTIVE AMENDMENT OR SUPPLEMENT THERETO, AS HOLDER MAY REASONABLY REQUEST IN ORDER TO FACILITATE THE DISPOSITION OF THE REGISTRABLE SECURITIES OF HOLDER COVERED BY SUCH REGISTRATION STATEMENT IN CONFORMITY WITH THE REQUIREMENTS OF THE SECURITIES ACT;

(F) PRIOR TO ANY PUBLIC OFFERING OF REGISTRABLE SECURITIES COVERED BY SUCH REGISTRATION STATEMENT, USE COMMERCIALY REASONABLE EFFORTS TO REGISTER OR



QUALIFY SUCH REGISTRABLE SECURITIES FOR OFFER AND SALE UNDER THE SECURITIES OR BLUE SKY LAWS OF SUCH JURISDICTIONS AS HOLDER SHALL REASONABLY REQUEST IN WRITING; PROVIDED, HOWEVER, THAT PARENT SHALL IN NO EVENT BE REQUIRED TO QUALIFY GENERALLY TO DO BUSINESS AS A FOREIGN CORPORATION OR AS A DEALER IN ANY JURISDICTION WHERE IT IS NOT AT THE TIME SO QUALIFIED OR TO EXECUTE OR FILE A GENERAL CONSENT TO SERVICE OF PROCESS IN ANY SUCH JURISDICTION WHERE IT HAS NOT THERETOFORE DONE SO OR TO TAKE ANY ACTION THAT WOULD SUBJECT IT TO GENERAL SERVICE OF PROCESS OR TAXATION IN ANY SUCH JURISDICTION WHERE IT IS NOT THEN SUBJECT; AND

(G) UPON THE OCCURRENCE OF ANY EVENT CONTEMPLATED BY PARAGRAPH 1.4(C)(V) ABOVE, PREPARE A SUPPLEMENT OR POST-EFFECTIVE AMENDMENT TO SUCH REGISTRATION STATEMENT OR THE RELATED PROSPECTUS OR ANY DOCUMENT INCORPORATED OR DEEMED TO BE INCORPORATED THEREIN BY REFERENCE AND FILE ANY OTHER REQUIRED DOCUMENT SO THAT, AS THEREAFTER DELIVERED TO THE PURCHASERS OF THE REGISTRABLE SECURITIES BEING SOLD THEREUNDER, SUCH PROSPECTUS WILL NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE ANY MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY TO MAKE THE STATEMENTS THEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING.

1.5 REPORTS UNDER SECURITIES EXCHANGE ACT OF 1934  
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. WITH A VIEW TO MAKING AVAILABLE TO HOLDER THE BENEFITS OF RULE 144 PROMULGATED UNDER THE SECURITIES ACT, PARENT AGREES USE COMMERCIALY REASONABLE EFFORTS TO:

(A) MAKE AND KEEP PUBLIC INFORMATION AVAILABLE, AS THOSE TERMS ARE UNDERSTOOD AND DEFINED IN SEC RULE 144, FOR THE TWO YEAR PERIOD FOLLOWING THE DATE OF THIS AGREEMENT, SO LONG AS PARENT REMAINS SUBJECT TO THE PERIODIC REPORTING REQUIREMENTS UNDER SECTIONS 13 OR 15(D) OF THE EXCHANGE ACT;  
(B) FILE WITH THE SEC IN A TIMELY MANNER ALL REPORTS AND OTHER DOCUMENTS REQUIRED OF PARENT UNDER THE SECURITIES ACT AND THE EXCHANGE ACT; AND  
(C) FURNISH TO HOLDER, SO LONG AS HOLDER OWNS ANY REGISTRABLE SECURITIES, FORTHWITH UPON REQUEST A WRITTEN STATEMENT BY PARENT THAT IT HAS COMPLIED WITH THE REPORTING REQUIREMENTS OF SEC RULE 144.

1.6 INDEMNIFICATION.  
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(A) PARENT WILL INDEMNIFY AND HOLD HARMLESS, TO THE FULL EXTENT PERMITTED BY LAW, HOLDER WITH RESPECT TO WHICH REGISTRATION, QUALIFICATION OR COMPLIANCE HAS BEEN EFFECTED PURSUANT TO THIS SECTION 1, AND EACH UNDERWRITER, IF ANY, AND  
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EACH PERSON WHO CONTROLS ANY UNDERWRITER WITHIN THE MEANING OF SECTION 15 OF THE SECURITIES ACT OR THE EXCHANGE ACT, AGAINST ALL EXPENSES, CLAIMS, LOSSES, DAMAGES OR LIABILITIES (OR ACTIONS IN RESPECT THEREOF), INCLUDING ANY OF THE FOREGOING INCURRED IN SETTLEMENT OF ANY LITIGATION, COMMENCED OR THREATENED, ARISING OUT OF OR BASED ON ANY OF THE FOLLOWING STATEMENTS, OMISSIONS OR VIOLATIONS, OR ALLEGATIONS THEREOF (ANY OF WHICH, A "VIOLATION"): (I) ANY UNTRUE  
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STATEMENT (OR ALLEGED UNTRUE STATEMENT) OF A MATERIAL FACT CONTAINED IN ANY REGISTRATION STATEMENT, PROSPECTUS, OFFERING CIRCULAR OR OTHER DOCUMENT, OR ANY AMENDMENT OR SUPPLEMENT THERETO, INCIDENT TO ANY SUCH REGISTRATION, QUALIFICATION OR COMPLIANCE, (II) ANY OMISSION (OR ALLEGED OMISSION) TO STATE THEREIN A MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY TO MAKE THE STATEMENTS THEREIN, IN LIGHT OF THE CIRCUMSTANCES IN WHICH THEY WERE MADE, NOT MISLEADING OR (III) ANY VIOLATION BY PARENT OF THE SECURITIES ACT, THE EXCHANGE ACT, STATE SECURITIES LAW OR ANY RULE OR REGULATION PROMULGATED UNDER SUCH LAWS APPLICABLE TO PARENT IN CONNECTION WITH ANY SUCH REGISTRATION, QUALIFICATION OR COMPLIANCE, AND WITHIN A REASONABLE PERIOD PARENT WILL REIMBURSE HOLDER, EACH SUCH UNDERWRITER AND EACH PERSON WHO CONTROLS ANY SUCH UNDERWRITER, FOR ANY LEGAL AND ANY OTHER EXPENSES REASONABLY INCURRED IN CONNECTION WITH INVESTIGATING, PREPARING OR DEFENDING ANY SUCH CLAIM, LOSS, DAMAGE, LIABILITY OR ACTION; PROVIDED THAT PARENT WILL NOT BE LIABLE IN ANY SUCH CASE TO THE EXTENT THAT ANY SUCH CLAIM, LOSS, DAMAGE, LIABILITY OR EXPENSE ARISES OUT OF OR IS BASED ON (X) ANY UNTRUE STATEMENT OR OMISSION OR ALLEGED UNTRUE STATEMENT OR OMISSION, MADE IN RELIANCE UPON AND IN CONFORMITY WITH WRITTEN INFORMATION FURNISHED BY HOLDER TO PARENT FOR USE IN THE REGISTRATION STATEMENT OR (Y) A MATERIAL MISSTATEMENT OR OMISSION OF FACT CONTAINED IN ANY PRELIMINARY PROSPECTUS IF A FINAL, AMENDED OR SUPPLEMENTAL PROSPECTUS WHICH CORRECTS SUCH OMISSION OR MISSTATEMENT IS DELIVERED BY PARENT TO SUCH PERSON AT OR PRIOR TO THE WRITTEN CONFIRMATION OF THE SALE GIVING RISE TO THE VIOLATION OR ALLEGED VIOLATION.

(B) HOLDER WILL INDEMNIFY PARENT, EACH OF ITS AFFILIATES, DIRECTORS, OFFICERS, AGENTS AND REPRESENTATIVES, EACH UNDERWRITER, IF ANY, OF PARENT'S SECURITIES COVERED BY A REGISTRATION STATEMENT COVERING THE RESALE OF THE SHARES, AND EACH PERSON WHO CONTROLS PARENT OR SUCH UNDERWRITER WITHIN THE MEANING OF SECTION 15 OF THE SECURITIES ACT, AGAINST ALL CLAIMS, LOSSES, DAMAGES AND LIABILITIES (OR ACTIONS IN RESPECT THEREOF) ARISING OUT OF OR BASED ON A VIOLATION, AND WITHIN A REASONABLE PERIOD WILL REIMBURSE PARENT, SUCH AFFILIATES, DIRECTORS, OFFICERS, PERSONS, UNDERWRITERS OR CONTROL PERSONS FOR ANY LEGAL OR ANY OTHER EXPENSES REASONABLY INCURRED IN CONNECTION WITH INVESTIGATING OR DEFENDING ANY SUCH CLAIM, LOSS, DAMAGE, LIABILITY OR ACTION, IN EACH CASE TO THE EXTENT, BUT ONLY TO THE EXTENT, THAT SUCH UNTRUE STATEMENT (OR ALLEGED UNTRUE STATEMENT) OR OMISSION (OR ALLEGED OMISSION) IS MADE IN SUCH REGISTRATION STATEMENT, PROSPECTUS, OFFERING CIRCULAR OR OTHER DOCUMENT IN RELIANCE UPON AND IN CONFORMITY WITH WRITTEN INFORMATION FURNISHED BY HOLDER TO PARENT FOR USE IN THE REGISTRATION STATEMENT.

(C) EACH PARTY ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 1.6 (THE  
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"INDEMNIFIED PARTY") SHALL GIVE NOTICE TO THE PARTY REQUIRED TO PROVIDE

INDEMNIFICATION (THE "INDEMNIFYING PARTY") PROMPTLY AFTER SUCH INDEMNIFIED PARTY

HAS ACTUAL KNOWLEDGE OF ANY CLAIM AS TO WHICH INDEMNITY MAY BE SOUGHT, AND SHALL PERMIT THE INDEMNIFYING PARTY TO ASSUME THE DEFENSE OF ANY SUCH CLAIM OR ANY LITIGATION RESULTING THEREFROM, PROVIDED THAT COUNSEL FOR THE INDEMNIFYING PARTY, WHO SHALL CONDUCT THE DEFENSE OF SUCH CLAIM OR LITIGATION, SHALL BE APPROVED BY THE INDEMNIFIED PARTY (WHOSE APPROVAL SHALL NOT UNREASONABLY BE WITHHELD), AND THE INDEMNIFIED PARTY MAY PARTICIPATE IN SUCH DEFENSE AT SUCH PARTY'S EXPENSE, AND PROVIDED FURTHER THAT THE FAILURE OF ANY INDEMNIFIED PARTY TO GIVE NOTICE AS PROVIDED HEREIN SHALL NOT RELIEVE THE INDEMNIFYING PARTY OF ITS OBLIGATIONS UNDER THIS SECTION 1 UNLESS THE FAILURE TO GIVE SUCH NOTICE IS

MATERIALLY PREJUDICIAL TO AN INDEMNIFYING PARTY'S ABILITY TO DEFEND SUCH ACTION AND PROVIDED FURTHER, THAT THE INDEMNIFYING PARTY SHALL NOT ASSUME THE DEFENSE FOR MATTERS AS TO WHICH THERE IS A CONFLICT OF INTEREST OR SEPARATE AND DIFFERENT DEFENSES. NO INDEMNIFYING PARTY, IN THE DEFENSE OF ANY SUCH CLAIM OR LITIGATION, SHALL, EXCEPT WITH THE CONSENT OF EACH INDEMNIFIED PARTY, CONSENT TO ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WHICH DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THEREOF THE GIVING BY THE CLAIMANT OR PLAINTIFF TO SUCH INDEMNIFIED PARTY OF A RELEASE FROM ALL LIABILITY IN RESPECT TO SUCH CLAIM OR LITIGATION.

1.7 INFORMATION BY HOLDER

. IF REGISTRABLE SECURITIES HELD BY HOLDER ARE INCLUDED IN ANY REGISTRATION, HOLDER SHALL FURNISH TO PARENT SUCH INFORMATION REGARDING HOLDER, THE REGISTRABLE SECURITIES AND OTHER SECURITIES OF PARENT HELD BY HIM AND THE DISTRIBUTION PROPOSED BY HOLDER AS PARENT MAY REQUEST IN WRITING AND AS SHALL BE REQUIRED IN CONNECTION WITH ANY REGISTRATION, QUALIFICATION OR COMPLIANCE REFERRED TO IN THIS SECTION 1.

1.8 TRANSFER OF REGISTRATION RIGHTS

. THE RIGHTS TO HAVE SECURITIES REGISTERED GRANTED HOLDERS UNDER SECTION

1.2 MAY NOT BE ASSIGNED TO A TRANSFEREE OR ASSIGNEE WITHOUT THE PRIOR WRITTEN

CONSENT OF PARENT EXCEPT THAT SUCH RIGHTS MAY BE TRANSFERRED OR ASSIGNED TO

SPOUSES AND TO ANCESTORS, LINEAL DESCENDANTS AND SIBLINGS OF HOLDER WHO ACQUIRE

SHARES BY GIFT, WILL OR INTESTATE SUCCESSION.

SECTION 2

MISCELLANEOUS

2.1 GOVERNING LAW

. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

2.2 SURVIVAL

. THE COVENANTS AND AGREEMENTS MADE HEREIN SHALL SURVIVE THE CLOSING OF THE TRANSACTIONS CONTEMPLATED HEREBY.

2.3 SUCCESSORS AND ASSIGNS

. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE PROVISIONS HEREOF SHALL INURE TO THE BENEFIT OF, AND BE BINDING UPON, THE SUCCESSORS, ASSIGNS, HEIRS, EXECUTORS AND ADMINISTRATORS OF THE PARTIES HERETO.

2.4 ENTIRE AGREEMENT; AMENDMENT

. THIS AGREEMENT AND THE MERGER AGREEMENT CONSTITUTE THE FULL AND ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES WITH REGARD TO THE SUBJECTS HEREOF AND THEREOF, AND NO PARTY SHALL BE LIABLE OR BOUND TO ANY OTHER PARTY IN ANY MANNER BY ANY WARRANTIES, REPRESENTATIONS OR COVENANTS EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR THEREIN. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER THIS AGREEMENT NOR ANY TERM HEREOF MAY BE AMENDED, WAIVED, DISCHARGED OR TERMINATED OTHER THAN BY A WRITTEN INSTRUMENT SIGNED BY THE PARTY AGAINST WHOM ENFORCEMENT OF ANY SUCH AMENDMENT, WAIVER, DISCHARGE OR TERMINATION IS SOUGHT; PROVIDED, HOWEVER, THAT HOLDERS OF A MAJORITY OF THE REGISTRABLE SECURITIES MAY, WITH PARENT'S PRIOR WRITTEN CONSENT, WAIVE, MODIFY OR AMEND ON BEHALF OF ALL HOLDERS, ANY PROVISIONS HEREOF.

2.5 NOTICES, ETC

.. ALL NOTICES, REQUESTS, DEMANDS, CLAIMS, AND OTHER COMMUNICATIONS HEREUNDER WILL BE IN WRITING. ANY NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION HEREUNDER SHALL BE DEEMED DULY GIVEN IF (AND THEN TWO BUSINESS DAYS AFTER) IT IS SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, AND ADDRESSED TO THE INTENDED RECIPIENT AS SET FORTH BELOW:

IF TO HOFFMAN:

LESLIE HOFFMAN  
6660 VARIEL AVENUE  
CANOGA PARK, CA 91203  
TELECOPY: (818) 346-6294

WITH A COPY TO:

- - - - -

FULBRIGHT & JAWORSKI L.L.P.  
865. S. FIGUEROA STREET, 29TH FLOOR  
LOS ANGELES, CALIFORNIA 90017  
ATTN: DAVID A. EBERSHOFF, ESQ.  
TELECOPY: (213) 680-4518  
IF TO PARENT:  
- - - - -

RESMED INC.  
14040 DANIELSON STREET  
POWAY, CALIFORNIA 92064  
ATTN: LEGAL DEPARTMENT  
TELECOPY: (858) 746-2830  
COPY TO:  
- - - - -

LATHAM & WATKINS  
650 TOWN CENTER DRIVE,  
20TH FLOOR,  
COSTA MESA, CALIFORNIA 92626  
ATTN: PATRICK T. SEAVER, ESQ.  
TELECOPY: (714) 755-8290

ANY PARTY MAY SEND ANY NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION  
HEREUNDER TO THE INTENDED RECIPIENT AT THE ADDRESS SET FORTH ABOVE USING ANY  
OTHER MEANS (INCLUDING PERSONAL DELIVERY, EXPEDITED COURIER, MESSENGER SERVICE,  
TELECOPY, TELEX, ORDINARY MAIL, OR ELECTRONIC MAIL), BUT NO SUCH NOTICE,  
REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION SHALL BE DEEMED TO HAVE BEEN DULY  
GIVEN UNLESS AND UNTIL IT ACTUALLY IS RECEIVED BY THE INTENDED RECIPIENT. ANY  
PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICES, REQUESTS, DEMANDS, CLAIMS, AND  
OTHER COMMUNICATIONS HEREUNDER ARE TO BE DELIVERED BY GIVING THE OTHER PARTIES  
NOTICE IN THE MANNER HEREIN SET FORTH.

2.6 DELAYS OR OMISSIONS  
-----

. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO DELAY OR OMISSION TO EXERCISE  
ANY RIGHT, POWER OR REMEDY ACCRUING TO ANY PARTY TO THIS AGREEMENT UPON ANY  
BREACH OR DEFAULT OF ANY OTHER PARTY UNDER THIS AGREEMENT, SHALL IMPAIR ANY SUCH  
RIGHT, POWER OR REMEDY OF SUCH NONDEFAULTING PARTY NOR SHALL IT BE CONSTRUED TO  
BE A WAIVER OF ANY SUCH BREACH OR DEFAULT, OR AN ACQUIESCENCE THEREIN, OR OF OR  
IN ANY SIMILAR BREACH OR DEFAULT THEREAFTER OCCURRING; NOR SHALL ANY WAIVER OF  
ANY SINGLE BREACH OR DEFAULT BE DEEMED A WAIVER OF ANY OTHER BREACH OR DEFAULT  
THEREFORE OR THEREAFTER OCCURRING. ANY WAIVER, PERMIT, CONSENT OR APPROVAL OF  
ANY KIND OR CHARACTER ON THE PART OF ANY PARTY OF ANY BREACH OR DEFAULT UNDER  
THIS AGREEMENT, OR ANY WAIVER ON THE PART OF ANY HOLDER OF ANY PROVISIONS OR  
CONDITIONS OF THIS AGREEMENT, MUST BE IN WRITING AND SHALL BE EFFECTIVE ONLY TO  
THE EXTENT SPECIFICALLY SET FORTH IN SUCH WRITING. ALL REMEDIES, EITHER UNDER  
THIS AGREEMENT OR BY LAW OR OTHERWISE AFFORDED TO ANY PARTY TO THIS AGREEMENT,  
SHALL BE CUMULATIVE AND NOT ALTERNATIVE.

2.7 COUNTERPARTS  
-----

. THIS AGREEMENT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF  
WHICH SHALL BE ENFORCEABLE AGAINST THE PARTIES ACTUALLY EXECUTING SUCH  
COUNTERPARTS, AND ALL OF WHICH TOGETHER SHALL CONSTITUTE ONE INSTRUMENT.

2.8 SEVERABILITY  
-----

. IN THE EVENT THAT ANY PROVISION OF THIS AGREEMENT BECOMES OR IS DECLARED  
BY A COURT OF COMPETENT JURISDICTION TO BE ILLEGAL, UNENFORCEABLE OR VOID, THIS  
AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT WITHOUT SAID PROVISION;  
PROVIDED THAT NO SUCH SEVERABILITY SHALL BE EFFECTIVE IF IT MATERIALLY CHANGES  
THE ECONOMIC BENEFIT OF THIS AGREEMENT TO ANY PARTY.

2.9 TITLES AND SUBTITLES  
-----

. THE TITLES AND SUBTITLES USED IN THIS AGREEMENT ARE USED FOR CONVENIENCE  
ONLY AND ARE NOT CONSIDERED IN CONSTRUING OR INTERPRETING THIS AGREEMENT.

(SIGNATURE PAGE FOLLOWS)

THE FOREGOING AGREEMENT IS HEREBY EXECUTED AS OF THE DATE FIRST ABOVE WRITTEN.  
"PARENT"

RESMED INC.,  
A DELAWARE CORPORATION  
BY:  
/S/PETER C FARRELL  
-----

NAME: PETER C FARRELL  
TITLE: CEO

"HOFFMAN"  
LESLIE HOFFMAN,

AN INDIVIDUAL  
/S/ LESLIE HOFFMAN  
-----

(SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT)

IMPORTANT NOTICE TO VENDORS AND PURCHASERS

BEFORE SIGNING THIS CONTRACT YOU SHOULD ENSURE THAT YOU UNDERSTAND YOUR RIGHTS AND OBLIGATIONS, SOME OF WHICH ARE NOT WRITTEN IN THIS CONTRACT BUT ARE IMPLIED BY LAW.

IF THIS CONTRACT IS MADE ON OR AFTER 1 SEPTEMBER 2000, THIS NOTICE APPLIES INSTEAD OF THE NOTICE ON PAGE 3 OF THIS CONTRACT.

VENDOR: RESMED HOLDINGS LIMITED ACN 003 765 133
PURCHASER: TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749
PROPERTY: 97 WATERLOO ROAD, NORTH RYDE

<TABLE>
<CAPTION>

CONTRACT FOR THE SALE OF LAND - 2000 EDITION
(THIS CONTRACT CONSISTS OF THIS SHEET, THE PROVISIONS OF THIS CONTRACT AND ANYTHING ATTACHED)
(A CHOICE PRINTED IN BLOCK CAPITALS APPLIES UNLESS A DIFFERENT CHOICE IS MARKED)

Table with columns <S> and <C>. Rows include: TERM, MEANING OF TERM; VENDOR'S AGENT, JONES LANG LASALLE; VENDOR'S SOLICITOR, DIBBS BARKER GOSLING; DEPOSIT HOLDER, VENDOR'S AGENT INVEST DEPOSIT; COMPLETION DATE; PROPERTY, LAND ADDRESS, PLAN, TITLE; IMPROVEMENTS, INCLUSIONS, EXCLUSIONS; PURCHASER, TRUST COMPANY OF AUSTRALIA LIMITED; IF MORE THAN ONE, AS PURCHASER'S SOLICITOR, LICENSED CONVEYANCER, PRICE; CONTRACT DATE.

NOTE: THE PRICE EXCLUDES GST (IF ANY) PAYABLE BY THE VENDOR.

VENDOR'S INITIALS (FULL SIGNATURES ON NEXT PAGE) PURCHASER'S INITIALS

<TABLE>
<CAPTION>

<S> <C> <C> <C> <C>
VENDOR PURCHASER
(USE THE APPROPRIATE BOX)

SIGNED BY ) SIGNED BY )

AS ATTORNEY FOR THE VENDOR	)	SIMON HINDSON	)
UNDER POWER OF ATTORNEY	)	AS ATTORNEY FOR THE PURCHASER	)
DATED	)	TRUST COMPANY OF	)
IN THE PRESENCE OF:	)	AUSTRALIA LIMITED	) /S/ SIMON HINDSON
	)	ACN 004 027 749	) -----
	)	UNDER POWER OF ATTORNEY	) MANAGER
	)	REGISTERED BOOK 4279 NO. 670)	)
	)		)

WITNESS	)	IN THE PRESENCE OF:	)
	)	/S/ ROHAN KHAN	)
	)	-----	)
	)	WITNESS	)

THE COMMON SEAL OF THE VENDOR	)	THE COMMON SEAL OF	)
RESMED HOLDINGS LIMITED ACN 03 765 133	)	MACQUARIE GOODMAN FUNDS MANAGEMENT) LIMITED ACN 067 796 641)	)
WAS AFFIXED IN ACCORDANCE WITH ITS CONSTITUTION IN THE PRESENCE OF:-	)	WAS AFFIXED IN ACCORDANCE WITH ITS CONSTITUTION IN THE) PRESENCE OF:	)

/S/ CHRIS ROBERTS	/S/ PATRICK LEDGERGOODMAN	/S/ JAMES HODGKINSON
-----	-----	-----
DIRECTOR / SECRETARY	DIRECTOR / SECRETARY	DIRECTOR

CHRIS ROBERTS	PATRICK LEDGERGOODMAN	JAMES HODGKINSON
-----	-----	-----
NAME (PRINTED)	NAME (PRINTED)	NAME (PRINTED)

<TABLE>  
<CAPTION>

DOCUMENTS (COPY OF DOCUMENT ATTACHED IF MARKED) (SOME COPIES ARE REQUIRED BY LEGISLATION)

<S>	<C>	<C>	<C>
X	GENERAL	STRATA OR COMMUNITY TITLE (CLAUSE 23)	
X	PROPERTY CERTIFICATE FOR THE LAND	PROPERTY CERTIFICATE FOR STRATA COMMON PROPERTY	
X	PLAN OF THE LAND	PLAN CREATING STRATA COMMON PROPERTY	
-	UNREGISTERED PLAN OF THE LAND	STRATA BY-LAWS NOT SET OUT IN LEGISLATION	
-	PLAN OF LAND TO BE SUBDIVIDED	STRATA DEVELOPMENT CONTRACT OR STATEMENT	
-	DOCUMENT THAT IS TO BE LODGED WITH A RELEVANT PLAN	STRATA MANAGEMENT STATEMENT	
X	S149(2) CERTIFICATE (ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979)	LEASEHOLD STRATA: LEASE OF LOT AND COMMON PROPERTY	
X	S149(5) INFORMATION INCLUDED IN THAT CERTIFICATE	PROPERTY CERTIFICATE FOR NEIGHBOURHOOD PROPERTY	
X	SEWERAGE CONNECTIONS DIAGRAM	PLAN CREATING NEIGHBOURHOOD PROPERTY	
X	SEWER MAINS DIAGRAM	NEIGHBOURHOOD DEVELOPMENT CONTRACT	
X	DOCUMENT THAT CREATED OR MAY HAVE CREATED AN EASEMENT, PROFIT PRENDRE, RESTRICTION ON USE OR POSITIVE COVENANT DISCLOSED IN THIS CONTRACT	NEIGHBOURHOOD MANAGEMENT STATEMENT	
X	S88G CERTIFICATE (POSITIVE COVENANT)	PROPERTY CERTIFICATE FOR PRECINCT PROPERTY	
X	SURVEY REPORT	PLAN CREATING PRECINCT PROPERTY	
-	SECTION 317A CERTIFICATE (CERTIFICATE OF COMPLIANCE)	PRECINCT DEVELOPMENT CONTRACT	
X	BUILDING CERTIFICATE GIVEN UNDER LEGISLATION	PRECINCT MANAGEMENT STATEMENT	
-	INSURANCE CERTIFICATE (HOME BUILDING ACT 1989)	PROPERTY CERTIFICATE FOR COMMUNITY PROPERTY	
-	SECTION 24 CERTIFICATE (SWIMMING POOLS ACT 1992)	PLAN CREATING COMMUNITY PROPERTY	
-	OLD SYSTEM DOCUMENT	COMMUNITY DEVELOPMENT CONTRACT	
-	CROWN TENURE CARD	COMMUNITY MANAGEMENT STATEMENT	
-	CROWN PURCHASE STATEMENT OF ACCOUNT	DOCUMENT DISCLOSING A CHANGE OF BY-LAWS	
		DOCUMENT DISCLOSING A CHANGE IN A	
		DOCUMENT DISCLOSING A CHANGE IN BOUNDARIES	

<TABLE>  
<CAPTION>

CHOICES

<S>	<C>	<C>	
ADJOINING LAND OWNED BY VENDOR	X NO	—	YES - PURCHASER CANNOT REQUIRE VENDOR TO CONTRIBUTE TO FENCING WORK
COVENANT/EASEMENT IN TRANSFER	X NO	—	YES - WORDING ATTACHED, WITH DESCRIPTION OF LAND BENEFITED (CLAUSE 4)
LAND TAX ADJUSTMENT REQUIRED	— NO	—	YES -USING OWNER-OCCUPIED RESIDENTIAL CONCESSION _ YES (CLAUSE 14)
SPECIAL COMPLETION ADDRESS	X NO	—	YES - ADDRESS (CLAUSE 16):
TENANCIES	— NO	—	YES - SUBJECT TO TENANCIES DISCLOSED IN THIS CONTRACT (CLAUSES 17, 24)
MONEY PAYABLE TO CROWN	X NO	—	YES - PURCHASER LIABLE FOR UP TO \$#(31) (IF NOT STATED, NIL)(CLAUSE 26)
CONSENT TO TRANSFER REQUIRED	X NO	—	YES - VENDOR TO APPLY FOR CONSENT (CLAUSE 27)

</TABLE>

GST INFORMATION (A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999) (CLAUSE 13)  
THIS SALE IS A TAXABLE SUPPLY (SECTIONS 9-5 AND 195-1) \_ NO X YES

TENANTS (COPY OF EACH LEASE AND ANY RELEVANT MEMORANDUM OR VARIATION ATTACHED)

PREMISES: #(32)  
TENANT'S NAME (SHOW FULL NAME): #(32A) SEE CLAUSES 43 AND 44  
NATURE OF TENANCY: #(32B)  
EXPIRY DATE: #(32C)  
OPTION PERIOD: #(32D)  
RENT (SHOW WEEKLY/MONTHLY): #(32E)

STRATA / COMMUNITY MANAGEMENT AGENT'S NAME, ADDRESS AND PHONE NUMBER  
(OR IF THERE IS NO MANAGEMENT AGENT, SECRETARY'S DETAILS)  
NAME: #(33)  
ADDRESS: #(33A)  
PHONE: #(33B)

SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF CONTRACT FOR SALE OF LAND  
BETWEEN

RESMED HOLDINGS LIMITED (VENDOR)  
AND TRUST COMPANY OF AUSTRALIA LIMITED (PURCHASER)  
DATED THE DAY OF 2002

30. MORE INTERPRETATION

30.1 IN THIS CONTRACT UNLESS THE CONTEXT OTHERWISE REQUIRES:  
- - THE TERM "PURCHASER'S SOLICITOR" OR PHRASES REFERRING TO THE SOLICITOR FOR  
THE PURCHASER INCLUDE THE PERSON OR ENTITY NAMED AS THE PURCHASER'S SOLICITOR OR  
PURCHASER'S REPRESENTATIVE IN THIS CONTRACT.  
- - IF THERE IS ANY INCONSISTENCY BETWEEN CLAUSES 1 - 29 AND THESE SPECIAL  
PROVISIONS, THESE PROVISIONS PREVAIL;  
- - A REFERENCE TO ANY LEGISLATION OR LEGISLATIVE PROVISION INCLUDES ANY  
STATUTORY MODIFICATION OR RE-ENACTMENT OF, OR LEGISLATIVE PROVISION SUBSTITUTED  
FOR, AND ANY SUBORDINATE LEGISLATION OR REGULATIONS ISSUED UNDER, THAT  
LEGISLATION OR LEGISLATIVE PROVISION;  
- - THE SINGULAR INCLUDES THE PLURAL AND VICE VERSA;  
- - A REFERENCE TO ANY THING (INCLUDING ANY RIGHT) INCLUDES A PART OF THAT  
THING;  
- - A REFERENCE TO AN INDIVIDUAL OR PERSON INCLUDES A CORPORATION,  
PARTNERSHIP, JOINT VENTURE, ASSOCIATION, AUTHORITY, TRUST, STATE OR GOVERNMENT  
AND VICE VERSA;  
- - A REFERENCE TO ANY GENDER INCLUDES ALL GENDERS;  
- - A REFERENCE TO ANY PARTY TO THIS CONTRACT OR ANY OTHER DOCUMENT OR  
ARRANGEMENT INCLUDES THAT PARTY'S EXECUTORS, ADMINISTRATORS, SUBSTITUTES,  
SUCCESSORS AND PERMITTED ASSIGNS;  
- - WHERE AN EXPRESSION IS DEFINED, ANOTHER PART OF SPEECH OR GRAMMATICAL FORM  
OF THAT EXPRESSION HAS A CORRESPONDING MEANING; AND  
- - HEADINGS ARE FOR CONVENIENCE OF REFERENCE ONLY AND DO NOT AFFECT  
INTERPRETATION.

30.2 TIME OF DAY REFERS TO THE LOCAL TIME THEN APPLICABLE IN SYDNEY, NEW  
SOUTH WALES.

30.3 IF ANY PROVISION OF THIS CONTRACT IS OR BECOMES INVALID OR NOT  
ENFORCEABLE IN ACCORDANCE WITH ITS TERMS, ALL OTHER PROVISIONS WHICH ARE  
SELF-SUSTAINING AND CAPABLE OF SEPARATE ENFORCEMENT WITHOUT REGARD TO THE  
INVALID OR UNENFORCEABLE PROVISION WILL BE AND CONTINUE TO BE VALID AND  
ENFORCEABLE IN ACCORDANCE WITH THEIR TERMS.

31. AMENDMENTS TO PRINTED PROVISIONS

THE PROVISIONS OF THIS CONTRACT SPECIFIED IN THIS CLAUSE ARE DEEMED AMENDED AS  
FOLLOWS:

31.1 SETTLEMENT CHEQUE  
IN CLAUSE 1 THE DEFINITION OF "SETTLEMENT CHEQUE" IS DELETED AND REPLACED BY THE  
FOLLOWING:  
"AN UNENDORSED CHEQUE MADE PAYABLE TO THE PERSON TO BE PAID AND DRAWN ON ITS OWN  
FUNDS BY A BANK THAT CARRIES ON BUSINESS IN AUSTRALIA OR, IF AUTHORISED IN

WRITING BY THE VENDOR OR THE VENDOR'S SOLICITORS, SOME OTHER CHEQUE;"

31.2 INVESTMENT OF DEPOSIT

TO CLAUSE 3 ADD: "NOTWITHSTANDING THE FOREGOING, IF THIS CONTRACT IS COMPLETED BUT ONE PARTY (OR WHERE A PARTY COMPRISES TWO OR MORE PERSONS, ALL OF THEM) FAILS TO FURNISH THE DEPOSITHOLDER WITH HIS TAX FILE NUMBER OR EXEMPTION FROM QUOTATION THEREOF, ALL NET INTEREST AFTER DEDUCTIONS AS AFORESAID SHALL BE PAID TO THE OTHER PARTY".

31.3 CLAIMS

IN CLAUSE 7.1.1 CHANGE "5%" TO "2.5%";

31.4 CLAUSE 13

CLAUSES 13.2, 13.4, 13.5, 13.6, 13.7, 13.8 AND 13.9 ARE DELETED.

31.5 CLAUSE 16.5

CLAUSE 16.5 IS DELETED.

31.6 POSSESSION BEFORE COMPLETION

TO CLAUSE 18 ADD:

"18.8 IF ANY FEE OR RENT PAYABLE BY THE PURCHASER IS IN ARREARS FOR A PERIOD EXCEEDING 7 DAYS, OR IF THE PURCHASER DOES NOT COMPLY WITH ANY PART OF THIS CLAUSE, IMMEDIATELY AFTER THE VENDOR SERVES NOTICE REQUIRING THE PURCHASER TO VACATE THE PROPERTY THE PURCHASER MUST DO SO."

31.7 LAND TAX

CLAUSE 16.6 IS DELETED.

31.8 FACSIMILE

DELETE CLAUSE 20.6.5 AND SUBSTITUTE:

"20.6.5 SERVED IF IT IS SENT BY FAX TO THE PARTY'S SOLICITOR. THE DOCUMENT WILL BE DEEMED TO HAVE BEEN DULY SERVED WHEN THE TRANSMISSION HAS BEEN COMPLETED EXCEPT WHERE:

(A) THE SENDER'S MACHINE INDICATES A MALFUNCTION IN TRANSMISSION OR THE RECIPIENT IMMEDIATELY NOTIFIES THE SENDER OF AN INCOMPLETE TRANSMISSION, IN WHICH CASE THE DOCUMENT WILL BE DEEMED NOT TO HAVE BEEN SERVED; OR

(B) THE TRANSMISSION IS MADE ON A DAY WHICH IS NOT A BUSINESS DAY OR AFTER 5.00PM ON A BUSINESS DAY, IN WHICH CASES THE DOCUMENT WILL BE DEEMED TO HAVE BEEN SERVED AT 9.00AM ON THE NEXT BUSINESS DAY;"

31.9 CLAUSE 29

CLAUSE 29 IS DELETED.

32. PURCHASER'S ACKNOWLEDGMENTS

SUBJECT TO SECTION 52A(2)(B) OF THE CONVEYANCING ACT, 1919 AND THE REGULATIONS UNDER THAT ACT THE PURCHASER ACKNOWLEDGES AND AGREES THAT:

32.1 THE PURCHASER PURCHASES THE PROPERTY:

(A) RELYING ON THE PURCHASER'S OWN KNOWLEDGE, INSPECTION AND ENQUIRIES; AND

(B) IN ITS EXISTING CONDITION AND STATE OF REPAIR AND SUBJECT TO ALL INFESTATIONS AND DILAPIDATION;

32.2 EXCEPT FOR ANYTHING CONTAINED IN THIS CONTRACT, ANY WARRANTIES BY OR ON BEHALF OF THE VENDOR, EXPRESS OR IMPLIED, AS TO ANY PURPOSE FOR WHICH THE PROPERTY, OR FOR WHICH ANY BUILDING WHICH IS OR MAY BE ERECTED ON THE PROPERTY, CAN BE USED ARE EXPRESSLY NEGATIVED;

32.3 THE PURCHASER CANNOT MAKE A CLAIM, OBJECTION OR REQUISITION OR RESCIND OR TERMINATE IN RESPECT OF ANY OF THE FOLLOWING MATTERS:

(A) THE PRESENCE ON THE PROPERTY OF ANY SEWER, MANHOLE, VENT, MAINS, CONNECTIONS, WIRES, PIPES, CONDUITS, CHANNELS OR DISTRIBUTORS WITH RESPECT TO ANY SERVICE AS REFERRED TO IN BRACKETS IN CLAUSE 10.1.2;

(B) ANY ROOF AND/OR YARDWATER DRAINAGE OR PIPE BEING CONNECTED TO THE SEWER;

(C) WHETHER OR NOT ANY IMPROVEMENTS HAVE BEEN CONSTRUCTED OVER OR ADJACENT TO THE SEWER MAIN OR OTHER INSTALLATIONS OF SYDNEY WATER CORPORATION (OR OTHER COMPETENT AUTHORITY) AND WHETHER OR NOT ANY APPROVALS FOR SUCH CONSTRUCTION HAVE BEEN OBTAINED AND WHETHER OR NOT ANY CONDITIONS OF ANY APPROVAL HAVE BEEN COMPLIED WITH.

33. DEATH, MENTAL ILLNESS, LIQUIDATION, ETC

WITHOUT IN ANY MANNER NEGATING LIMITING OR RESTRICTING ANY RIGHTS OR REMEDIES WHICH WOULD HAVE BEEN AVAILABLE TO THE VENDOR AT LAW OR IN EQUITY HAD THIS CLAUSE NOT BEEN INCLUDED, SHOULD THE PURCHASER (OR, WHERE THE PURCHASER COMPRISES MORE THAN ONE PERSON, ANY OF THEM) PRIOR TO COMPLETION:

(A) DIE OR BECOME MENTALLY ILL THEN THE VENDOR CAN RESCIND BY SERVING NOTICE ON THE PURCHASER'S SOLICITOR; OR

(B) AS DEBTOR, ENTER INTO ANY COMPOSITION UNDER PART X OF THE BANKRUPTCY ACT 1966 (COMMONWEALTH) OR, BEING A BODY CORPORATE, RESOLVE TO GO INTO LIQUIDATION OR BE SUBJECT TO AN APPLICATION FOR ITS WINDING UP MADE TO THE COURT OR ENTER INTO ANY COMPROMISE OR ARRANGEMENT WITH ITS CREDITORS UNDER THE CORPORATIONS LAW OR OTHER APPLICABLE LAW OR SHOULD ANY LIQUIDATOR, PROVISIONAL LIQUIDATOR, RECEIVER, RECEIVER AND MANAGER OR OFFICIAL MANAGER BE APPOINTED IN RESPECT OF THE PURCHASER, THEN THE PURCHASER SHALL IMMEDIATELY AND WITHOUT NOTICE BE IN BREACH OF THIS CONTRACT IN AN ESSENTIAL RESPECT.

34. (DELETED)

35. SURVEY ETC

ANNEXED TO THIS CONTRACT IS A COPY OF

(A) A SURVEY REPORT BY WILLIAM L BACKHOUSE PTY LIMITED DATED 5 DECEMBER 2001;

(B) BUILDING CERTIFICATE GIVEN UNDER LEGISLATION DATED 21 MARCH 2002 ISSUED BY RYDE CITY COUNCIL.

THE PURCHASER CANNOT MAKE A CLAIM OR REQUISITION OR RESCIND OR TERMINATE IN RESPECT OF ANY MATTER DISCLOSED OR REFERRED TO THEREIN INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY ENCROACHMENTS WHICH ARE SHOWN IN THE SAID SURVEY REPORT OR ANY ENCROACHMENT ON TO ANY EASEMENT OR THE SIZE OR



LOCATION OF THE SUBSTATION PREMISES.

- 36. (DELETED)
- 37. (DELETED)
- 38. EXCLUSIONS

-----  
THE PURCHASER ACKNOWLEDGES THAT:

- (A) THE EXCLUSIONS LISTED BELOW ARE NOT INCLUDED IN THE SALE AND FORM PART OF THE LESSEE'S FITTINGS UNDER THE LEASE REFERRED TO IN CLAUSE 44;
- (B) THE EXCLUSIONS NEED NOT BE REMOVED FROM THE PROPERTY ON OR PRIOR TO COMPLETION; AND
- (C) RESMED LIMITED, AS LESSEE UNDER THE SAID LEASE, WILL BE OBLIGED TO REMOVE THE EXCLUSIONS FROM THE PROPERTY PRIOR TO ITS VACATING THE PROPERTY, SUBJECT TO THE TERMS OF THE SAID LEASE IN THAT REGARD.

EXCLUSIONS: ALL ARTWORK, ALL OFFICE FURNITURE, WORKSTATIONS, LABORATORY BENCHES, BOARDROOM FURNITURE, MEETING ROOM FURNITURE, RESOURCES ROOM FURNITURE, AUDIO VISUAL SYSTEMS, AUDIO/VIDEO CONFERENCING EQUIPMENT, ALL PRODUCTION EQUIPMENT, PRODUCTION RELATED COMPRESSORS, PRODUCTION RELATED CHILLERS AND ALL WAREHOUSE RACKING.

39. ENVIRONMENTAL MATTERS

-----  
39.1 IN THIS CLAUSE:

"CONTAMINATION" MEANS ANY POLLUTION, CONTAMINATION, DEGRADATION OR POISONING OF OR WHICH AFFECTS OR MAY AFFECT OR WHICH HAS OR MAY HAVE ITS ORIGIN (AND WHETHER BEFORE, ON OR AFTER THE DATE OF THIS CONTRACT) ON THE PROPERTY OR ANY PART OF THE PROPERTY OR ANY DAMAGE ARISING THEREFROM AND, WITHOUT LIMITATION, INCLUDES CONTAMINATION AS DEFINED IN THE CONTAMINATED LAND MANAGEMENT ACT 1997 AND ANYTHING REFERRED TO OR IDENTIFIED AS CONTAMINATION IN THE ENVIRONMENTAL REPORT. "ENVIRONMENTAL LEGISLATION" MEANS ANY STATE OR FEDERAL STATUTE RELATING TO HEALTH OR THE ENVIRONMENT (INCLUDING, WITHOUT LIMITATION, ENVIRONMENT AS DEFINED IN THE CONTAMINATED LAND MANAGEMENT ACT 1997) INCLUDING, WITHOUT LIMITATION, THE CLEAN AIR ACT 1961, THE CLEAN WATERS ACT 1970, THE CONTAMINATED LAND MANAGEMENT ACT 1997, THE ENVIRONMENTAL OFFENCES & PENALTIES ACT 1989, THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, THE ENVIRONMENTALLY HAZARDOUS CHEMICALS ACT 1985, THE NOISE CONTROL ACT 1975, THE POLLUTION CONTROL ACT 1970, THE PROTECTION OF THE ENVIRONMENT ADMINISTRATION ACT 1991, THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997, THE UNHEALTHY BUILDING LAND ACT 1990 AND THE WASTE MINIMISATION & MANAGEMENT ACT 1995, ALL AS AMENDED FROM TIME TO TIME (OR ANY ACT WHICH REPLACES OR SUBSTITUTES ANY OF THEM) TOGETHER WITH ALL REGULATIONS MADE UNDER THEM AS AMENDED FROM TIME TO TIME; "ENVIRONMENTAL REPORT" MEANS EACH OF THE GEOTECHNICAL & ENVIRONMENTAL STUDY DATED 10 MARCH 1995 BY COFFEY PARTNERS INTERNATIONAL PTY LIMITED (COPY ATTACHED) AND THE ENVIRONMENTAL DUE DILIGENCE REPORT DATED DECEMBER 2001 BY NOEL ARNOLD AND ASSOCIATES PTY LIMITED (COPY ATTACHED).

39.2 (A) THE PURCHASER ACKNOWLEDGES AND WARRANTS THAT PRIOR TO THE DATE OF THIS CONTRACT THE PURCHASER PERUSED AND WAS SATISFIED AS TO THE CONTENTS OF THE ENVIRONMENTAL REPORT.

(B) THE VENDOR DOES NOT WARRANT THAT THE ENVIRONMENTAL REPORT WAS, OR IS AT THE DATE OF THIS CONTRACT, ACCURATE OR COMPLETE.

39.3 THE PURCHASER SHALL NOT BE ENTITLED TO MAKE A CLAIM OR REQUISITION EITHER BEFORE OR AFTER COMPLETION OR TO RESCIND OR TERMINATE OR DELAY COMPLETION OF THIS CONTRACT IN RESPECT OF:

(A) ANY MATTER DISCLOSED OR REFERRED TO IN OR ARISING FROM THE ENVIRONMENTAL REPORT; OR

(B) SUBJECT TO CLAUSES 39.5 AND 39.6 AND CLAUSE 15 OF THE LEASE REFERRED TO IN CLAUSE 44:

- (I) CONTAMINATION; OR
- (II) ANY BREACH OF OR CLAIM, ORDER, DECLARATION, NOTICE OR PROPOSAL UNDER ANY ENVIRONMENTAL LEGISLATION IN RESPECT OF CONTAMINATION; OR
- (III) THE COSTS OR EXPENSES OF OR INCIDENTAL TO ANY INVESTIGATION, PROPOSAL OR REMEDIATION IN RELATION TO CONTAMINATION.

39.4 SUBJECT TO CLAUSES 39.5 AND 39.6 AND CLAUSE 15 OF THE LEASE REFERRED TO IN CLAUSE 44:

(A) THE PURCHASER MUST COMPLY AT THE PURCHASER'S COST WITH THE REQUIREMENTS OF ANY ENVIRONMENTAL LEGISLATION RELATING TO CONTAMINATION OR OTHERWISE AFFECTING THE PROPERTY AND WITH ALL NOTICES AND REQUIREMENTS OF ANY GOVERNMENTAL, SEMI-GOVERNMENTAL, CITY, MUNICIPAL, LICENSING OR ANY OTHER AUTHORITY HAVING JURISDICTION OR AUTHORITY IN THAT REGARD; AND

(B) THE PURCHASER RELEASES THE VENDOR AND RESMED LIMITED AND THE PURCHASER INDEMNIFIES AND WILL KEEP INDEMNIFIED THE VENDOR AND RESMED LIMITED FROM AND AGAINST ALL DEMANDS, CLAIMS, EXPENSES, PROCEEDINGS OR LIABILITIES WHATEVER AND HOWEVER ARISING FROM OR IN RESPECT OF CONTAMINATION, OR ANY LEACHING WITHIN THE PROPERTY OF CONTAMINATION OR FROM OR TO THE PROPERTY OF CONTAMINATION IN OR ON TO OR FROM ANY ADJOINING LAND, WATERCOURSE OR BODY OF WATER, OR ANY OTHER MATTER DISCLOSED HEREIN.

39.5 THE VENDOR WARRANTS THAT AS AT THE DATE OF THIS CONTRACT AND EXCEPT AS DISCLOSED HEREIN IT IS NOT AWARE OF:

(A) ANY SUBSISTING NOTICES, ORDERS, FINES, PENALTIES OR PROCEEDINGS ISSUED, IMPOSED OR COMMENCED BY THE ENVIRONMENT PROTECTION AUTHORITY, THE STATE POLLUTION CONTROL COMMISSION OR ANY OTHER GOVERNMENTAL OR SEMI-GOVERNMENTAL BODY OR AUTHORITY OR ANY OTHER PERSON OR CORPORATION FOR ANY POLLUTION OR CONTAMINATION TO THE PROPERTY OR POLLUTION OR CONTAMINATION EMANATING FROM THE PROPERTY AND AFFECTING ANY ADJOINING PROPERTY OR FOR COMPLIANCE REQUIREMENTS UNDER ANY ENVIRONMENTAL LEGISLATION;

(B) CONTAMINATION OR THE LIKELIHOOD OF CONTAMINATION OF THE PROPERTY.  
39.6 DESPITE ANY OTHER PROVISIONS OF THIS CONTRACT, THE VENDOR SHALL REMAIN

LIABLE TO THE PURCHASER AND TO ALL THIRD PARTIES AND AUTHORITIES IN RESPECT OF ALL LIABILITY ARISING AS A RESULT OF THE PRESENCE OF ANY CONTAMINATION ON, IN, ABOVE OR UNDER THE PROPERTY WHICH EXISTED AT OR PRIOR TO THE DATE OF COMPLETION AND WHICH OCCURRED DURING OWNERSHIP OF THE PROPERTY BY THE VENDOR AND WHICH HAD ITS ORIGIN ON THE PROPERTY (OTHER THAN CONTAMINATION DISCLOSED OR REFERRED TO HEREIN) AND INDEMNIFIES THE PURCHASER FROM AND IN RESPECT OF ALL CLAIMS, DEMANDS, SUITS, ACTIONS, PROCEEDINGS AND COSTS ARISING IN RESPECT OF SUCH CONTAMINATION.

39.7 THE PURCHASER ACKNOWLEDGES THAT THE PURCHASER, WHEN ENTERING INTO THIS CONTRACT, RELIED EXCLUSIVELY ON THE FOLLOWING MATTERS INDEPENDENTLY OF ANY STATEMENTS, INDUCEMENTS OR REPRESENTATIONS MADE BY OR ON BEHALF OF THE VENDOR:  
(A) INSPECTIONS OF AND INVESTIGATIONS RELATING TO THE PROPERTY INCLUDING THE ENVIRONMENTAL REPORT MADE BY OR ON BEHALF OF THE PURCHASER;  
(B) THE SKILL AND JUDGMENT OF THE PURCHASER, ITS CONSULTANTS AND REPRESENTATIVES;  
(C) OPINIONS OR ADVICE OBTAINED BY THE PURCHASER INDEPENDENTLY OF THE VENDOR OR OF THE VENDOR'S AGENTS OR EMPLOYEES.

39.8 THE PROVISIONS OF THIS CLAUSE SHALL NOT MERGE ON COMPLETION OR IN THE TRANSFER OF THE PROPERTY.

#### 40. SERVICE CONTRACTS

40.1 IN THIS CLAUSE "SERVICE CONTRACTS" MEANS THE FOLLOWING CONTRACTS FOR SERVICING OR MAINTAINING PLANT OR EQUIPMENT OR FOR THE PROVISION OF SERVICES AT THE PROPERTY, COPIES OF WHICH HAVE BEEN PROVIDED TO THE PURCHASER PRIOR TO THE DATE OF THIS CONTRACT:

- (A) ELEVATOR SERVICE AGREEMENT WITH KONE ELEVATORS PTY LIMITED ("KONE");
- (B) AIR CONDITIONING MAINTENANCE AGREEMENT WITH MCNEALL INDUSTRIAL TECHNOLOGIES PTY LIMITED;
- (C) CHILLER MAINTENANCE AGREEMENT WITH YORK INTERNATIONAL AUSTRALIA PTY LIMITED;
- (D) AIR CONDITIONING PREVENTIVE MAINTENANCE CONTRACT WITH MCNEALL INDUSTRIAL TECHNOLOGIES PTY LIMITED;
- (E) FIRE PROTECTION SERVICE AGREEMENT WITH AUTOMATIC FIRE PROTECTION DESIGN PTY LIMITED;
- (F) GENERATOR MAINTENANCE AGREEMENT WITH CUMMINS ENGINE COMPANY PTY LIMITED.

40.2 THE PARTIES ACKNOWLEDGE THAT:

- (A) THE SERVICE CONTRACTS ARE WITH RESMED LIMITED;
- (B) SUBJECT TO CLAUSE 40.4, THE SERVICE CONTRACTS WILL CONTINUE AFTER COMPLETION.

40.3 THE PURCHASER APPROVES THE CONTRACTORS WITH WHOM RESMED LIMITED HAS CONTRACTED UNDER THE SERVICE CONTRACTS AS SPECIALIST CONTRACTORS FOR THE PURPOSE OF CLAUSE 14.1(B) OF THE LEASE REFERRED TO IN CLAUSE 44.

40.4 THE VENDOR SHALL PROCURE RESMED LIMITED TO ASSIGN AND THE PURCHASER AGREES TO TAKE AN ASSIGNMENT OF THE ELEVATOR SERVICE AGREEMENT WITH KONE, SUBJECT TO THE CONSENT OF KONE. THE VENDOR SHALL PROCURE RESMED LIMITED TO, AND THE PURCHASER SHALL, USE ITS BEST ENDEAVOURS TO EFFECT SUCH ASSIGNMENT AS SOON AS PRACTICABLE AFTER COMPLETION AND TO OBTAIN A RELEASE BY KONE OF THE OBLIGATIONS OF RESMED LIMITED UNDER THE AGREEMENT.

40.5 THE PURCHASER CANNOT MAKE ANY REQUISITION OR CLAIM OR RESCIND OR TERMINATE OR DELAY COMPLETION OF THIS CONTRACT IN RESPECT OF ANYTHING REFERRED TO IN THIS CLAUSE OR ANYTHING IN RELATION TO THE SERVICE CONTRACTS.

40.6 THE PROVISIONS OF THIS CLAUSE SHALL NOT MERGE IN THE TRANSFER OR ON COMPLETION.

#### 41. GST

41.1 IN THIS CONTRACT:

"GST" MEANS THE SAME AS IN THE GST LAW;

"GST LAW" MEANS THE SAME AS "GST ACT" MEANS IN THE GST ACT.

41.2 CLAUSES 13.2, 13.4 13.5, 13.6, 13.7, 13.8 AND 13.9 ARE DEEMED DELETED.

41.3 ANY AMOUNTS PAYABLE UNDER THIS CONTRACT (OTHER THAN SUMS PAYABLE UNDER THIS CLAUSE) DO NOT INCLUDE GST.

41.4 IF ANY GST IS OR BECOMES PAYABLE BY THE VENDOR IN RELATION TO ANY ASPECT OF ITS SALE OF THE PROPERTY OR WITH RESPECT TO ANYTHING SUPPLIED (OR DEEMED TO BE SUPPLIED) BY THE VENDOR TO THE PURCHASER UNDER THIS CONTRACT, THEN THE PURCHASER MUST PAY THE VENDOR (IN ADDITION TO THE AMOUNTS REFERRED TO IN THE PRECEDING SUBCLAUSE) A SUMS OR SUMS ON ACCOUNT OF GST, EACH SUM TO BE CALCULATED BY MULTIPLYING THE AMOUNT PAYABLE BY THE PURCHASER FOR THE RELEVANT SUPPLY BY THE PREVAILING GST RATE.

41.5 THE PURCHASER MUST MAKE PAYMENT UNDER THIS CLAUSE ON COMPLETION. IT IS AN ESSENTIAL TERM OF THIS CONTRACT THAT SUCH SUMS ON ACCOUNT OF GST, AND ANY SUMS PAYABLE BY THE PURCHASER UNDER THE NEXT SUBCLAUSE, ARE PAID ON OR BEFORE COMPLETION AND THE PURCHASER IS NOT ENTITLED TO REQUIRE THE VENDOR TO COMPLETE UNLESS SUCH SUMS ARE SO PAID.

41.6 IF ANY INTEREST, FINE, PENALTY, ADDITIONAL TAX OR OTHER SUM LEVIED AGAINST THE VENDOR FOR NON-PAYMENT OF GST ("DEFAULT GST") BECOMES PAYABLE AS A RESULT OF NON-PAYMENT OR DELAYED PAYMENT BY THE PURCHASER UNDER THIS CLAUSE, THE PURCHASER MUST PAY ANY SUCH DEFAULT GST. IT SHALL NOT BE A DEFENCE TO A CLAIM AGAINST THE PURCHASER FOR PAYMENT TO THE VENDOR OF ANY DEFAULT GST THAT THE VENDOR HAS FAILED TO MITIGATE THE VENDOR'S DAMAGES BY NOT PAYING GST WHEN IT FELL DUE.

#### 41.7 REIMBURSEMENTS

A PARTY'S OBLIGATION TO REIMBURSE ANOTHER PARTY FOR AN AMOUNT PAID OR PAYABLE TO A THIRD PARTY (EG A PARTY'S OBLIGATION TO PAY ANOTHER PARTY'S LEGAL COSTS) INCLUDES GST ON THE AMOUNT PAID OR PAYABLE TO THE THIRD PARTY EXCEPT TO THE EXTENT THAT THE PARTY BEING REIMBURSED IS ENTITLED TO CLAIM AN INPUT TAX CREDIT

FOR THAT GST.

41.8 INDEMNITIES

(A) IF A PAYMENT UNDER AN INDEMNITY GIVES RISE TO A LIABILITY TO PAY GST, THE PAYER MUST PAY, AND INDEMNIFY THE PAYEE AGAINST, THE AMOUNT OF THAT GST.

(B) IF A PARTY HAS AN INDEMNITY FOR A COST ON WHICH THAT PARTY MUST PAY GST, THE INDEMNITY IS FOR THE COST PLUS ALL GST (EXCEPT ANY GST FOR WHICH THAT PARTY CAN OBTAIN AN INPUT TAX CREDIT).

(C) A PARTY MAY RECOVER PAYMENT UNDER AN INDEMNITY BEFORE IT MAKES THE PAYMENT IN RESPECT OF WHICH THE INDEMNITY IS GIVEN.

41.9 THE PROVISIONS OF THIS CLAUSE SHALL NOT MERGE ON COMPLETION OR IN THE TRANSFER OF THE PROPERTY.

42. ADJUSTMENTS

42.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT:

(A) NO ADJUSTMENTS OF COUNCIL RATES, WATER RATES OR CHARGES OR LAND TAX ("STATUTORY OUTGOINGS") SHALL BE MADE AT COMPLETION;

(B) ON OR PRIOR TO COMPLETION THE VENDOR MUST PAY ALL ARREARS OF STATUTORY OUTGOINGS AND ALL INSTALMENTS OF STATUTORY OUTGOINGS CHARGED FOR PERIODS CURRENT AT THE DATE OF COMPLETION ("INSTALMENTS") WHERE THOSE INSTALMENTS ARE PAYABLE ON OR PRIOR TO COMPLETION.

42.2 THE PURCHASER CANNOT MAKE ANY REQUISITION OR CLAIM OR RESCIND OR TERMINATE OR DELAY COMPLETION OF THIS CONTRACT, NOR REQUIRE A LAND TAX CERTIFICATE SHOWING NO CHARGE ON THE LAND, IN RESPECT OF INSTALMENTS NOT DUE ON OR PRIOR TO COMPLETION NOT HAVING BEEN PAID ON OR PRIOR TO COMPLETION.

42.3 THE PARTIES ACKNOWLEDGE THAT RESMED LIMITED IS OBLIGATED TO PAY STATUTORY OUTGOINGS UNDER THE LEASE REFERRED TO IN CLAUSE 44.

43. SUBJECT TO LEASE

THE PROPERTY IS SOLD SUBJECT TO THE LEASE REGISTERED AS 6745832 (COPY ATTACHED) AND CLAUSE 24 APPLIES. THE PURCHASER CANNOT MAKE A CLAIM OR REQUISITION IN RESPECT OF THE VENDOR NOT HOLDING OR HANDING OVER ON COMPLETION THE ORIGINAL OF THE SAID LEASE.

44. LEASE BACK

(A) UPON COMPLETION OF THIS CONTRACT THE PURCHASER (AS LANDLORD) SHALL GRANT AND THE VENDOR SHALL PROCURE RESMED LIMITED ACN 003 765 142 (AS TENANT) TO ACCEPT A LEASE OF THE PROPERTY FOR THE TERM AND AT THE RENT AND UPON THE CONDITIONS CONTAINED IN THE FORM OF LEASE ANNEXED HERETO MARKED "Z".

(B) SUCH LEASE SHALL COMMENCE ON THE DATE OF COMPLETION OF THIS CONTRACT AND THE COMMENCEMENT AND EXPIRY DATES OF THE TERM SHALL BE INSERTED IN THE LEASE ACCORDINGLY.

(C) THE VENDOR SHALL PROCURE RESMED LIMITED TO EXECUTE AND HAVE DULY STAMPED THE LEASE DOCUMENT IN TRIPPLICATE;

(D) WITHIN 21 DAYS AFTER THE CONTRACT DATE THE VENDOR SHALL SUBMIT TO THE PURCHASER THE STAMPED ORIGINAL EXECUTED LEASE AND A STAMPED COPY EXECUTED LEASE. THE PURCHASER SHALL EXECUTE, AND PROCURE MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED AS RESPONSIBLE ENTITY TO EXECUTE, THOSE DOCUMENTS. THE PURCHASER SHALL HOLD THOSE DOCUMENTS IN ESCROW PENDING COMPLETION. IF THIS CONTRACT IS RESCINDED OR TERMINATED, THE PURCHASER SHALL FORTHWITH THEREAFTER RETURN THOSE DOCUMENTS TO THE VENDOR.

(E) ON COMPLETION THE PURCHASER SHALL DELIVER TO THE VENDOR THE COPY LEASE DULY EXECUTED BY THE PURCHASER AND MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED. ON COMPLETION THE VENDOR SHALL DELIVER TO THE PURCHASER A FURTHER STAMPED COPY OF THE LEASE EXECUTED BY RESMED LIMITED.

(F) ON COMPLETION THE PURCHASER SHALL PROVIDE WRITTEN EVIDENCE TO THE VENDOR THAT ANY MORTGAGEE OF THE PURCHASER CONSENTS TO THE LEASE.

(G) ON OR BEFORE COMPLETION THE VENDOR WILL PROCURE RESMED LIMITED TO PROVIDE THE PURCHASER WITH A CERTIFICATE OF CURRENCY FOR POLICY IS10017/00 AS REFERRED TO IN CLAUSE 7.7(B) OF THE LEASE EVIDENCING THAT CLAUSE 7.7(E) (I) OF THE LEASE HAS BEEN COMPLIED WITH.

(H) PURSUANT TO THE PROVISIONS OF THIS CLAUSE, THE VENDOR SHALL NOT BE REQUIRED TO GIVE VACANT POSSESSION OF THE PROPERTY UPON COMPLETION TO THE INTENT THAT COMPLETION OF THIS CONTRACT IS CONDITIONAL ON THE LEASE BEING ENTERED INTO.

(I) THE VENDOR SHALL PROCURE RESMED LIMITED TO PAY TO THE PURCHASER ON COMPLETION REGISTRATION FEES AND THE RENT (AS WELL AS GST ON THE RENT) FOR THE FIRST MONTH PAYABLE IN RELATION TO THE LEASE AND THE PURCHASER SHALL ON COMPLETION GIVE THE VENDOR FOR FORWARDING TO RESMED LIMITED A TAX INVOICE (AS REFERRED TO IN CLAUSE 13.1) IN RESPECT OF THE RENT PAID. NOTWITHSTANDING THE PROVISIONS OF THE LEASE EACH PARTY SHALL BEAR ITS OWN LEGAL COSTS IN RESPECT OF PREPARING, NEGOTIATING AND ENROSSING THE LEASE.

(J) FOLLOWING COMPLETION THE PURCHASER SHALL PROCURE THE REGISTRATION OF THE LEASE WITHOUT DELAY AND THEREAFTER SHALL PROMPTLY DELIVER TO THE VENDOR THE ORIGINAL OF THE LEASE.

(K) THE PROVISIONS OF THIS CLAUSE SHALL NOT MERGE ON COMPLETION.

45. NOTICE TO COMPLETE

45.1 A NOTICE TO COMPLETE SERVED BY EITHER PARTY CAN REQUIRE COMPLETION TO BE EFFECTED BY A TIME AND ON A DATE WHICH DATE IS 14 DAYS OR MORE (AS SPECIFIED IN THE NOTICE) AFTER THE DATE OF SERVICE OF THE NOTICE. THE PARTIES AGREE THAT SUCH NOTICE IS SUFFICIENT AT LAW AND IN EQUITY TO MAKE TIME OF THE ESSENCE IN RESPECT OF THE TIME (BOTH THE DATE AND THE HOUR OF THE DAY) SPECIFIED IN THE NOTICE.

45.2 THE PARTIES FURTHER AGREE THAT A PERIOD OF AT LEAST 14 DAYS FROM (BUT EXCLUDING) THE DATE OF SERVICE OF THE NOTICE TO (AND INCLUDING) THE DATE FOR COMPLETION SPECIFIED IN THE NOTICE WILL BE A SUFFICIENT AND REASONABLE PERIOD

FOR THE PARTY SERVED TO COMPLETE THIS CONTRACT, AND WILL BE A SUFFICIENT AND REASONABLE PERIOD AS AFORESAID EVEN THOUGH THAT PERIOD INCLUDES (BUT DOES NOT EXPIRE ON) ANY DAYS WHICH ARE NOT BUSINESS DAYS.

45.3 A PARTY CAN AT ANY TIME WITHDRAW HIS NOTICE TO COMPLETE WITHOUT PREJUDICE TO HIS CONTINUING RIGHT TO GIVE ANY FURTHER SUCH NOTICE.

46. INTEREST

46.1 IN THIS CLAUSE "NON-INTEREST DAY" MEANS ANY BUSINESS DAY AFTER THE COMPLETION DATE DURING THE WHOLE OF WHICH BUSINESS DAY THE VENDOR IS UNABLE OR UNWILLING TO COMPLETE THIS CONTRACT AND THE PURCHASER IS ABLE AND WILLING TO COMPLETE.

46.2 IF COMPLETION IS NOT EFFECTED ON OR BEFORE THE COMPLETION DATE THEN, WITHOUT PREJUDICE TO ANY OTHER REMEDY OF THE VENDOR AND IN ADDITION TO ALL OTHER AMOUNTS PAYABLE BY THE PURCHASER TO THE VENDOR UNDER THIS CONTRACT, THE PURCHASER MUST PAY TO THE VENDOR ON COMPLETION INTEREST ON THE #(M)BALANCE OF THE PRICE AT THE RATE OF 10 PER CENT PER ANNUM.

46.3 THE INTEREST ACCRUES FROM DAY TO DAY FROM (BUT EXCLUDING) THE COMPLETION DATE UNTIL (AND INCLUDING) THE DATE OF ACTUAL COMPLETION, BUT NO SUCH INTEREST IS PAYABLE IN RESPECT OF ANY NON-INTEREST DAY, NOR IN RESPECT OF ANY NON-BUSINESS DAY WHERE THE IMMEDIATELY PRECEDING BUSINESS DAY IS A NON-INTEREST DAY.

46.4 IT IS AN ESSENTIAL TERM OF THIS CONTRACT THAT SUCH INTEREST IS PAID TO THE VENDOR ON COMPLETION AND THE PURCHASER IS NOT ENTITLED TO REQUIRE THE VENDOR TO COMPLETE UNLESS SUCH INTEREST IS SO PAID.

47. LIMITATION OF LIABILITY

47.1 THE PURCHASER (REFERRED TO IN THIS CLAUSE AS "THE CUSTODIAN") ENTERS INTO THIS CONTRACT AS CUSTODIAN AND AGENT OF MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED A.C.N. 067 796 641, THE RESPONSIBLE ENTITY OF THE TRUST AND IN NO OTHER CAPACITY.

47.2 THE PARTIES OTHER THAN THE CUSTODIAN ACKNOWLEDGE THAT THE OBLIGATIONS ARE INCURRED BY THE CUSTODIAN SOLELY IN ITS CAPACITY AS CUSTODIAN OF THE ASSETS OF THE TRUST AND AS AGENT OF THE RESPONSIBLE ENTITY AND THAT THE CUSTODIAN WILL CEASE TO HAVE ANY OBLIGATION UNDER THIS CONTRACT IF THE CUSTODIAN CEASES FOR ANY REASON TO BE CUSTODIAN OF THE ASSETS OF THE TRUST.

47.3 THE CUSTODIAN WILL NOT BE LIABLE TO PAY OR SATISFY ANY OBLIGATIONS EXCEPT TO THE EXTENT TO WHICH IT IS INDEMNIFIED BY THE RESPONSIBLE ENTITY OR EXCEPT OUT OF THE ASSETS AGAINST WHICH IT IS ENTITLED TO BE INDEMNIFIED IN RESPECT OF ANY LIABILITY INCURRED BY IT. THE OBLIGATION OF THE RESPONSIBLE ENTITY TO INDEMNIFY THE CUSTODIAN AND THE RIGHT OF THE CUSTODIAN TO BE INDEMNIFIED OUT OF THE ASSETS ARE LIMITED.

47.4 THE PARTIES OTHER THAN THE CUSTODIAN MAY ENFORCE THEIR RIGHTS AGAINST THE CUSTODIAN ARISING FROM NON-PERFORMANCE OF THE OBLIGATIONS ONLY TO THE EXTENT OF THE CUSTODIAN INDEMNITY AS PROVIDED ABOVE IN SUBCLAUSE 3.

47.5 IF ANY PARTY OTHER THAN THE CUSTODIAN DOES NOT RECOVER ALL MONEY OWING TO IT ARISING FROM NON-PERFORMANCE OF THE OBLIGATIONS IT MAY NOT SEEK TO RECOVER THE SHORTFALL BY:

(A) BRINGING PROCEEDINGS AGAINST THE CUSTODIAN IN ITS PERSONAL CAPACITY; OR  
(B) APPLYING TO HAVE THE CUSTODIAN WOUND UP OR PROVING IN THE WINDING UP OF THE CUSTODIAN.

47.6 EXCEPT IN THE CASE OF AND TO THE EXTENT OF FRAUD, NEGLIGENCE OR BREACH OF DUTY ON THE PART OF THE CUSTODIAN UNDER ITS CUSTODY AGREEMENT WITH THE RESPONSIBLE ENTITY, THE PARTIES OTHER THAN THE CUSTODIAN WAIVE THEIR RIGHTS AND RELEASE THE CUSTODIAN FROM ANY PERSONAL LIABILITY WHATSOEVER, IN RESPECT OF ANY LOSS OR DAMAGE:

(A) WHICH THEY MAY SUFFER AS A RESULT OF ANY:  
(I) BREACH BY THE CUSTODIAN OF ANY OF ITS OBLIGATIONS; OR  
(II) NON-PERFORMANCE BY THE CUSTODIAN OF THE OBLIGATIONS; AND  
(B) WHICH CANNOT BE PAID OR SATISFIED FROM THE INDEMNITY SET OUT ABOVE IN SUBCLAUSE 3 IN RESPECT OF ANY LIABILITY INCURRED BY IT.

47.7 THE PARTIES OTHER THAN THE CUSTODIAN ACKNOWLEDGE THAT THE WHOLE OF THIS CONTRACT IS SUBJECT TO THIS CLAUSE AND SUBJECT TO SUBCLAUSE 6 THE CUSTODIAN SHALL IN NO CIRCUMSTANCES BE REQUIRED TO SATISFY ANY LIABILITY ARISING UNDER, OR FOR NON PERFORMANCE OR BREACH OF ANY OBLIGATIONS UNDER OR IN RESPECT OF, THIS CONTRACT OR UNDER OR IN RESPECT OF ANY OTHER DOCUMENT TO WHICH IT IS EXPRESSED TO BE A PARTY OUT OF ANY FUNDS, PROPERTY OR ASSETS OTHER THAN TO THE EXTENT THAT THIS CONTRACT REQUIRES SATISFACTION OUT OF THE ASSETS OF THE TRUST UNDER THE CUSTODIAN'S CONTROL AND IN ITS POSSESSION AS AND WHEN THEY ARE AVAILABLE TO THE CUSTODIAN TO BE APPLIED IN EXONERATION FOR SUCH LIABILITY.

47.8 THE PARTIES ACKNOWLEDGE THAT THE RESPONSIBLE ENTITY OF THE TRUST IS RESPONSIBLE UNDER THE CONSTITUTION FOR PERFORMING A VARIETY OF OBLIGATIONS RELATING TO THE TRUST, INCLUDING UNDER THIS CONTRACT. THE PARTIES AGREE THAT NO ACT OR OMISSION OF THE CUSTODIAN (INCLUDING ANY RELATED FAILURE TO SATISFY ANY OBLIGATIONS) WILL CONSTITUTE FRAUD, NEGLIGENCE OR BREACH OF DUTY OF THE CUSTODIAN FOR THE PURPOSES OF SUBCLAUSE 6 TO THE EXTENT TO WHICH THE ACT OR OMISSION WAS CAUSED OR CONTRIBUTED TO BY ANY FAILURE OF THE RESPONSIBLE ENTITY OR ANY OTHER PERSON TO FULFIL ITS OBLIGATIONS RELATING TO THE TRUST OR BY ANY OTHER ACT OR OMISSION OF THE RESPONSIBLE ENTITY OR ANY OTHER PERSON.

47.9 NO ATTORNEY, AGENT OR OTHER PERSON APPOINTED IN ACCORDANCE WITH THIS CONTRACT HAS AUTHORITY TO ACT ON BEHALF OF THE CUSTODIAN IN A WAY WHICH EXPOSES THE CUSTODIAN TO ANY PERSONAL LIABILITY AND NO ACT OR OMISSION OF SUCH A PERSON WILL BE CONSIDERED FRAUD, NEGLIGENCE OR BREACH OF DUTY OF THE CUSTODIAN FOR THE PURPOSES OF SUBCLAUSE 6.

47.10 IN THIS CLAUSE THE "OBLIGATIONS" MEANS ALL OBLIGATIONS AND LIABILITIES OF WHATEVER KIND UNDERTAKEN OR INCURRED BY, OR DEVOLVING UPON, THE CUSTODIAN

UNDER OR IN RESPECT OF THIS CONTRACT. "ASSETS" INCLUDES ALL ASSETS, PROPERTY AND RIGHTS REAL AND PERSONAL OF ANY VALUE WHATSOEVER OF THE TRUST, AND "RESPONSIBLE ENTITY" MEANS MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED OR ANY REPLACEMENT RESPONSIBLE ENTITY OF THE TRUST FROM TIME TO TIME. "TRUST" MEANS THE MACQUARIE GOODMAN CAPITAL TRUST, "CUSTODY AGREEMENT" MEANS THE AGREEMENT MADE BETWEEN MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED (PREVIOUSLY KNOWN AS GOODMAN HARDIE MANAGEMENT AUSTRALIA LIMITED) AND TRUST COMPANY OF AUSTRALIA LIMITED DATED 17 JANUARY 2000 OR SUCH REPLACEMENT AGREEMENT. "CONSTITUTION" MEANS THE TRUST DEED ESTABLISHING THE TRUST DATED 5 APRIL 2002 AS AMENDED FROM TIME TO TIME.

48. RESPONSIBLE ENTITY'S LIMITATION OF LIABILITY  
-----

48.1 THE RESPONSIBLE ENTITY (AS TESTIFIED BY ITS EXECUTION OF THIS CONTRACT) INCURS OBLIGATIONS UNDER THIS CONTRACT AS RESPONSIBLE ENTITY OF THE TRUST AND IN NO OTHER CAPACITY. AN OBLIGATION CAN BE ENFORCED AGAINST THE RESPONSIBLE ENTITY ONLY TO THE EXTENT TO WHICH IT IS SATISFIED OUT OF PROPERTY OF THE TRUST OUT OF WHICH THE RESPONSIBLE ENTITY IS ACTUALLY INDEMNIFIED FOR THE OBLIGATION. THIS LIMITATION OF THE RESPONSIBLE ENTITY'S LIABILITY APPLIES DESPITE ANY OTHER PROVISION OF THIS CONTRACT AND EXTENDS TO ALL OBLIGATIONS.

48.2 THE PARTIES OTHER THAN THE RESPONSIBLE ENTITY MAY NOT SUE THE RESPONSIBLE ENTITY IN ANY CAPACITY OTHER THAN AS RESPONSIBLE ENTITY OF THE TRUST, INCLUDING SEEK THE APPOINTMENT OF A RECEIVER (EXCEPT IN RELATION TO PROPERTY OF THE TRUST), A LIQUIDATOR, AN ADMINISTRATOR OR ANY SIMILAR PERSON TO THE RESPONSIBLE ENTITY OR PROVE IN ANY LIQUIDATION, ADMINISTRATION OR ARRANGEMENT OF OR AFFECTING THE RESPONSIBLE ENTITY (EXCEPT IN RELATION TO PROPERTY OF THE TRUST).

48.3 THE PROVISIONS OF THIS CLAUSE DO NOT APPLY TO AN OBLIGATION TO THE EXTENT THAT IT IS NOT SATISFIED BECAUSE UNDER THE TRUST DEED ESTABLISHING THE TRUST OR BY OPERATION OF LAW THERE IS A REDUCTION IN THE EXTENT OF THE RESPONSIBLE ENTITY'S INDEMNIFICATION OUT OF THE ASSETS OF THE TRUST, AS A RESULT OF THE RESPONSIBLE ENTITY'S FRAUD, NEGLIGENCE OR BREACH OF TRUST. THE RESPONSIBLE ENTITY IS NOT TO BE REGARDED AS BEING NEGLIGENT OR IN BREACH OF TRUST TO THE EXTENT TO WHICH ANY FAILURE BY THE RESPONSIBLE ENTITY TO SATISFY ITS OBLIGATIONS UNDER THIS CONTRACT HAS BEEN CAUSED OR CONTRIBUTED TO BY A FAILURE BY ANY PERSON TO FULFIL ITS OBLIGATIONS IN RELATION TO THE TRUST OR ANY OTHER ACT OR OMISSION OF ANOTHER PERSON.

48.4 NO ATTORNEY, AGENT, RECEIVER, OR RECEIVER AND MANAGER APPOINTED IN ACCORDANCE WITH THIS CONTRACT HAS AUTHORITY TO ACT ON BEHALF OF THE RESPONSIBLE ENTITY IN ANY WAY WHICH EXPOSES THE RESPONSIBLE ENTITY TO ANY PERSONAL LIABILITY AND NO ACT OR OMISSION OF ANY SUCH PERSON WILL BE CONSIDERED FRAUD, NEGLIGENCE OR BREACH OF TRUST OF THE RESPONSIBLE ENTITY FOR THE PURPOSE OF SUBCLAUSE 3 OF THIS CLAUSE.

48.5 THE RESPONSIBLE ENTITY IS NOT OBLIGED TO DO OR REFRAIN FROM DOING ANYTHING UNDER THIS CONTRACT (INCLUDING INCUR ANY LIABILITY) UNLESS THE RESPONSIBLE ENTITY'S LIABILITY IS LIMITED IN THE SAME MANNER AS SET OUT IN SUBCLAUSES 1 TO 3 OF THIS CLAUSE.

48.6 FOR THE PURPOSES OF THIS CLAUSE:

"OBLIGATIONS" MEANS ALL OBLIGATIONS AND LIABILITIES OF WHATSOEVER KIND, UNDERTAKEN OR INCURRED BY, OR DEVOLVING UPON THE RESPONSIBLE ENTITY UNDER OR IN RESPECT OF THIS CONTRACT OR ANY DEED, AGREEMENT OR OTHER INSTRUMENT COLLATERAL WITH THIS CONTRACT OR GIVEN OR ENTERED INTO UNDER THIS CONTRACT AND INCLUDES, WITHOUT LIMITATION, ALL LIABILITIES OF THE RESPONSIBLE ENTITY IN ANY WAY CONNECTED WITH ANY REPRESENTATION, WARRANTY, CONDUCT, OMISSION, AGREEMENT OR TRANSACTION RELATED TO THIS CONTRACT. "TRUST" MEANS THE MACQUARIE GOODMAN CAPITAL TRUST.

48.7 THE RESPONSIBLE ENTITY WARRANTS TO THE VENDOR THAT, IN ENTERING INTO THIS CONTRACT, THE RESPONSIBLE ENTITY WILL NOT BE IN BREACH OF THE CUSTODY AGREEMENT AND WILL BE ENTITLED TO BE INDEMNIFIED OUT OF THE ASSETS OF THE TRUST IN RELATION TO ITS OBLIGATIONS AS PURCHASER ARISING UNDER THIS CONTRACT.

<TABLE>

<CAPTION>

FORM : 07L LEASE  
LICENCE : 01-08-025 NEW SOUTH WALES  
LICENSEE: DIBBS BARKER GOSLING REAL PROPERTY ACT 1900

<S>

<C>

STAMP DUTY  
(A) TORRENS TITLE  
(B) LODGED BY

PRIVACY NOTE: THIS INFORMATION IS LEGALLY REQUIRED AND WILL BECOME PART OF THE PUBLIC RECORD  
OFFICE OF STATE REVENUE USE ONLY  
PROPERTY LEASED: IF APPROPRIATE, SPECIFY THE PART OR PREMISES 1/872430  
DELIVERY CODE  
L  
BOX  
REFERENCE (OPTIONAL): 3055754.DAT (79432)  
TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749

(C) LESSOR

THE LESSOR LEASES TO THE LESSEE THE PROPERTY REFERRED TO ABOVE

(D) ENCUMBRANCES (IF APPLICABLE): 1. LEASE 6745832 2. 3.  
RESMED LIMITED ACN 003 765 142

(E) LESSEE

(F) TENANCY:

</TABLE>

<TABLE>  
<CAPTION>  
<C><S>

(G) 1. TERM THREE (3) YEARS  
2. COMMENCEMENT DATE  
3. TERMINATING DATE  
4. WITH AN OPTION TO RENEW FOR A PERIOD OF ONE (1) YEAR SET OUT IN ITEM 10  
5. WITH AN OPTION TO PURCHASE SET OUT IN : NOT APPLICABLE  
6. TOGETHER WITH AND RESERVING THE RIGHTS SET OUT IN ANNEXURE "A" HERETO.  
7. INCORPORATES THE PROVISIONS OR ADDITIONAL MATERIAL SET OUT IN ANNEXURE(S) "A" HERETO.  
8. INCORPORATES THE PROVISIONS SET OUT IN MEMORANDUM FILED AT LAND AND PROPERTY INFORMATION NEW SOUTH WALES AS NO. : NOT APPLICABLE  
9. THE RENT IS SET OUT IN ITEM 11 OF THE SUMMARY OF LEASE PARTICULARS  
DATE \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
DD MM YYYY

</TABLE>

<TABLE>  
<CAPTION>  
<S> <C>

(H) I CERTIFY THAT THE PERSON(S) SIGNING OPPOSITE, WITH WHOM I AM PERSONALLY ACQUAINTED OR AS TO WHOSE IDENTITY I AM OTHERWISE SATISFIED, SIGNED THIS INSTRUMENT IN MY PRESENCE.  
SIGNATURE OF WITNESS:  
NAME OF WITNESS: SEE ANNEXURE "C" FOR EXECUTION  
ADDRESS OF WITNESS:  
</TABLE>

CERTIFIED CORRECT FOR THE PURPOSE OF THE REAL  
PROPERTY ACT 1900 BY THE LESSOR.  
SIGNATURE OF LESSOR

SIGNATURE OF LESSOR:

NOTE: WHERE APPLICABLE, THE LESSOR MUST COMPLETE THE STATUTORY DECLARATION BELOW.

<TABLE>  
<CAPTION>  
<S> <C>

I CERTIFY THAT THE PERSON(S) SIGNING OPPOSITE, WITH WHOM I AM PERSONALLY ACQUAINTED OR AS TO WHOSE IDENTITY I AM OTHERWISE SATISFIED, SIGNED THIS INSTRUMENT IN MY PRESENCE.  
SIGNATURE OF WITNESS:  
NAME OF WITNESS: SEE ANNEXURE "C" FOR EXECUTION  
ADDRESS OF WITNESS:  
</TABLE>

CERTIFIED CORRECT FOR THE PURPOSE OF THE REAL  
PROPERTY ACT 1900 BY THE LESSOR.  
SIGNATURE OF LESSOR

SIGNATURE OF LESSOR:

(I) STATUTORY DECLARATION

I,  
SOLEMNLY AND SINCERELY DECLARE THAT -  
1. THE TIME FOR THE EXERCISE OF \_\_\_\_\_ IN EXPIRED LEASE NO.  
2. THE LESSEE UNDER THAT LEASE HAS NOT EXERCISED THE OPTION.

I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING THE SAME TO BE TRUE AND BY VIRTUE OF THE OATHS ACT 1900.  
MADE AND SUBSCRIBED AT \_\_\_\_\_ IN THE STATE OF  
ON \_\_\_\_\_ IN THE PRESENCE OF -

SIGNATURE OF WITNESS SIGNATURE OF LESSOR:

NAME OF WITNESS:

ADDRESS OF WITNESS:

QUALIFICATION OF WITNESS:

THIS PAGE AND THE FOLLOWING PAGES CONSTITUTE ANNEXURE "A" TO LEASE

BETWEEN TRUST COMPANY OF AUSTRALIA LIMITED (LESSOR)  
AND RESMED LIMITED (LESSEE)  
DATED THIS DAY OF

-----200--

SUMMARY OF LEASE PARTICULARS

ITEM 1 THE LESSOR (CLAUSE 1.1):  
TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749 OF 80-84 NEW SOUTH ROAD,  
EDGECLIFF.

ITEM 2 THE LESSEE (CLAUSE 1.1):  
RESMED LIMITED (ACN 003 765 142) OF 97 WATERLOO ROAD, NORTH RYDE, 2113

ITEM 3 THE GUARANTOR (CLAUSES 1.1 AND 14):  
NOT APPLICABLE

ITEM 4 THE LAND (CLAUSE 1.1):  
THE WHOLE OF THE LAND IN THE FOLLOWING CERTIFICATE OF TITLE:  
FOLIO 1/872430

ITEM 5 THE PREMISES (CLAUSE 1.1):  
THE LAND AND THE IMPROVEMENTS ERECTED THEREON, KNOWN AS 97 WATERLOO ROAD,  
NORTH RYDE (TOGETHER WITH THE ITEMS LISTED IN ANNEXURE "B" HERETO).

ITEM 6 THE STATE/TERRITORY (CLAUSE 1.1):  
NEW SOUTH WALES

ITEM 7 THE TERM (CLAUSE 1.1):  
THREE (3) YEARS

ITEM 8 COMMENCEMENT DATE (CLAUSE 1.1):  
200

ITEM 9 TERMINATION DATE (CLAUSE 1.1):  
200

ITEM 10 FURTHER TERM (CLAUSE 3.2):  
ONE FURTHER LEASE OF ONE (1) YEAR WHICH EXPIRES ON  
200

ITEM 11 BASE RENT (CLAUSE A AND B.1):  
TWO MILLION NINE HUNDRED THOUSAND DOLLARS (\$2,900,000.00) PER ANNUM.

ITEM 12 BASE RENT INCREASE (CLAUSE B.2):  
ON EACH ANNIVERSARY OF THE COMMENCEMENT DATE AND AT THE COMMENCEMENT OF THE  
OPTION TERM.

ITEM 13 LESSEE'S BUSINESS (CLAUSES 1.1 AND 4.1(A)):  
COMMERCIAL PREMISES AND MANUFACTURING AND DIRECT SALES OF SLEEP DISORDER  
BREATHING PRODUCTS.

ITEM 14 NOT USED

ITEM 15 PUBLIC RISK INSURANCE (CLAUSE 7.1(A)):  
TWENTY MILLION DOLLARS (\$20,000,000.00).

ITEM 16 BANK GUARANTEE (CLAUSES 1.1 AND 14.1):  
NOT APPLICABLE.

ITEM 17 OUTGOINGS YEAR (CLAUSE A):  
THE 30TH DAY OF JUNE

ITEM 18 AGREEMENT FOR LEASE (CLAUSES 1.1 AND 1.2(H)):  
NOT APPLICABLE

ITEM 19 PART OF LESSEE'S FITTINGS (CLAUSE 1.1):  
ALL ARTWORK, ALL OFFICE FURNITURE, WORKSTATIONS, LABORATORY BENCHES, BOARDROOM  
FURNITURE, MEETING ROOM FURNITURE, RESOURCES ROOM FURNITURE, AUDIO VISUAL  
SYSTEMS, AUDIO/VIDEO CONFERENCING EQUIPMENT, ALL PRODUCTION EQUIPMENT,  
PRODUCTION RELATED COMPRESSORS, PRODUCTION RELATED CHILLERS AND ALL WAREHOUSE  
RACKING.

GENERAL LEASE CONDITIONS

49. DEFINITIONS AND INTERPRETATION

NOTE: DEFINITIONS AND MOST OPERATIVE PROVISIONS DEALING WITH RENT, OPERATING  
EXPENSES AND CLEANING ARE CONTAINED IN THE RENT SCHEDULE.

49.1 DEFINITIONS

IN THIS LEASE THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS UNLESS THE  
CONTEXT OTHERWISE REQUIRES:

"AGREEMENT" MEANS THE WRITTEN AGREEMENT FOR THE GRANT OF THIS LEASE (IF ANY) AS  
SPECIFIED IN ITEM 18;

"APPURTENANCE" INCLUDES ANY DRAIN, BASIN, SINK, TOILET OR URINAL;

"AUSTRALIAN INSTITUTE" MEANS AUSTRALIAN PROPERTY INSTITUTE INC. (STATE  
DIVISION);

"AUTHORITY" INCLUDES ANY STATE OR FEDERAL GOVERNMENT, ANY SEMI OR LOCAL  
GOVERNMENT, ANY STATUTORY, PUBLIC OR ANY OTHER PERSON, AUTHORITY,  
INSTRUMENTALITY OR BODY HAVING JURISDICTION OVER THE BUILDING AND/OR THE LAND OR  
ANY PART OF THEM OR ANYTHING IN RELATION TO THEM AND INCLUDES THE INSURANCE  
COUNCIL;

"BANK GUARANTEE" MEANS AN IRREVOCABLE AND UNCONDITIONAL UNDERTAKING BY A TRADING  
BANK OR OTHER FINANCIAL ORGANISATION APPROVED BY THE LESSOR TO PAY AN AMOUNT OF  
MONEY TO THE LESSOR UPON DEMAND AND CONTAINING SUCH TERMS AND CONDITIONS AS ARE  
ACCEPTABLE TO THE LESSOR AND AS THE LESSOR MAY DETERMINE IN ITS ABSOLUTE  
DISCRETION;

"BUILDING" MEANS THE IMPROVEMENTS ERECTED ON THE LAND;

"CLAIM" INCLUDES ANY CLAIM, DEMAND, REMEDY, SUIT, INJURY, DAMAGE, LOSS, COST,  
LIABILITY, ACTION, PROCEEDING, RIGHT OF ACTION, CLAIM FOR COMPENSATION AND CLAIM  
FOR ABATEMENT OF RENT OBLIGATION;

"CLAUSE" MEANS A CLAUSE OF THIS LEASE; ("SUB-CLAUSE" HAS A SIMILAR MEANING); A  
REFERENCE TO A CLAUSE FOLLOWED BY A NUMBER REFERS TO THE RELEVANT CLAUSE IN THIS  
LEASE; A REFERENCE TO A CLAUSE FOLLOWED BY A LETTER OF THE ALPHABET REFERS TO  
THE RELEVANT CLAUSE IN THE RENT SCHEDULE;

"COMMENCEMENT DATE" MEANS THE DATE OF COMMENCEMENT OF THIS LEASE AS SET OUT IN ITEM 8;

"CORPORATION" - SEE CLAUSE 1.2(M);

"COST" INCLUDES ANY COST, CHARGE, EXPENSE, OUTGOING, PAYMENT OR OTHER EXPENDITURE OF ANY NATURE (WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL AND WHETHER ACCRUED OR PAID), INCLUDING WHERE APPROPRIATE ALL RATES AND ALL REASONABLE AND PROPER LEGAL FEES;

"DEFAULT RATE" MEANS THE RATE WHICH IS TWO PER CENT (2%) PER ANNUM ABOVE THE HIGHEST OVERDRAFT RATE CHARGED AT THE DUE DATE FOR PAYMENT OF THE RELEVANT MONEY BY THE LESSOR'S BANK FOR COMMERCIAL LOANS IN EXCESS OF \$100,000. A NOTICE BY ANY MANAGER OF THE LESSOR'S BANK SHALL IN THE ABSENCE OF MANIFEST ERROR BE CONCLUSIVE EVIDENCE OF SUCH RATE;

"GUARANTOR" MEANS EACH GUARANTOR (IF ANY) NAMED IN THIS LEASE (AS IDENTIFIED IN ITEM 3) AND INCLUDES ANY:

- (A) SUCCESSOR OR PERMITTED ASSIGN OF ANY CORPORATE GUARANTOR;
- (B) EXECUTOR, ADMINISTRATOR OR PERMITTED ASSIGN OF ANY NATURAL PERSON THAT IS A GUARANTOR; AND
- (C) PERSON THAT MAY FROM TIME TO TIME BE INCLUDED AS A GUARANTOR;

"INCOMING TENANT" MEANS THE PROPOSED ASSIGNEE OR SUBLESSEE AS REFERRED TO IN CLAUSE 6;

"INSURANCE COUNCIL" MEANS THE INSURANCE COUNCIL OF AUSTRALIA LTD;

"ITEM" MEANS THE RELEVANT ITEM IN THE SUMMARY OF LEASE PARTICULARS;

"KEYS" MEANS KEYS, ACCESS CARDS OR OTHER METHODS OF ACCESS FROM TIME TO TIME USED FOR THE BUILDING OR ANY PART OF IT;

"LAND" MEANS THE LAND IN THE CERTIFICATE(S) OF TITLE OR CONVEYANCE(S) SPECIFIED IN ITEM 4;

"LAW" INCLUDES ANY REQUIREMENT OF ANY STATUTE, RULE, REGULATION, PROCLAMATION, ORDINANCE OR BY-LAW, PRESENT OR FUTURE, AND WHETHER STATE, FEDERAL OR OTHERWISE;

"LESSEE" MEANS THE LESSEE NAMED IN THIS LEASE (AS IDENTIFIED IN ITEM 2) AND INCLUDES IN THE CASE OF A:

- (A) CORPORATION THE LESSEE, ITS SUCCESSORS AND PERMITTED ASSIGNS;
- (B) NATURAL PERSON THE LESSEE, HIS EXECUTORS, ADMINISTRATORS AND PERMITTED ASSIGNS;

"LESSEE'S BUSINESS" MEANS THAT BUSINESS CARRIED ON OR WHICH MAY BE CARRIED ON IN THE PREMISES IN COMPLIANCE WITH THE PERMITTED USE OF THE PREMISES SPECIFIED IN ITEM 13;

"LESSEE'S EMPLOYEES" INCLUDES THE LESSEE'S SUBLESSEES, LICENSEES AND CONCESSIONAIRES, AND THE EMPLOYEES, AGENTS, CONTRACTORS, CONSULTANTS, CUSTOMERS, WORKMEN, INVITEES AND CLIENTS OF THEM OR OF THE LESSEE, WHO MAY AT ANY TIME BE IN OR UPON THE PREMISES, THE BUILDING OR THE LAND, WHETHER WITH OR WITHOUT INVITATION;

"LESSEE'S FITTINGS" INCLUDES ALL FIXTURES, FITTINGS, PLANT, EQUIPMENT, PARTITIONS OR OTHER ARTICLES AND CHATTELS OF ALL KINDS (OTHER THAN STOCK-IN-TRADE) WHICH ARE NOT OWNED BY THE LESSOR AND AT ANY TIME ARE IN THE PREMISES (INCLUDING, WITHOUT LIMITATION, THE ITEMS LISTED IN ITEM 19);

"LESSOR" MEANS THE LESSOR NAMED IN THIS LEASE (AS IDENTIFIED IN ITEM 1) AND INCLUDES IN THE CASE OF A:

- (A) CORPORATION THE LESSOR, ITS SUCCESSORS AND ASSIGNS;
- (B) NATURAL PERSON THE LESSOR, HIS EXECUTORS, ADMINISTRATORS AND ASSIGNS;

"LESSOR'S BANK" MEANS THE FINANCIAL INSTITUTION WHICH AT THE RELEVANT TIME THE LESSOR USES AS A BANK AND WHICH, IN THE EVENT OF MORE THAN ONE, SHALL BE THE FINANCIAL INSTITUTION FROM TIME TO TIME SELECTED BY THE LESSOR IN ITS ABSOLUTE DISCRETION;

"LESSOR'S FIXTURES" INCLUDES:

(A) GENERAL: ALL PLANT AND EQUIPMENT, MECHANICAL OR OTHERWISE, FITTINGS, FIXTURES, FURNITURE, FURNISHINGS OF ANY KIND, INCLUDING WINDOW COVERINGS, BLINDS AND LIGHT FITTINGS FROM TIME TO TIME IN THE PREMISES OR ANY PART OF THEM AND OWNED OR SUPPLIED BY THE LESSOR (INCLUDING THE ITEMS LISTED IN ANNEXURE "B" HERETO);

(B) FIRE FIGHTING: ALL STOP COCKS, FIRE HOSES, HYDRANTS, OTHER FIRE PREVENTION AIDS AND ALL FIRE FIGHTING SERVICES FROM TIME TO TIME LOCATED IN THE PREMISES OR WHICH MAY SERVICE THE PREMISES AND BE IN COMMON AREAS NEAR THE PREMISES;

"MONTH" OR "MONTHLY" MEANS RESPECTIVELY CALENDAR MONTH AND CALENDAR MONTHLY;

"NOTICE" MEANS ANY NOTICE IN WRITING, ANY STATEMENT IN WRITING, ANY WRITTEN MATERIAL AND ANY OTHER WRITTEN COMMUNICATION;

"OFFICER" INCLUDES ANY DIRECTOR, ALTERNATE DIRECTOR, SECRETARY, ASSISTANT SECRETARY, EXECUTIVE OFFICER, ATTORNEY AND MANAGING AGENT OF THE PARTICULAR PARTY;

"PARAGRAPH" MEANS A PARAGRAPH OF A CLAUSE OF THIS LEASE; ("SUB-PARAGRAPH" HAS A SIMILAR MEANING);

"PARTY" MEANS A PARTY TO THIS LEASE AND INCLUDES ANY GUARANTOR;

"PERSON" INCLUDES A NATURAL PERSON AND A CORPORATION;

"PREMISES" MEANS THE BUILDING AND, IF SO SPECIFIED IN ITEM 5, THE LAND AND INCLUDES ANY OF THE LESSOR'S FIXTURES FROM TIME TO TIME IN THEM;

"PROPOSED WORK" INCLUDES ANY PROPOSED WORK, ALTERATION, ADDITION OR INSTALLATION IN OR TO THE PREMISES AND/OR TO THE BUILDING AND/OR TO THE LESSOR'S FIXTURES AND/OR TO THE EXISTING LESSEE'S FITTINGS BY THE LESSEE AND/OR BY THE LESSEE'S EMPLOYEES;

"REINSTATEMENT NOTICE" MEANS ANY NOTICE GIVEN BY THE LESSOR TO THE LESSEE OF ITS INTENTION TO RE-INSTATE THE BUILDING AND/OR MAKE THE PREMISES FIT FOR OCCUPATION AND USE OF AND/OR ACCESSIBLE TO THE LESSEE (AS APPROPRIATE);

"RENT" MEANS AND INCLUDES EACH OF THE RENTS AND ANY OTHER MONEYS THAT MAY AT ANY TIME BE PAYABLE ON ANY ACCOUNT BY OR ON BEHALF OF THE LESSEE, INCLUDING SUCH RENTS OR OTHER MONEYS REFERRED TO IN THE RENT SCHEDULE;



"RENT SCHEDULE" MEANS THE SCHEDULE TO THIS LEASE WHICH INCLUDES PROVISIONS DEALING WITH RENT;

"REQUIREMENT" INCLUDES ANY REQUIREMENT, NOTICE, ORDER, DIRECTION, RECOMMENDATION, STIPULATION OR SIMILAR NOTIFICATION RECEIVED FROM OR GIVEN BY ANY AUTHORITY OR PURSUANT TO ANY LAW, WHETHER IN WRITING OR OTHERWISE AND NOTWITHSTANDING TO WHOM SUCH REQUIREMENT IS ADDRESSED OR DIRECTED;

"SERVICES" MEANS ALL SERVICES OR SYSTEMS OF ANY NATURE FROM TIME TO TIME PROVIDED TO THE BUILDING AND/OR TO THE LAND OR AVAILABLE FOR USE, AND INCLUDES THE PROVISIONS OF ANY ELECTRONIC MEDIUM, ENERGY SOURCE, LIGHTING, GAS, FUEL, POWER, WATER, SEWERAGE, DRAINAGE, LOADING DOCKS, PLANT ROOMS, STORAGE AREAS, FIRE SERVICES, SPRINKLER SYSTEMS OR DEVICES, LIFTS, ESCALATORS, AIR-CONDITIONING AND THE FITTINGS, FIXTURES, APPLIANCES, PLANT AND EQUIPMENT UTILISED FOR ANY SUCH SERVICES, AND INCLUDES ANY SERVICES OR SYSTEMS FROM TIME TO TIME UTILISED FOR ACCESS TO THE BUILDING;

"STATE" MEANS THE STATE OR TERRITORY OF AUSTRALIA SPECIFIED IN ITEM 6;

"SUMMARY OF LEASE PARTICULARS" MEANS THE SUMMARY OF LEASE PARTICULARS TO THIS LEASE AND INCLUDES ALL THE INFORMATION FROM TIME TO TIME CONTAINED OR DEEMED TO BE CONTAINED IN IT;

"TERM" MEANS THE TERM OF THIS LEASE AS SPECIFIED IN ITEM 7 AND SHALL BE DEEMED TO COMPRISE THAT PERIOD FROM AND INCLUDING THE COMMENCEMENT DATE TO AND INCLUDING THE TERMINATION DATE;

"TERMINATION DATE" MEANS THE DATE OF TERMINATION OF THIS LEASE AS SPECIFIED IN ITEM 9;

"THIS LEASE" OR "THE LEASE" MEANS AND INCLUDES THIS LEASE AND ALL SCHEDULES, APPENDICES, ANNEXURES AND EXHIBITS TO IT AND THE RULES (IF ANY) FROM TIME TO TIME CURRENT;

"WRITING" AND WORDS OF SIMILAR OUTPUT - SEE CLAUSE 1.2(L).

#### 49.2 INTERPRETATION

(A) PLURALS: WORDS IMPORTING THE SINGULAR NUMBER INCLUDE THE PLURAL AND VICE VERSA.

(B) GENDER: WORDS IMPORTING ANY PARTICULAR GENDER INCLUDE ALL GENDERS.

(C) PARTIES JOINTLY AND SEVERALLY BOUND: WHERE

(I) THE LESSEE OR THE GUARANTOR COMPRISES MORE THAN ONE PERSON; AND

(II) A COVENANT OR AGREEMENT IS MADE BY OR ON BEHALF OF SUCH PARTY, SUCH COVENANT OR AGREEMENT ON THEIR PART SHALL BIND SUCH PERSONS JOINTLY AND EACH OF THEM SEVERALLY.

(D) STATUTES AND REGULATIONS: REFERENCE TO STATUTES, REGULATIONS, ORDINANCES OR BY-LAWS INCLUDES ALL STATUTES, REGULATIONS, ORDINANCES OR BY-LAWS AMENDING, CONSOLIDATING OR REPLACING THEM.

(E) COVENANTS:

(I) EVERY OBLIGATION UNDERTAKEN BY ANY OF THE PARTIES OR ARISING FROM THIS LEASE OR THE AGREEMENT SHALL:

(A) NOTWITHSTANDING THE FORM OR CONTEXT OF THE WORDING, BE DEEMED TO BE AND BE CONSTRUED AS A COVENANT BY THE PARTY UNDERTAKING SUCH OBLIGATION; AND

(B) UNLESS THE CONTEXT OTHERWISE REQUIRES, BE CONSTRUED AS CONTINUING THROUGHOUT THE TERM AND ANY HOLDING OVER PERIOD AND THEREAFTER SO FAR AS THE OBLIGATION REMAINS TO BE OBSERVED OR PERFORMED.

(II) EVERY COVENANT BY THE LESSEE SHALL BE DEEMED TO INCLUDE A COVENANT BY THE LESSEE TO PROCURE COMPLIANCE WITH THE COVENANT BY EACH OF THE LESSEE'S EMPLOYEES.

(F) SEVERABILITY: ALL PROVISIONS OF THIS LEASE SHALL SO FAR AS POSSIBLE BE CONSTRUED SO AS NOT TO BE INVALID, ILLEGAL OR UNENFORCEABLE IN ANY RESPECT BUT, IF ANY PROVISION ON ITS TRUE INTERPRETATION IS ILLEGAL, INVALID OR UNENFORCEABLE, THAT PROVISION SHALL SO FAR AS POSSIBLE BE READ DOWN TO SUCH EXTENT AS MAY BE NECESSARY TO ENSURE THAT IT IS NOT ILLEGAL, INVALID OR UNENFORCEABLE AND AS MAY BE REASONABLE IN ALL THE CIRCUMSTANCES SO AS TO GIVE IT A VALID OPERATION OF A PARTIAL CHARACTER. IF ANY SUCH PROVISION OR PART OF IT CANNOT BE SO READ DOWN, SUCH PROVISION OR PART SHALL BE DEEMED TO BE VOID AND SEVERABLE AND THE REMAINING PROVISIONS OF THIS LEASE SHALL NOT IN ANY WAY BE AFFECTED OR IMPAIRED.

(G) NO LIMITATION: NO WORD, WORDS OR PROVISION OF THIS LEASE SHALL OPERATE TO LIMIT OR IN ANY WAY PREJUDICE THE EFFECT OF ANY OTHER WORD, WORDS OR PROVISIONS OF THIS LEASE UNLESS IT IS EXPRESSLY PROVIDED OTHERWISE.

(H) EXTRINSIC TERMS: SUBJECT TO THE PROVISIONS OF ANY WRITTEN MATERIAL ENTERED INTO AND APPROVED BY THE LESSOR AND TO WHICH THE LESSOR AND THE LESSEE ARE PARTIES, THE LESSOR AND THE LESSEE AGREE THAT:

(I) THE TERMS CONTAINED IN THIS LEASE AND THE AGREEMENT COVER AND COMPRISE THE WHOLE OF THE AGREEMENT IN RESPECT OF THE PREMISES BETWEEN THE LESSOR AND THE LESSEE;

(II) NO FURTHER TERMS, WHETHER IN RESPECT OF THE PREMISES OR OTHERWISE, SHALL BE IMPLIED OR ARISE BETWEEN THE LESSOR AND THE LESSEE BY WAY OF COLLATERAL OR OTHER AGREEMENT MADE BY OR ON BEHALF OF THE LESSOR OR BY OR ON BEHALF OF THE LESSEE ON OR BEFORE OR AFTER THE EXECUTION OF THIS LEASE, AND ANY IMPLICATION OR COLLATERAL OR OTHER AGREEMENT IS EXCLUDED AND NEGATED; AND

(III) TO THE EXTENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE AGREEMENT AND THIS LEASE, THE PROVISIONS OF THIS LEASE SHALL PREVAIL AND TAKE EFFECT.

(FOR THE PURPOSES ONLY OF THIS CLAUSE 1.2(H), THE TERM "LESSEE" SHALL INCLUDE "GUARANTOR").

(I) HEADINGS: HEADINGS, BOLD LETTERING AND THE TABLE OF CONTENTS TO THIS LEASE HAVE BEEN INSERTED FOR GUIDANCE ONLY, AND SHALL NOT FORM PART OF THE CONTEXT AND SHALL NOT LIMIT OR GOVERN THE CONSTRUCTION OF THIS LEASE.

(J) BODIES AND AUTHORITIES:

(I) WHERE A REFERENCE IS MADE TO ANY PERSON, BODY OR AUTHORITY SUCH REFERENCE SHALL, IF THE PERSON, BODY OR AUTHORITY HAS CEASED TO EXIST, BE DEEMED

A REFERENCE TO THE PERSON, BODY OR AUTHORITY AS THEN SERVES SUBSTANTIALLY THE SAME OBJECTS AS THAT PERSON, BODY OR AUTHORITY.

(II) ANY REFERENCE TO THE PRESIDENT OF SUCH PERSON, BODY OR AUTHORITY SHALL, IN THE ABSENCE OF A PRESIDENT, BE READ AS A REFERENCE TO THE SENIOR OFFICER FOR THE TIME BEING OF THE PERSON, BODY OR AUTHORITY OR SUCH OTHER PERSON FULFILLING THE DUTIES OF PRESIDENT.

(K) CONSENT OF LESSOR: UNLESS THE CONTEXT OTHERWISE REQUIRES, WHERE THE LESSOR HAS A DISCRETION OR ITS CONSENT OR APPROVAL IS REQUIRED FOR ANYTHING THE LESSOR SHALL, CONSISTENT WITH ITS RIGHTS AND OBLIGATIONS AS LESSOR, NOT UNREASONABLY WITHHOLD OR DELAY ITS DECISION, CONSENT OR APPROVAL.

(L) WRITING: A REFERENCE TO "WRITING" OR "WRITTEN" AND ANY WORDS OF SIMILAR IMPORT INCLUDE PRINTING, TYPING, LITHOGRAPHY AND ANY OTHER MEANS OF REPRODUCING CHARACTERS IN TANGIBLE AND VISIBLE FORM, INCLUDING ANY COMMUNICATION EFFECTED THROUGH ANY ELECTRONIC MEDIUM IF SUCH COMMUNICATION IS SUBSEQUENTLY CAPABLE OF REPRODUCTION IN TANGIBLE OR VISIBLE FORM.

(M) CORPORATION: A REFERENCE TO "CORPORATION" AND ANY OTHER WORDS OR EXPRESSIONS USED OR DEFINED IN THE CORPORATIONS ACT 2001 SHALL, UNLESS THE CONTEXT OTHERWISE REQUIRES, HAVE THE SAME MEANING AS GIVEN IN THE CORPORATIONS ACT 2001.

(N) EMERGENCY: WHERE ANYTHING IS PERMITTED IN AN "EMERGENCY" THE OPINION OF THE LESSOR ACTING REASONABLY AS TO THE EXISTENCE OR NON-EXISTENCE OF SUCH STATE OF AFFAIRS SHALL BE CONCLUSIVE.

(O) UPON DEMAND: A REFERENCE TO "ON DEMAND", "OF DEMAND" OR "UPON DEMAND" AND ANY OTHER WORDS OF SIMILAR IMPORT SHALL, UNLESS THE CONTEXT OTHERWISE REQUIRES, MEAN WHICHEVER IS THE EARLIER OF:

(I) THE DATE ON WHICH THE LESSOR MAKES FORMAL DEMAND (WHETHER ORAL OR IN WRITING); AND

(II) THE DATE ON WHEN THE MONEYS OUGHT IN THE CIRCUMSTANCES TO HAVE BEEN PAID BY OR ON BEHALF OF THE LESSEE.

(P) LIQUIDATION: A REFERENCE TO "LIQUIDATION" AND WORDS OF SIMILAR IMPORT EXCLUDES ANY LIQUIDATION FOR THE PURPOSE OF RECONSTRUCTION OR AMALGAMATION PREVIOUSLY APPROVED IN WRITING BY THE LESSOR.

(Q) PROPER LAW: THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE AND THE PARTIES IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE AND WHERE APPLICABLE THE FEDERAL COURTS OF AUSTRALIA.

(R) RELEVANT DATE: WHERE THE DAY OR LAST DAY FOR DOING ANYTHING OR ON WHICH AN ENTITLEMENT IS DUE TO ARISE IS A SATURDAY, SUNDAY OR PUBLIC HOLIDAY IN THE STATE, THE DAY OR LAST DAY FOR DOING THE THING OR DATE ON WHICH THE ENTITLEMENT ARISES SHALL FOR THE PURPOSES OF THIS LEASE BE THE IMMEDIATELY FOLLOWING DAY THAT IS NOT A SATURDAY, SUNDAY OR PUBLIC HOLIDAY.

50. EXCLUSION OF STATUTORY PROVISIONS

50.1 CONVEYANCING ACT

THE COVENANTS, POWERS AND PROVISIONS IMPLIED IN LEASES BY VIRTUE OF ANY LAW ARE EXPRESSLY NEGATED.

50.2 MORATORIUM

TO THE EXTENT PERMITTED BY LAW THE APPLICATION TO THIS LEASE OR TO ANY PARTY OF ANY LAW OR ANY REQUIREMENT OR ANY MORATORIUM HAVING THE EFFECT OF EXTENDING OR REDUCING THE TERM, REDUCING OR POSTPONING THE PAYMENT OF RENT OR ANY PART(S) OF IT OR OTHERWISE AFFECTING THE OPERATION OF THE TERMS OF THIS LEASE OR ITS APPLICATION TO ANY PARTY IS EXCLUDED AND NEGATED.

51. TERM

51.1 TERM OF LEASE

THIS LEASE STARTS ON THE COMMENCEMENT DATE AND ITS PROVISIONS BIND THE PARTIES ON AND FROM THAT DATE, WHENEVER THIS LEASE IS EXECUTED OR DATED. IT ENDS AT MIDNIGHT ON THE TERMINATION DATE.

51.2 OPTION TO RENEW

IF THE LESSEE:

(A) WISHES TO HAVE A LEASE OF THE PREMISES GRANTED TO THE LESSEE FOR THE FURTHER TERM SPECIFIED IN ITEM 10, TO COMMENCE IMMEDIATELY AFTER THE TERMINATION DATE;

(B) GIVES THE LESSOR NOTICE TO THAT EFFECT NOT LESS THAN THREE (3) MONTHS BEFORE THE TERMINATION DATE; AND

(C) IS NOT IN DEFAULT IN COMPLYING WITH ANY PROPER NOTICE GIVEN BY THE LESSOR TO THE LESSEE REQUIRING THE LESSEE TO REMEDY ANY BREACH COMMITTED BY THE LESSEE OF ANY OF THE COVENANTS, CONDITIONS OR AGREEMENTS CONTAINED IN THIS LEASE, WITHIN THE TIME SPECIFIED IN THE NOTICE,

THE LESSOR SHALL GRANT TO THE LESSEE A LEASE OF THE PREMISES UPON THE SAME COVENANTS, CONDITIONS AND AGREEMENTS AS ARE CONTAINED IN THIS LEASE EXCEPT THAT:

(D) THE TERM TO BE SPECIFIED IN ITEM 7 OF THE FURTHER LEASE SHALL BE THAT SPECIFIED IN ITEM 10;

(E) THE DATE TO BE SPECIFIED IN ITEM 8 OF THE FURTHER LEASE SHALL BE THE DAY AFTER THE TERMINATION DATE;

(F) THE DATE TO BE SPECIFIED IN ITEM 9 OF THE FURTHER LEASE SHALL BE THE LAST DAY OF THE TERM SPECIFIED IN ITEM 10 AFTER THE DATE OF COMMENCEMENT OF THE FURTHER LEASE;

(G) THE AMOUNT OF BASE RENT TO BE SPECIFIED IN ITEM 11 OF THE FURTHER LEASE SHALL BE DETERMINED IN ACCORDANCE WITH CLAUSE B.2;

(H) THE NUMBER OF FURTHER LEASES (IF ANY) SPECIFIED IN ITEM 10 SHALL BE REDUCED BY ONE AND IF THE RESULTING NUMBER IS ZERO, THEN THIS CLAUSE 3.2 WILL NOT BE INCLUDED IN THE FURTHER LEASE.

51.3 HOLDING OVER

IF THE LESSOR PERMITS THE LESSEE TO CONTINUE TO OCCUPY THE PREMISES BEYOND THE TERMINATION DATE (OTHERWISE THAN PURSUANT TO THE GRANT OF A FURTHER LEASE) THEN:

(A) THE LESSEE SHALL DO SO AS A MONTHLY TENANT ONLY AT A TOTAL RENTAL PAYABLE MONTHLY IN ADVANCE, THE FIRST OF SUCH PAYMENTS TO BE MADE ON THE DAY

FOLLOWING THE TERMINATION DATE, AND BEING AN AMOUNT EQUAL TO ONE-TWELFTH OF THE AGGREGATE OF THE RENT AND ANY OTHER MONEYS PAYABLE BY THE LESSEE TO THE LESSOR PURSUANT TO THIS LEASE AS AT THE TERMINATION DATE;

(B) THE MONTHLY TENANCY SO CREATED SHALL BE DETERMINABLE AT ANY TIME BY EITHER THE LESSOR OR THE LESSEE BY ONE (1) MONTH'S NOTICE GIVEN TO THE OTHER, TO EXPIRE ON ANY DATE, BUT OTHERWISE THE TENANCY SHALL CONTINUE ON THE SAME TERMS AND CONDITIONS SO FAR AS APPLICABLE TO A MONTHLY TENANCY AS ARE CONTAINED IN THIS LEASE.

#### 52. USE OF PREMISES AND BUILDING

##### 52.1 PERMITTED USE

THE LESSEE SHALL:

(A) LESSEE'S BUSINESS: NOT WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR USE THE PREMISES FOR ANY PURPOSE OTHER THAN THAT SPECIFIED IN ITEM 13;

(B) ALL TIMES CONDUCT THE LESSEE'S BUSINESS IN THE PREMISES;

(C) NOT USE THE PREMISES FOR THE PURPOSES OF A RESIDENCE;

(D) NOT KEEP ANY ANIMALS OR BIRDS IN THE PREMISES OR THE BUILDING;

(E) AT ITS OWN COST KEEP THE PREMISES FREE AND CLEAR OF PESTS, INSECTS AND VERMIN;

(F) NOT (AND DISREGARDING ANY OTHER PROVISION OF THIS LEASE OR OF ANY CONSENT OR OF ANY PERMISSION GRANTED PURSUANT TO THIS LEASE) DO OR CARRY ON IN THE PREMISES OR ANY PART OF THEM ANY HARMFUL OR OFFENSIVE TRADE, BUSINESS OR OCCUPATION OR ANYTHING WHATEVER WHICH SHALL OR MAY CAUSE ANNOYANCE, NUISANCE, DAMAGE OR DISTURBANCE TO THE OCCUPIERS OR OWNERS OF ANY NEARBY PREMISES OR TO THE LESSOR;

(G) NOT HOLD ANY AUCTION, BANKRUPT OR FIRE SALE ON THE PREMISES;

(H) NOT PREPARE OR COOK FOOD EXCEPT IN ANY AREAS WHICH MAY BE PROVIDED.

##### 52.2 NO WARRANTY AS TO USE

THE LESSOR GIVES NO WARRANTY (EITHER PRESENT OR FUTURE) AS TO THE SUITABILITY OF THE PREMISES FOR THE USE TO WHICH THE PREMISES MAY BE PUT. THE LESSEE SHALL:

(A) BE DEEMED TO HAVE ACCEPTED THIS LEASE WITH FULL KNOWLEDGE OF AND SUBJECT TO ANY PROHIBITIONS OR RESTRICTIONS ON THE USE OF THE PREMISES FROM TIME TO TIME UNDER OR IN PURSUANCE OF ANY LAWS OR ANY REQUIREMENTS;

(B) OBTAIN, MAINTAIN AND COMPLY WITH AT THE LESSEE'S COST THE REQUIREMENTS OF ANY LAWS AND ALL CONSENTS OR APPROVALS FROM ALL AUTHORITIES WHICH MAY FROM TIME TO TIME BE NECESSARY OR APPROPRIATE FOR THE LESSEE'S BUSINESS;

(C) NOT BY ANY ACT OR OMISSION CAUSE OR PERMIT ANY CONSENT OR APPROVAL AS REFERRED TO IN CLAUSE 4.2(B) TO LAPSE OR BE REVOKED.

##### 52.3 COMPLIANCE WITH LAWS AND REQUIREMENTS

(A) THE LESSEE SHALL:

(I) COMPLY WITH AND OBSERVE AT THE LESSEE'S OWN COST ALL LAWS AND ALL REQUIREMENTS IN RELATION TO OR AFFECTING:

(A) ANY OF THE LESSEE'S FITTINGS INSTALLED IN THEM; AND/OR

(B) THE LESSEE'S PARTICULAR USE OR OCCUPATION OF THE PREMISES FROM TIME TO TIME, INCLUDING SUCH AS ARISE AS A RESULT OF THE SEX OR NUMBER OF PERSONS IN THE PREMISES,

WHETHER OR NOT ANY SUCH LAWS OR REQUIREMENTS ARE ADDRESSED TO OR REQUIRED TO BE COMPLIED WITH BY EITHER OR BOTH OF THE LESSOR AND THE LESSEE OR BY ANY OTHER PERSON. WHERE ANY SUCH LAWS OR REQUIREMENTS ARE NOTIFIED TO OR SERVED UPON THE LESSEE THE LESSEE SHALL FORTHWITH PROVIDE A COMPLETE COPY OF THEM TO THE LESSOR;

(II) BEFORE COMPLYING WITH ANY LAWS OR REQUIREMENTS AS REFERRED TO IN THIS CLAUSE 4.3 OBTAIN THE WRITTEN CONSENT OF THE LESSOR AND OTHERWISE OBSERVE THE PROVISIONS OF THIS LEASE.

(B) THE LESSOR MAY:

(I) (WITHOUT PREJUDICE TO ANY OF THE LESSOR'S OTHER RIGHTS IN RESPECT OF NON-COMPLIANCE) ELECT AT THE LESSEE'S COST TO COMPLY WITH ANY SUCH LAWS OR REQUIREMENTS (AS REFERRED TO IN THIS CLAUSE 4.3) EITHER IN PART OR WHOLE, INCLUDING WHERE THE LESSEE FAILS TO COMPLY WITHIN THE APPROPRIATE TIME WITH ANY OF ITS OBLIGATIONS; AND

(II) WHERE THE LESSOR DOES EXERCISE ANY RIGHTS AS REFERRED TO IN PARAGRAPH (I), ELECT TO HAVE THE BALANCE OF ANY SUCH LAWS OR REQUIREMENTS COMPLIED WITH BY THE LESSEE.

(C) STRUCTURAL ALTERATIONS: THE LESSEE SHALL NOT BE REQUIRED PURSUANT TO THIS CLAUSE 4.3 TO EFFECT STRUCTURAL OR CAPITAL ALTERATIONS OR ADDITIONS EXCEPT TO THE EXTENT THAT THE NEED TO COMPLY HAS BEEN CONTRIBUTED TO OR ARISES FROM THE LESSEE'S PARTICULAR USE OF THE PREMISES, THE NUMBER OR SEX OF THE LESSEE AND LESSEE'S EMPLOYEES OR FROM ANY DELIBERATE OR NEGLIGENT ACT OR OMISSION ON THE PART OF THE LESSEE OR OF THE LESSEE'S EMPLOYEES.

(D) THE LESSEE SHALL UPON DEMAND PAY TO THE LESSOR ALL REASONABLE COSTS INCURRED BY OR ON BEHALF OF THE LESSOR IN COMPLYING WITH ANY SUCH LAWS OR REQUIREMENTS AS REFERRED TO IN THIS CLAUSE 4.3 AS IF SUCH MONEYS WERE RENT IN ARREARS.

##### 52.4 OVERLOADING

THE LESSEE SHALL NOT:

(A) OVERLOADING OF FLOOR: PLACE OR STORE ANY HEAVY ARTICLES OR MATERIALS ON ANY OF THE FLOORS OF THE BUILDING WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR, WHICH CONSENT SHALL ONLY BE GIVEN WHERE THE ARTICLES OR MATERIALS ARE REASONABLY NECESSARY AND PROPER FOR THE CONDUCT OF THE LESSEE'S BUSINESS AND ARE OF SUCH NATURE AND SIZE AS WILL NOT IN THE LESSOR'S OPINION CAUSE OR BE LIKELY TO CAUSE ANY STRUCTURAL OR OTHER DAMAGE TO THE FLOORS OR WALLS OR ANY OTHER PART OF THE PREMISES OR OF THE BUILDING. THE LESSOR SHALL IN ALL CASES BE ENTITLED TO PRESCRIBE THE MAXIMUM WEIGHT FOR AND PROPER LOCATION OF SUCH HEAVY ARTICLES OR MATERIALS IN THE PREMISES OR THE BUILDING, AND ANY DAMAGE DONE TO THE BUILDING OR ANY PART OF IT BY TAKING IN OR REMOVING THEM OR DURING THE TIME THEY ARE IN THE BUILDING SHALL BE MADE GOOD AND/OR PAID FOR UPON DEMAND BY THE LESSEE

(AS APPROPRIATE); OR

(B) OVERLOADING OF ELECTRICAL CIRCUITS: INSTALL ANY EQUIPMENT OR SYSTEM IN THE PREMISES THAT OVERLOADS OR MAY OVERLOAD THE ELECTRICAL OR OTHER SERVICES TO THE PREMISES. IF THE LESSOR AT THE REQUEST OF THE LESSEE UPGRADES THE SERVICES TO ACCOMMODATE ANY EQUIPMENT OR SYSTEM WHICH THE LESSEE WISHES TO INSTALL, THE LESSEE SHALL PAY TO THE LESSOR UPON DEMAND THE ENTIRE COST TO THE LESSOR OF SUCH ALTERATIONS (INCLUDING CONSULTANTS' FEES) AND THE LESSOR MAY REQUIRE THE LESSEE TO DEPOSIT WITH THE LESSOR THE ESTIMATED COST OF THEM BEFORE ANY SUCH ALTERATIONS ARE COMMENCED. THE LESSOR GIVES NO WARRANTY AS TO THE SUITABILITY OF ANY SUCH ALTERATIONS.

52.5 AIRCONDITIONING AND FIRE ALARM EQUIPMENT

WHERE ANY AIRCONDITIONING OR FIRE ALARM SYSTEM OF THE LESSOR IS INSTALLED IN THE PREMISES, THE LESSEE SHALL NOT IN ANY WAY INTERFERE WITH ANY SUCH SYSTEM AND SHALL NOT IN ANY MANNER OBSTRUCT OR HINDER ACCESS TO IT.

52.6 USE OF APPURTENANCES

THE LESSEE SHALL:

(A) NOT USE THE APPURTENANCES IN THE PREMISES FOR ANY PURPOSE OTHER THAN THOSE FOR WHICH THEY WERE DESIGNED;

(B) NOT PLACE IN THE APPURTENANCES ANY SUBSTANCES WHICH THEY WERE NOT DESIGNED TO RECEIVE; AND

(C) PAY TO THE LESSOR ANY REASONABLE COSTS OF MAKING GOOD ANY DAMAGE TO ANY APPURTENANCES ARISING FROM ANY MISUSE CAUSED BY THE LESSEE OR BY THE LESSEE'S EMPLOYEES.

52.7 NOT ERECT AWNING

THE LESSEE SHALL NOT ERECT OR INSTALL WINDOW COVERINGS, BLINDS, SCREENS OR AWNINGS WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR, AND ANY WINDOW COVERINGS, BLINDS, SCREENS OR AWNINGS HUNG, ERECTED OR INSTALLED IN OR NEAR THE PREMISES SHALL BE OF NON-INFLAMMABLE MATERIALS AND SHALL COMPLY WITH ALL RELEVANT PRESCRIBED OR RECOMMENDED STANDARDS OF THE AUSTRALIAN STANDARDS ASSOCIATION AND OF ALL OTHER AUTHORITIES.

52.8 NOT DAMAGE

THE LESSEE SHALL NOT DAMAGE OR DEFACE OR MARK, OR WITHOUT THE LESSOR'S CONSENT DRIVE ANY NAILS, SCREWS OR HOOKS INTO, ANY PART OF THE BUILDING. IF THE LESSEE OR THE LESSEE'S EMPLOYEES DAMAGE, DEFACE OR MARK ANY PART OR PARTS OF THE BUILDING, THE LESSEE SHALL FORTHWITH UPON DEMAND PAY TO THE LESSOR ALL COSTS IN REPAIRING AND/OR REINSTATING SUCH PART OR PARTS OF THE BUILDING TO THEIR FORMER CONDITION.

52.9 NOT ACCUMULATE RUBBISH

THE LESSEE SHALL KEEP THE PREMISES CLEAN (HAVING REGARD TO THEIR CONDITION AT THE COMMENCEMENT DATE) AND SHALL NOT PERMIT ANY ACCUMULATION OF USELESS PROPERTY OR RUBBISH IN THEM. NO RUBBISH OR WASTE SHALL AT ANY TIME BE BURNED UPON THE PREMISES OR THE BUILDING BY THE LESSEE.

52.10 NOT THROW ITEMS FROM WINDOWS

THE LESSEE SHALL NOT THROW ANYTHING OUT OF THE WINDOWS OR DOORS OF THE PREMISES OR THE BUILDING OR DOWN THE LIFT SHAFTS, PASSAGES OR SKYLIGHTS OR INTO THE LIGHT AREAS OF THE BUILDING, OR DEPOSIT WASTE PAPER OR RUBBISH ANYWHERE EXCEPT IN PROPER RECEPTACLES, OR PLACE ANYTHING UPON ANY SILL, LEDGE OR OTHER SIMILAR PART OF THE BUILDING.

52.11 SIGNS

(A) THE LESSEE SHALL NOT DISPLAY ANY SIGN (OTHER THAN SIGNS EXISTING AT THE COMMENCEMENT DATE) ON ANY PART OF THE OUTSIDE OF THE BUILDING EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE LESSOR, AND THEN ONLY OF SUCH COLOUR, SIZE AND STYLE AND IN SUCH PLACE OR PLACES AS SHALL BE FIRST APPROVED BY THE LESSOR.

(B) AT THE TERMINATION DATE OR OTHER DETERMINATION OF THIS LEASE THE LESSEE SHALL AT ITS SOLE COST REMOVE ALL LETTERING, SIGNS AND OTHER DISTINCTIVE MARKS FROM THE PREMISES AND THE BUILDING. THE LESSEE SHALL ALSO BE ENTITLED TO REMOVE THE DEDICATION PLAQUE AT THE ENTRANCE TO THE PREMISES.

(C) SUBJECT TO CLAUSE 4.13, THE LESSOR SHALL NOT DISPLAY ANY SIGN ON OR AT THE PREMISES EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE LESSEE, AND THEN ONLY OF SUCH COLOUR, SIZE AND STYLE AND IN SUCH PLACE OR PLACES AS SHALL BE FIRST APPROVED BY THE LESSEE.

52.12 INFECTIOUS ILLNESS

IF ANY INFECTIOUS ILLNESS OCCURS IN THE PREMISES OR THE BUILDING THE LESSEE SHALL FORTHWITH GIVE NOTICE OF SUCH EVENT TO THE LESSOR AND TO ALL PROPER AUTHORITIES, AND WHERE ANY SUCH INFECTIOUS ILLNESS IS CONFINED TO THE PREMISES AND HAS RESULTED FROM THE USE OF THEM BY THE LESSEE OR BY THE LESSEE'S EMPLOYEES THE LESSEE AT ITS COST SHALL THOROUGHLY FUMIGATE AND DISINFECT THE PREMISES TO THE SATISFACTION OF THE LESSOR AND OF ALL RELEVANT AUTHORITIES.

52.13 FOR SALE/TO LET

THE LESSOR SHALL BE ENTITLED AT REASONABLE TIMES TO:

(A) PLACE ADVERTISEMENTS AND SIGNS ON SUCH PART(S) OF THE PREMISES AS IT REASONABLY CONSIDERS APPROPRIATE WHERE THE BUILDING OR THE PREMISES ARE EITHER FOR SALE OR AVAILABLE FOR LEASE; AND

(B) SHOW INTERESTED PERSONS THROUGH THE PREMISES.

THE LESSOR IN EXERCISING ITS RIGHTS UNDER THIS CLAUSE SHALL ENDEAVOUR TO MINIMISE ANY INCONVENIENCE TO THE LESSEE OR THE LESSEE'S BUSINESS.

53. MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS

53.1 REPAIR OBLIGATIONS

(A) GENERAL REPAIR OBLIGATION: THE LESSEE SHALL DURING THE TERM AND ANY HOLDING OVER KEEP THE PREMISES (INCLUDING LANDSCAPING ELEMENTS), THE LESSEE'S FITTINGS AND ALL THE LESSOR'S FIXTURES IN THE PREMISES IN GOOD REPAIR AND CONDITION HAVING REGARD TO THEIR STATE OF REPAIR AND CONDITION AT THE COMMENCEMENT OF THIS LEASE (OR IF THIS LEASE IS ONE OF A SEQUENCE OF LEASES, TO THEIR STATE OF REPAIR AND CONDITION AT THE COMMENCEMENT OF THE FIRST LEASE). THIS OBLIGATION EXCLUDES:

(I) FAIR WEAR AND TEAR; AND  
(II) DAMAGE TO THE PREMISES ARISING FROM FIRE, FLOOD, LIGHTNING, STORM, TEMPEST, EARTHQUAKE, AIRCRAFT OR OTHER AERIAL DEVICE, RIOT, EXPLOSION, ACT OF GOD, INHERENT DEFECT, TERRORISM, WAR OR OTHER DISABLING CAUSE OR DAMAGE TO THE PREMISES WHERE THE LESSOR IS INDEMNIFIED BY AN INSURANCE POLICY TAKEN OUT BY THE LESSOR OR WHICH WOULD BE TAKEN OUT BY A PRUDENT LESSOR IN RESPECT OF THE BUILDING (OTHER THAN WHERE ANY INSURANCE MONEYS ARE IRRECOVERABLE THROUGH THE ACT, OMISSION, NEGLIGENCE, DEFAULT OR MISCONDUCT OF THE LESSEE OR THE LESSEE'S EMPLOYEES)

(B) STRUCTURAL REPAIR: NOTHING IN THIS CLAUSE 5.1 SHALL IMPOSE ANY OBLIGATION UPON THE LESSEE IN RESPECT OF ANY STRUCTURAL MAINTENANCE, REPLACEMENT OR REPAIR EXCEPT WHERE RENDERED NECESSARY BY ANY ACT, OMISSION, NEGLIGENCE, DEFAULT OR MISCONDUCT OF THE LESSEE OR THE LESSEE'S EMPLOYEES OR BY ITS OR THEIR PARTICULAR USE AND OCCUPANCY OF THE PREMISES OR BY THE INSTALLATION, USE OR REMOVAL OF THE LESSEE'S FITTINGS.

(C) PARTICULAR REPAIR OBLIGATIONS: THE LESSEE SHALL, OR THE LESSOR MAY AT THE LESSEE'S COST:

(I) (WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY OF THE LESSOR) IMMEDIATELY MAKE GOOD ANY DAMAGE TO THE PREMISES OR ANY OTHER PART OF THE BUILDING CAUSED BY THE WILFUL OR NEGLIGENT ACT OF THE LESSEE OR OF THE LESSEE'S EMPLOYEES;

(II) IMMEDIATELY REPLACE ALL GLASS BROKEN BY THE LESSEE OR BY ANY OF THE LESSEE'S EMPLOYEES;

(III) REPLACE ALL DAMAGED OR NON-OPERATIVE ELECTRIC LIGHT BULBS, GLOBES, TUBES AND OTHER MEANS OF ILLUMINATION WITHIN THE PREMISES;

(IV) SUBJECT TO CLAUSE 5.1(A), REPAIR OR WHERE APPROPRIATE REPLACE ANY OF THE LESSOR'S FIXTURES WHICH ARE BROKEN OR DAMAGED BY THE LESSEE OR BY ANY OF THE LESSEE'S EMPLOYEES. UNLESS THE LESSOR NOTIFIES THE LESSEE IN WRITING TO THE CONTRARY THE LESSEE AGREES THAT SUCH REPAIRS OR REPLACEMENTS SHALL ONLY BE CARRIED OUT BY THE LESSOR BUT AT THE LESSEE'S COST.

(D) CONDITION REPORT: FOR THE PURPOSE OF ESTABLISHING A RECORD OF THE STATE OF REPAIR AND CONDITION OF THE BUILDING AT THE COMMENCEMENT DATE IN 2002, THE LESSEE SHALL AS SOON AS PRACTICABLE AFTER SUCH COMMENCEMENT DATE PREPARE A CONDITION REPORT CONSISTING OF PHOTOGRAPHS OF COMPONENTS OF THE BUILDING AND FURNISH A COPY TO THE LESSOR.

#### 53.2 LESSOR'S RIGHT OF INSPECTION

THE LESSOR MAY AT ALL REASONABLE TIMES UPON GIVING TO THE LESSEE REASONABLE NOTICE (EXCEPT IN THE CASE OF EMERGENCY WHEN NO NOTICE SHALL BE REQUIRED) ENTER THE PREMISES AND VIEW THEIR STATE OF REPAIR AND CONDITION.

53.3 NOT USED.

53.4 NOT USED.

#### 53.5 ENFORCEMENT OF REPAIR OBLIGATIONS

THE LESSOR MAY:

(A) SERVE UPON THE LESSEE A NOTICE OF ANY FAILURE BY THE LESSEE TO CARRY OUT ANY REPAIR, REPLACEMENT, CLEANING OR REDECORATION OF THE PREMISES WHICH IS THE LESSEE'S OBLIGATION UNDER THIS LEASE; AND/OR

(B) REQUIRE THE LESSEE TO CARRY OUT SUCH REPAIR, REPLACEMENT, CLEANING OR REDECORATION WITHIN A REASONABLE TIME AND, IN DEFAULT OF THE LESSEE DOING SO, THE LESSOR MAY ELECT TO CARRY OUT SUCH REPAIR, REPLACEMENT, CLEANING OR REDECORATION AND ANY COSTS WHETHER INCIDENTAL OR OTHERWISE SHALL BE PAYABLE ON DEMAND BY THE LESSEE TO THE LESSOR.

#### 53.6 LESSOR MAY ENTER TO REPAIR

IF:

(A) THE LESSOR WISHES TO CARRY OUT ANY REPAIRS TO THE PREMISES CONSIDERED NECESSARY OR DESIRABLE BY THE LESSOR OR IN RELATION TO ANYTHING WHICH THE LESSOR IS OBLIGED TO DO UNDER THIS LEASE;

(B) ANY AUTHORITY REQUIRES ANY REPAIR OR WORK TO BE UNDERTAKEN ON THE PREMISES OR THE BUILDING WHICH THE LESSOR IN ITS DISCRETION ELECTS TO DO AND FOR WHICH THE LESSEE IS NOT LIABLE UNDER THIS LEASE; AND/OR

(C) THE LESSOR ELECTS TO CARRY OUT ANY REPAIR WORK WHICH THE LESSEE IS REQUIRED OR LIABLE TO DO UNDER THIS LEASE BY ANY LAW OR BY ANY REQUIREMENT BUT FAILS TO DO SO,

THEN THE LESSOR, ITS ARCHITECTS, WORKMEN AND OTHERS AUTHORISED BY THE LESSOR MAY AT ALL REASONABLE TIMES UPON GIVING TO THE LESSEE REASONABLE NOTICE (EXCEPT IN THE CASE OF EMERGENCY WHEN NO NOTICE SHALL BE REQUIRED) ENTER AND CARRY OUT ANY SUCH WORKS AND REPAIRS. IN SO DOING THE LESSOR SHALL ENDEAVOUR NOT TO CAUSE UNDUE INCONVENIENCE TO THE LESSEE AND THE CONDUCT OF THE LESSEE'S BUSINESS.

#### 53.7 ALTERATIONS TO PREMISES

THE LESSEE SHALL NOT MAKE OR PERMIT TO BE MADE ANY PROPOSED WORK (INCLUDING INTER-TENANCY PARTITIONS AND FLOOR COVERINGS) WITHOUT THE LESSOR'S PRIOR WRITTEN APPROVAL AND:

(A) IN SEEKING THE LESSOR'S APPROVAL TO A PROPOSED WORK THE LESSEE SHALL SUBMIT PLANS AND SPECIFICATIONS OF THE PROPOSED WORK TOGETHER WITH A LIST OF THE PERSONS (IF ANY) FROM WHOM THE LESSEE PROPOSES TO CALL TENDERS FOR THE PROPOSED WORK;

(B) THE LESSOR WILL (UNLESS IT NOTIFIES OTHERWISE) REQUIRE AS A CONDITION OF ITS APPROVAL THAT:

(I) ANY PROPOSED WORK SHALL BE SUPERVISED BY A PERSON APPROVED BY THE LESSOR;

(II) ANY PROPOSED WORK SHALL BE EXECUTED BY CONTRACTORS OR TRADESMEN APPROVED BY THE LESSOR, BUT NO OBJECTION SHALL BE MADE BY THE LESSOR TO ANY PERSON WHOSE NAME APPEARS ON THE LIST PROVIDED PURSUANT TO PARAGRAPH (A) AND WHO HAS BEEN APPROVED BY THE LESSOR;

(III) THE LESSEE PAYS ON DEMAND ALL COSTS INCURRED BY THE LESSOR IN CONSIDERING THE PROPOSED WORK AND ITS SUPERVISION, INCLUDING THE FEES OF

ARCHITECTS OR OTHER BUILDING CONSULTANTS ENGAGED BY OR ON BEHALF OF THE LESSOR;  
(IV) THE LESSEE SHALL OBTAIN AND KEEP CURRENT ALL NECESSARY APPROVALS OR PERMITS FROM ALL AUTHORITIES NECESSARY TO ENABLE ANY PROPOSED WORK TO BE LAWFULLY EFFECTED, AND SHALL ON REQUEST BY THE LESSOR PRODUCE FOR INSPECTION BY THE LESSOR COPIES OF ALL SUCH APPROVALS AND PERMITS;

(V) UPON COMPLETION OF THE PROPOSED WORK THE LESSEE SHALL FORTHWITH OBTAIN AND PRODUCE TO THE LESSOR ANY UNCONDITIONAL CERTIFICATES OF COMPLIANCE OR OF SATISFACTORY COMPLETION AVAILABLE FROM ANY SUCH AUTHORITY; AND

(VI) THE LESSEE SHALL FORTHWITH REPAY ON DEMAND BY THE LESSOR ANY COST INCURRED BY THE LESSOR AS A RESULT OF ANY ALTERATION, ADDITION OR INSTALLATION TO OR IN THE PREMISES, INCLUDING ANY RESULTING MODIFICATION OR VARIATION TO THE BUILDING; AND

(C) THE LESSEE SHALL AT ITS OWN EXPENSE COMPLY WITH ALL CONDITIONS ON WHICH THE LESSOR CONSENTS TO ANY PROPOSED WORK.

53.8 ALTERATIONS OR ADDITIONS TO LESSOR'S FIXTURES AND SERVICES SUBJECT TO CLAUSE 5.7 THE LESSEE WILL NOT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE LESSOR INSTALL, INTERFERE WITH OR MAKE ANY CONNECTIONS TO THE LESSOR'S FIXTURES, SERVICES AND/OR APPURTENANCES, INCLUDING EXISTING WATER, GAS OR ELECTRICAL FIXTURES, EQUIPMENT OR APPLIANCES OR ANY APPARATUS FOR ILLUMINATING, AIR-CONDITIONING, HEATING, COOLING OR VENTILATING THE PREMISES.

53.9 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC  
THE LESSEE SHALL FORTHWITH GIVE NOTICE TO THE LESSOR OF ANY:

(A) DAMAGE, ACCIDENT TO OR DEFECTS IN THE PREMISES OR IN THE BUILDING; OR  
(B) CIRCUMSTANCES LIKELY TO CAUSE ANY DAMAGE OR INJURY OCCURRING WITHIN THE PREMISES OR THE BUILDING OF WHICH THE LESSEE HAS NOTICE (ACTUAL OR CONSTRUCTIVE).

54. ASSIGNMENT AND SUBLETTING

54.1 NO DISPOSAL OF LESSEE'S INTEREST

THE LESSEE SHALL NOT DURING THE CONTINUANCE OF THIS LEASE ASSIGN, TRANSFER OR OTHERWISE DEAL WITH OR PART WITH POSSESSION OF THE PREMISES OR THIS LEASE OR ANY PART OF THEM OR ANY INTEREST IN THEM OR ATTEMPT TO DO ANY OF THE FOREGOING, OR BY ANY ACT PROCURE THE PREMISES OR THIS LEASE OR ANY PART OF THEM OR ANY INTEREST IN THEM TO BE ASSIGNED, TRANSFERRED OR OTHERWISE DEALT WITH OR DISPOSED OF.

54.2 ASSIGNMENTS AND SUBLEASES

THE LESSEE SHALL NOT BE IN BREACH OF CLAUSE 6.1 IF:

(A) THE LESSEE IS NOT IN DEFAULT IN THE TIMELY OBSERVANCE OR PERFORMANCE OF EACH OF THE COVENANTS AND AGREEMENTS ON THE LESSEE'S PART, AND IN PARTICULAR ALL RENT AND ALL OTHER MONEYS PAYABLE BY THE LESSEE TO THE LESSOR UP TO THE DATE OF THE PROPOSED ASSIGNMENT OR SUBLEASE HAVE BEEN PAID;

(B) THE LESSEE PAYS TO THE LESSOR ALL REASONABLE COSTS INCURRED BY THE LESSOR (WHETHER OR NOT THE PROPOSED ASSIGNMENT OR SUBLEASE PROCEEDS TO COMPLETION) INCLUDING THE LESSOR'S ADMINISTRATIVE AND OTHER LEGAL COSTS OF AND INCIDENTAL TO THE PROPOSED ASSIGNMENT OR SUBLEASE;

(C) THE LESSEE PROVES TO THE SATISFACTION OF THE LESSOR THAT THE INCOMING TENANT IS A RESPECTABLE, RESPONSIBLE AND SOLVENT PERSON;

(D) IN THE CASE OF A PROPOSED SUBLEASE:

(I) THE LESSEE PROVES TO THE SATISFACTION OF THE LESSOR (BY VALUATION OR VALUATIONS IF SO REQUIRED) THAT THE RENT PAYABLE BY THE INCOMING TENANT UNDER THE SUBLEASE IS AT A RATE NOT LESS THAN THE THEN CURRENT MARKET RENT FOR THE PREMISES;

(II) THE LESSOR MAY IN ITS ABSOLUTE DISCRETION APPROVE A SUBLEASE AT A RATE LESS THAN THE THEN CURRENT MARKET RENT FOR THE PREMISES IF THE LESSEE PROVIDES A WRITTEN ACKNOWLEDGMENT IN A FORM SATISFACTORY TO THE LESSOR THAT THE RATE IS BELOW CURRENT MARKET RENT FOR THE PREMISES;

(E) THE LESSEE AND THE INCOMING TENANT ENTER INTO A DEED WITH THE LESSOR IN THE FORM REQUIRED BY THE LESSOR WHICH INCLUDES PROVISIONS THAT THE INCOMING TENANT, IF AN ASSIGNEE, WILL COMPLY WITH ALL THE LESSEE'S OBLIGATIONS UNDER THIS LEASE ON AND FROM THE DATE OF ASSIGNMENT OR, IF A SUBLESSEE, WILL NOT CAUSE OR CONTRIBUTE TO A BREACH OF THIS LEASE;

(F) THE LESSEE AND THE INCOMING TENANT COMPLY WITH THE LESSOR'S REQUIREMENTS IN RELATION TO THE DOCUMENTATION, STAMPING AND REGISTRATION OF THE PROPOSED ASSIGNMENT OR SUBLEASE; AND

(G) IF THE INCOMING TENANT IS A COMPANY, OTHER THAN A COMPANY WHOSE SHARES CAN BE PUBLICLY TRADED THROUGH A STOCK EXCHANGE, THE LESSEE PROVIDES AND/OR PROCURES IN FAVOUR OF THE LESSOR A BANK GUARANTEE EQUIVALENT TO SIX MONTHS BASE RENT.

54.3 CORPORATE OWNERSHIP

IF THE LESSEE IS A COMPANY, OTHER THAN A COMPANY WHOSE SHARES CAN BE PUBLICLY TRADED THROUGH A STOCK EXCHANGE, ANY CHANGE IN THE SHAREHOLDING OF THE LESSEE ALTERING THE EFFECTIVE CONTROL OF THE LESSEE SHALL BE DEEMED A PROPOSED ASSIGNMENT OF THIS LEASE, AND THE LESSEE SHALL NOT REGISTER, RECORD OR ENTER IN ITS BOOKS ANY TRANSFER OF ANY SHARE OR SHARES IN THE CAPITAL OF THE LESSEE, OR DEAL WITH ANY BENEFICIAL INTEREST IN ANY SUCH SHARE OR SHARES, OR ISSUE ANY NEW SHARE OR SHARES, OR TAKE OR ATTEMPT TO TAKE ANY ACTION HAVING THE EFFECT OF ALTERING THE EFFECTIVE CONTROL OF THE LESSEE OR HAVING THE EFFECT THAT THE SHAREHOLDERS OF THE LESSEE AT THE DATE OF THIS LEASE TOGETHER BENEFICIALLY HOLD OR CONTROL LESS THAN FIFTY ONE PER CENT (51%) OF THE VOTING RIGHTS OF CAPITAL IN THE LESSEE, UNLESS THE LESSEE COMPLIES WITH THE CONDITIONS OF CLAUSE 6.2.

54.4 MORTGAGING LESSEE'S INTEREST IN PREMISES

THE LESSEE SHALL NOT MORTGAGE OR CHARGE THIS LEASE OR THE LESSEE'S INTEREST IN THE PREMISES WITHOUT FIRST OBTAINING THE CONSENT OF THE LESSOR, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD WHERE THE LESSEE IS A COMPANY AND WISHES TO ENTER INTO A PROPER FIXED AND/OR FLOATING CHARGE OVER ITS ASSETS IN GOOD FAITH AS A MEANS OF SECURING A BANK OVERDRAFT FACILITY.

54.5 RESMED LTD AND RELATED BODIES CORPORATE  
NOTWITHSTANDING CLAUSE 6.2, THE LESSEE SHALL NOT BE IN BREACH OF CLAUSE 6.1 IF:  
(A) THE LESSEE IS RESMED LIMITED AND/OR A RELATED BODY CORPORATE (WHICH TERM IN THIS CLAUSE 6.5 HAS THE MEANING AS DEFINED IN THE CORPORATIONS ACT 2001) OF RESMED LIMITED; AND  
(B) THE INCOMING TENANT IS RESMED LIMITED AND/OR A RELATED BODY CORPORATE OF RESMED LIMITED; AND  
(C) IN THE CASE OF A PROPOSED SUBLEASE, THE INCOMING TENANT AGREES THAT THE PROPOSED SUBLEASE WILL TERMINATE UPON THE TERMINATION OF THIS LEASE; AND  
(D) CLAUSES 6.2(B), (E) AND (F) ARE COMPLIED WITH; AND  
(E) RESMED LIMITED PROVIDES IN FAVOUR OF THE LESSOR A GUARANTEE OF THE OBLIGATIONS AND COVENANTS OF THE INCOMING TENANT CONTAINING PROVISIONS AS SET OUT OR TO THE EFFECT OF THOSE SET OUT IN CLAUSES 13.2-13.5 OF THIS LEASE.

55. INSURANCE AND INDEMNITIES

55.1 INSURANCES TO BE TAKEN OUT BY LESSEE

THE LESSEE SHALL:

(A) PUBLIC RISK: EFFECT ON OR BEFORE THE COMMENCEMENT DATE AND KEEP CURRENT DURING THE TERM (INCLUDING ANY EXTENSION OR RENEWAL OR HOLDING OVER) A PUBLIC RISK INSURANCE POLICY BEARING AN ENDORSEMENT WHEREBY THE INDEMNITY UNDER THE POLICY IS EXTENDED TO INCLUDE THE RISKS REFERRED TO IN CLAUSE 7.6 AND ALL OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, SUCH POLICY TO BE FOR AN AMOUNT OF NOT LESS THAN THE AMOUNT SPECIFIED IN ITEM 15 OR SUCH OTHER REASONABLE AMOUNT AS THE LESSOR MAY NOTIFY THE LESSEE FROM TIME TO TIME IN RESPECT OF ANY SINGLE ACCIDENT;

(B) PLATE GLASS: INSURE IN SUCH AMOUNT (NOT BEING LESS THAN THE FULL INSURABLE VALUE OF THEM) AND AGAINST SUCH RISKS AS THE LESSOR MAY REQUIRE ALL PLATE GLASS WINDOWS (OTHER THAN EXTERNAL WINDOWS), DOORS AND DISPLAY SHOW-CASES FORMING PART OF OR WITHIN THE PREMISES;

(C) APPROVED INSURERS: ENSURE THAT ALL POLICIES OF INSURANCE EFFECTED OR REQUIRED TO BE EFFECTED BY THE LESSEE PURSUANT TO THIS CLAUSE 7, WHETHER IN RESPECT OF THE PROPERTY OR RISK EITHER OF THE LESSOR OR THE LESSEE:

(I) ARE TAKEN OUT WITH AN INDEPENDENT AND REPUTABLE INSURER;  
(II) ARE FOR SUCH AMOUNTS AND COVER SUCH RISKS AS ARE REASONABLY ACCEPTABLE TO OR REQUIRED BY THE LESSOR AND/OR THE LESSOR'S INSURER(S); AND  
(III) ARE TAKEN OUT IN THE NAMES OF THE LESSOR AND THE LESSEE FOR THEIR RESPECTIVE RIGHTS AND INTERESTS;

(D) EVIDENCE OF INSURANCE: IN RESPECT OF ANY POLICY OF INSURANCE TO BE EFFECTED BY THE LESSEE PURSUANT TO THIS CLAUSE 7, WHENEVER REASONABLY REQUIRED BY THE LESSOR PRODUCE TO THE LESSOR THE POLICY OF INSURANCE, THE RECEIPT FOR THE LAST PREMIUM AND A CERTIFICATE OF CURRENCY; AND

(E) LESSEE TO PAY PREMIUMS: PAY ALL PREMIUMS AND OTHER MONEYS PAYABLE IN RESPECT OF ANY SUCH POLICY WHENEVER THEY SHALL BECOME DUE AND PAYABLE.

55.2 EFFECT ON LESSOR'S INSURANCES

(A) NOT TO PREJUDICE INSURANCES: THE LESSEE SHALL NOT WITHOUT THE PRIOR CONSENT IN WRITING OF THE LESSOR BRING, KEEP, DO OR PERMIT TO BE BROUGHT, KEPT OR DONE ANYTHING TO OR UPON THE PREMISES OR THE BUILDING WHICH SHALL OR MAY:

(I) INCREASE THE RATE OF ANY INSURANCE ON THE PREMISES OR THE BUILDING OR ON ANY PROPERTY IN THEM; OR  
(II) VITIATE OR RENDER VOID OR VOIDABLE ANY INSURANCE IN RESPECT OF THE PREMISES OR THE BUILDING OR ANY PROPERTY IN THEM; OR  
(III) CONFLICT WITH ANY LAWS OR ANY REQUIREMENTS OR WITH ANY REQUIREMENTS OF THE LESSOR'S INSURER(S) RELATING TO FIRES OR FIRE SAFETY OR FIRE PREVENTION OR WITH ANY INSURANCE POLICY IN RESPECT OF THE PREMISES OR THE BUILDING OR ANY PROPERTY IN THEM.

(B) EXTRA COSTS OF INSURANCE: THE LESSEE SHALL PAY TO THE LESSOR ON DEMAND ALL EXTRA COSTS OF INSURANCE (INCLUDING ANY RATES) ON THE PREMISES OR THE BUILDING AND ON ANY PROPERTY IN THEM (IF ANY ARE REQUIRED) ON ACCOUNT OF THE EXTRA RISK CAUSED BY THE LESSEE'S USE OR OCCUPATION OF THE PREMISES.

55.3 INFLAMMABLE SUBSTANCES

THE LESSEE SHALL NOT:

(A) OTHER THAN AS IS NECESSARY AND PROPER FOR THE LESSEE'S BUSINESS, AND THEN ONLY IN SUCH QUANTITIES AS ARE REASONABLY APPROPRIATE, STORE CHEMICALS, INFLAMMABLE LIQUIDS, ACETYLENE GAS OR ALCOHOL, VOLATILE OR EXPLOSIVE OILS, COMPOUNDS OR SUBSTANCES UPON THE PREMISES AND/OR THE BUILDING; OR

(B) USE ANY OF SUCH SUBSTANCES OR FLUIDS IN THE PREMISES FOR ANY PURPOSE OTHER THAN THE LESSEE'S BUSINESS.

55.4 COMPLIANCE WITH FIRE REGULATIONS

THE LESSEE SHALL:

(A) COMPLY WITH INSURANCE, SPRINKLER OR FIRE ALARM REGULATIONS IN RESPECT OF ANY PARTITIONS WHICH MAY BE ERECTED BY OR ON BEHALF OF THE LESSEE IN THE PREMISES; AND

(B) PAY TO THE LESSOR UPON DEMAND THE COST OF ANY ALTERATION TO ANY SERVICES, SPRINKLER OR FIRE PREVENTION EQUIPMENT AND INSTALLATIONS (INCLUDING ALARMS) WHICH MAY BECOME NECESSARY BY REASON OF THE NON-COMPLIANCE BY THE LESSEE OR BY THE LESSEE'S EMPLOYEES WITH ANY SUCH REGULATIONS IN RESPECT OF SUCH PARTITIONS.

55.5 EXCLUSION OF LESSOR'S LIABILITY

THE LESSEE:

(A) LESSEE'S RISK: ACKNOWLEDGES THAT ALL PROPERTY WHICH MAY BE IN THE PREMISES DURING THE CONTINUANCE OF THIS LEASE SHALL BE AT THE SOLE RISK OF THE LESSEE, AND THE LESSOR SHALL NOT BE LIABLE FOR ANY CLAIM THAT THE LESSEE OR THE LESSEE'S EMPLOYEES OR ANY PERSON CLAIMING BY, THROUGH OR UNDER THE LESSEE MAY INCUR OR MAKE OR ANY WHICH ARISES FROM:  
(I) ANY FAULT IN THE CONSTRUCTION OR STATE OF REPAIR OF THE BUILDING OR THE PREMISES OR ANY PART OF THEM OR THE LESSOR'S FIXTURES; OR

(II) ANY DEFECT IN ANY SERVICE OR ANY APPURTENANCE; OR  
(III) THE FLOW, OVERFLOW, LEAKAGE, CONDENSATION OR BREAKDOWN OF ANY WATER, AIR-CONDITIONING, GAS, OIL OR OTHER SOURCES OF ENERGY OR FUEL, WHETHER FROM THE ROOF, WALLS, GUTTER, DOWNPIPES OR OTHER PARTS OF THE BUILDING; OR FROM ANY OTHER CAUSE EXCEPT AS A RESULT OF BREACH OF THIS LEASE BY, OR THE NEGLIGENCE OF ANY SERVANT OR AGENT OF, THE LESSOR; AND  
(B) RELEASE: AGREES THAT THE LESSOR SHALL NOT BE RESPONSIBLE FOR AND RELEASES THE LESSOR FROM LIABILITY IN RESPECT OF ANY:  
(I) CLAIM RELATING TO ANY PROPERTY OF THE LESSEE OR ANY OTHER PERSON IN THE BUILDING OR ANY PART OF IT HOWEVER OCCURRING; OR  
(II) DAMAGE OR INJURY TO ANY PERSON OR PROPERTY IN THE BUILDING OR ON ANY LAND NEAR THE BUILDING,  
EXCEPT TO THE EXTENT THE CLAIM, DAMAGE OR INJURY RESULTS FROM BREACH OF THIS LEASE BY, OR THE NEGLIGENCE OF ANY SERVANT OR AGENT OF, THE LESSOR.

55.6 INDEMNITIES  
NOTWITHSTANDING THAT:

(A) ANY CLAIMS SHALL HAVE RESULTED FROM ANYTHING WHICH THE LESSEE MAY BE AUTHORISED OR OBLIGED TO DO UNDER THIS LEASE; AND/OR  
(B) AT ANY TIME ANY WAIVER OR OTHER INDULGENCE HAS BEEN GIVEN TO THE LESSEE IN RESPECT OF ANY OBLIGATION OF THE LESSEE UNDER THIS CLAUSE 7.6, THE LESSEE SHALL INDEMNIFY AND KEEP INDEMNIFIED THE LESSOR FROM AND AGAINST ALL CLAIMS FOR WHICH THE LESSOR SHALL OR MAY BE OR BECOME LIABLE, WHETHER DURING OR AFTER THE TERM, IN RESPECT OF OR ARISING FROM:  
(I) INJURY TO PROPERTY OR PERSON: ANY LOSS, DAMAGE OR INJURY TO PROPERTY OR PERSON CAUSED OR CONTRIBUTED TO BY ANY WILFUL OR NEGLIGENT ACT OR OMISSION, ANY DEFAULT UNDER THIS LEASE, AND/OR THE USE OF THE PREMISES, BY OR ON THE PART OF THE LESSEE OR THE LESSEE'S EMPLOYEES EXCEPT TO THE EXTENT CAUSED BY THE LESSOR, ITS SERVANTS OR AGENTS;  
(II) ABUSE OF SERVICES: THE NEGLIGENT OR CARELESS USE OR NEGLECT OF THE SERVICES AND FACILITIES OF THE PREMISES OR THE BUILDING OR THE APPURTENANCES BY THE LESSEE OR THE LESSEE'S EMPLOYEES OR ANY OTHER PERSON CLAIMING THROUGH OR UNDER THE LESSEE.  
(III) WATER LEAKAGE: OVERFLOW OR LEAKAGE OF WATER (INCLUDING RAIN WATER) OR FROM ANY SERVICES OR FROM ANY OF THE APPURTENANCES OR THE LESSOR'S FIXTURES, CAUSED OR CONTRIBUTED TO BY ANY ACT OR OMISSION ON THE PART OF THE LESSEE OR THE LESSEE'S EMPLOYEES OR OTHER PERSON CLAIMING THROUGH OR UNDER THE LESSEE;  
(IV) NOTIFICATION OF DEFECTS: FAILURE OF THE LESSEE TO GIVE NOTICE TO THE LESSOR OF ANY DEFECT IN ANY OF THE MECHANICAL OR ANY OTHER SERVICES IN, TO OR NEAR THE PREMISES;  
(V) PLATE GLASS: ALL CLAIMS RELATING TO PLATE AND OTHER GLASS CAUSED OR CONTRIBUTED TO BY ANY ACT OR OMISSION ON THE PART OF THE LESSEE OR THE LESSEE'S EMPLOYEES.

55.7 BUILDING INSURANCE

(A) IN THIS CLAUSE "INDUSTRIAL SPECIAL RISKS POLICY" MEANS AN INSURANCE POLICY:

(I) FOR THE FULL INSURABLE AND REPLACEMENT VALUE (AS DETERMINED BY AN INDEPENDENT VALUER AT THE LESSOR'S EXPENSE) OF THE BUILDING AND THE LESSOR'S FIXTURES, INCLUDING COVERAGE FOR COSTS OF DEMOLITION, SITE CLEARANCE, REMOVAL OF DEBRIS, PROFESSIONAL AND OTHER COSTS OF PLANNING AND OTHER APPROVALS AND FOR REINSTATING OR REPLACING THE BUILDING AND THE LESSOR'S FIXTURES, AGAINST LOSS OR DAMAGE BY FIRE, STORM, TEMPEST, EARTHQUAKE, LIGHTNING, EXPLOSION AND OTHER RISKS USUALLY COVERED UNDER A COMPREHENSIVE INSURANCE POLICY FOR FIRE AND RELATED RISKS; AND

(II) (SUBJECT TO THE EXCLUSION OF ANY RENTS ARISING FROM NORMAL VACANCIES DURING LETTING UP PERIODS) FOR LOSS OF ANY RENTS OR OTHER MONEYS (WHETHER SEPARATE OR OTHERWISE INCLUDED IN ANY RENTS OR OTHER MONEYS PAYABLE IN RESPECT OF ANY TENANCY OR OCCUPATION OF THE BUILDING) ARISING FROM DAMAGE OR DESTRUCTION OF THE BUILDING OR ANY PART OF IT OR ARISING FROM DIMINUTION OR LOSS OF ANY MEANS OF ACCESS OR OTHER SIMILAR CAUSES.

(B) FROM THE COMMENCEMENT DATE IN 2002 UNTIL 30 SEPTEMBER 2002 THE LESSEE SHALL MAINTAIN THE COMPREHENSIVE INSURANCE POLICY FOR INDUSTRIAL SPECIAL RISKS WITH XL WINTERTHUR INTERNATIONAL (POLICY NUMBER IS10017/00) ("THE CURRENT POLICY") WHICH POLICY COVERS THE BUILDING AND WHICH THE PARTIES ACKNOWLEDGE IS AN INDUSTRIAL SPECIAL RISKS POLICY FOR THE PURPOSES OF THIS CLAUSE.

(C) EACH PARTY WILL SUBMIT TO THE OTHER BY 31 AUGUST 2002 AND EACH ANNIVERSARY OF THAT DATE FOR THE REMAINDER OF TERM AT LEAST TWO (2) QUOTES FOR AN INDUSTRIAL SPECIAL RISKS POLICY FOR THE NEXT TWELVE (12) MONTHS STARTING FROM 1 OCTOBER AND ENDING ON THE FOLLOWING 30 SEPTEMBER FROM AN INSURER WHICH, AT THE DATE OF THE QUOTE, IS INDEPENDENT, REPUTABLE AND RATED WITH A STANDARD AND POOR'S RATING OF AT LEAST AA. WHERE THE PROPOSED POLICY COVERS PROPERTIES IN ADDITION TO THE BUILDING, A STATEMENT BY A PARTY'S INSURANCE BROKER AS TO THE COST OF THE POLICY IN RESPECT OF THE BUILDING SHALL BE THE QUOTE FOR THAT POLICY FOR THE PURPOSE OF THIS CLAUSE.

(D) THE PARTIES WILL ACCEPT THE LOWEST QUOTE AND WHICHEVER PARTY OBTAINED SUCH QUOTE WILL EFFECT AND MAINTAIN THE INDUSTRIAL SPECIAL RISKS POLICY WITH THE RELEVANT INSURER FOR THE RELEVANT TWELVE (12) MONTH PERIOD STARTING FROM 1 OCTOBER AND ENDING ON THE FOLLOWING 30 SEPTEMBER.

(E) IN RESPECT OF ANY INDUSTRIAL SPECIAL RISKS POLICY TAKEN OUT BY THE LESSEE PURSUANT TO THIS CLAUSE (INCLUDING THE CURRENT POLICY):

(I) SUCH POLICY WILL NOTE THE INTERESTS OF THE LESSOR, THE MACQUARIE GOODMAN CAPITAL TRUST (AS REFERRED TO IN CLAUSE 18.10) AND ANY MORTGAGEE OF THE PREMISES AS NOTIFIED BY THE LESSOR FROM TIME TO TIME;

(II) THE LESSEE, WHENEVER REASONABLY REQUIRED BY THE LESSOR, WILL PRODUCE TO THE LESSOR THE INDUSTRIAL SPECIAL RISKS POLICY, THE RECEIPT OF THE LAST PREMIUM AND A CERTIFICATE OF CURRENCY;



(III) THE LESSEE WILL PAY ALL PREMIUMS AND OTHER MONEYS PAYABLE IN RESPECT OF ANY SUCH POLICY WHENEVER THEY SHALL BECOME DUE AND PAYABLE.

(F) IN THE EVENT OF LOSS OR DAMAGE TO THE BUILDING OR THE LESSOR'S FIXTURES WHICH IS COVERED BY AN INDUSTRIAL SPECIAL RISKS POLICY, THE LESSEE ACKNOWLEDGES THAT THE LESSOR IS ENTITLED TO THE PROCEEDS FROM THE INSURANCE AND, IF ANY SUCH PROCEEDS ARE RECEIVED BY THE LESSEE, THE LESSEE SHALL FORTHWITH REMIT THE AMOUNT RECEIVED TO THE LESSOR.

56. DAMAGE AND RESUMPTION

56.1 DAMAGE TO OR DESTRUCTION OF BUILDING/PREMISES

IF THE BUILDING OR THE PREMISES OR ANY PART OF THEM SHALL AT ANY TIME BE DAMAGED OR DESTROYED OR AFFECTED BY ANY DISABLING CAUSE SO AS TO RENDER THE PREMISES OR ANY PART WHOLLY OR SUBSTANTIALLY UNFIT FOR THE OCCUPATION AND USE OF THE LESSEE OR (HAVING REGARD TO THE NATURE AND LOCATION OF THE PREMISES AND THE NORMAL MEANS OF ACCESS) WHOLLY OR SUBSTANTIALLY INACCESSIBLE THEN:

(A) RENT ABATEMENT: SUBJECT TO SUBCLAUSE (D), THE RENT (AND OPERATING EXPENSES) OR A PROPORTIONATE PART THEREOF ACCORDING TO THE NATURE AND EXTENT OF THE DAMAGE, DESTRUCTION OR AFFECTATION SHALL ABATE, AND ALL REMEDIES FOR RECOVERY OF SAME FALLING DUE AFTER SUCH DAMAGE, DESTRUCTION OR AFFECTATION SHALL BE SUSPENDED UNTIL THE PREMISES HAVE BEEN RESTORED OR MADE FIT FOR THE OCCUPATION AND USE OF OR ACCESSIBLE TO THE LESSEE (AS APPROPRIATE);

(B) UNLESS THE LESSOR:

(I) WITHIN THREE (3) MONTHS AFTER THE OCCURRENCE OF ANY SUCH DESTRUCTION, DAMAGE OR AFFECTATION SHALL HAVE GIVEN A REINSTATEMENT NOTICE; AND

(II) SHALL THEREAFTER WITH ALL REASONABLE EXPEDITION (AND SUBJECT TO ALL NECESSARY APPROVALS FIRST BEING OBTAINED) PROCEED TO REINSTATE THE BUILDING AND MAKE THE PREMISES FIT FOR OCCUPATION AND USE OR ACCESSIBLE TO THE LESSEE (AS APPROPRIATE),

THIS LEASE MAY BE DETERMINED BY NOTICE BY THE LESSOR OR, SUBJECT TO SUBCLAUSE (D), BY THE LESSEE, SERVED ON THE OTHER;

(C) IF THE LESSOR GIVES A REINSTATEMENT NOTICE TO THE LESSEE AND THEREAFTER DOES NOT WITHIN A REASONABLE TIME (HAVING REGARD TO THE NATURE AND EXTENT OF THE DAMAGE, DESTRUCTION OR AFFECTATION AND THE TIME EXPECTED TO OBTAIN ALL NECESSARY APPROVALS AND TO COMMENCE AND TO CARRY OUT THE NECESSARY WORKS) REINSTATE THE PREMISES OR MAKE THEM FIT FOR THE OCCUPATION AND USE OF, OR RENDER THEM ACCESSIBLE TO, THE LESSEE (AS APPROPRIATE), THE LESSEE MAY SERVE ON THE LESSOR NOTICE OF INTENTION TO TERMINATE THIS LEASE (THE "FIRST NOTICE"), AND UNLESS THE LESSOR SHALL UPON RECEIPT OF THE FIRST NOTICE PROCEED WITH REASONABLE EXPEDITION AND DILIGENCE TO REINSTATE THE PREMISES OR MAKE THEM FIT FOR THE OCCUPATION AND USE OF, OR RENDER THEM ACCESSIBLE TO, THE LESSEE (AS APPROPRIATE), THE LESSEE MAY TERMINATE THIS LEASE BY GIVING NOT LESS THAN ONE (1) MONTH'S NOTICE TO THE LESSOR (THE "SECOND NOTICE") AND AT THE EXPIRATION OF THE SECOND NOTICE THIS LEASE SHALL BE AT AN END;

(D) THE PROVISIONS OF PARAGRAPH (A) SHALL NOT APPLY TO THE EXTENT SUCH DAMAGE, DESTRUCTION OR AFFECTATION HAS BEEN CAUSED OR CONTRIBUTED TO OR ARISES FROM, AND THE PROVISIONS OF PARAGRAPHS (B) AND (C) SHALL NOT APPLY WHERE SUCH DAMAGE OR DESTRUCTION HAS BEEN CAUSED OR CONTRIBUTED TO OR ARISES FROM, ANY ACT OR OMISSION OF THE LESSEE OR THE LESSEE'S EMPLOYEES AND ANY POLICY OR POLICIES OF INSURANCE EFFECTED ON THE BUILDING SHALL HAVE BEEN AVOIDED, OR PAYMENT OF THE POLICY MONEYS REFUSED OR REDUCED, IN CONSEQUENCE OF ANY ACT OR DEFAULT OF THE LESSEE OR OF THE LESSEE'S EMPLOYEES.

56.2 LESSOR'S RIGHT TO TERMINATE

IF IN THE LESSOR'S ABSOLUTE UNFETTERED OPINION (WHICH MAY BE FORMED AT ANY TIME INCLUDING BEFORE OR AFTER ANY NOTICE REFERRED TO IN CLAUSE 8.1) THE DAMAGE, DESTRUCTION OR AFFECTATION TO THE BUILDING OR THE PREMISES IS SUCH THAT IT IS IMPRACTICAL OR UNDESIRABLE TO REINSTATE THE PREMISES OR MAKE THEM FIT FOR THE OCCUPATION AND USE OF, OR RENDER THEM ACCESSIBLE TO, THE LESSEE (AS APPROPRIATE), THE LESSOR MAY TERMINATE THIS LEASE BY GIVING NOT LESS THAN ONE (1) MONTH'S NOTICE TO THE LESSEE AND AT THE EXPIRATION OF THAT NOTICE THIS LEASE SHALL BE AT AN END.

56.3 RESUMPTION

IF:

(A) THE WHOLE OF THE PREMISES ARE RESUMED; OR

(B) PART OF THE PREMISES IS RESUMED SO THAT THE RESIDUE OF THEM IS WHOLLY OR SUBSTANTIALLY UNFIT FOR THE OCCUPATION AND USE OF THE LESSEE OR (HAVING REGARD TO THE NATURE AND LOCATION OF THE PREMISES AND THE NORMAL MEANS OF ACCESS) IS WHOLLY OR SUBSTANTIALLY INACCESSIBLE,

EITHER THE LESSOR OR THE LESSEE MAY DETERMINE THIS LEASE BY GIVING NOT LESS THAN ONE MONTH'S NOTICE TO THE OTHER. AT THE END OF THAT NOTICE THIS LEASE WILL BE AT AN END.

56.4 LIABILITY

NO LIABILITY SHALL ATTACH TO THE LESSOR OR TO THE LESSEE BY REASON OF TERMINATION OF THIS LEASE PURSUANT TO CLAUSE 8.1 OR CLAUSE 8.2 OR CLAUSE 8.3. ANY SUCH TERMINATION SHALL BE WITHOUT PREJUDICE TO THE RIGHTS OF EITHER PARTY IN RESPECT OF ANY PRECEDING BREACH OR NON-OBSERVANCE OF ANY COVENANT OR PROVISION OF THIS LEASE.

56.5 DISPUTE

ANY DISPUTE ARISING UNDER CLAUSE 8.1 SHALL BE DETERMINED BY A LOSS ASSESSOR BEING A MEMBER OF THE INSURANCE COUNCIL APPOINTED BY ITS PRESIDENT FOR THE TIME BEING. THE PERSON SO APPOINTED SHALL BE AN ASSESSOR HAVING SUBSTANTIAL EXPERIENCE IN ASSESSING BUILDINGS OF A SIMILAR TYPE WITHIN THE AREA IN WHICH THE BUILDING IS LOCATED OR OTHER COMPARABLE AREA AND SHALL IN MAKING HIS DETERMINATION ACT AS AN EXPERT AND NOT AS AN ARBITRATOR AND HIS DETERMINATION SHALL BE FINAL AND BINDING ON THE PARTIES. THE COST OF ANY SUCH DETERMINATION SHALL BE BORNE BY EITHER OR BOTH OF THE LESSOR OR THE LESSEE (AND IF BY BOTH OF THE PARTIES IN THE PROPORTION BETWEEN THEM) AS THE PERSON MAKING THE

DETERMINATION SHALL DECIDE.

56.6 LESSOR NOT OBLIGED TO REINSTATE  
NOTHING IN THIS LEASE SHALL OBLIGE THE LESSOR TO REINSTATE THE BUILDING OR THE PREMISES OR THE MEANS OF ACCESS TO THEM.

57. LESSOR'S COVENANTS

57.1 QUIET ENJOYMENT

SUBJECT TO THE RIGHTS, POWERS, REMEDIES AND RESERVATIONS OF OR TO THE LESSOR, THE LESSOR COVENANTS THAT, IF THE LESSEE PAYS THE RENT AND OBSERVES AND PERFORMS IN A TIMELY FASHION THE COVENANTS AND CONDITIONS ON ITS PART CONTAINED IN THIS LEASE, THE LESSEE MAY OCCUPY AND ENJOY THE PREMISES DURING THE TERM WITHOUT ANY INTERRUPTION BY THE LESSOR OR BY ANY PERSON RIGHTFULLY CLAIMING THROUGH, UNDER OR IN TRUST FOR THE LESSOR.

57.2 BUILDING CONDITION

SUBJECT TO THE LESSEE'S OBLIGATIONS UNDER THIS LEASE, THE LESSOR SHALL DURING THE CONTINUANCE OF THIS LEASE KEEP THE STRUCTURE OF THE BUILDING IN A SOUND AND TENANTABLE CONDITION AND KEEP THE BUILDING WATERTIGHT AND WEATHERPROOF AND SHALL CARRY OUT ANY REASONABLY NECESSARY REPAIRS TO THE BUILDING AND SHALL MAINTAIN THE ACCESS WAYS, PARKING AREAS, WATER, DRAINAGE, ELECTRICAL AND OTHER FACILITIES AND SERVICES IN OR ON THE BUILDING AND THE LAND OPERATING AS INTENDED AND IN A REASONABLE STATE OF REPAIR HAVING REGARD TO THE CONDITION AND STATE OF REPAIR OF THE BUILDING, THE FACILITIES AND SERVICES AS AT THE COMMENCEMENT DATE.

57.3 FIRE SAFETY AND OTHER REQUIREMENTS

THE LESSOR SHALL AT ITS OWN EXPENSE ENSURE THAT THE BUILDING COMPLIES WITH ALL FIRE AND SAFETY REQUIREMENTS AND SHALL PROMPTLY COMPLY WITH AND OBSERVE ALL NOTICES AND REQUIREMENTS OF ANY AUTHORITY WITH RESPECT TO THE BUILDING WHETHER INVOLVING STRUCTURAL ALTERATIONS OR NOT EXCEPT THOSE WHICH ARE THE RESPONSIBILITY OF THE LESSEE UNDER THIS LEASE.

58. DEFAULT, TERMINATION

58.1 DEFAULT

IF:  
(A) THE RENT OR ANY PART OF IT IS IN ARREARS AND UNPAID FOR FOURTEEN (14) DAYS NEXT AFTER ANY OF THE DUE DATES FOR PAYMENT (WHETHER DEMANDED OR NOT); OR  
(B) ANY MONEYS (OTHER THAN RENT) PAYABLE BY THE LESSEE TO THE LESSOR ON DEMAND ARE NOT PAID WITHIN FOURTEEN (14) DAYS OF THE LESSOR DEMANDING PAYMENT, OR IF ANY OTHER MONEYS PAYABLE BY THE LESSEE TO THE LESSOR ARE NOT PAID BY THE DUE DATE FOR PAYMENT; OR  
(C) THE LESSEE FAILS OR REFUSES TO CARRY OUT ANY REPAIRS PROPERLY REQUIRED BY ANY NOTICE WITHIN THE TIME SPECIFIED IN THE NOTICE; OR  
(D) THE LESSEE FAILS TO PERFORM OR OBSERVE IN A TIMELY FASHION ANY OF THE COVENANTS OR CONDITIONS CONTAINED IN THIS LEASE WHICH OUGHT TO BE PERFORMED OR OBSERVED BY THE LESSEE; OR  
(E) ANY ASSIGNMENT IS MADE OF THE PROPERTY OF THE LESSEE FOR THE BENEFIT OF CREDITORS; OR  
(F) THE LESSEE, BEING A COMPANY, ENTERS INTO LIQUIDATION (WHETHER VOLUNTARY, COMPULSORY OR PROVISIONAL), OR IS WOUND-UP OR DISSOLVED, OR ENTERS INTO A SCHEME OF ARRANGEMENT FOR CREDITORS, OR IS PLACED UNDER OFFICIAL MANAGEMENT, OR A RECEIVER AND/OR MANAGER OF ANY OF ITS ASSETS IS APPOINTED,  
THEN AND IN ANY OF SUCH CASES THE LESSEE SHALL BE DEEMED TO HAVE MADE DEFAULT. THE LESSOR MAY ELECT TO TREAT ANY SUCH DEFAULT AS A REPUDIATION OF THIS LEASE BY THE LESSEE.

58.2 FORFEITURE OF LEASE

IF THE LEASE HAS MADE DEFAULT AS SPECIFIED IN CLAUSE 10.1 THE LESSOR MAY, WITHOUT PREJUDICE TO ANY OTHER CLAIM WHICH THE LESSOR HAS OR MAY HAVE OR COULD OTHERWISE HAVE AGAINST THE LESSEE OR ANY OTHER PERSON IN RESPECT OF SUCH DEFAULT, AT ANY TIME:

(A) SUBJECT TO ANY PRIOR DEMAND OR NOTICE AS IS REQUIRED BY LAW, RE-ENTER INTO AND TAKE POSSESSION OF THE PREMISES OR ANY PART OF THEM (BY FORCE IF NECESSARY) AND EJECT THE LESSEE AND ALL OTHER PERSONS FROM THEM, AND THEREUPON THIS LEASE SHALL BE ABSOLUTELY DETERMINED; OR  
(B) BY NOTICE TO THE LESSEE DETERMINE THIS LEASE, AND FROM THE DATE OF GIVING SUCH NOTICE THIS LEASE SHALL BE ABSOLUTELY DETERMINED.

58.3 LESSOR MAY RECTIFY

THE LESSOR MAY, BUT SHALL NOT BE OBLIGED TO, REMEDY AT ANY TIME WITHOUT NOTICE ANY DEFAULT BY THE LESSEE UNDER THIS LEASE, AND WHENEVER THE LESSOR SO ELECTS ALL REASONABLE COSTS INCURRED BY THE LESSOR (INCLUDING LEGAL COSTS AND EXPENSES) IN REMEDYING A DEFAULT SHALL CONSTITUTE A LIQUIDATED DEBT AND SHALL BE PAID BY THE LESSEE TO THE LESSOR ON DEMAND.

58.4 WAIVER

(A) NO WAIVER: THE LESSOR'S FAILURE TO TAKE ADVANTAGE OF ANY DEFAULT OR BREACH OF COVENANT ON THE PART OF THE LESSEE SHALL NOT BE OR BE CONSTRUED AS A WAIVER OF IT, NOR SHALL ANY CUSTOM OR PRACTICE WHICH MAY GROW UP BETWEEN ANY OF THE PARTIES IN THE COURSE OF ADMINISTERING THIS LEASE BE CONSTRUED TO WAIVE OR TO LESSEN THE RIGHT OF THE LESSOR TO INSIST UPON THE TIMELY PERFORMANCE OR OBSERVANCE BY THE LESSEE OF ANY COVENANT OR CONDITION OF THIS LEASE OR TO EXERCISE ANY RIGHTS GIVEN TO THE LESSOR IN RESPECT OF ANY SUCH DEFAULT.  
(B) WAIVER OF INDIVIDUAL DEFAULT: A WAIVER BY THE LESSOR OF A PARTICULAR BEACH OR DEFAULT SHALL NOT BE DEEMED TO BE A WAIVER OF THE SAME OR ANY OTHER SUBSEQUENT BREACH OR DEFAULT.  
(C) ACCEPTANCE OR DEMAND FOR RENT NOT WAIVER: THE DEMAND BY THE LESSOR FOR, OR SUBSEQUENT ACCEPTANCE BY OR ON BEHALF OF THE LESSOR OF, RENT OR ANY OTHER MONEYS PAYABLE UNDER THIS LEASE SHALL NOT CONSTITUTE A WAIVER OF ANY EARLIER BREACH BY THE LESSEE OF ANY COVENANT OR CONDITION OF THIS LEASE, OTHER THAN THE FAILURE OF THE LESSEE TO MAKE THE PARTICULAR PAYMENT OR PAYMENTS OF RENT OR OTHER MONEYS SO ACCEPTED, REGARDLESS OF THE LESSOR'S KNOWLEDGE OF ANY EARLIER BREACH AT THE TIME OF ACCEPTANCE OF SUCH RENT OR OTHER MONEYS.

58.5 TENDER AFTER DETERMINATION

ANY MONEYS TENDERED BY THE LESSEE AFTER THE DETERMINATION OF THIS LEASE IN THE MANNER DESCRIBED IN CLAUSE 10.2(A) OR IN CLAUSE 10.2(B) AND ACCEPTED BY THE LESSOR MAY BE AND (IN THE ABSENCE OF ANY EXPRESS ELECTION OF THE LESSOR) SHALL BE APPLIED:

(A) FIRSTLY ON ACCOUNT OF ANY RENT AND OTHER MONEYS ACCRUED AND DUE PURSUANT TO THIS LEASE BUT UNPAID AT THE TERMINATION DATE OR DATE OF DETERMINATION OF THIS LEASE (AS APPROPRIATE); AND

(B) SECONDLY ON ACCOUNT OF THE LESSOR'S COSTS OF RE-ENTRY.

58.6 INTEREST ON OVERDUE MONEYS

(A) THE LESSEE SHALL PAY TO THE LESSOR INTEREST AT THE DEFAULT RATE ON ANY RENT OR OTHER MONEYS DUE BY THE LESSEE TO THE LESSOR ON ANY ACCOUNT WHATEVER (INCLUDING ALL MONEYS OR COSTS WHICH ARE EXPRESSED TO BE PAYABLE OR REIMBURSABLE TO THE LESSOR UPON DEMAND) BUT UNPAID FOR FOURTEEN (14) DAYS PURSUANT TO THIS LEASE.

(B) RENT OR MONEYS FALLING DUE FOR PAYMENT BUT UNPAID AS A RESULT OF CONSECUTIVE BREACHES OF THE SAME COVENANT SHALL BEAR INTEREST AT THE RATE APPLICABLE TO THE RENT OR OTHER MONEYS (AS APPROPRIATE) WHICH WERE DUE AND UNPAID ON THE BREACH OF THE COVENANT WHICH FIRST OCCURRED.

(C) SUCH INTEREST SHALL:

(I) ACCRUE FROM DAY TO DAY;

(II) BE COMPUTED FROM THE DUE DATE FOR PAYMENT OF THE RENT OR OTHER MONEYS (AS APPROPRIATE) UNTIL PAYMENT OF SUCH RENT OR OTHER MONEYS IN FULL; AND

(III) BE RECOVERABLE IN THE SAME MANNER AS RENT IN ARREARS.

58.7 DAMAGES FOR BREACH

THE LESSEE AGREES THAT:

(A) IF THE LESSEE'S CONDUCT (WHETHER BY ACT OR OMISSION) CONSTITUTES A REPUDIATION OF THIS LEASE (OR OF THE LESSEE'S OBLIGATIONS UNDER THIS LEASE), OR CONSTITUTES A BREACH OF ANY LEASE COVENANTS, OR THE LESSOR ELECTS TO TREAT ANY DEFAULT AS A REPUDIATION PURSUANT TO CLAUSE 10.1, THE LESSEE SHALL COMPENSATE THE LESSOR FOR ALL COSTS SUFFERED BY REASON OF OR ARISING FROM ANY SUCH REPUDIATION OR BREACH;

(B) THE LESSOR SHALL BE ENTITLED TO RECOVER COSTS AGAINST THE LESSEE IN RESPECT OF REPUDIATION OR BREACH OF COVENANT FOR THE DAMAGE SUFFERED BY THE LESSOR FOR THE TERM;

(C) THE LESSOR'S ENTITLEMENT TO RECOVER DAMAGES FROM THE LESSEE OR ANY OTHER PERSON SHALL NOT BE LIMITED FOR ANY REASON OR AFFECTED BY ANY OF THE FOLLOWING:

(I) IF THE LESSEE ABANDONS OR VACATES THE PREMISES;

(II) IF THE LESSOR ELECTS TO RE-ENTER THE PREMISES OR TERMINATE THIS LEASE;

(III) IF THE LESSOR ACCEPTS THE LESSEE'S REPUDIATION; OR

(IV) IF THE PARTIES' CONDUCT (OR THAT OF ANY OF THEIR SERVANTS OR AGENTS) CONSTITUTES OR MAY CONSTITUTE A SURRENDER BY OPERATION OF LAW.

58.8 LESSOR MAY INSTITUTE PROCEEDINGS AT ANY TIME

THE LESSOR SHALL BE ENTITLED AT ANY TIME IN THE LESSOR'S ABSOLUTE DISCRETION TO INSTITUTE LEGAL PROCEEDINGS CLAIMING DAMAGES AGAINST THE LESSEE IN RESPECT OF THE TERM, INCLUDING THE PERIOD BEFORE AND AFTER THE REPUDIATION, ABANDONMENT, TERMINATION, ACCEPTANCE OF REPUDIATION OR SURRENDER BY OPERATION OF LAW REFERRED TO IN CLAUSE 10.7, WHETHER THE PROCEEDINGS ARE INSTITUTED EITHER BEFORE OR AFTER SUCH CONDUCT.

58.9 LESSOR TO MITIGATE DAMAGES

IF THE LESSEE VACATES THE PREMISES, WHETHER WITH OR WITHOUT THE LESSOR'S CONSENT, THE LESSOR SHALL TAKE RESPONSIBLE STEPS TO MITIGATE ITS LOSS AND TO ENDEAVOUR TO RE-LEASE THE PREMISES AT A REASONABLE RENT AND ON REASONABLE TERMS. THE LESSOR'S CONDUCT TAKEN IN PURSUANCE OF THIS DUTY TO MITIGATE DAMAGES SHALL NOT OF ITSELF CONSTITUTE ACCEPTANCE OF THE LESSEE'S BREACH OR REPUDIATION OR A SURRENDER BY OPERATION OF LAW.

58.10 ESSENTIAL TERMS AND DAMAGES

(A) THE FOLLOWING ARE ESSENTIAL TERMS OF THIS LEASE:

CLAUSE 4.3(A) (COMPLIANCE WITH LAWS AND REQUIREMENTS)

CLAUSE 6.1 (NO DISPOSAL OF LESSEE'S INTEREST)

CLAUSE 6.4 (NO MORTGAGE ETC)

PAYMENT OF THE BASE RENT UNDER CLAUSE B.1 OF, OR OF OTHER MONEYS UNDER, THE RENT SCHEDULE WITHIN 14 DAYS OF THE DUE DATE.

(B) SHOULD THE LESSOR TERMINATE THIS LEASE FOLLOWING ANY BREACH OF AN ESSENTIAL TERM THEN, WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY OF THE LESSOR, THE LESSOR SHALL BE ENTITLED TO RECOVER FROM THE LESSEE THE DIFFERENCE BETWEEN THE NET PRESENT VALUE (AS DETERMINED BY A MEMBER OF THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA APPOINTED AT THE REQUEST OF THE LESSOR BY THE PRESIDENT OF THAT INSTITUTE) OF THE AGGREGATE OF RENT AND OTHER MONEYS PAYABLE BY THE LESSEE UNDER THIS LEASE FOR THE UNEXPIRED RESIDUE OF THE TERM LESS THE NET PRESENT VALUE OF THE AGGREGATE OF RENT AND OTHER MONEY EXPECTED TO BE RECEIVED FROM A NEW TENANT OR TENANTS OF THE PREMISES DURING THE UNEXPIRED RESIDUE OF THE TERM. IN ADDITION THE LESSEE SHALL PAY ALL FEES CHARGED BY THE EXPERTS APPOINTED UNDER THIS CLAUSE.

59. DETERMINATION OF TERM

59.1 LESSEE TO YIELD UP

THE LESSEE SHALL AT THE EXPIRATION OR SOONER DETERMINATION OF THE TERM YIELD UP THE PREMISES IN THE ORDER AND CONDITION DESCRIBED IN CLAUSE 5.1

59.2 REMOVAL OF LESSEE'S FITTINGS

THE LESSEE SHALL, AT OR BEFORE THE TERMINATION DATE OR SOONER DETERMINATION OF THIS LEASE, REMOVE FROM THE PREMISES ALL THE LESSEE'S FITTINGS.

59.3 LESSEE NOT TO CAUSE DAMAGE

THE LESSEE SHALL USE REASONABLE ENDEAVOURS NOT TO CAUSE OR CONTRIBUTE TO ANY DAMAGE TO THE PREMISES OR TO THE BUILDING IN THE REMOVAL OF THE LESSEE'S FITTINGS. SHOULD THE LESSEE FAIL TO DO SO THE LESSEE SHALL MAKE GOOD ANY SUCH

DAMAGE AND IN ANY EVENT SHALL LEAVE THE PREMISES IN A CLEAN STATE AND CONDITION HAVING REGARD TO THEIR CONDITION AT THE COMMENCEMENT DATE. IF THE LESSEE FAILS TO DO SO THE LESSOR MAY MAKE GOOD AND/OR CLEAN THE PREMISES AT THE COST OF AND AS AGENT FOR THE LESSEE AND RECOVER FROM THE LESSEE THE COST TO THE LESSOR OF DOING SO AS A LIQUIDATED DEBT PAYABLE ON DEMAND.

59.4 FAILURE BY LESSEE TO REMOVE LESSEE'S FITTINGS  
IF THE LESSEE FAILS TO REMOVE THE LESSEE'S FITTINGS AS REQUIRED BY CLAUSE 11.2, OR IN THE EVENT OF RE-ENTRY PURSUANT TO CLAUSE 10.2, THE LESSOR MAY AT ITS OPTION:

(A) CAUSE ANY SUCH LESSEE'S FITTINGS TO BE REMOVED AND STORED IN SUCH MANNER AS THE LESSOR IN ITS ABSOLUTE DISCRETION DEEMS FIT AT THE RISK AND AT THE COST OF LESSEE; OR

(B) TREAT THE LESSEE'S FITTINGS AS IF THE LESSEE HAD ABANDONED ITS INTEREST IN THEM AND THEY HAD BECOME THE PROPERTY OF THE LESSOR, AND DEAL WITH THEM IN SUCH MANNER AS THE LESSOR THINKS FIT WITHOUT BEING LIABLE IN ANY WAY TO ACCOUNT TO THE LESSEE FOR THEM.

59.5 LESSEE TO INDEMNIFY AND PAY LESSOR'S COSTS  
THE LESSEE SHALL:

(A) INDEMNIFY AND KEEP INDEMNIFIED THE LESSOR IN RESPECT OF THE REMOVAL AND STORAGE OF THE LESSEE'S FITTINGS AND ALSO IN RESPECT OF ALL CLAIMS WHICH THE LESSOR MAY SUFFER OR INCUR AT THE SUIT OF ANY PERSON (OTHER THAN THE LESSEE) CLAIMING AN INTEREST IN THE LESSEE'S FITTINGS BY REASON OF THE LESSOR ACTING IN ANY MANNER PERMITTED IN CLAUSE 11.4; AND

(B) PAY TO THE LESSOR AS A LIQUIDATED DEBT PAYABLE ON DEMAND ANY COSTS INCURRED BY THE LESSOR IN EXERCISING ITS RIGHTS PURSUANT TO CLAUSE 11.4, INCLUDING ANY EXCESS OF COSTS OVER MONEYS RECEIVED ON DISPOSAL OF THE LESSEE'S FITTINGS PURSUANT TO THE LESSOR'S RIGHTS CONTAINED IN CLAUSE 11.4(B).

59.6 EARLIER BREACHES

THE TERMINATION OR DETERMINATION OF THIS LEASE SHALL NOT PREJUDICE OR AFFECT ANY RIGHTS OR REMEDIES OF THE LESSOR AGAINST THE LESSEE IN RESPECT OF ANY EARLIER BREACH BY THE LESSEE OF ANY COVENANTS AND CONDITIONS ON THE PART OF THE LESSEE.

60. MISCELLANEOUS

60.1 NOTICES

(A) EXECUTION OF LESSOR'S NOTICE: ANY NOTICE SERVED OR GIVEN BY THE LESSOR PURSUANT TO THIS LEASE SHALL BE VALID AND EFFECTUAL IF SIGNED BY ANY OFFICER OR SOLICITORS FOR THE TIME BEING OF THE LESSOR OR ANY OTHER PERSON NOMINATED FROM TIME TO TIME BY THE LESSOR.

(B) NOTICE OF LESSEE'S ADDRESS: THE LESSEE SHALL FORTHWITH PROVIDE THE LESSOR WITH A NOTICE CONTAINING FULL PARTICULARS OF THE ADDRESS AND FACSIMILE INFORMATION OF THE LESSEE AND OF ANY GUARANTORS, AND SHALL UPDATE SUCH NOTICE IN THE EVENT OF ANY CHANGE.

(C) SERVICE OF NOTICE ON LESSEE: ANY NOTICE REQUIRED TO BE SERVED OR WHICH THE LESSOR MAY ELECT TO SERVE ON THE LESSEE SHALL BE SUFFICIENTLY SERVED IF:

(I) SERVED PERSONALLY OR IF LEFT ADDRESSED TO THE LESSEE ON THE PREMISES;  
(II) SENT BY FACSIMILE MACHINE TO THE LESSEE'S FACSIMILE MACHINE; OR  
(III) FORWARDED BY PREPAID REGISTERED POST TO THE LAST KNOWN PLACE OF BUSINESS OR ABODE OF THE LESSEE OR THE LESSEE'S REGISTERED OFFICE IF THE LESSEE IS A CORPORATION.

(D) SERVICE OF NOTICE ON LESSOR: ANY NOTICE REQUIRED TO BE SERVED ON THE LESSOR SHALL BE SUFFICIENTLY SERVED IF:

(I) SERVED PERSONALLY;  
(II) SENT BY FACSIMILE MACHINE TO THE LESSOR'S TELEX OR FACSIMILE MACHINE;  
OR

(III) FORWARDED BY PREPAID REGISTERED POST ADDRESSED TO THE LESSOR.  
ALL SUCH NOTICES MUST BE ADDRESSED TO THE LESSOR AT THE ADDRESS SPECIFIED IN THIS LEASE OR AT SUCH OTHER ADDRESS AS THE LESSOR SHALL FROM TIME TO TIME NOMINATE.

(E) TIME OF: ANY NOTICE SENT BY:

(I) POST SHALL BE DEEMED TO BE SERVED ON THE SECOND BUSINESS DAY AFTER THE DAY IT WAS POSTED;

(II) FACSIMILE SHALL BE DEEMED TO HAVE BEEN SERVED AT THE TIME AND ON THE DAY THAT THE SENDING FACSIMILE MACHINE INDICATES THE WHOLE OF THE NOTICE HAS BEEN TRANSMITTED UNLESS THE INTENDED RECIPIENT FORTHWITH INDICATES A MALFUNCTION IN THE TRANSMISSION.

60.2 COSTS

THE LESSEE SHALL PAY TO THE LESSOR ON DEMAND:

(A) DUTY: ALL DUTY (INCLUDING PENALTIES AND FINES OTHER THAN PENALTIES AND FINES DUE TO THE DEFAULT OF THE LESSOR) IN RESPECT OF THIS LEASE; AND

(B) LESSOR'S OTHER COSTS: ALL THE LESSOR'S REASONABLE LEGAL AND OTHER COSTS OF AND INCIDENTAL TO:

(I) (DELETED);

(II) ANY CONSENT REQUIRED UNDER THIS LEASE;

(III) ANY ASSIGNMENT OR SUBLETTING;

(IV) ANY SURRENDER OR TERMINATION OF THIS LEASE OTHERWISE THAN BY EFFLUXION OF TIME; AND

(V) DEFAULT BY THE LESSEE OR THE LESSEE'S EMPLOYEES IN OBSERVING OR PERFORMING ANY COVENANTS CONTAINED OR IMPLIED IN THIS LEASE.

(VI) THE ACTUAL OR CONTEMPLATED ENFORCEMENT OF, OR ACTUAL OR CONTEMPLATED EXERCISE, PRESERVATION OR CONSIDERATION OF ANY RIGHTS, POWERS OR REMEDIES UNDER THIS LEASE.

60.3 RESERVATIONS

THE LESSOR RESERVES TO ITSELF AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER THE LESSOR, AFTER REASONABLE NOTICE (EXCEPT IN THE CASE OF AN EMERGENCY WHEN NO NOTICE SHALL BE NECESSARY), THE RIGHT TO INSTALL, MAINTAIN, USE, REPAIR, ALTER, SERVICE AND REPLACE ANY SERVICES OR ANY PART OF THEM INCLUDING ANY PIPE, DUCT,

WIRE AND PLANT FOR THE LAND AND/OR FOR THE BUILDING.

60.4 EASEMENTS

THE LESSOR MAY, FOR THE PURPOSE OF THE PROVISION OF PUBLIC OR PRIVATE ACCESS TO THE PREMISES OR THE BUILDING, OR FOR THE PURPOSE OF RECTIFYING ANY ENCROACHMENT, OR FOR THE SUPPORT OF STRUCTURES HEREAFTER ERECTED ON OR FROM ADJOINING LAND, OR FOR ANY SERVICES, DEDICATE LAND OR TRANSFER, GRANT OR CREATE ANY EASEMENT OR OTHER RIGHT IN FAVOUR OF, OR ENTER INTO ANY ARRANGEMENT OR AGREEMENT WITH, ANY OWNERS, LESSEES OR OCCUPIERS OR OTHERS HAVING AN INTEREST IN ANY LAND (INCLUDING THE LAND) NEAR THE PREMISES OR WITH ANY AUTHORITY (PURSUANT TO ANY VALID AND ENFORCEABLE REQUIREMENT OF ANY SUCH AUTHORITY) AS THE LESSOR MAY DECIDE, ACTING REASONABLY, PROVIDED SUCH EASEMENT OR RIGHT DOES NOT MATERIALLY INTERFERE WITH THE LESSEE'S USE AND OCCUPATION OF THE PREMISES UNDER THIS LEASE. THIS LEASE SHALL BE DEEMED TO BE SUBJECT TO ANY SUCH EASEMENT OR OTHER RIGHT AS ENVISAGED BY THIS CLAUSE AND THE LESSEE SHALL PROMPTLY UPON REQUEST BY THE LESSOR CONFIRM TO THE LAND TITLES OFFICE OR OTHER RELEVANT AUTHORITY ITS CONSENT TO THAT EASEMENT OR OTHER RIGHT.

61. GUARANTEES AND INDEMNITIES

61.1 BANK GUARANTEE

(A) THE LESSEE MUST:

(I) ON OR BEFORE EXECUTING THIS LEASE GIVE TO THE LESSOR A BANK GUARANTEE FOR THE AMOUNT SPECIFIED IN ITEM 16;

(II) AT ALL TIMES ENSURE THAT ANY BANK GUARANTEE IS KEPT CURRENT AND ENFORCEABLE; AND

(III) WHERE THE LESSOR MAKES DEMAND ON ANY BANK GUARANTEE, PROVIDE A REPLACEMENT BANK GUARANTEE EQUAL TO THE AMOUNT FROM TIME TO TIME PROPERLY CLAIMED BY THE LESSOR.

(B) IF THE LESSEE BREACHES OR FAILS TO COMPLY WITH ANY OF THE LESSEE'S OBLIGATIONS UNDER THIS LEASE, THE LESSOR MAY WITHOUT LIMITING ANY OTHER AVAILABLE REMEDY DEMAND PAYMENT UNDER THE BANK GUARANTEE TO RECOVER THE WHOLE OR ANY PART OF ANY LOSS SUFFERED AS A RESULT OF THE LESSEE'S DEFAULT.

61.2 PERSONAL GUARANTEE

THE GUARANTOR GUARANTEES TO THE LESSOR:

(A) RENT: THE DUE PAYMENT BY THE LESSEE OF THE RENT AND OTHER MONEYS COVENANTED OR AGREED TO BE PAID; AND

(B) OTHER COVENANTS: THE TIMELY PERFORMANCE AND OBSERVANCE OF ALL THE COVENANTS AND CONDITIONS CONTAINED OR IMPLIED IN THIS LEASE AND TO BE PERFORMED AND OBSERVED BY THE LESSEE.

61.3 INDEMNITY

THE GUARANTOR INDEMNIFIES THE LESSOR AND AGREES AT ALL TIMES TO KEEP THE LESSOR INDEMNIFIED FROM AND AGAINST ALL CLAIMS WHICH THE LESSOR MAY SUFFER OR INCUR CONSEQUENT UPON OR ARISING DIRECTLY OR INDIRECTLY OUT OF ANY BREACH OR NON-OBSERVANCE BY THE LESSEE OF ANY OF THE COVENANTS OR CONDITIONS CONTAINED OR IMPLIED IN THIS LEASE OR ANY EXTENSION OR RENEWAL OF IT AND TO BE PERFORMED OR OBSERVED BY THE LESSEE.

61.4 LIABILITY OF GUARANTOR

(A) LIABILITY OF GUARANTOR: THE RIGHTS, REMEDIES AND RECOURSE OF THE LESSOR PURSUANT TO CLAUSES 13.2 AND 13.3 SHALL NOT IN ANY WAY BE PREJUDICED OR AFFECTED AND SHALL REMAIN FULLY ENFORCEABLE, AND THE LIABILITY OF THE GUARANTOR UNDER CLAUSES 13.2 AND 13.3 SHALL NOT BE PREJUDICED OR AFFECTED, NOTWITHSTANDING ANY ONE OR MORE OR ALL OF THE FOLLOWING CIRCUMSTANCES:

(I) THE GRANTING OF ANY TIME, CREDIT, FORBEARANCE, INDULGENCE OR CONCESSION AT ANY TIME BY THE LESSOR TO THE LESSEE OR TO ANY GUARANTOR;

(II) ANY ABSOLUTE OR PARTIAL RELEASE OF THE LESSEE OR ANY GUARANTOR OR ANY COMPROMISE WITH THE LESSEE OR ANY GUARANTOR;

(III) ANY VARIATION OF THE PROVISIONS OF THIS LEASE OR ANY EXTENSION OR RENEWAL OF IT AND ANY EXTENSION OR RENEWAL OR HOLDING OVER OF THE TERM OR OTHER CONTINUED OCCUPATION OF THE PREMISES BY THE LESSEE;

(IV) ANY COMPOSITION, COMPROMISE, RELEASE, DISCHARGE, ARRANGEMENT, ABANDONMENT, WAIVER, VARIATION, RELINQUISHMENT OR RENEWAL OF ANY SECURITY OR RIGHT BY THE LESSOR;

(V) ANY ASSIGNMENT OF THIS LEASE OR SUBLEASE OF THE PREMISES OR ANY PART OF THEM;

(VI) ANY TERMINATION OR DETERMINATION OF THIS LEASE (WHETHER BY EFFLUXION OF TIME, RE-ENTRY, FORFEITURE, SURRENDER OR OTHERWISE);

(VII) THE FACT THAT THE RENT OR ANY OTHER MONEYS OR ANY PART OF THEM MAY NOT BE RECOVERABLE OR MAY CEASE TO BE RECOVERABLE OR MAY NEVER HAVE BEEN RECOVERABLE, OR THAT ANY TRANSACTION AFFECTING IN ANY WAY THE RENT OR THE OBLIGATIONS CONTAINED OR SECURED BY THIS LEASE IS VOID, VOIDABLE OR UNENFORCEABLE IN WHOLE OR IN PART WHETHER INITIALLY OR OTHERWISE;

(VIII) ANY FAILURE OR AGREEMENT NOT TO SUE, EXCHANGE OR MODIFICATION MADE OR ANY OTHER DEALING, ACT OR OMISSION (WHETHER CONSTITUTING A WAIVER, ELECTION, ESTOPPEL OR OTHERWISE) BY THE LESSOR WITH RESPECT TO ANY JUDGMENT, ORDER FOR PAYMENT OF MONEYS, SPECIALTY INSTRUMENT, NEGOTIABLE OR OTHERWISE, OR OTHER SECURITY WHATEVER RECOVERED, HELD OR ENFORCEABLE BY THE LESSOR OR WITH RESPECT TO ANY OBLIGATION OR LIABILITY WHATEVER IN RESPECT OF ALL OR ANY OF THE RENT AND OTHER MONEYS PAYABLE UNDER THIS LEASE OR THE OBLIGATIONS CONTAINED IN THIS LEASE.

(IX) THE DEATH, DISABILITY, BANKRUPTCY, INFANCY, DEED OR ARRANGEMENT, ASSIGNMENT OR COMPOSITION FOR THE BENEFIT OF CREDITORS, WINDING-UP, SCHEME OF ARRANGEMENT, REDUCTION OF CAPITAL, CAPITAL RECONSTRUCTION OR THE APPOINTMENT OF RECEIVER AND/OR MANAGER (WHETHER BY THE COURT OR UNDER THE POWERS CONTAINED IN ANY INSTRUMENT) OR OFFICIAL MANAGEMENT OF THE LESSEE OR ANY GUARANTOR OR NOTICE OF ANY OF THESE CIRCUMSTANCES;

(X) THE FACT THAT ONE OR MORE OF THE PERSONS NAMED IN THIS LEASE AS A GUARANTOR MAY NEVER EXECUTE THIS LEASE AS GUARANTOR OR THAT THE EXECUTION OF

THIS LEASE BY ANY ONE OR MORE OF THE GUARANTOR (OTHER THAN THE PERSON SOUGHT TO BE MADE LIABLE UNDER CLAUSE 13.2 OR CLAUSE 13.3) IS OR MAY BECOME UNENFORCEABLE, VOID OR VOIDABLE; OR

(XI) ANY EXERCISE OR PURPORTED EXERCISE BY THE LESSOR OF ITS RIGHT OF RE-ENTRY.

(B) IRREVOCABLE: THIS GUARANTEE AND INDEMNITY SHALL BE IRREVOCABLE AND CONTINUING AND SHALL EXTEND TO COVER ALL OBLIGATIONS OF THE LESSEE TO THE LESSOR HOWEVER ARISING, AND THEY SHALL CONTINUE AND REMAIN IN FULL FORCE AND EFFECT UNTIL THE DUE PERFORMANCE AND OBSERVANCE BY THE LESSEE OF ALL THE COVENANTS AND CONDITIONS TO BE PERFORMED AND OBSERVED BY THE LESSEE IN ACCORDANCE WITH THE TERMS OF THIS LEASE.

(C) GUARANTEE NOT PREJUDICED: NEITHER THE GUARANTOR'S LIABILITY NOR THE LESSOR'S RIGHTS UNDER THIS GUARANTEE AND INDEMNITY OR OTHERWISE SHALL BE PREJUDICED OR DISCHARGED BY ANY ACT OR OMISSION OR ANY EVENT OR SECURITIES OF ANY DESCRIPTION WHICH MIGHT OTHERWISE HAVE THE EFFECT (WHETHER AT LAW IN EQUITY OR UNDER ANY LAW) OF PREJUDICING OR DISCHARGING THE LIABILITY OF THE GUARANTOR, EITHER AS GUARANTOR OR PRINCIPAL DEBTOR OR AS AN INDEMNIFIER.

(D) GUARANTOR LIABLE NOTWITHSTANDING ANY LAW: THE GUARANTOR FURTHER AGREES THAT ANY PAYMENT MADE TO THE LESSOR AND LATER AVOIDED BY PROVISIONS OF ANY LAW SHALL BE DEEMED NOT TO HAVE DISCHARGED THE GUARANTOR'S LIABILITY, AND IN ANY SUCH EVENT THE LESSOR, THE LESSEE AND THE GUARANTOR SHALL BE RESTORED TO THE RIGHTS WHICH EACH RESPECTIVELY WOULD HAVE HAD IF THE PAYMENT HAD NOT BEEN MADE.

(E) INDEMNITY ON DISCLAIMER: THE GUARANTOR AGREES TO INDEMNIFY AND KEEP INDEMNIFIED THE LESSOR AGAINST ALL CLAIMS, DIRECT OR INDIRECT, SUSTAINED OR INCURRED BY THE LESSOR CONSEQUENT UPON ANY DISCLAIMER OF THIS LEASE BY A LIQUIDATOR OF THE LESSEE FOR THE RESIDUE OF THE TERM WHICH WOULD HAVE REMAINED IF THERE HAD BEEN NO DISCLAIMER.

(F) GUARANTOR NOT PROVE IN LIQUIDATION: THE GUARANTOR SHALL NOT PROVE OR CLAIM IN ANY SUCH LIQUIDATION, COMPOSITION, ARRANGEMENT OR ASSIGNMENT OR IN RESPECT OF SUCH APPOINTMENT UNTIL THE LESSOR HAS RECEIVED ONE HUNDRED CENTS IN THE DOLLAR IN RESPECT OF THE MONEYS DUE, OWING OR PAYABLE BY THE LESSEE TO THE LESSOR, AND THE GUARANTOR SHALL HOLD IN TRUST FOR THE LESSOR SUCH PROOF AND CLAIM AND ANY DIVIDEND RECEIVED ON IT.

#### 61.5 GUARANTEE TO ENURE

IF THIS LEASE IS TRANSFERRED OR ASSIGNED TO ANY PERSON OR PERSONS THE BENEFIT OF THIS GUARANTEE AND INDEMNITY SHALL EXTEND TO THE TRANSFEREE OR ASSIGNEE AND THE BENEFIT OF THIS GUARANTEE AND INDEMNITY SHALL CONTINUE TO ENURE CONCURRENTLY FOR THE BENEFIT OF THE LESSOR NOTWITHSTANDING ANY SUCH TRANSFER OR ASSIGNMENT.

#### 62. REPAIRS MAINTENANCE AND COMPLIANCE WITH LAWS

62.1 IN ADDITION TO THE OTHER OBLIGATIONS OF THE LESSEE CONTAINED IN THIS LEASE, SUBJECT TO CLAUSE 14.2 THE LESSEE MUST:

(A) ENSURE THAT ALL AIR-CONDITIONING PLANT, FIRE PREVENTION EQUIPMENT AND ALL OTHER PLANT MACHINERY INSTALLATIONS AND EQUIPMENT IN OR SERVICING THE BUILDING (COLLECTIVELY CALLED "PLANT") ARE ONLY USED FOR THEIR PROPER PURPOSE AND MUST [SUBJECT TO CLAUSES 5.1(A) AND (B)] MAINTAIN AND KEEP SUCH PLANT IN GOOD REPAIR AND CONDITION HAVING REGARD TO ITS CONDITION AT THE COMMENCEMENT OF THIS LEASE (OR AT THE COMMENCEMENT OF ANY PRIOR LEASE IF THIS LEASE IS GRANTED PURSUANT TO AN OPTION) OR AT THE TIME OF ANY REPLACEMENT, EXCEPT FOR FAIR WEAR AND TEAR BUT THE LESSEE SHALL NOT BE LIABLE FOR ANY EXPENSES OF A CAPITAL NATURE UNLESS THEY RESULT FROM THE LESSEE'S FAILURE TO SO MAINTAIN THE PLANT; AND

(B) ENTER INTO AND KEEP CURRENT DURING THIS LEASE A MAINTENANCE CONTRACT WITH SUCH RESPONSIBLE SPECIALIST CONTRACTORS AS ARE REASONABLY APPROVED BY THE LESSOR FOR THE REGULAR INSPECTION, SERVICE, MAINTENANCE AND REPAIR (INCLUDING THE TESTING AND INSPECTION OF SUCH EQUIPMENT PURSUANT TO THE REQUIREMENTS OF ALL AUTHORITIES) OF ALL SUCH PLANT AND SHALL PAY ALL FEES AND OTHER CHARGES PAYABLE TO SUCH CONTRACTORS. IN PARTICULAR, THE SERVICE MAINTENANCE CONTRACT FOR THE AIR-CONDITIONING PLANT SHALL INCLUDE PROVISIONS FOR INSPECTION OF SUCH PLANT NOT LESS FREQUENTLY THAN ONCE EVERY THREE MONTHS.

62.2 THE LESSEE SHALL ASSIGN AND THE LESSOR SHALL TAKE AN ASSIGNMENT OF THE ELEVATOR SERVICE AGREEMENT BETWEEN THE LESSEE AND KONE ELEVATORS PTY LIMITED ("KONE") WHICH COMMENCED ON 1 MARCH 2000 WITH RESPECT TO THE PREMISES. THE LESSOR AND THE LESSEE ACKNOWLEDGE THAT, WHILE THE AGREEMENT SUBSISTS DURING THE TERM, THE MAINTAINING OF THE ELEVATORS IN THE PREMISES AND THE KEEPING OF THE ELEVATORS IN GOOD REPAIR AND CONDITION WILL BE THE RESPONSIBILITY OF KONE AND THE LESSEE WILL REIMBURSE THE LESSOR FOR AMOUNTS PROPERLY PAYABLE TO KONE UNDER THE AGREEMENT.

62.3 THE LESSEE MUST COMPLY WITH THE LESSOR'S REASONABLE DIRECTIONS ABOUT REFUSE REMOVAL AND RECYCLING.

62.4 THE LESSOR WILL NOTIFY THE LESSEE (IF POSSIBLE) OF ANY INTERRUPTION TO ANY SERVICE PROVIDED UNDER THIS LEASE AND REINSTATE THE SERVICE AS SOON AS PRACTICABLE AFTER SUCH INTERRUPTION.

#### 63. ENVIRONMENTAL PROTECTION

63.1 THE LESSEE AGREES TO COMPLY WITH ALL ENVIRONMENTAL PROTECTION LEGISLATION DURING THE TERM TO THE EXTENT THAT THE LESSEE CAUSES ANY REQUIREMENT OF SUCH LEGISLATION TO BE APPLIED TO THE PREMISES AND WILL NOT BRING ONTO OR ALLOW TO REMAIN ON THE PREMISES ANY SUBSTANCE OR MATERIAL, THE PRESENCE OF WHICH IS, OR WITH THE PASSAGE OF TIME MAY, CONSTITUTE OR CREATE AN ENVIRONMENTAL CONTAMINATION RISK OR HAZARD EXCEPT SUCH AS MAY BE REQUIRED FOR THE LESSEE'S BUSINESS AND THE LESSEE SHALL COMPLY WITH ANY LAW IN RESPECT OF SUCH SUBSTANCES OR MATERIALS WHICH ARE SO REQUIRED.

63.2 THE LESSEE INDEMNIFIES THE LESSOR FROM AND AGAINST ALL COSTS, DAMAGES, PENALTIES, FINES, LOSSES OR CLAIMS WHICH THE LESSOR MAY SUSTAIN AS A RESULT OF ANY BREACH OF CLAUSE 15.1 BY THE LESSEE INCLUDING THE COST INCURRED BY THE LESSOR IN CLEANING UP THE REINSTATING THE PREMISES, DISPOSING OF ANY SUCH MATERIAL AND COMPLYING WITH ALL LEGAL REQUIREMENTS IN THE REMOVAL, STORAGE,

TRANSPORTATION AND DISPOSAL OF THE MATERIAL.

64. RULES AND REGULATIONS

64.1 THE LESSEE MUST OBSERVE AND COMPLY WITH RULES AND REGULATIONS IN RESPECT OF THE MANAGEMENT, SAFETY AND CONTROL OF THE BUILDING OR IN THE CONDUCT OF OCCUPANTS OF THE BUILDING NOTIFIED TO THE LESSEE FROM TIME TO TIME AS VARIED, ADDED TO, DELETED OR AMENDED.

64.2 THE LESSOR SHALL HAVE THE RIGHT AT ANY TIME AND FROM TIME TO TIME TO DELETE VARY AMEND OR ADD TO THE SAID RULES AND REGULATIONS. THE LESSEE MUST OBSERVE AND COMPLY WITH SUCH DELETIONS VARIATIONS AMENDMENTS OR ADDITIONS FOLLOWING NOTICE IN WRITING FROM THE LESSOR.

64.3 DESPITE THE FOREGOING, NO RULE OR REGULATION OR DELETION VARIATION AMENDMENT OR ADDITION TO ANY RULE OR REGULATION SHALL DEROGATE FROM OR BE INCONSISTENT WITH THE RIGHTS OF THE LESSEE UNDER THIS LEASE.

64.4 SUBJECT TO THE PRECEDING SUBCLAUSE, THE LESSEE ACKNOWLEDGES AND AGREES THAT THE FAILURE OF THE LESSEE TO KEEP ANY SUCH RULES AND REGULATIONS AS MAY BE IN FORCE SHALL CONSTITUTE A BREACH OF THE TERMS OF THIS LEASE.

65. DISPUTE RESOLUTION

(A) A PARTY MUST NOT COMMENCE LEGAL PROCEEDINGS (OTHER THAN FOR INJUNCTIVE RELIEF) UNLESS IT HAS COMPLIED WITH THIS CLAUSE.

(B) IF THERE IS A DISPUTE BETWEEN THE PARTIES, EITHER PARTY MAY GIVE A NOTICE TO THE OTHER:

(I) SUCCINCTLY SETTLING OUT THE DETAILS OF THE DISPUTE;

(II) STATING THAT IT IS A DISPUTE NOTICE GIVEN UNDER THIS CLAUSE.

(C) WITHIN 10 BUSINESS DAYS AFTER THE DELIVERY OF THE DISPUTE NOTICE, THE RECIPIENT MUST DELIVER TO THE OTHER PARTY A NOTICE IN RESPONSE:

(I) STATING THAT IT IS A NOTICE GIVEN UNDER THIS CLAUSE; AND

(II) SUCCINCTLY SETTLING OUT ANY INFORMATION IT BELIEVES IS DIRECTLY RELEVANT TO THE DISPUTE.

(D) THE PARTIES MUST MEET WITHIN 15 BUSINESS DAYS AFTER THE DATE OF DELIVERY OF THE DISPUTE NOTICE TO ATTEMPT TO RESOLVE THE DISPUTE AND MUST USE ITS BEST ENDEAVOURS AND ACT IN GOOD FAITH.

(E) (I) IF THE PARTIES CANNOT SOLVE THE DISPUTE WITHIN 20 BUSINESS DAYS OF THE DATE ON WHICH THE DISPUTE NOTICE IS DELIVERED, EACH PARTY MUST REFER THE DISPUTE TO ITS RESPECTIVE CHIEF EXECUTIVE OFFICER;

(II) EACH PARTY MUST PROVIDE ITS CHIEF EXECUTIVE OFFICER WITH A COPY OF:

(A) THE DISPUTE NOTICE;

(B) THE NOTICE IN RESPONSE; AND

(C) A SUCCINCT ACCOUNT OF ANY SUBSEQUENT MEETINGS OR CORRESPONDENCE BETWEEN THE PARTIES.

(F) IF THE CHIEF EXECUTIVE OFFICERS CANNOT SOLVE THE DISPUTE WITHIN 30 BUSINESS DAYS OF THE DATE ON WHICH THE DISPUTE NOTICE IS DELIVERED, THEN NEITHER PARTY IS RESTRICTED IN PURSUING ITS RIGHTS UNDER THIS LEASE.

(G) EACH PARTY MUST CONTINUE TO PERFORM ITS RESPECTIVE OBLIGATIONS UNDER THIS LEASE PENDING RESOLUTION OF THE DISPUTE.

66. LIMITATION OF LIABILITY

66.1 THE LESSOR (REFERRED TO IN THIS CLAUSE AS "THE CUSTODIAN") ENTERS INTO THIS LEASE AS CUSTODIAN AND AGENT OF MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED A.C.N. 067 796 641, THE RESPONSIBLE ENTITY OF THE TRUST AND IN NO OTHER CAPACITY.

66.2 THE PARTIES OTHER THAN THE CUSTODIAN ACKNOWLEDGE THAT THE OBLIGATIONS ARE INCURRED BY THE CUSTODIAN SOLELY IN ITS CAPACITY AS CUSTODIAN OF THE ASSETS OF THE TRUST AND AS AGENT OF THE RESPONSIBLE ENTITY AND THAT THE CUSTODIAN WILL CEASE TO HAVE ANY OBLIGATION UNDER THIS LEASE IF THE CUSTODIAN CEASES FOR ANY REASON TO BE CUSTODIAN OF THE ASSETS OF THE TRUST.

66.3 THE CUSTODIAN WILL NOT BE LIABLE TO PAY OR SATISFY ANY OBLIGATIONS EXCEPT TO THE EXTENT TO WHICH IT IS INDEMNIFIED BY THE RESPONSIBLE ENTITY OR EXCEPT OUT OF THE ASSETS AGAINST WHICH IT IS ENTITLED TO BE INDEMNIFIED IN RESPECT OF ANY LIABILITY INCURRED BY IT. THE OBLIGATION OF THE RESPONSIBLE ENTITY TO INDEMNIFY THE CUSTODIAN AND THE RIGHT OF THE CUSTODIAN TO BE INDEMNIFIED OUT OF THE ASSETS ARE LIMITED.

66.4 THE PARTIES OTHER THAN THE CUSTODIAN MAY ENFORCE THEIR RIGHTS AGAINST THE CUSTODIAN ARISING FROM NON-PERFORMANCE OF THE OBLIGATIONS ONLY TO THE EXTENT OF THE CUSTODIAN INDEMNITY AS PROVIDED ABOVE IN SUBCLAUSE 3.

66.5 IF ANY PARTY OTHER THAN THE CUSTODIAN DOES NOT RECOVER ALL MONEY OWING TO IT ARISING FROM NON-PERFORMANCE OF THE OBLIGATIONS IT MAY NOT SEEK TO RECOVER THE SHORTFALL BY:

(A) BRINGING PROCEEDINGS AGAINST THE CUSTODIAN IN ITS PERSONAL CAPACITY; OR

(B) APPLYING TO HAVE THE CUSTODIAN WOUND UP OR PROVING IN THE WINDING UP OF THE CUSTODIAN.

66.6 EXCEPT IN THE CASE OF AND TO THE EXTENT OF FRAUD, NEGLIGENCE OR BREACH OF DUTY ON THE PART OF THE CUSTODIAN UNDER ITS CUSTODY AGREEMENT WITH THE RESPONSIBLE ENTITY, THE PARTIES OTHER THAN THE CUSTODIAN WAIVE THEIR RIGHTS AND RELEASE THE CUSTODIAN FROM ANY PERSONAL LIABILITY WHATSOEVER, IN RESPECT OF ANY LOSS OR DAMAGE:

(A) WHICH THEY MAY SUFFER AS A RESULT OF ANY:

(I) BREACH BY THE CUSTODIAN OF ANY OF ITS OBLIGATIONS; OR

(II) NON-PERFORMANCE BY THE CUSTODIAN OF THE OBLIGATIONS; AND

(B) WHICH CANNOT BE PAID OR SATISFIED FROM THE INDEMNITY SET OUT ABOVE IN SUBCLAUSE 3 IN RESPECT OF ANY LIABILITY INCURRED BY IT.

66.7 THE PARTIES OTHER THAN THE CUSTODIAN ACKNOWLEDGE THAT THE WHOLE OF THIS LEASE IS SUBJECT TO THIS CLAUSE AND SUBJECT TO SUBCLAUSE 6 THE CUSTODIAN SHALL IN NO CIRCUMSTANCES BE REQUIRED TO SATISFY ANY LIABILITY ARISING UNDER, OR FOR NON PERFORMANCE OR BREACH OF ANY OBLIGATIONS UNDER OR IN RESPECT OF, THIS LEASE OR UNDER OR IN RESPECT OF ANY OTHER DOCUMENT TO WHICH IT IS EXPRESSED TO BE A PARTY OUT OF ANY FUNDS, PROPERTY OR ASSETS OTHER THAN TO THE EXTENT THAT THIS

LEASE REQUIRES SATISFACTION OUT OF THE ASSETS OF THE TRUST UNDER THE CUSTODIAN'S CONTROL AND IN ITS POSSESSION AS AND WHEN THEY ARE AVAILABLE TO THE CUSTODIAN TO BE APPLIED IN EXONERATION FOR SUCH LIABILITY.

66.8 THE PARTIES ACKNOWLEDGE THAT THE RESPONSIBLE ENTITY OF THE TRUST IS RESPONSIBLE UNDER THE CONSTITUTION FOR PERFORMING A VARIETY OF OBLIGATIONS RELATING TO THE TRUST, INCLUDING UNDER THIS LEASE. THE PARTIES AGREE THAT NO ACT OR OMISSION OF THE CUSTODIAN (INCLUDING ANY RELATED FAILURE TO SATISFY ANY OBLIGATIONS) WILL CONSTITUTE FRAUD, NEGLIGENCE OR BREACH OF DUTY OF THE CUSTODIAN FOR THE PURPOSES OF SUBCLAUSE 6 TO THE EXTENT TO WHICH THE ACT OR OMISSION WAS CAUSED TO OR CONTRIBUTED TO BY ANY FAILURE OF THE RESPONSIBLE ENTITY OR ANY OTHER PERSON TO FULFIL ITS OBLIGATIONS RELATING TO THE TRUST OR BY ANY OTHER ACT OR OMISSION OF THE RESPONSIBLE ENTITY OR ANY OTHER PERSON.

66.9 NO ATTORNEY, AGENT OR OTHER PERSON APPOINTED IN ACCORDANCE WITH THIS LEASE HAS AUTHORITY TO ACT ON BEHALF OF THE CUSTODIAN IN A WAY WHICH EXPOSES THE CUSTODIAN TO ANY PERSONAL LIABILITY AND NO ACT OR OMISSION OF SUCH A PERSON WILL BE CONSIDERED FRAUD, NEGLIGENCE OR BREACH OF DUTY OF THE CUSTODIAN FOR THE PURPOSES OF SUBCLAUSE 6.

66.10 IN THIS CLAUSE THE "OBLIGATIONS" MEANS ALL OBLIGATIONS AND LIABILITIES OF WHATEVER KIND UNDERTAKEN OR INCURRED BY, OR DEVOLVING UPON, THE CUSTODIAN UNDER OR IN RESPECT OF THIS LEASE. "ASSETS" INCLUDES ALL ASSETS, PROPERTY AND RIGHTS REAL AND PERSONAL OF ANY VALUE WHATSOEVER OF THE TRUST, AND "RESPONSIBLE ENTITY" MEANS MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED OR ANY REPLACEMENT RESPONSIBLE ENTITY OF THE TRUST FROM TIME TO TIME. "TRUST" MEANS THE MACQUARIE GOODMAN CAPITAL TRUST, "CUSTODY AGREEMENT" MEANS THE AGREEMENT MADE BETWEEN MACQUARIE GOODMAN FUNDS MANAGEMENT LIMITED (PREVIOUSLY KNOWN AS GOODMAN HARDIE MANAGEMENT AUSTRALIA LIMITED) AND TRUST COMPANY OF AUSTRALIA LIMITED DATED 17 JANUARY 2000 OR SUCH REPLACEMENT AGREEMENT. "CONSTITUTION" MEANS THE TRUST DEED ESTABLISHING THE TRUST DATED 13 DECEMBER 1989 AS AMENDED FROM TIME TO TIME.

67. RESPONSIBLE ENTITY'S LIMITATION OF LIABILITY

67.1 THE RESPONSIBLE ENTITY (AS TESTIFIED BY ITS EXECUTION OF THIS LEASE) INCURS OBLIGATIONS UNDER THIS LEASE AS RESPONSIBLE ENTITY OF THE TRUST AND IN NO OTHER CAPACITY. AN OBLIGATION CAN BE ENFORCED AGAINST THE RESPONSIBLE ENTITY ONLY TO THE EXTENT TO WHICH IT IS SATISFIED OUT OF PROPERTY OF THE TRUST OUT OF WHICH THE RESPONSIBLE ENTITY IS ACTUALLY INDEMNIFIED FOR THE OBLIGATION. THIS LIMITATION OF THE RESPONSIBLE ENTITY'S LIABILITY APPLIES DESPITE ANY OTHER PROVISION OF THIS LEASE AND EXTENDS TO ALL OBLIGATIONS.

67.2 THE PARTIES OTHER THAN THE RESPONSIBLE ENTITY MAY NOT SUE THE RESPONSIBLE ENTITY IN ANY CAPACITY OTHER THAN AS RESPONSIBLE ENTITY OF THE TRUST, INCLUDING SEEK THE APPOINTMENT OF A RECEIVER (EXCEPT IN RELATION TO PROPERTY OF THE TRUST), A LIQUIDATOR, AN ADMINISTRATOR OR ANY SIMILAR PERSON TO THE RESPONSIBLE ENTITY OR PROVE IN ANY LIQUIDATION, ADMINISTRATION OR ARRANGEMENT OF OR AFFECTING THE RESPONSIBLE ENTITY (EXCEPT IN RELATION TO PROPERTY OF THE TRUST).

67.3 THE PROVISIONS OF THIS CLAUSE DO NOT APPLY TO AN OBLIGATION TO THE EXTENT THAT IT IS NOT SATISFIED BECAUSE UNDER THE TRUST DEED ESTABLISHING THE TRUST OR BY OPERATION OF LAW THERE IS A REDUCTION IN THE EXTENT OF THE RESPONSIBLE ENTITY'S INDEMNIFICATION OUT OF THE ASSETS OF THE TRUST, AS A RESULT OF THE RESPONSIBLE ENTITY'S FRAUD, NEGLIGENCE OR BREACH OF TRUST. THE RESPONSIBLE ENTITY IS NOT TO BE REGARDED AS BEING NEGLIGENT OR IN BREACH OF TRUST TO THE EXTENT TO WHICH ANY FAILURE BY THE RESPONSIBLE ENTITY TO SATISFY ITS OBLIGATIONS UNDER THIS LEASE HAS BEEN CAUSED OR CONTRIBUTED TO BY A FAILURE BY ANY PERSON TO FULFIL ITS OBLIGATIONS IN RELATION TO THE TRUST OR ANY OTHER ACT OR OMISSION OF ANOTHER PERSON.

67.4 NO ATTORNEY, AGENT, RECEIVER, OR RECEIVER AND MANAGER APPOINTED IN ACCORDANCE WITH THIS LEASE HAS AUTHORITY TO ACT ON BEHALF OF THE RESPONSIBLE ENTITY IN ANY WAY WHICH EXPOSES THE RESPONSIBLE ENTITY TO ANY PERSONAL LIABILITY AND NO ACT OR OMISSION OF ANY SUCH PERSON WILL BE CONSIDERED FRAUD, NEGLIGENCE OR BREACH OF TRUST OF THE RESPONSIBLE ENTITY FOR THE PURPOSE OF SUBCLAUSE 3 OF THIS CLAUSE.

67.5 THE RESPONSIBLE ENTITY IS NOT OBLIGED TO DO OR REFRAIN FROM DOING ANYTHING UNDER THIS LEASE (INCLUDING INCUR ANY LIABILITY) UNLESS THE RESPONSIBLE ENTITY'S LIABILITY IS LIMITED IN THE SAME MANNER AS SET OUT IN SUBCLAUSES 1 TO 3 OF THIS CLAUSE.

67.6 FOR THE PURPOSES OF THIS CLAUSE:

"OBLIGATIONS" MEANS ALL OBLIGATIONS AND LIABILITIES OF WHATSOEVER KIND, UNDERTAKEN OR INCURRED BY, OR DEVOLVING UPON THE RESPONSIBLE ENTITY UNDER OR IN RESPECT OF THIS LEASE OR ANY DEED, AGREEMENT OR OTHER INSTRUMENT COLLATERAL WITH THIS LEASE OR GIVEN OR ENTERED INTO UNDER THIS LEASE AND INCLUDES, WITHOUT LIMITATION, ALL LIABILITIES OF THE RESPONSIBLE ENTITY IN ANY WAY CONNECTED WITH ANY REPRESENTATION, WARRANTY, CONDUCT, OMISSION, AGREEMENT OR TRANSACTION RELATED TO THIS LEASE. "TRUST" MEANS THE MACQUARIE GOODMAN CAPITAL TRUST.

67.7 THE RESPONSIBLE ENTITY WARRANTS TO THE LESSEE THAT, IN ENTERING INTO THIS LEASE, THE RESPONSIBLE ENTITY WILL NOT BE IN BREACH OF THE CUSTODY AGREEMENT AND WILL BE ENTITLED TO BE INDEMNIFIED OUT OF THE ASSETS OF THE TRUST IN RELATION TO ITS OBLIGATIONS AS LESSEE ARISING UNDER THIS LEASE.

#### RENT SCHEDULE

##### A. DEFINITIONS

IN THIS LEASE THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT OTHERWISE REQUIRES:

"BASE RENT" MEANS THE AMOUNT OF BASE RENT SPECIFIED IN ITEM 11 AS VARIED FROM



TIME TO TIME IN ACCORDANCE WITH THE PROVISIONS OF THIS LEASE;  
"LEASE YEAR" MEANS EACH PERIOD OF TWELVE (12) MONTHS COMMENCING ON AND FROM THE COMMENCEMENT DATE;

"LESSEE'S OPERATING EXPENSE CONTRIBUTION" MEANS THE AMOUNT FROM TIME TO TIME PAYABLE BY THE LESSEE TO THE LESSOR UNDER CLAUSE C.1;

"OPERATING EXPENSES" MEANS THE TOTAL OF ALL AMOUNTS PAID BY THE LESSOR (OR FOR THE PAYMENT OF WHICH THE LESSOR MAY BE OR BECOME LIABLE) IN ANY OUTGOING YEAR IN RESPECT OF THE BUILDING AND/OR THE LAND (WHETHER BY DIRECT ASSESSMENT OR BY VIRTUE OF ANY COVENANT IN ANY HEAD LEASE OR OTHERWISE) UNDER THE FOLLOWING SUBCLAUSES (A), (B) AND (C):

(A) STATUTORY OR REGULATORY: ALL RATES PAYABLE TO ANY AUTHORITY OR UNDER ANY LAW IN RESPECT OF:

(I) THE BUILDING OR ANY PART OF IT;

(II) THE LAND OR ANY PART OF IT;

(III) THE LESSOR'S OWNERSHIP AND OPERATION OF THE WHOLE OR ANY PART OF THE BUILDING AND/OR THE LAND; AND/OR

(IV) RECEIPTS OF RENT AND OTHER MONEYS PAYABLE IN RESPECT OF THE WHOLE OR ANY PART OF THE BUILDING AND/OR THE LAND;

INCLUDING:

(A) COUNCIL RATES: ALL RATES PAYABLE TO ANY AUTHORITY RELATING TO THE USE AND OCCUPATION OF THE BUILDING AND/OR FOR ANY SERVICES OF THE TYPE FROM TIME TO TIME PROVIDED BY THE LOCAL GOVERNMENT AUTHORITY FOR THE LOCALITY IN WHICH THE BUILDING IS SITUATED, AND FOR WASTE AND GENERAL GARBAGE REMOVAL FROM THE BUILDING, INCLUDING ANY EXCESS;

(B) WATER RATES: ALL RATES PAYABLE TO ANY AUTHORITY FOR THE PROVISION, RETICULATION OR DISCHARGE OF WATER AND/OR SEW-AGE AND/OR DRAINAGE, INCLUDING EXCESS WATER OR WATER OR OTHER USAGE CHARGES AND METER RENTS; AND

(C) LAND TAX: LAND TAXES OR TAXES OF THE NATURE OF A TAX ON LAND, COMPUTED ON THE TAXABLE VALUE OF THE LAND AT THE RATE WHICH WOULD BE PAYABLE BY THE LESSOR IF THE LAND WERE THE ONLY LAND OWNED BY THE LESSOR IN THE STATE AND THE LESSOR WERE NOT A TRUSTEE OR NON-CONCESSIONAL COMPANY;

(B) INSURANCES: ALL INSURANCE PREMIUMS AND AMOUNTS PAYABLE IN RESPECT OF INSURANCE:

(I) BUILDING: ON THE BUILDING OR ANY PART OF IT FOR ITS FULL INSURABLE VALUE EXCEPT THAT THE LESSEE SHALL NOT BE REQUIRED TO PAY MORE THAN THE AMOUNT OF THE PREMIUM IT WOULD PAY IF IT WERE EFFECTING SUCH INSURANCE;

(II) LOSS OF RENTS: (SUBJECT TO THE EXCLUSION OF ANY RENTS ARISING FROM NORMAL VACANCIES DURING LETTING UP PERIODS) FOR LOSS OF ANY RENTS OR OTHER MONEYS (WHETHER SEPARATE OR OTHERWISE INCLUDED IN ANY RENTS OR OTHER MONEYS PAYABLE IN RESPECT OF ANY TENANCY OR OCCUPATION OF THE BUILDING) ARISING FROM DAMAGE OR DESTRUCTION OF THE BUILDING OR ANY PART OF IT OR ARISING FROM DIMINUTION OR LOSS OF ANY MEANS OF ACCESS OR OTHER SIMILAR CAUSES;

(III) WORKERS' COMPENSATION: FOR WORKERS' COMPENSATION FOR ALL EMPLOYEES OF THE LESSOR ENGAGED IN EMPLOYMENT IN CONNECTION WITH THE BUILDING, BUT WHERE ANY SUCH EMPLOYEE IS ENGAGED IN CONNECTION WITH OTHER BUILDINGS OF THE LESSOR THE COST OF WORKERS' COMPENSATION INSURANCE SHALL BE APPORTIONED BY THE LESSOR ON A EQUITABLE PRO RATA BASIS; AND

(IV) OTHER RISKS: FOR SUCH OTHER INSURABLE RISKS (INCLUDING MACHINERY BREAKDOWN AND BOILER EXPLOSION) AS THE LESSOR REASONABLY DEEMS APPROPRIATE FROM TIME TO TIME;

PROVIDED THAT, FOR ANY PERIOD DURING WHICH AN INDUSTRIAL SPECIAL RISKS POLICY TAKEN OUT BY THE LESSEE UNDER CLAUSE 7.7 IS ON FOOT, THE LESSOR MUST NOT INCLUDE WITHIN OPERATING EXPENSES ANY PREMIUMS OR AMOUNTS PAYABLE IN RESPECT OF INSURANCE UNDER PARAGRAPHS (I) AND (II).

(C) MANAGEMENT EXPENSES: MANAGEMENT, CONTROL, CARETAKING AND SECURITY EXPENSES ("MANAGEMENT SERVICES") OF THE LAND WHETHER PERFORMED ON THE LAND OR ELSEWHERE AND WHETHER PERFORMED BY THE LESSOR OR BY OTHERS (INCLUDING SALARIES, LEAVE ENTITLEMENTS, SUPERANNUATION OR OTHER EMPLOYMENT OVERHEADS PAID BY THE LESSOR) PROVIDED THAT WHILST EVER A "RESMED COMPANY" [BEING RESMED LIMITED AND/OR A RELATED BODY CORPORATE (WHICH TERM IN THIS CLAUSE HAS THE MEANING AS DEFINED IN THE CORPORATIONS ACT 2001) OF RESMED LIMITED] IS THE LESSEE, THE LESSOR APPOINTS THE RESMED COMPANY TO PERFORM THE MANAGEMENT SERVICES IN WHICH CASE THE RESMED COMPANY WILL ATTEND TO SAME DILIGENTLY AND AT NO EXPENSE TO THE LESSOR AND THE LESSOR SHALL NOT INCLUDE ANY SUCH EXPENSES WITHIN OPERATING EXPENSES.

"OUTGOING YEAR" MEANS EACH PERIOD OF TWELVE (12) MONTHS ENDING ON THE DATE IN EACH YEAR SPECIFIED IN ITEM 17, NOTWITHSTANDING THAT PART OF ANY SUCH TWELVE (12) MONTH PERIOD DOES NOT FALL WITHIN THE TERM (OR ANY PERIOD OF HOLDING OVER AS APPROPRIATE);

"RATES" INCLUDES ALL RATES, TAXES, CHARGES, COSTS, ASSESSMENTS, DUTIES, IMPOSITIONS, LEVIES, SURCHARGES OR FEES, OF ANY AUTHORITY OR OF ANY LAW BUT EXCLUDES ANY:

(A) INCOME TAX: TAX ON THE ASSESSABLE INCOME OF THE LESSOR; OR

(D) RATES ASSESSED ON THE PREMISES: RATES ASSESSED DIRECTLY IN RESPECT OF THE PREMISES AND PAID BY THE LESSEE;

B. BASE RENT

B.1 PAYMENT OF BASE RENT

THE LESSEE COVENANTS WITH THE LESSOR TO PAY TO THE LESSOR, WITHOUT DEMAND AND WITHOUT ANY DEDUCTION OR RIGHT OF SET-OFF WHATEVER, THE BASE RENT RESERVED BY THIS LEASE BY EQUAL MONTHLY INSTALMENTS (AND PROPORTIONATELY FOR ANY PART OF A MONTH) IN ADVANCE ON THE FIRST DAY OF EACH MONTH. THE FIRST INSTALMENT SHALL BE PAID ON THE COMMENCEMENT DATE. ALL SUCH INSTALMENTS SHALL BE PAID TO SUCH PLACE AND BY SUCH MEANS AS THE LESSOR MAY FROM TIME TO TIME DIRECT.

B.2 PERCENTAGE REVIEW OF BASE RENT

AT THE EXPIRATION OF EACH LEASE YEAR THE BASE RENT SHALL BE VARIED IN ACCORDANCE

WITH THE FOLLOWING FORMULA:

R = R X 103 WHERE IN THIS CLAUSE:

-----  
100

R = BASE RENT PAYABLE FOR THE FOLLOWING LEASE YEAR;  
R = BASE RENT PAYABLE DURING THE LEASE YEAR JUST ENDED.

C. OPERATING EXPENSES

C.1 LESSEE'S OPERATING EXPENSE CONTRIBUTION

IN ADDITION TO THE BASE RENT THE LESSEE SHALL PAY TO THE LESSOR THE LESSEE'S OPERATING EXPENSE CONTRIBUTION FOR EACH OUTGOINGS YEAR, THE AMOUNT OF WHICH SHALL BE CALCULATED AS FOLLOWS:

C = N X I WHERE IN THIS CLAUSE:

-----  
Y

C = LESSEE'S OPERATING EXPENSE CONTRIBUTION;  
N = THE NUMBER OF DAYS OF THE TERM OR HOLDING OVER (AS APPROPRIATE) FALLING WITHIN THE RELEVANT OUTGOINGS YEAR;  
I = THE AMOUNT (TO THE NEAREST DOLLAR) OF THE OPERATING EXPENSES FOR THE RELEVANT OUTGOINGS YEAR;  
Y = 365 (OR 366 IN THE CASE OF A LEAP YEAR).

C.2 LESSOR'S ESTIMATE

THE LESSOR MAY:

(E) BEFORE OR DURING EACH OUTGOINGS YEAR NOTIFY THE LESSEE OF THE LESSOR'S REASONABLE ESTIMATE OF THE LESSEE'S OPERATING EXPENSE CONTRIBUTION FOR THAT OUTGOINGS YEAR; AND

(F) FROM TIME TO TIME DURING THAT OUTGOINGS YEAR BY NOTICE TO THE LESSEE ADJUST THE REASONABLE ESTIMATE OF THE LESSEE'S OPERATING EXPENSE CONTRIBUTION AS MAY BE APPROPRIATE TO TAKE ACCOUNT OF CHANGES IN ANY OF THE OPERATING EXPENSES.

C.3 PAYMENTS ON ACCOUNT

THE LESSEE SHALL PAY ON ACCOUNT OF THE LESSEE'S OPERATING EXPENSE CONTRIBUTION (SUBJECT TO THIS CLAUSE C, WITHOUT DEMAND AND WITHOUT ANY DEDUCTION OR RIGHT OF SET OFF WHATEVER) THE ESTIMATES PROVIDED FOR IN CLAUSE C.2 BY EQUAL MONTHLY INSTALMENTS IN ADVANCE ON THE SAME DAYS AND IN THE SAME MANNER AS THE LESSEE IS REQUIRED TO PAY BASE RENT.

C.4 ADJUSTMENTS OF PAYMENTS

(B) AS SOON AS PRACTICABLE AFTER THE END OF EACH OUTGOINGS YEAR THE LESSOR SHALL FURNISH TO THE LESSEE A NOTICE GIVING REASONABLE DETAILS OF THE OPERATING EXPENSES FOR THAT OUTGOINGS YEAR AND THE LESSEE'S OPERATING EXPENSE CONTRIBUTION.

(G) THE LESSEE SHALL WITHIN FOURTEEN (14) DAYS AFTER THE DATE OF THE NOTICE REFERRED TO IN CLAUSE C.4 (A) PAY TO THE LESSOR OR THE LESSOR SHALL CREDIT TO THE LESSEE'S ACCOUNT (AS APPROPRIATE) THE DIFFERENCE BETWEEN THE AMOUNT PAID ON ACCOUNT OF THE LESSEE'S OPERATING EXPENSE CONTRIBUTION DURING THAT OUTGOINGS YEAR AND THE AMOUNT ACTUALLY PAYABLE IN RESPECT OF IT BY THE LESSEE, SO THAT THE LESSEE SHALL HAVE PAID THE CORRECT AMOUNT OF THE LESSEE'S OPERATING EXPENSE CONTRIBUTION FOR THAT OUTGOINGS YEAR. IN THE ABSENCE OF PATENT ERROR SUCH NOTICE SHALL BE SUFFICIENT EVIDENCE OF THE MATTERS CONTAINED IN IT UNLESS THE CONTRARY IS PROVED.

C.5 PAYMENT NOTWITHSTANDING TERMINATION

SUBJECT TO CLAUSE C.6 THE LESSEE'S OPERATING EXPENSE CONTRIBUTION SHALL BE PAYABLE NOTWITHSTANDING THAT THE TERM MAY HAVE EXPIRED OR BEEN DETERMINED BEFORE THE LESSEE'S OPERATING EXPENSE CONTRIBUTION FOR ANY PARTICULAR OUTGOINGS YEAR IS CAPABLE OF BEING FINALLY CALCULATED.

C.6 LESSOR'S RIGHTS NOT DIMINISHED

NOTHING IN CLAUSES C.1 TO C.5 SHALL PREVENT THE LESSOR:

(C) RECOVERING FROM THE LESSEE THE LESSEE'S OPERATING EXPENSE CONTRIBUTION WHERE THE LESSOR HAS FAILED TO NOTIFY THE LESSEE OF AN ESTIMATE OR OF THE ACTUAL AMOUNT OF SUCH LESSEE'S OPERATING EXPENSE CONTRIBUTION IN A TIMELY MANNER (INCLUDING FAILURE TO NOTIFY PRIOR TO THE TERMINATION DATE OR OTHER DETERMINATION OF THIS LEASE); OR

(H) REQUIRING THE LESSEE IN ANY NOTICE TO PAY TO THE LESSOR A LUMP SUM IN RESPECT OF THE LESSEE'S OPERATING EXPENSE CONTRIBUTION FOR A PERIOD THE COMMENCEMENT OF WHICH PRE-DATES THE DATE OF ANY SUCH NOTICE.

D. SERVICE CHARGES

D.1 LESSEE TO PAY CHARGES LEVIED ON PREMISES

THE LESSEE SHALL FORTHWITH PAY ALL:

(D) COSTS, RATES, TAXES OR IMPOSTS OF ANY NATURE IMPOSED OR SEPARATELY CHARGED BY ANY LAW OR BY ANY AUTHORITY TO THE PREMISES OR IN RESPECT OF THE CONDUCT OF THE LESSEE'S BUSINESS IN THE PREMISES; AND

(I) COSTS FOR ALL SERVICES, INCLUDING FOR ALL SOURCES OF ENERGY, ELECTRICITY, GAS, OIL, WATER AND TELEPHONE, SEPARATELY SUPPLIED, METERED, CONSUMED OR CONNECTED (AS APPROPRIATE) TO, IN OR ON THE PREMISES.

E. GST

(E) IN THIS CLAUSE "GST" REFERS TO GOODS AND SERVICES TAX UNDER A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999 ("GST ACT") AND THE TERMS USED HAVE THE MEANINGS AS DEFINED IN THE GST ACT.

(J) IT IS AGREED THAT RENT AND ALL OTHER AMOUNTS AGREED TO BE PAID BY THE LESSEE TO THE LESSOR, BEING THE CONSIDERATION FOR THE SUPPLY EXPRESSED IN THIS LEASE, ARE EXCLUSIVE OF GST.

(K) IN RESPECT OF ANY LIABILITY OF THE LESSOR FOR GST IN RESPECT OF THIS LEASE, AND THE RENEWAL OR EXTENSION OF THIS LEASE, INCLUDING FOR RENT, RATES, OUTGOINGS, OR ANY CONSIDERATION FOR ANY OTHER TAXABLE SUPPLY, THE LESSEE COVENANTS TO PAY TO THE LESSOR AT THE SAME TIME AS ANY PAYMENT IS MADE INVOLVING THE LESSOR IN GST LIABILITY, THE ADDITIONAL AMOUNT OF GST, TOGETHER WITH THE

PAYMENT TO WHICH IT RELATES.

(L) (I) THE LESSEE'S LIABILITY UNDER (C) IS TO REIMBURSE THE FULL AMOUNT OF GST, DISREGARDING AND EXCLUDING THE LESSOR'S ENTITLEMENT TO INPUT TAX CREDITS OR OTHER CREDITS OR REIMBURSEMENTS FOR GST.

(II) NOTWITHSTANDING (D)(I), IF THE LESSOR IS ENTITLED TO AN INPUT TAX CREDIT IN RELATION TO ANY AMOUNT RECOVERABLE FROM THE LESSEE UNDER (C), THE AMOUNT PAYABLE BY THE LESSEE SHALL BE REDUCED BY THE AMOUNT OF THE INPUT TAX CREDIT WHICH THE LESSOR HAS RECEIVED OR CLAIMS AND IS ENTITLED TO RECEIVE.

(III) IN RESPECT OF EACH PAYMENT BY THE LESSEE UNDER (C), THE LESSOR AGREES TO DELIVER TO THE LESSEE, AS REQUIRED UNDER THE GST ACT, TAX INVOICES IN A FORM WHICH COMPLIES WITH THE GST ACT, AND THE REGULATIONS, TO ENABLE THE LESSEE TO CLAIM INPUT TAX CREDITS IN RESPECT OF THE TAXABLE SUPPLY.

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ANNEXURE "C" TO LEASE BETWEEN  
TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749 (LESSOR)  
AND RESMED LIMITED ACN 003 765 142 (LESSEE)  
DATED THIS 8TH DAY OF MARY 2002

-----  
<S> SIGNED, SEALED AND DELIVERED BY ) <C>  
) )  
/S/SIMON HINDSON ) )  
) )  
AS ATTORNEY FOR THE LESSOR ) )  
TRUST COMPANY OF AUSTRALIA LIMITED ) )  
UNDER POWER OF ATTORNEY REGISTERED BOOK 4279 NO. 670 ) )  
IN THE PRESENCE OF: ) )  
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/S/EVE ROZALI  
-----  
WITNESS

EVE ROZALI  
-----  
NAME (PRINTED)

-----  
WITNESS, ADDRESS

THE COMMON SEAL OF )  
MACQUARIE GOODMAN FUNDS )  
MANAGEMENT LIMITED )  
ACN 067 796 641 WAS HEREUNTO )  
AFFIXED IN ACCORDANCE WITH ITS )  
CONSTITUTION IN THE PRESENCE OF: )

/S/ CAROLYN SLOBIS	/S/ GREG GOODMAN
-----	-----
DIRECTOR / SECRETARY	DIRECTOR
CAROLYN SLOBIS	GREG GOODMAN
-----	-----
NAME (PRINTED)	NAME (PRINTED)

THE COMMON SEAL OF THE LESSEE )  
RESMED LIMITED WAS AFFIXED )  
IN ACCORDANCE WITH ITS CONSTITUTION )  
IN THE PRESENCE OF: )

/S/CHRIS ROBERTS  
-----  
DIRECTOR / SECRETARY  
  
CHRIS ROBERTS  
-----  
NAME (PRINTED)

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT DATED AS OF MAY 14, 2002, IS ENTERED INTO BY SERVO MAGNETICS ACQUISITION, INC., A DELAWARE CORPORATION (THE "COMPANY"), AND LESLIE HOFFMAN, AN INDIVIDUAL (THE "EMPLOYEE").

1. EMPLOYMENT.

1.1 TITLE

.. THE COMPANY HEREBY EMPLOYS EMPLOYEE, AND EMPLOYEE HEREBY AGREES TO ACCEPT EMPLOYMENT FROM THE COMPANY AS ITS PRESIDENT AND CHIEF EXECUTIVE OFFICER REPORTING DIRECTLY TO THE CEO OF RESMED INC. EMPLOYEE AGREES TO USE HIS BEST EFFORTS TO PROMOTE THE INTERESTS OF THE COMPANY AND TO DEVOTE HIS FULL BUSINESS TIME AND ENERGIES TO THE BUSINESS AND AFFAIRS OF THE COMPANY, UNLESS OTHERWISE AUTHORIZED BY THE BOARD OF DIRECTORS OF RESMED INC., THE PARENT CORPORATION OF THE COMPANY ("RESMED").

2. TERM OF EMPLOYMENT.

2.1 YOU AGREE TO REMAIN EMPLOYED BY THE COMPANY FOR A PERIOD OF THREE (3) YEARS AFTER THE DATE OF THIS AGREEMENT. NEVERTHELESS AND SUBJECT TO THE PROVISIONS BELOW, THE COMPANY MAY TERMINATE YOUR EMPLOYMENT AT ANY TIME FOR ANY REASON, WITH OR WITHOUT CAUSE, BY GIVING YOU WRITTEN NOTICE OF SUCH TERMINATION.

3. COMPENSATION.

3.1 CASH COMPENSATION

.. AS COMPENSATION FOR SERVICES PROVIDED TO THE COMPANY, EMPLOYEE SHALL RECEIVE A SALARY AT THE ANNUAL RATE OF \$250,000, TO BE PAID BI-WEEKLY, LESS SUCH PAYROLL AND WITHHOLDING TAXES AS REQUIRED BY LAW TO BE DEDUCTED AND SUCH OTHER DEDUCTIONS AS EMPLOYEE SHALL AUTHORIZE IN WRITING (THE "BASE COMPENSATION"). THE SALARY SHALL BE PRO-RATED FOR ANY PARTIAL WEEK AT EITHER THE COMMENCEMENT OR TERMINATION OF THE EMPLOYMENT, OR AS OTHERWISE PERMITTED BY APPLICABLE LAW WITH RESPECT TO EXEMPT EMPLOYEES.

3.2 BONUS COMPENSATION

.. EMPLOYEE WILL QUALIFY FOR A BONUS BASED ON 50% OF HIS BASE COMPENSATION UNDER THE RESMED SENIOR EXECUTIVE BONUS PROGRAM.

3.3 COMPANY CAR

.. DURING THE TERM OF THIS AGREEMENT, THE COMPANY WILL PROVIDE EMPLOYEE WITH THE USE OF A CAR SUBSTANTIALLY SIMILAR TO THE CAR CURRENTLY LEASED AND ON SUBSTANTIALLY SIMILAR TERMS TO THOSE SET FORTH IN THE MASTER LEASE AGREEMENT BY AND BETWEEN WELLS FARGO BANK, N.A. AND SERVO MAGNETICS INCORPORATED, DATED NOVEMBER 15, 2000, AS SUPPLEMENTED BY THAT CERTAIN SUPPLEMENT TO MASTER LEASE, DATED NOVEMBER 15, 2000.

4. PARTICIPATION IN BENEFIT PLANS, REIMBURSEMENT OF BUSINESS EXPENSES.

4.1 BENEFIT PLANS

.. DURING THE TERM OF THIS AGREEMENT, EMPLOYEE SHALL BE PROVIDED WITH VACATION BENEFITS, SICK LEAVE BENEFITS, HOLIDAYS, AND OTHER BENEFITS WHICH ARE NOT LESS THAN, AND ON TERMS NO LESS FAVORABLE THAN, THOSE THAT THE COMPANY PROVIDES GENERALLY TO ITS OTHER EXECUTIVE EMPLOYEES, IF ANY. EMPLOYEE (AND ANY DEPENDENTS) MUST MEET THE ELIGIBILITY REQUIREMENTS OF ANY SUCH PLANS AS A CONDITION TO HIS (AND THEIR) PARTICIPATION. IN ADDITION, THE COMPANY AGREES TO PROVIDE CONTINUED COVERAGE FOR THE EMPLOYEE AND HIS SPOUSE UNDER THEIR EXISTING HEALTH INSURANCE POLICY WITH BLUE CROSS OF CALIFORNIA.

4.2 REIMBURSEMENT OF BUSINESS EXPENSES

.. DURING THE TERM OF THIS AGREEMENT, THE COMPANY SHALL REIMBURSE EMPLOYEE PROMPTLY FOR ALL REASONABLE EXPENSES INCURRED BY EMPLOYEE IN THE COURSE OF PERFORMING SERVICES FOR THE COMPANY, WHICH EXPENSES MAY INCLUDE, BUT ARE NOT LIMITED TO, TRAVEL, ENTERTAINMENT/MEETINGS, PARKING, PUBLICATIONS, ASSOCIATION DUES, AND CONFERENCES, PROVIDED THAT EMPLOYEE PROVIDES PROPER EVIDENCE OF SUCH EXPENSES AND SUBMITS HIS REQUESTS FOR REIMBURSEMENT IN ACCORDANCE THE POLICIES AND PROCEDURES OF THE COMPANY THEN IN EFFECT.

5. TERMINATION OF EMPLOYMENT.

5.1 AUTOMATIC TERMINATION

.. THIS AGREEMENT WILL AUTOMATICALLY TERMINATE IN THE EVENT OF EMPLOYEE'S DEATH OR DISABILITY WHICH PREVENTS EMPLOYEE FROM PERFORMING THE SUBSTANTIAL MAJORITY OF HIS DUTIES AND RESPONSIBILITIES FOR A PERIOD OF 90 DAYS IN ANY TWELVE-MONTH PERIOD, UNLESS SUCH TERMINATION IS PROHIBITED BY APPLICABLE LAW. THE COMPANY SHALL HAVE NO FURTHER OBLIGATIONS TO EMPLOYEE OR HIS ESTATE UPON SUCH AUTOMATIC TERMINATION, OTHER THAN TO DISTRIBUTE TO EMPLOYEE, HIS ESTATE OR HIS SURVIVORS, AS THE CASE MAY BE, ANY UNPAID SALARY, ACCRUED BUT UNPAID BENEFITS OR UNREIMBURSED EXPENSES OWED THE EMPLOYEE AT THE DATE OF THE TERMINATION.

5.2 BY THE COMPANY WITHOUT CAUSE

.. THE COMPANY MAY TERMINATE THIS AGREEMENT WITHOUT "CAUSE" (AS HEREINAFTER DEFINED) AT ANY TIME FOLLOWING THE EFFECTIVE DATE, UPON THIRTY (30) DAYS' WRITTEN NOTICE TO EMPLOYEE, SUBJECT TO COMPLIANCE BY THE COMPANY WITH THE PROVISIONS OF SECTION 5.6 HEREOF. UPON DELIVERY OF SUCH NOTICE THE COMPANY MAY, IN ITS SOLE DISCRETION, GIVE THE TERMINATION IMMEDIATE OR SUCH EARLIER EFFECT AS IT SPECIFIES BY PAYING TO EMPLOYEE IN A LUMP SUM ANY SALARY THAT WOULD BE PAYABLE BETWEEN SUCH DATE AND THE DATE OF TERMINATION STATED IN THE NOTICE, BUT IN NO EVENT MORE THAN ONE MONTH'S SALARY, PLUS OUTSTANDING EXPENSES AND ANY ACCRUED BUT UNUSED VACATION, LESS ANY DEDUCTIONS REQUIRED BY LAW OR AUTHORIZED BY EMPLOYEE.

5.3 BY EMPLOYEE WITHOUT GOOD REASON  
-----

.. EMPLOYEE MAY TERMINATE THIS AGREEMENT WITHOUT "GOOD REASON" (AS HEREINAFTER DEFINED) AT ANY TIME FOLLOWING THE EFFECTIVE DATE, UPON THIRTY (30) DAYS' WRITTEN NOTICE TO THE COMPANY. UPON RECEIPT OF SUCH NOTICE THE COMPANY MAY, IN ITS SOLE DISCRETION, GIVE THE TERMINATION IMMEDIATE OR SUCH EARLIER EFFECT AS IT SPECIFIES BY PAYING TO EMPLOYEE IN A LUMP SUM ANY SALARY THAT WOULD BE PAYABLE BETWEEN SUCH DATE AND THE DATE OF TERMINATION STATED IN THE NOTICE, BUT IN NO EVENT MORE THAN ONE MONTH'S SALARY, PLUS OUTSTANDING EXPENSES AND ANY ACCRUED BUT UNUSED VACATION, LESS ANY DEDUCTIONS REQUIRED BY LAW OR AUTHORIZED BY EMPLOYEE.

5.4 BY THE COMPANY FOR CAUSE  
-----

.. THE COMPANY MAY TERMINATE EMPLOYEE'S EMPLOYMENT FOR "CAUSE" AT ANY TIME, UPON WRITTEN NOTICE TO EMPLOYEE. FOR PURPOSES OF THIS AGREEMENT, "CAUSE" SHALL MEAN:

- (A) EMPLOYEE'S CONVICTION OF, OR PLEA OF NOLO CONTENDERE TO, A FELONY OR ANY CRIME INVOLVING MORAL TURPITUDE OR INVOLVING THE COMPANY;
- (B) EMPLOYEE'S COMMISSION OF ANY ACT OF THEFT, EMBEZZLEMENT OR MISAPPROPRIATION AGAINST THE COMPANY OR AN ASSIGNEE OF THIS AGREEMENT, OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATES, SUBSIDIARIES OR SUCCESSORS;
- (C) THE GROSS NEGLIGENCE, MALFEASANCE OR NONFEASANCE OF EMPLOYEE IN THE PERFORMANCE OF THE SERVICES CONTEMPLATED HEREUNDER;
- (D) A MATERIAL BREACH OF THIS AGREEMENT BY EMPLOYEE, WHICH IF CURABLE, HAS NOT BEEN CURED WITHIN TEN (10) DAYS AFTER WRITTEN NOTICE OF SUCH BREACH TO EMPLOYEE;
- (E) ANY WILLFUL MISCONDUCT OR UNETHICAL BEHAVIOR OF OR INSUBORDINATION BY EMPLOYEE;
- (F) THE SEXUAL OR OTHER HARASSMENT BY EMPLOYEE OF ANY EMPLOYEE, INDEPENDENT CONTRACTOR OR CUSTOMER OF THE COMPANY OR AN ASSIGNEE OF THIS AGREEMENT, OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATES, SUBSIDIARIES OR SUCCESSORS;
- (G) EMPLOYEE'S USE OF ILLEGAL DRUGS OR ABUSE OF ALCOHOL OR LEGALLY PRESCRIBED DRUGS; AND
- (H) EMPLOYEE'S FAILURE TO CONSISTENTLY DISCHARGE HIS DUTIES TO THE COMPANY OR AN ASSIGNEE OF THIS AGREEMENT, OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATES, SUBSIDIARIES OR SUCCESSORS UNDER THIS AGREEMENT OR OTHERWISE.

5.5 BY EMPLOYEE FOR GOOD REASON  
-----

.. EMPLOYEE MAY TERMINATE HIS EMPLOYMENT FOR "GOOD REASON" AT ANY TIME, UPON WRITTEN NOTICE TO THE COMPANY. FOR PURPOSES OF THIS AGREEMENT, "GOOD REASON" SHALL MEAN:

- (A) THE COMPANY'S FAILURE TO TIMELY MAKE ANY PAYMENTS REQUIRED UNDER THIS AGREEMENT AFTER TEN (10) DAYS WRITTEN NOTICE AND OPPORTUNITY TO CURE;
- (B) THE COMPANY'S MATERIAL BREACH OF THIS AGREEMENT, WHICH, IF CURABLE, HAS NOT BEEN CURED WITHIN TEN (10) DAYS AFTER WRITTEN NOTICE OF SUCH BREACH TO THE COMPANY;
- (C) THE COMPANY'S REDUCTION OF EMPLOYEE'S ANNUAL BASE COMPENSATION BELOW \$250,000 OR THE COMPANY'S REDUCTION OF THE PERCENTAGE OF BASE COMPENSATION ON WHICH EMPLOYEE'S BONUS IS BASED BELOW 50%, EXCEPT FOR ACROSS-THE-BOARD COMPENSATION REDUCTIONS SIMILARLY AFFECTING ALL MANAGEMENT PERSONNEL OF RESMED.

5.6 TERMINATION PAYMENT  
-----

.. IN THE EVENT THAT EMPLOYEE'S EMPLOYMENT IS TERMINATED PURSUANT TO SECTIONS 5.1 THROUGH 5.5, EMPLOYEE SHALL CONTINUE TO RENDER SERVICES TO THE COMPANY PURSUANT TO THE TERMS OF THIS AGREEMENT UNTIL THE DATE OF TERMINATION AND HE OR HIS ESTATE (AS APPLICABLE) SHALL BE PAID ANY AMOUNTS EARNED THROUGH THE DATE OF TERMINATION. IN THE EVENT THAT THIS AGREEMENT IS TERMINATED PURSUANT TO SECTIONS 5.2 OR 5.5, EMPLOYEE SHALL RECEIVE SEVERANCE IN AN AMOUNT EQUAL TO THE EMPLOYEE'S BASE COMPENSATION FOR A PERIOD EQUAL TO THE LESSER OF (I) TWELVE (12) MONTHS OR (II) THE REMAINING TERM OF THIS AGREEMENT UNDER SECTION 2 ABOVE, LESS APPLICABLE WITHHOLDING, (THE "SEVERANCE PAYMENT") IN A SINGLE LUMP SUM PAYABLE ON THE TENTH (10TH) DAY AFTER EXECUTION OF THE RELEASE DESCRIBED BELOW. EXCEPT AS PROVIDED IN THIS SECTION 5.6, EMPLOYEE SHALL NOT BE ENTITLED TO ANY OTHER PAYMENTS OR BENEFITS IN CONNECTION WITH HIS EMPLOYMENT AND/OR THE TERMINATION THEREOF, AND SHALL HAVE NO FURTHER RIGHT TO RECEIVE COMPENSATION, BENEFITS OR OTHER CONSIDERATION FROM THE COMPANY, OR HAVE ANY OTHER REMEDY WHATSOEVER AGAINST THE COMPANY, AS A RESULT OF THE TERMINATION OF THIS AGREEMENT OR THE TERMINATION OF EMPLOYEE.

TO BE ELIGIBLE TO RECEIVE THE SEVERANCE PAYMENT UNDER THIS SECTION 5.6, EMPLOYEE MUST EXECUTE AND DELIVER (AND NOT REVOKE, IF A REVOCATION PERIOD IS REQUIRED BY LAW) THE WAIVER AND RELEASE THAT IS ATTACHED TO THIS AGREEMENT AS APPENDIX A.

6. NONCOMPETITION, CONFIDENTIALITY AND CONFLICTS OF INTEREST.

6.1 NONCOMPETITION  
-----

.. EMPLOYEE AGREES AND UNDERSTANDS THAT, DUE TO THE NATURE OF HIS POSITION WITH THE COMPANY, HE WILL GAIN POSSESSION OF CONFIDENTIAL INFORMATION ABOUT THE COMPANY AND THE WAY IT CONDUCTS ITS BUSINESS. IN CONJUNCTION WITH THE EXECUTION OF, AND AS PART OF THE CONSIDERATION GIVEN FOR, THIS AGREEMENT, EMPLOYEE WILL NOT DIVULGE ANY CONFIDENTIAL INFORMATION ABOUT THE COMPANY WITH REGARD TO SALES, ENGINEERING, OPERATIONS, OR SERVICE TO ANY OUTSIDE INTERESTS FROM THE COMPANY. THIS CONFIDENTIALITY SHALL SURVIVE TERMINATION OF HIS EMPLOYMENT WITH THE COMPANY. EMPLOYEE ACKNOWLEDGES THAT A REMEDY AT LAW FOR ANY BREACH OR THREATENED BREACH BY HIM WOULD BE INADEQUATE TO PROTECT THE COMPANY AGAINST THE CONSEQUENCES OF SUCH BREACH, AND HE THEREFORE AGREES THAT THE COMPANY SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN CASE OF ANY SUCH BREACH OR THREATENED BREACH. THE COMPANY WILL NOT PREVENT EMPLOYEE FROM CONTINUING TO USE THE KNOWLEDGE AND INFORMATION THAT HE POSSESSED PRIOR TO COMMENCING EMPLOYMENT HEREUNDER, OR ANY NON-CONFIDENTIAL INFORMATION HE ACQUIRED DURING HIS EMPLOYMENT, IN ANY LAWFUL MANNER FOLLOWING TERMINATION OF HIS EMPLOYMENT HEREUNDER.

6.2 RESTRICTIVE COVENANT  
-----

.. DURING THE TWELVE (12) MONTH PERIOD FOLLOWING THE TERMINATION DATE OF EMPLOYEE'S EMPLOYMENT UNDER THIS AGREEMENT, EMPLOYEE SHALL NOT, WITHOUT FIRST OBTAINING THE PRIOR WRITTEN APPROVAL OF THE COMPANY, DIRECTLY OR INDIRECTLY ENGAGE IN ANY ACTIVITIES IN COMPETITION WITH THE COMPANY, OR ACCEPT EMPLOYMENT OR ESTABLISH A BUSINESS RELATIONSHIP WITH A BUSINESS ENGAGED IN COMPETITION WITH THE COMPANY AND SUCH OTHER BUSINESSES AS THE COMPANY COMES TO BE ACTIVELY ENGAGED IN DURING THE TERM OF THIS AGREEMENT, IN ANY GEOGRAPHICAL AREA IN WHICH THE COMPANY, AS OF THE TERMINATION DATE, EITHER IS CONDUCTING OR HAS MADE KNOWN TO EMPLOYEE PRIOR TO HIS TERMINATION BONA FIDE PLANS TO CONDUCT BUSINESS. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.3 CONFLICTS OF INTEREST  
-----

.. DURING HIS EMPLOYMENT, EMPLOYEE AGREES NOT TO ACQUIRE, ASSUME OR PARTICIPATE IN, DIRECTLY OR INDIRECTLY, ANY POSITION, INVESTMENT OR INTEREST KNOWN BY HIM TO BE ADVERSE OR ANTAGONISTIC TO THE COMPANY, ITS BUSINESS OR PROSPECTS, FINANCIAL OR OTHERWISE. HOWEVER, EMPLOYEE MAY OWN, SOLELY AS A PASSIVE INVESTOR, UNLESS OTHERWISE AGREED TO BY THE COMPANY IN WRITING, SECURITIES OF OTHER COMPANIES, PROVIDED HIS BENEFICIAL OWNERSHIP OF THE STOCK OF ANY ONE SUCH CORPORATION DOES NOT EXCEED 1% OF SUCH CORPORATION'S VOTING STOCK.

6.4 NON-INTERFERENCE  
-----

.. WHILE EMPLOYED BY THE COMPANY, AND FOR A PERIOD OF ONE (1) YEAR IMMEDIATELY FOLLOWING THE TERMINATION OF HIS EMPLOYMENT, EMPLOYEE WILL NOT INTERFERE WITH THE BUSINESS OF THE COMPANY BY:

- (A) SOLICITING, ATTEMPTING TO SOLICIT, INDUCING OR OTHERWISE CAUSING ANY EMPLOYEE OF THE COMPANY TO TERMINATE HIS OR HER EMPLOYMENT IN ORDER TO BECOME AN OWNER, PARTNER, SOLE PROPRIETOR IN OR A COMPETITOR OF OR AN EMPLOYEE, CONSULTANT, LENDER OR CONTRACTOR TO OR FOR ANY COMPETITOR OF THE COMPANY; OR
- (B) DIRECTLY OR INDIRECTLY SOLICITING THE BUSINESS OF ANY CUSTOMER OF THE COMPANY WHICH AT THE TIME OF TERMINATION OR ONE YEAR PRIOR THERETO WAS LISTED ON THE COMPANY'S CUSTOMER LIST, WHICH SOLICITATION, IF SUCCESSFUL, WOULD RESULT IN THE LOSS OF BUSINESS OR POTENTIAL BUSINESS FOR THE COMPANY SO LONG AS THE POTENTIAL BUSINESS IS WITHIN THE COMPANY'S CORE BUSINESS OR IS A LOGICAL EXTENSION OF SUCH BUSINESS AS IT EXISTS AT THE TIME OF THE EMPLOYEE'S TERMINATION.

THE PROVISIONS OF THIS SECTION 6.4 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7. NOTICES.

ALL NOTICES, REQUESTS, DEMANDS, CLAIMS, AND OTHER COMMUNICATIONS HEREUNDER WILL BE IN WRITING. ANY NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION HEREUNDER SHALL BE DEEMED DULY GIVEN IF (AND THEN TWO BUSINESS DAYS AFTER) IT IS SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, AND ADDRESSED TO THE INTENDED RECIPIENT AS SET FORTH BELOW:

IF TO EMPLOYEE: LESLIE HOFFMAN  
6660 VARIEL AVENUE  
CANOGA PARK, CA 91203  
TELECOPY: (818) 346-6294

WITH A COPY TO:  
-----

FULBRIGHT & JAWORSKI L.L.P.  
865. S. FIGUEROA STREET, 29TH FLOOR  
LOS ANGELES, CALIFORNIA 90017  
ATTN: DAVID A. EBERSHOFF, ESQ.  
TELECOPY: (213) 680-4518

IF TO THE COMPANY: SERVO MAGNETICS ACQUISITION, INC.  
RESMED INC.  
14040 DANIELSON STREET  
POWAY, CALIFORNIA 92064  
ATTN: LEGAL DEPARTMENT  
TELECOPY: (858) 746-2830

WITH A COPY TO:  
-----



LATHAM & WATKINS  
650 TOWN CENTER DRIVE  
20TH FLOOR  
COSTA MESA, CALIFORNIA 92626  
ATTN: PATRICK T. SEAVER, ESQ.  
TELECOPY: (714) 755-8290

ANY PARTY MAY SEND ANY NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION HEREUNDER TO THE INTENDED RECIPIENT AT THE ADDRESS SET FORTH ABOVE USING ANY OTHER MEANS (INCLUDING PERSONAL DELIVERY, EXPEDITED COURIER, MESSENGER SERVICE, TELECOPY, TELEX, ORDINARY MAIL, OR ELECTRONIC MAIL), BUT NO SUCH NOTICE, REQUEST, DEMAND, CLAIM, OR OTHER COMMUNICATION SHALL BE DEEMED TO HAVE BEEN DULY GIVEN UNLESS AND UNTIL IT ACTUALLY IS RECEIVED BY THE INTENDED RECIPIENT. ANY PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICES, REQUESTS, DEMANDS, CLAIMS, AND OTHER COMMUNICATIONS HEREUNDER ARE TO BE DELIVERED BY GIVING THE OTHER PARTIES NOTICE IN THE MANNER HEREIN SET FORTH.

8. MODIFICATIONS; WAIVERS; APPLICABLE LAW.

NO PROVISION IN THIS AGREEMENT MAY BE MODIFIED, WAIVED OR DISCHARGED UNLESS SUCH WAIVER, MODIFICATION OR DISCHARGE IS AGREED TO IN WRITING, SIGNED BY EMPLOYEE AND BY THE CHIEF EXECUTIVE OFFICER OF THE COMPANY.

9. SEVERABILITY.

IF ANY PROVISION OF THIS AGREEMENT IS DETERMINED TO BE INVALID OR IS IN ANY WAY MODIFIED BY ANY GOVERNMENTAL AGENCY, TRIBUNAL OR COURT OF COMPETENT JURISDICTION, SUCH DETERMINATION SHALL BE CONSIDERED AS RELATING ONLY TO A SEPARATE, DISTINCT, AND INDEPENDENT PART OF THIS AGREEMENT AND SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OF THE REMAINING PROVISIONS OF THIS AGREEMENT.

10. SUCCESSOR RIGHTS AND ASSIGNMENT.

THIS AGREEMENT SHALL BIND, INURE TO THE BENEFIT OF AND BE ENFORCEABLE BY EMPLOYEE'S PERSONAL OR LEGAL REPRESENTATIVES, EXECUTORS, ADMINISTRATORS, SUCCESSORS, HEIRS, DISTRIBUTEES, AND LEGATEES. THE RIGHTS AND OBLIGATIONS OF THE COMPANY UNDER THIS AGREEMENT MAY BE ASSIGNED BY THE COMPANY, IN WHICH EVENT IT SHALL BE BINDING UPON, AND INURE TO THE BENEFIT OF, THE PERSON(S) OR ENTITY(IES) TO WHOM IT IS ASSIGNED. EMPLOYEE MAY NOT ASSIGN HIS DUTIES HEREUNDER AND HE MAY NOT ASSIGN ANY OF HIS RIGHTS HEREUNDER WITHOUT THE WRITTEN CONSENT OF THE COMPANY.

11. REPRESENTATIONS OF EMPLOYEE.

EMPLOYEE REPRESENTS AND WARRANTS THAT HIS ENTRY INTO AND THE PERFORMANCE OF THE DUTIES AND OBLIGATIONS CALLED FOR HEREIN DO NOT BREACH OR OTHERWISE VIOLATE ANY LEGAL OBLIGATION OF EMPLOYEE, COMMON LAW, STATUTORY OR CONTRACTUAL.

12. ENTIRE AGREEMENT.

THIS AGREEMENT CONTAINS ALL OF THE TERMS AND CONDITIONS AGREED UPON BY THE PARTIES. ANY PRIOR DRAFTS, DISCUSSIONS OR NEGOTIATIONS ARE SUPERCEDED BY THIS AGREEMENT.

IN WITNESS WHEREOF, EMPLOYEE AND THE COMPANY HEREBY EXECUTE THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.  
THE COMPANY

SERVO MAGNETICS ACQUISITION, INC.,  
A DELAWARE CORPORATION  
BY: /S/ W FLICKER

NAME: W FLICKER

TITLE: SECRETARY

EMPLOYEE  
LESLIE HOFFMAN,  
AN INDIVIDUAL

/S/ LESLIE HOFFMAN

APPENDIX A

WAIVER AND RELEASE OF CLAIMS

IN EXCHANGE FOR PAYMENT TO ME OF AMOUNTS PURSUANT TO SECTION 5.6 OF MY EMPLOYMENT AGREEMENT (THE "AGREEMENT") WITH SERVO MAGNETICS ACQUISITION, INC. (THE "COMPANY") AND FOR THE OTHER BENEFITS PROVIDED TO ME THEREIN, TO WHICH AGREEMENT THIS FORM IS ATTACHED, I HEREBY FURNISH THE COMPANY WITH THE FOLLOWING RELEASE AND WAIVER.

I HEREBY RELEASE AND FOREVER DISCHARGE THE COMPANY, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, STOCKHOLDERS, SUCCESSORS, ASSIGNS AND AFFILIATES, OF AND FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, CAUSES OF ACTION, COSTS, EXPENSES, ATTORNEYS' FEES, DAMAGES, INDEMNITIES AND OBLIGATIONS OF EVERY KIND

AND NATURE, IN LAW, EQUITY, OR OTHERWISE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING AT ANY TIME PRIOR TO AND INCLUDING MY EMPLOYMENT TERMINATION DATE WITH RESPECT TO ANY CLAIMS RELATING TO MY EMPLOYMENT AND THE TERMINATION OF MY EMPLOYMENT, INCLUDING BUT NOT LIMITED TO, CLAIMS PURSUANT TO ANY FEDERAL, STATE OR LOCAL LAW RELATING TO EMPLOYMENT INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION CLAIMS, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, THE AMERICAN WITH DISABILITIES ACT, AS AMENDED, CLAIMS UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, AS AMENDED, AND THE FEDERAL AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED ("ADEA"), OR CLAIMS FOR WRONGFUL TERMINATION, BREACH OF THE COVENANT OF GOOD FAITH, CONTRACT CLAIMS, TORT CLAIMS, AND WAGE OR BENEFIT CLAIMS, INCLUDING BUT NOT LIMITED TO, CLAIMS FOR SALARY, BONUSES, COMMISSIONS, STOCK, STOCK OPTIONS, VACATION PAY, FRINGE BENEFITS, SEVERANCE PAY OR ANY FORM OF COMPENSATION; PROVIDED HOWEVER, THAT NOTHING IN THIS RELEASE SHALL AFFECT ANY RIGHTS I MAY HAVE (I) UNDER THAT CERTAIN AGREEMENT AND PLAN OF MERGER, DATED AS OF MAY 14, 2002, BY AND AMONG ME, SERVO MAGNETICS INCORPORATED, A CALIFORNIA CORPORATION, THE COMPANY, AND RESMED INC., A DELAWARE CORPORATION, RELATING TO MATTERS OTHER THAN MY EMPLOYMENT WITH THE COMPANY, OR (II) TO INDEMNIFICATION BY THE COMPANY FOR ANY ACTIONS OR CLAIMS BROUGHT AGAINST ME IN MY CAPACITY AS OFFICER, DIRECTOR OR AGENT OF THE COMPANY, WHETHER SUCH INDEMNIFICATION RIGHTS ARE PURSUANT TO THE BYLAWS OR THE CERTIFICATE OF INCORPORATION OF THE COMPANY OR PURSUANT TO ANY INSURANCE POLICY MAINTAINED BY THE COMPANY.

I ALSO ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND SECTION 1542 OF THE CALIFORNIA CIVIL CODE WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." I HEREBY EXPRESSLY WAIVE AND RELINQUISH ALL RIGHTS AND BENEFITS UNDER THAT SECTION AND ANY LAW OF ANY JURISDICTION OF SIMILAR EFFECT WITH RESPECT TO ANY CLAIMS I MAY HAVE AGAINST THE COMPANY.

I ACKNOWLEDGE THAT, AMONG OTHER RIGHTS, I AM WAIVING AND RELEASING ANY RIGHTS I MAY HAVE UNDER ADEA, THAT THIS WAIVER AND RELEASE IS KNOWING AND VOLUNTARY, AND THAT THE CONSIDERATION GIVEN FOR THIS WAIVER AND RELEASE IS IN ADDITION TO ANYTHING OF VALUE TO WHICH I WAS ALREADY ENTITLED AS AN EMPLOYEE OF THE COMPANY. I FURTHER ACKNOWLEDGE THAT IF I AM OVER 40 I HAVE BEEN ADVISED, AS REQUIRED BY THE OLDER WORKERS BENEFIT PROTECTION ACT, THAT: (A) THE WAIVER AND RELEASE GRANTED HEREIN DOES NOT RELATE TO CLAIMS WHICH MAY ARISE AFTER THIS RELEASE IS EXECUTED; (B) I HAVE BEEN ADVISED OF MY RIGHT TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT (ALTHOUGH I MAY CHOOSE VOLUNTARILY NOT TO DO SO); (C) I HAVE TWENTY-ONE (21) DAYS FROM THE DATE I RECEIVE THIS AGREEMENT, IN WHICH TO CONSIDER THIS AGREEMENT (ALTHOUGH I MAY CHOOSE VOLUNTARILY TO EXECUTE THIS AGREEMENT EARLIER AND THEREBY WAIVE ALL OR A PORTION OF THE 21-DAY PERIOD); (D) I HAVE SEVEN (7) DAYS FOLLOWING THE EXECUTION OF THIS AGREEMENT TO REVOKE MY CONSENT TO THE AGREEMENT; AND (E) THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL THE SEVEN (7) DAY REVOCATION PERIOD HAS EXPIRED.

DATE: MAY 14, 2002

BY: /S/ LESLIE HOFFMAN

-----  
LESLIE HOFFMAN

<TABLE>

<CAPTION>

CONTRACT FOR THE SALE OF LAND - 2000 EDITION  
(THIS CONTRACT CONSISTS OF THIS SHEET, THE PROVISIONS OF THIS CONTRACT AND ANYTHING ATTACHED)  
(A CHOICE PRINTED IN BLOCK CAPITALS APPLIES UNLESS A DIFFERENT CHOICE IS MARKED)

<S>	<C>
TERM	MEANING OF TERM
VENDOR'S AGENT (IF MORE THAN ONE, THE FIRST NAMED)	NAME: NIL ADDRESS: PHONE:
VENDOR	NORWEST LIMITED ACN 003 765 133 46 BROOKHOLLOW AVENUE, NORWEST BUSINESS PARK, BAULKHAM HILLS 2153
VENDOR'S SOLICITOR	ABBOTT TOUT PHONE: (02) 02 9842 8888 LEVEL 5, TOWER LIFE BUILDING FAX: (02) 9842 8855 69 PHILLIP STREET, PARRAMATTA NSW 2150 REF: J R BOLAND
DEPOSIT HOLDER	VENDOR'S SOLICITOR INVEST DEPOSIT: NO
COMPLETION DATE	SO DESCRIBED IN SPECIAL CONDITION 2.1
PROPERTY	THE LAND, THE IMPROVEMENTS, ALL FIXTURES AND THE INCLUSIONS, BUT NOT THE EXCLUSIONS
LAND ADDRESS	LOT 6001 NORWEST BOULEVARDE, NORWEST BUSINESS PARK, BAULKHAM HILLS UNREGISTERED PLAN: LOT 6001 IN AN UNREGISTERED PLAN (COPY ATTACHED) (CLAUSE 28) WHICH IS PART OF LOT 601 SECTION PLAN 882552 (COPY ATTACHED)
PLAN	LOT 938 SECTION PLAN 876722 (COPY ATTACHED) WHICH IS PART OF LOT 601 SECTION PLAN 882552 (COPY ATTACHED) LOT 938 SECTION PLAN 876722 (COPY ATTACHED)
TITLE	FOLIO PART FOLIO IDENTIFIERS 601/882552 AND 938/876722 _TORRENS _ STRATA _ COMMUNITY _ QUALIFIED _ LIMITED _ OLD SYSTEM
TITLE	_ FEE SIMPLE - OWNERSHIP _ PURCHASE FROM CROWN _ LEASE FROM CROWN _ OTHER
IMPROVEMENTS	_ NONE X OTHER: VACANT LAND
INCLUSIONS	NIL
EXCLUSIONS	NIL
PURCHASER	RESMED LIMITED ABN 30 003 765 142 97 WATERLOO RD NORTH RYDE NSW 2113
IF MORE THAN ONE, AS PURCHASER'S	_ JOINT TENANTS ___ TENANTS IN COMMON (IN EQUAL SHARE UNLESS OTHERWISE STATED)
_ SOLICITOR	DIBBS BARKER GOSLING PHONE: 02 8233 9500
_ LICENSED	LEVEL 8, ANGEL PLACE, 123 PITT STREET SYDNEY FAX: 02 8233 9555
_ CONVEYANCER	DX 101 SYDNEY REF: DAVID TURNER
PRICE	PRICE IN WORDS: FORTY SIX MILLION TWO HUNDRED THOUSAND DOLLARS PRICE \$46,200,000.00 DEPOSIT \$4,620,000.00 (10% OF THE PRICE, UNLESS OTHERWISE STATED)
CONTRACT DATE	BALANCE \$41,580,000.00 (IF NOT STATED, THE DATE THIS CONTRACT WAS MADE)

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NOTE: SUBJECT TO CLAUSE 13, THE PRICE INCLUDES GOODS AND SERVICES TAX (IF ANY)  
PAYABLE BY THE VENDOR.

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<S>	<C>
THE COMMON SEAL OF NORWEST LIMITED WAS AFFIXED TO THIS DOCUMENT IN ACCORDANCE WITH ITS CONSTITUTION AND IN THE PRESENCE OF:	THE COMMON SEAL OF RESMED LIMITED WAS AFFIXED TO THIS DOCUMENT IN ACCORDANCE WITH ITS CONSTITUTION AND IN THE PRESENCE OF:

/S/ ALAN ZAMMIT  
DIRECTOR

S/ CHRIS ROBERTS  
DIRECTOR

</TABLE>

<TABLE>

<CAPTION>

<input type="checkbox"/> <S>	<input type="checkbox"/> <C>
GENERAL	STRATA OR COMMUNITY TITLE (CLAUSE 23)
X PROPERTY CERTIFICATE FOR THE LAND	<input type="checkbox"/> PROPERTY CERTIFICATE FOR STRATA COMMON PROPERTY
X PLAN OF THE LAND	<input type="checkbox"/> PLAN CREATING STRATA COMMON PROPERTY
<input type="checkbox"/> UNREGISTERED PLAN OF THE LAND	<input type="checkbox"/> STRATA BY-LAWS NOT SET OUT IN LEGISLATION
<input type="checkbox"/> PLAN OF LAND TO BE SUBDIVIDED	<input type="checkbox"/> STRATA DEVELOPMENT CONTRACT OR STATEMENT
<input type="checkbox"/> DOCUMENT THAT IS TO BE LODGED WITH A RELEVANT PLAN	<input type="checkbox"/> STRATA MANAGEMENT STATEMENT
X S149(2) CERTIFICATE (ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979)	<input type="checkbox"/> LEASEHOLD STRATA: LEASE OF LOT AND COMMON PROPERTY
X S149(5) INFORMATION INCLUDED IN THAT CERTIFICATE	<input type="checkbox"/> PROPERTY CERTIFICATE FOR NEIGHBOURHOOD PROPERTY
X SEWERAGE CONNECTIONS DIAGRAM	<input type="checkbox"/> PLAN CREATING NEIGHBOURHOOD PROPERTY
X SEWER MAINS DIAGRAM	<input type="checkbox"/> NEIGHBOURHOOD DEVELOPMENT CONTRACT
X DOCUMENT THAT CREATED OR MAY HAVE CREATED AN EASEMENT, PROFIT PRENDRE, RESTRICTION ON USE OR POSITIVE COVENANT DISCLOSED IN THIS CONTRACT	<input type="checkbox"/> NEIGHBOURHOOD MANAGEMENT STATEMENT
X S88G CERTIFICATE (POSITIVE COVENANT)	<input type="checkbox"/> PROPERTY CERTIFICATE FOR PRECINCT PROPERTY
X SURVEY REPORT	<input type="checkbox"/> PLAN CREATING PRECINCT PROPERTY
<input type="checkbox"/> SECTION 317A CERTIFICATE (CERTIFICATE OF COMPLIANCE)	<input type="checkbox"/> PRECINCT DEVELOPMENT CONTRACT
<input type="checkbox"/> BUILDING CERTIFICATE GIVEN UNDER LEGISLATION	<input type="checkbox"/> PRECINCT MANAGEMENT STATEMENT
<input type="checkbox"/> INSURANCE CERTIFICATE (HOME BUILDING ACT 1989)	<input type="checkbox"/> PROPERTY CERTIFICATE FOR COMMUNITY PROPERTY
<input type="checkbox"/> SECTION 24 CERTIFICATE (SWIMMING POOLS ACT 1992)	<input type="checkbox"/> PLAN CREATING COMMUNITY PROPERTY
<input type="checkbox"/> OLD SYSTEM DOCUMENT	<input type="checkbox"/> COMMUNITY DEVELOPMENT CONTRACT
<input type="checkbox"/> CROWN TENURE CARD	<input type="checkbox"/> COMMUNITY MANAGEMENT STATEMENT
<input type="checkbox"/> CROWN PURCHASE STATEMENT OF ACCOUNT	<input type="checkbox"/> DOCUMENT DISCLOSING A CHANGE OF BY-LAWS
</TABLE>	<input type="checkbox"/> DOCUMENT DISCLOSING A CHANGE IN A
	<input type="checkbox"/> DOCUMENT DISCLOSING A CHANGE IN BOUNDARIES

<TABLE>  
<CAPTION>

CHOICES

<input type="checkbox"/> <S>	<input type="checkbox"/> <C>
ADJOINING LAND OWNED BY VENDOR	X NO <input type="checkbox"/> YES - PURCHASER CANNOT REQUIRE VENDOR TO CONTRIBUTE TO FENCING WORK
COVENANT/EASEMENT IN TRANSFER	X NO <input type="checkbox"/> YES - WORDING ATTACHED, WITH DESCRIPTION OF LAND BENEFITED (CLAUSE 4)
LAND TAX ADJUSTMENT REQUIRED	<input type="checkbox"/> NO <input type="checkbox"/> YES -USING OWNER-OCCUPIED RESIDENTIAL CONCESSION <input type="checkbox"/> YES (CLAUSE 14)
SPECIAL COMPLETION ADDRESS	X NO <input type="checkbox"/> YES - ADDRESS (CLAUSE 16):
TENANCIES	<input type="checkbox"/> NO <input type="checkbox"/> YES - SUBJECT TO TENANCIES DISCLOSED IN THIS CONTRACT (CLAUSES 17, 24)
MONEY PAYABLE TO CROWN	X NO <input type="checkbox"/> YES - PURCHASER LIABLE FOR UP TO \$#(31) (IF NOT STATED, NIL) (CLAUSE 26)
CONSENT TO TRANSFER REQUIRED	X NO <input type="checkbox"/> YES - VENDOR TO APPLY FOR CONSENT (CLAUSE 27)

</TABLE>

GST INFORMATION (A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999) (CLAUSE 13)  
THIS SALE IS A TAXABLE SUPPLY (SECTIONS 9-5 AND 195-1)  NO  YES

TENANTS (COPY OF EACH LEASE AND ANY RELEVANT MEMORANDUM OR VARIATION ATTACHED)  
PREMISES: #(32)  
TENANT'S NAME (SHOW FULL NAME): #(32A) SEE CLAUSES 43 AND 44  
NATURE OF TENANCY: #(32B)  
EXPIRY DATE: #(32C)  
OPTION PERIOD: #(32D)  
RENT (SHOW WEEKLY/MONTHLY): #(32E)

STRATA / COMMUNITY MANAGEMENT AGENT'S NAME, ADDRESS AND PHONE NUMBER  
(OR IF THERE IS NO MANAGEMENT AGENT, SECRETARY'S DETAILS)

1. DEFINITIONS AND INTERPRETATION  
1.1 DEFINITIONS

IN THIS CONTRACT, UNLESS INCONSISTENT WITH THE CONTEXT, THE FOLLOWING WORDS AND EXPRESSIONS SHALL HAVE THE RESPECTIVE FOLLOWING MEANINGS:

"ASSOCIATION" MEANS NORWEST ASSOCIATION LIMITED (ACN 003 443 883) A COMPANY HAVING RESPONSIBILITIES AND RIGHTS TO CONTROL THE DEVELOPMENT, MANAGEMENT AND OPERATION OF NORWEST BUSINESS PARK IN ACCORDANCE WITH THE CONSTITUTION;

"ASSOCIATION CONSENT" MEANS AN APPROVAL OR CONSENT TO THE DEVELOPMENT APPLICATION ISSUED BY THE ASSOCIATION IN ACCORDANCE WITH THE CONSTITUTION EITHER UNCONDITIONALLY OR ON CONDITIONS WHICH ARE ACCEPTABLE TO THE PURCHASER ACTING

REASONABLY;

"AUTHORITY" MEANS ANY FEDERAL, STATE OR LOCAL GOVERNMENT, OR ANY GOVERNMENTAL, SEMI-GOVERNMENTAL, ADMINISTRATIVE, FISCAL OR JUDICIAL BODY, DEPARTMENT COMMISSION, TRIBUNAL AGENCY OR ENTITY AND INCLUDES THE ASSOCIATION IN ITS CAPACITY AS APPROVING AUTHORITY PURSUANT TO THE PLANNING DOCUMENTS;

"BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION DULY CONSTITUTED FROM TIME TO TIME;

"BUSINESS DAY" MEANS A DAY (EXCLUDING SATURDAY, SUNDAY OR PUBLIC HOLIDAY) ON WHICH TRADING BANKS ARE OPEN FOR BUSINESS IN SYDNEY;

"COMPLETION DATE" MEANS THAT DATE REFERRED TO IN SPECIAL CONDITION 2.1;

"CONSTITUTION" MEANS THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE ASSOCIATION AND INCLUDES ALL BY-LAWS AND REGULATIONS CREATED PURSUANT TO THE MEMORANDUM AND ARTICLES OF ASSOCIATION A COPY OF WHICH IS EXHIBIT 3;

"COUNCIL" MEANS THE BAULKHAM HILLS SHIRE COUNCIL;

"COUNCIL DEED" MEANS THE DEED BETWEEN THE VENDOR, THE ASSOCIATION AND COUNCIL DATED 2 SEPTEMBER 1992 A COPY OF WHICH IS EXHIBIT 2;

"DEED OF OPTION AND RIGHT OF FIRST REFUSAL" MEANS THE DEED TO BE ENTERED INTO BETWEEN THE VENDOR AND THE PURCHASER IN ACCORDANCE WITH SPECIAL CONDITION 17 A COPY OF WHICH IS ANNEXED AND MARKED "A";

"DEPOSITED PLANS" MEANS; DEPOSITED PLAN 816340 AND THE SECTION 88B INSTRUMENT IN RESPECT OF THAT PLAN, A COPY OF WHICH IS ANNEXED AND MARKED "B"

"DEVELOPMENT APPLICATION" MEANS A DEVELOPMENT APPLICATION PURSUANT TO PART 4 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 FOR THE PROPOSED DEVELOPMENT ON THE PROPERTY AND WHICH SHALL INCLUDE A LANDSCAPE MANAGEMENT PLAN FIRST APPROVED BY THE VENDOR AND THE ASSOCIATION AND WHICH MUST BE IN ACCORDANCE WITH THE MASTER SCHEME.

"DEVELOPMENT CONSENT" MEANS A DEVELOPMENT CONSENT INCLUDING A "DEFERRED COMMENCEMENT" CONSENT ISSUED PURSUANT TO THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 FOR THE PROPOSED DEVELOPMENT EITHER UNCONDITIONALLY OR ON CONDITIONS WHICH ARE ACCEPTABLE TO THE PURCHASER ACTING REASONABLY;

"DEVELOPMENT CONTROL PLAN" MEANS EACH AND EVERY DEVELOPMENT CONTROL PLAN AND CONCEPT DEVELOPMENT CONTROL PLAN RELATING TO NORWEST BUSINESS PARK FROM TIME TO TIME;

"DEVELOPMENT GUIDELINES" MEANS THE ESTATE DEVELOPMENT GUIDELINES AND THE PROPERTY DEVELOPMENT GUIDELINES;

"DISCHARGE" MEANS A REGISTRABLE DISCHARGE OR SURRENDER OR WITHDRAWAL OF AN ENCUMBRANCE;

"DRAINAGE DIAGRAM" MEANS THE SEWERAGE SERVICE DIAGRAM ANNEXED AND MARKED "D" (IF ANY);

"ENCUMBRANCE" MEANS A MORTGAGE, LEASE, OR CAVEAT;

"ESTATE DEVELOPMENT GUIDELINES" MEANS THE GUIDELINES RELATING TO SUBDIVISION, DEVELOPMENT, LANDSCAPING, MAINTENANCE AND OTHER MATTERS CREATED OR ADOPTED BY THE ASSOCIATION FROM TIME TO TIME FOR THE NORWEST BUSINESS PARK A COPY OF WHICH IS EXHIBIT 4;

"ENVIRONMENTAL LAW" MEANS ANY COMMON LAW, STATUTE, INCLUDING SUBORDINATE LEGISLATION, RULING OR STANDARD RELATING TO PLANNING, THE ENVIRONMENT OR OCCUPATIONAL OR PUBLIC HEALTH AND SAFETY;

"ENVIRONMENTAL LIABILITY" MEANS ANY CLAIM, DEMAND, OBLIGATION, EXPENSE, LOSS, PENALTY, FINE OR DAMAGES FOR WHICH ANY OCCUPIER OF THE PROPERTY MIGHT BE LIABLE UNDER THE COMMON LAW, ANY STATUTE (INCLUDING SUBORDINATE LEGISLATION), RULING OR STANDARD RELATING TO PLANNING, THE ENVIRONMENT OR OCCUPATIONAL OR PUBLIC HEALTH AND SAFETY.

"FIRB" MEANS THE FOREIGN INVESTMENT REVIEW BOARD OF THE COMMONWEALTH OF AUSTRALIA;

"FIRB APPLICATION" MEANS AN APPLICATION TO THE TREASURER FOR THE FIRB APPROVAL.

"FIRB APPROVAL" MEANS:

(A) THE ISSUE BY THE TREASURER OF A NOTICE STATING THAT THE TREASURER DOES NOT OBJECT TO THE PROPOSAL SET OUT IN THE FIRB APPLICATION AND SUCH NOTICE DOES NOT CONTAIN CONDITIONS WHICH ARE NOT ACCEPTABLE TO THE PURCHASER ACTING REASONABLY; OR

(B) THE TREASURER BEING OR BECOMING PRECLUDED BY LAW FROM MAKING ANY ORDER IN RESPECT OF THE FIRB APPLICATION;

"GOODS & SERVICES TAX" MEANS THE TAX OF THAT NAME REFERRED TO IN A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999 (COMMONWEALTH);

"INFRASTRUCTURE WORKS" MEANS SUCH WORKS AS ARE NECESSARY TO ENABLE THE PROVISION OF ELECTRICITY, WATER, SEWERAGE, DRAINAGE AND GAS SERVICES TO THE PROPERTY;

"LAND" MEANS THAT PART OF THE LAND FORMERLY COMPRISING LOT 102 IN DEPOSITED PLAN 624844 BEING THE LAND FORMERLY COMPRISED IN CERTIFICATE OF TITLE FOLIO IDENTIFIER 102/624844 AND EACH AND EVERY PART OF THAT LAND AND ALL OTHER LAND IN ADDITION WHICH MAY FROM TIME TO TIME BE INCORPORATED OR CONSOLIDATED AS PART OF THE NORWEST BUSINESS PARK ZONED EMPLOYMENT AREA 10(A) (BUSINESS PARK) IN LEP 1991;

"LEP 1991" MEANS THE BAULKHAM HILLS LOCAL ENVIRONMENT PLAN 1991;

"MASTER SCHEME" MEANS THE SCHEME OF DEVELOPMENT FOR THE NORWEST BUSINESS PARK AS DETERMINED BY THE VENDOR ANY RELEVANT AUTHORITY OR THE ASSOCIATION FROM TIME TO TIME INCORPORATING BUT NOT LIMITED TO:

(A) THE PLANNING DOCUMENTS;

(B) THE CONSTITUTION;

(C) THE COVENANTS, EASEMENTS AND RESTRICTIONS AT ANY TIME APPLICABLE TO OR PROPOSED FOR THE NORWEST BUSINESS PARK;

(D) ANY OTHER PLANNING DEVELOPMENT, CONTROL OR REVIEW PROCEDURES WHICH ARISE IN RESPECT OF THE NORWEST BUSINESS PARK (INCLUDING BUT NOT LIMITED TO THE BOARD AND THE PANEL AND THEIR RESPECTIVE CONTROLS, REVIEWS AND PROCEDURES); AND

(E) ALL ARRANGEMENTS WITH THE COUNCIL (INCLUDING BUT NOT LIMITED TO THOSE IN THE COUNCIL DEED),

ALL AS VARIED OR SUBSTITUTED FROM TIME TO TIME;

"MINOR ALTERATION" MEANS AN ALTERATION IN WHICH THE TOTAL AREA OF THE PROPERTY EITHER REMAINS UNCHANGED OR IS REDUCED OR INCREASED BY LESS THAN FIVE PER CENT (5%);

"NORWEST BUSINESS PARK" MEANS THE LAND OR SUCH PART OF THE LAND OR ADDITIONS TO THE LAND AS MAY FROM TIME TO TIME BE ADMINISTERED PURSUANT TO THE MASTER SCHEME;

"NORWEST ESTATE CONCEPT DEVELOPMENT CONTROL PLAN" MEANS THE DOCUMENT ISSUED BY THE COUNCIL A COPY OF WHICH IS EXHIBIT 1;

"PLAN" MEANS THE PLAN OF SUBDIVISION GENERALLY IN THE FORM OF ANNEXURE "F" WHEREBY THE LOT COMPRISING THE PROPERTY IS CREATED AS A LOT IN A DEPOSITED PLAN WHICH PLAN WILL INVOLVE A SUBDIVISION OF LOT 601 IN DEPOSITED PLAN 882552 AND LOT 938 IN DEPOSITED PLAN 876722 AND WHICH MAY INVOLVE OTHER SUBDIVISIONS PRIOR TO CREATION OF THE PROPERTY.

"PLANNING DOCUMENTS" MEANS:

(A) THE BAULKHAM HILLS LOCAL ENVIRONMENTAL PLAN 1991 AS AMENDED;

(B) ALL OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS (AS DEFINED IN THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (NSW));

(C) ALL RELEVANT DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS (AS DEFINED IN THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (NSW));

(D) ALL DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS AND DEVELOPMENT CONTROL PLANS;

(E) THE DEVELOPMENT GUIDELINES; AND

(F) ALL OTHER PLANNING POLICIES, PLANS, INSTRUMENTS, AFFECTATIONS, DOCUMENTS OR DIRECTIVES ISSUED BY THE COUNCIL OR ANY AUTHORITY IN RESPECT OF OR IN RELATION TO NORWEST BUSINESS PARK;

"PRINTED CONDITIONS" MEANS THE CONDITIONS OF SALE CONTAINED IN THE STANDARD FORM;

"PROPERTY" MEANS LOT 6001 IN THE PLAN;

"PROPERTY DEVELOPMENT GUIDELINES" MEANS THE GUIDELINES IN RESPECT OF DEVELOPMENT, IMPROVEMENT, LANDSCAPING AND OTHER MATTERS CREATED OR ADOPTED BY THE ASSOCIATION FROM TIME TO TIME IN RESPECT OF THE LAND A COPY OF WHICH IS EXHIBIT 5;

"PROPOSED AFFECTATIONS" MEANS SUCH OF THE EASEMENTS, COVENANTS, RIGHTS, RESTRICTIONS AS TO USER OR RESUMPTIONS LISTED IN THE SIXTH SCHEDULE RELATING TO THE NORWEST BUSINESS PARK OR THE PROPERTY AS THE VENDOR MAY DECIDE (ACTING REASONABLY) TO CREATE OR WHICH THE VENDOR IS OBLIGED BY AN AUTHORITY TO CREATE OR WHICH AN AUTHORITY CREATES, IMPOSES OR REQUIRES;

"PROPOSED DEVELOPMENT" MEANS STAGE 1 OF THE PURCHASER'S REDEVELOPMENT OF THE PROPERTY WHICH STAGE COMPRISES OFFICES, MANUFACTURING AND WAREHOUSING FACILITIES OF NOT LESS THAN 24,000 SQUARE METRES;

"RESTRICTIONS AS TO USER" MEANS THE RESTRICTIONS AS TO USER REFERRED TO IN SPECIAL CONDITION 13 AND IN THE FORM ANNEXED AND MARKED "G";

"SPECIAL CONDITIONS" MEAN THESE CONDITIONS OF SALE NOT INCLUDING THE PRINTED CONDITIONS;

"STANDARD FORM" MEANS THE STANDARD FORM OF CONTRACT FOR SALE OF LAND - 2000 EDITION;

"THIS CONTRACT" INCLUDES ALL PARTS OF AND SCHEDULES AND EXHIBITS TO THIS CONTRACT;

"TREASURER" MEANS THE TREASURER OF THE COMMONWEALTH OF AUSTRALIA;

"VENDOR'S AGENT" MEANS THE PARTY, IF ANY, DEFINED AS VENDOR'S AGENT ON PAGE 1 OF THE PRINTED CONDITIONS.

#### 1.2 INTERPRETATION

IN THIS CONTRACT, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) HEADINGS AND UNDERLININGS ARE FOR CONVENIENCE ONLY AND DO NOT AFFECT THE INTERPRETATION OF THIS CONTRACT;

(B) WORDS IMPORTING THE SINGULAR INCLUDE THE PLURAL AND VICE VERSA;

(C) WORDS IMPORTING A GENDER INCLUDE ANY GENDER;

(D) AN EXPRESSION IMPORTING A NATURAL PERSON INCLUDES ANY COMPANY, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, CORPORATION OR OTHER BODY CORPORATE AND ANY GOVERNMENTAL AGENCY;

(E) A REFERENCE TO ANY THING INCLUDES A PART OF THAT THING;

(F) OTHER PARTS OF SPEECH AND GRAMMATICAL FORMS OF A WORD OR PHRASE DEFINED IN THIS CONTRACT HAVE A CORRESPONDING MEANING;

(G) A REFERENCE TO A PART, SPECIAL CONDITION, PARTY, ANNEXURE, EXHIBIT OR SCHEDULE IS A REFERENCE TO A PART AND SPECIAL CONDITION OF, AND A PARTY, ANNEXURE, EXHIBIT AND SCHEDULE TO, THIS CONTRACT;

(H) A REFERENCE TO A STATUTE, REGULATION, PROCLAMATION, ORDINANCE OR BY-LAW INCLUDES ALL STATUTES, REGULATIONS, PROCLAMATIONS, ORDINANCES OR BY-LAWS VARYING, CONSOLIDATING OR REPLACING IT, AND A REFERENCE TO A STATUTE INCLUDES ALL REGULATIONS, PROCLAMATIONS, ORDINANCES AND BY-LAWS ISSUED UNDER THAT STATUTE;

(I) A REFERENCE TO A DOCUMENT INCLUDES ALL AMENDMENTS OR SUPPLEMENTS TO, OR REPLACEMENTS OR NOVATIONS OF, THAT DOCUMENT;

(J) A REFERENCE TO A PARTY TO A DOCUMENT INCLUDES THAT PARTY'S SUCCESSORS AND PERMITTED ASSIGNS;

(K) WHERE THE DAY ON OR BY WHICH ANY THING IS TO BE DONE IS NOT A BUSINESS DAY, THAT THING MUST BE DONE ON OR BY THE NEXT SUCCEEDING BUSINESS DAY;

(L) NO RULE OF CONSTRUCTION APPLIES TO THE DISADVANTAGE OF A PARTY BECAUSE THAT PARTY WAS RESPONSIBLE FOR THE PREPARATION OF THIS CONTRACT OR ANY PART OF IT;

(M) A COVENANT OR CONTRACT ON THE PART OF TWO OR MORE PERSONS BINDS THEM JOINTLY AND SEVERALLY;

(N) A REFERENCE TO A CONTRACT OTHER THAN THIS CONTRACT INCLUDES AN UNDERTAKING, DEED, CONTRACT OR LEGALLY ENFORCEABLE ARRANGEMENT OR UNDERSTANDING WHETHER OR NOT IN WRITING;

(O) A REFERENCE TO AN ASSET INCLUDES ALL PROPERTY OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, A BUSINESS, AND ALL RIGHTS, REVENUES AND BENEFITS;

(P) A REFERENCE TO A DOCUMENT INCLUDES ANY CONTRACT IN WRITING, OR ANY CERTIFICATE, NOTICE, INSTRUMENT OR OTHER DOCUMENT OF ANY KIND;

(Q) A REFERENCE TO LIQUIDATION INCLUDES OFFICIAL MANAGEMENT, APPOINTMENT OF AN ADMINISTRATOR, COMPROMISE, ARRANGEMENT, MERGER, AMALGAMATION,

RECONSTRUCTION, WINDING-UP, DISSOLUTION, ASSIGNMENT FOR THE BENEFIT OF CREDITORS, INSOLVENCY, BANKRUPTCY, OR ANY SIMILAR PROCEDURE OR, WHERE APPLICABLE, CHANGES IN THE CONSTITUTION OF ANY PARTNERSHIP OR PERSON, OR DEATH;

(R) A REFERENCE TO "DOLLARS", "A\$" OR "\$" IS A REFERENCE TO THE LAWFUL CURRENCY OF THE COMMONWEALTH OF AUSTRALIA;

(S) A REFERENCE TO "REQUISITION" INCLUDES AN INQUIRY;

(T) A REFERENCE TO A BODY, OTHER THAN A PARTY TO THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, AN INSTITUTE, ASSOCIATION OR AUTHORITY), WHETHER OR NOT IT IS A STATUTORY BODY:

(1) WHICH CEASES TO EXIST; OR

(2) WHOSE POWERS OR FUNCTIONS ARE TRANSFERRED TO ANY OTHER BODY,

IS A REFERENCE TO THE BODY WHICH REPLACES IT OR WHICH SUBSTANTIALLY SUCCEEDS TO ITS POWERS OR FUNCTIONS.

1.3 NOTWITHSTANDING THE REFERENCE TO "LAND" ON THE FRONT PAGE OF THIS CONTRACT AND THE DEFINITION OF "LAND" IN SPECIAL CONDITION 1.1 THE VENDOR AND THE PURCHASER AGREE THAT THE WORD "LAND" SHALL HAVE THE MEANING ASCRIBED ON THE FRONT PAGE OF THIS CONTRACT WHERE IT IS USED IN THE PRINTED CONDITIONS AND THE WORD "LAND" SHALL HAVE THE MEANING ASCRIBED IN SPECIAL CONDITION 1.1 WHERE IT IS USED ELSEWHERE IN THIS CONTRACT.

## 2. COMPLETION

### 2.1 CONDITIONAL CONTRACT

(A) THE COMPLETION DATE IS THE LATER OF THE DATES 6 CALENDAR MONTHS FROM THE DATE OF THIS CONTRACT AND THE DATE 10 BUSINESS DAYS AFTER THE DATE COMPLETION OF THIS CONTRACT CEASES TO BE SUBJECT TO ALL OF THE CONDITIONS IN SPECIAL CONDITION 2.4.

(B) IF ANY CONDITION OF COMPLETION IS NOT SATISFIED ON OR BEFORE THE DATE BEING 12 MONTHS FROM THE DATE OF THIS CONTRACT EITHER PARTY MAY AT ANY TIME THEREAFTER RESCIND THIS CONTRACT BY WRITTEN NOTICE TO THE OTHER.

### 2.2 NOTICE TO COMPLETE

(A) COMPLETION OF THIS CONTRACT MUST TAKE PLACE BY 12 NOON ON THE COMPLETION DATE.

(B) IF COMPLETION DOES NOT OCCUR ON THE COMPLETION DATE, EITHER PARTY MAY, IF IT IS READY AND WILLING TO COMPLETE AND IS NOT IN DEFAULT, SERVE A NOTICE TO COMPLETE ON THE OTHER PARTY.

(C) THE NOTICE TO COMPLETE MUST STIPULATE A TIME AND DATE FOR COMPLETION WHICH IS AT LEAST 10 BUSINESS DAYS AFTER THE DATE OF SERVICE OF THE NOTICE AND THE PARTIES ACKNOWLEDGE THAT 10 BUSINESS DAYS IS A REASONABLE MINIMUM PERIOD IN WHICH TO COMPLETE THIS CONTRACT.

(D) THE NOTICE TO COMPLETE MAY STIPULATE THAT TIME IS OF THE ESSENCE.

### 2.3 DELAYED COMPLETION

(A) IF COMPLETION DOES NOT OCCUR ON THE COMPLETION DATE THEN:

(1) ON COMPLETION THE PURCHASER MUST, IN ADDITION TO THE BALANCE OF THE PRICE OR ADJUSTED BALANCE OF THE PRICE (AS THE CASE MAY BE), PAY TO THE VENDOR INTEREST ON THE BALANCE OF THE PRICE OR ADJUSTED BALANCE OF THE PRICE (AS THE CASE MAY BE) CALCULATED ON A DAILY BASIS AT 11 PER CENTUM PER ANNUM (11%) FOR THE PERIOD FROM BUT EXCLUDING THE COMPLETION DATE TO AND INCLUDING THE ACTUAL DATE OF COMPLETION, AND ALL INTEREST ON THE DEPOSIT EARNED ON AND AFTER THE COMPLETION DATE SHALL BE PAID SOLELY TO THE VENDOR; AND

(2) THE VENDOR IS NOT OBLIGED TO COMPLETE UNLESS THE PURCHASER COMPLIES WITH PARAGRAPH (A) (1) ABOVE.

(B) THE PURCHASER HEREBY ACKNOWLEDGES THAT INTEREST AT THE RATE REFERRED TO IN (A) (1) ABOVE ON THE BALANCE OR THE ADJUSTED BALANCE OF THE PRICE REPRESENTS A GENUINE PRE-ESTIMATE OF THE LIQUIDATED DAMAGES LIKELY TO BE SUFFERED BY THE VENDOR AS A RESULT OF COMPLETION NOT TAKING PLACE ON OR BEFORE THE COMPLETION DATE.

(C) PARAGRAPH (A) DOES NOT OPERATE IF THE PURCHASER FAILS TO COMPLETE ON THE COMPLETION DATE BY REASON ONLY THAT THE VENDOR WAS THEN IN DEFAULT OR OTHERWISE NOT READY OR WILLING TO COMPLETE.

### 2.4 CONDITIONS PRECEDENT

COMPLETION OF THIS CONTRACT IS CONDITIONAL UPON:

(A) THE REGISTRATION OF THE PLAN AS A DEPOSITED PLAN AT THE LAND TITLES OFFICE IN ACCORDANCE WITH SPECIAL CONDITION 8; AND

(B) THE PURCHASER BECOMING A MEMBER OF THE ASSOCIATION IN ACCORDANCE WITH SPECIAL CONDITION 10;



(C) THE PURCHASER OBTAINING FIRB APPROVAL IN ACCORDANCE WITH SPECIAL CONDITION 11.

3. DEPOSIT AND INTEREST

3.1 NOTWITHSTANDING PRINTED CONDITION 3 ALL INTEREST EARNED ON THE DEPOSIT SHALL BE PAID TO THE PARTY ENTITLED TO THE DEPOSIT UPON COMPLETION, TERMINATION OR RESCISSION OF THIS CONTRACT.

3.2 CLAUSE 2.5 OF THE PRINTED CONDITIONS APPLIES TO THE DEPOSIT.

3.3 THE PARTY ENTITLED TO THE DEPOSIT BEARS ANY LOSS RESULTING FROM INVESTMENT OF THE DEPOSIT.

4. SURVEY

4.1 THE PARTIES ACKNOWLEDGE THAT THE PURCHASE PRICE IS BASED ON THE PROPERTY HAVING AN AREA OF 120,000 SQUARE METRES AT A PRICE OF \$385.00 PER SQUARE METRE INCLUSIVE OF GST.

4.2 PRIOR TO COMPLETION OF THIS CONTRACT THE VENDOR MUST DELIVER TO THE PURCHASER A COPY OF THE PLAN IN REGISTRABLE FORM OR AS REGISTERED SHOWING THE AREA OF THE PROPERTY.

4.3 THE PURCHASE PRICE MUST THEN BE RECALCULATED AT THE RATE OF \$385.00 PER SQUARE METRE (INCLUSIVE OF GST) AND THE PURCHASE PRICE ADJUSTED ACCORDINGLY, SUCH ADJUSTED PRICE LESS THE DEPOSIT PAID, BEING THE "ADJUSTED BALANCE OF THE PRICE" FOR THE PURPOSES OF SPECIAL CONDITION 2.3.

5. ADJUSTMENTS

5.1 (A) THE DEFINITION OF "ADJUSTMENT DATE" IN PRINTED CONDITION 1 MEANS THE EARLIEST OF THE DATE OF GIVING OF POSSESSION OF THE PROPERTY TO THE PURCHASER, THE DATE OF ACTUAL COMPLETION OF THIS CONTRACT AND THE COMPLETION DATE.

(B) THE VENDOR WILL NOT BE OBLIGED TO REMOVE ANY CHARGE ON THE PROPERTY FROM ANY RATE, TAX (INCLUDING LAND TAX) OR OUTGOING, UNTIL THE DATE OF ACTUAL COMPLETION OF THIS CONTRACT;

(C) THE VENDOR WILL NOT BE DEEMED TO BE UNABLE TO COMPLETE THIS CONTRACT BY REASON OF THE EXISTENCE OF ANY CHARGE ON THE PROPERTY FOR ANY RATE, TAX (INCLUDING LAND TAX) OR OUTGOING; AND

(D) THE VENDOR WILL BE ENTITLED TO SERVE A NOTICE TO COMPLETE OR ANY OTHER NOTICE ON THE PURCHASER NOTWITHSTANDING THE EXISTENCE OF ANY CHARGE ON THE PROPERTY FOR ANY RATE, TAX (INCLUDING LAND TAX) OR OUTGOING.

5.2 NOTWITHSTANDING ANYTHING CONTAINED IN THIS CONTRACT, IF THE COUNCIL, SYDNEY WATER CORPORATION, THE COMMISSIONER FOR LAND TAX OR ANY OTHER RELEVANT AUTHORITY HAS NOT ISSUED A SEPARATE ASSESSMENT OF ANY RATE, TAX (INCLUDING LAND TAX) OR OUTGOING FOR THE PROPERTY:

(A) THE PURCHASER WILL NOT BE ENTITLED TO DELAY COMPLETION OF THIS CONTRACT OR DISPUTE THE VALIDITY OF ANY NOTICE TO COMPLETE OR ANY OTHER NOTICE TO THE PURCHASER GIVEN BY THE VENDOR ON THE BASIS THAT A SEPARATE ASSESSMENT HAS NOT BEEN ISSUED; AND

(B) THE PARTIES AGREE THAT THE AMOUNT OF THE RELEVANT RATE, TAX (INCLUDING LAND TAX) OR OUTGOING FOR THE PROPERTY TO BE APPORTIONED AND ADJUSTED ON COMPLETION WILL BE:

<TABLE>

<CAPTION>

<S>	<C>
COUNCIL RATES	\$3,400.00 PER ANNUM
LAND TAX	628,320.00 PER ANNUM
WATER RATES	\$70.00 PER QUARTER

</TABLE>

(C) NOTWITHSTANDING SUB-PARAGRAPH (B) IF THE QUANTUM OF THE ANNUAL COUNCIL RATES OR LAND TAX AS ACTUALLY LEVIED ON THE PROPERTY FOR THE RATE OR TAX YEAR IN WHICH COMPLETION OF THIS CONTRACT OCCURS IS VARIED BY MORE THAN 10% OF THE AMOUNT SPECIFIED IN SUB-PARAGRAPH (B) THEN THE PARTIES SHALL RE-ADJUST COUNCIL RATES AND/OR LAND TAX USING THE ACTUAL RATES OR TAX LEVIED ON THE PROPERTY.

(D) IT IS EXPRESSLY AGREED THAT THE PRICE DOES NOT INCLUDE GST PAYABLE ON ADJUSTMENTS PAYABLE BY THE PURCHASER TO THE VENDOR ON COMPLETION. THE PURCHASER SHALL PAY IN ADDITION TO THE PRICE GST ON THE QUANTUM OF ADJUSTMENTS CALCULATED AT THE RATE OF 10% THEREOF AND THE AMOUNT OF ANY SUCH GST SO PAID SHALL BE INCLUDED IN THE TAX INVOICE TO BE PROVIDED BY THE VENDOR TO THE

PURCHASER ON COMPLETION.

6. DISCLOSURES AND ACKNOWLEDGMENTS

6.1 PURCHASER'S TITLE

(A) THE VENDOR IS NOT AWARE OF ANY INTEREST WHICH IS NOT DISCLOSED IN THIS CONTRACT AFFECTING THE TITLE TO THE PROPERTY.

(B) SUBJECT TO THE CONVEYANCING ACT 1919 (NSW), THE PURCHASER IS NOT ENTITLED TO MAKE ANY OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION, RESCIND OR TERMINATE THIS CONTRACT OR DELAY COMPLETION DUE TO ANY MATTER AFFECTING THE TITLE TO THE PROPERTY, DISCLOSED IN THIS CONTRACT.

6.2 DISCLOSURE

(A) THE PURCHASER AGREES THAT, FOR THE PURPOSES OF THIS CONTRACT, ALL MATTERS DISCLOSED AND DESCRIBED IN THIS CONTRACT ARE SPECIFICALLY DISCLOSED AND CLEARLY DESCRIBED, AND THE PURCHASER FURTHER AGREES THAT IT WILL NOT MAKE ANY OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION OR RESCIND OR TERMINATE THIS CONTRACT OR DELAY COMPLETION BECAUSE OF ANY OF THESE MATTERS.

(B) WITHOUT LIMITING THE OPERATION OF PARAGRAPH (A) ABOVE, THE PURCHASER ACKNOWLEDGES THAT THE FOLLOWING MATTERS ARE SPECIFICALLY DISCLOSED AND CLEARLY DESCRIBED:

- ANNEXURE B - DEPOSITED PLAN;
- ANNEXURE D - DRAINAGE DIAGRAM (IF AVAILABLE);
- ANNEXURE F - PLAN;
- ANNEXURE G - RESTRICTIONS AS TO USER;
- ANNEXURE H - FOLIO IDENTIFIERS 601/882552 AND 938/876722
- ANNEXURE I - CERTIFICATE UNDER SECTION 149 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979;
- ANNEXURE J - RESTRICTION ON USER BURDENING THE PROPERTY;
- ANNEXURE K - REPORT BY GEOTECHNIQUE PTY LIMITED
- ANNEXURE L - DRAFT COUNCIL DEED
- ANNEXURE M - PLAN OF PROPOSED EASEMENT TO DRAIN WATER;
- EXHIBIT 1 - NORWEST ESTATE DEVELOPMENT CONTROL PLAN;
- EXHIBIT 2 - COUNCIL DEED;
- EXHIBIT 3 - CONSTITUTION;
- EXHIBIT 4 - ESTATE DEVELOPMENT GUIDELINES;
- EXHIBIT 5 - PROPERTY DEVELOPMENT GUIDELINES.

(C) SUBJECT TO PARAGRAPH (D) BELOW AND TO THE CONVEYANCING ACT 1919, THE VENDOR DOES NOT WARRANT THE ACCURACY, CURRENCY OR COMPLETENESS OF ANY OF THE DOCUMENTS OR MATTERS REFERRED TO IN PARAGRAPH (B) ABOVE.

(D) THE VENDOR WARRANTS THAT THE CONSTITUTION, ESTATE DEVELOPMENT GUIDELINES AND PROPERTY DEVELOPMENT GUIDELINES ARE CURRENT AND COMPLETE COPIES OF THOSE DOCUMENTS AS AT THE DATE OF THIS CONTRACT.

6.3 PURCHASER'S ACKNOWLEDGMENT

THE PURCHASER ACKNOWLEDGES AND AGREES THAT:

(A) THE PROPERTY AND THE NORWEST BUSINESS PARK AND ALL IMPROVEMENTS ARE THE SUBJECT OF DEVELOPMENT AND REDEVELOPMENT PURSUANT TO OR IN ACCORDANCE WITH THE MASTER SCHEME AND THAT THE PROPERTY IS AN UNDEVELOPED SITE. THE VENDOR'S INTEREST IN THE PROPERTY IS TAKEN AND ACCEPTED BY THE PURCHASER IN SUBSTANTIALLY ITS CONDITION AND STATE AS AT THE DATE OF THIS CONTRACT;

(B) THE LAND IN THE VICINITY OF THE PROPERTY ARE ALL PART OF THE NORWEST BUSINESS PARK AND THE PURCHASER MUST NOT OBJECT TO ANY NOISE, DUST OR OTHER INCONVENIENCE WHICH IS CAUSED AS A RESULT OF:

- (1) THE ERECTION OF ANY BUILDING,
- (2) THE CARRYING OUT OF INFRASTRUCTURE WORKS,
- (3) THE CARRYING OUT OF ANY OTHER WORKS,
- (4) THE GENERATION OF TRAFFIC, OR,

(5) ANY OTHER MATTER CONDUCTED, UNDERTAKEN OR CARRIED OUT FOR OR ON BEHALF OF THE VENDOR OR THE ASSOCIATION

AND WHICH ARISES OUT OF OR IN CONNECTION WITH THE MASTER SCHEME OR ANY DEVELOPMENT ON OR IN THE NORWEST BUSINESS PARK NOT INCONSISTENT WITH THE MASTER SCHEME;

(C) IT CONSENTS TO AND IS NOT ENTITLED TO TAKE, MAKE OR RAISE ANY OBJECTION OR REQUISITION OR CLAIM FOR LOSS, DAMAGE OR COMPENSATION OR HAVE ANY RIGHT OF RESCISSION IN RELATION TO THE FOLLOWING MATTERS:

(1) ANY MATTER DISCLOSED IN THE DOCUMENTS LISTED IN SPECIAL CONDITION 6.2(B) AND MUST PROVIDE ALL SUCH WRITTEN CONSENTS TO THE ABOVE MATTERS AS MAY BE REQUIRED BY THE VENDOR AT ANY TIME;

(2) THE REGISTRATION OF ANY DOCUMENT COMPRISING PART OF THE ANNEXURES TO THIS CONTRACT OR ANY DOCUMENT OR INSTRUMENT CREATING OR OTHERWISE CONCERNING ANY OF THE PROPOSED AFFECTATIONS ON THE TITLE TO THE PROPERTY OR ANY PART OF THE LAND;

(3) ANY REQUIREMENT REASONABLY ACCEPTABLE TO THE PURCHASER OF ANY AUTHORITY INCLUDING BUT NOT LIMITED TO THE COUNCIL, THE ROADS AND TRAFFIC AUTHORITY OR SYDNEY WATER CORPORATION ATTACHING CONDITIONS TO SUBDIVISION OR OTHER DEVELOPMENT OF THE PROPERTY;

(D) THE PURCHASER HAS SATISFIED ITSELF AS TO THE PURPOSES FOR WHICH THE PROPERTY MAY BE USED IN ACCORDANCE WITH THE REQUIREMENTS OF THE RESPONSIBLE AUTHORITY UNDER THE PROVISIONS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AND THE LOCAL GOVERNMENT ACT, 1993;

(E) THE VENDOR IS UNDERTAKING CONTINUING DEVELOPMENT OF THE NORWEST BUSINESS PARK AND THIS MAY INCLUDE BUT IS NOT LIMITED TO AMENDMENTS TO THE MASTER SCHEME, INCLUDING AMENDMENTS OR VARIATIONS TO THE AREAS DESIGNATED AND THE PERMITTED USES IN THE AREAS AND USES DESIGNATED.

#### 6.4 NO WARRANTY OR REPRESENTATION

(A) SUBJECT TO SPECIAL CONDITION 7.2, NO WARRANTY OR REPRESENTATION AS TO THE CONDITION OR FITNESS OF THE PROPERTY (INCLUDING BUT NOT LIMITED TO THE CONDITION OR FITNESS OF THE SUB-SURFACE) OR AS TO THE CONDITION OR FITNESS FOR PURPOSE OF THE PROPERTY FOR ANY PURPOSE OF ANY NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO THE PROPOSED DEVELOPMENT) IS GIVEN OR MADE BY THE VENDOR.

(B) THE PURCHASER MUST NOT RAISE ANY REQUISITION OR OBJECTION OR MAKE ANY CLAIM FOR LOSS, DAMAGE OR COMPENSATION OR OTHER RELIEF IN RESPECT OF OR RELATING TO ANY ISSUE RELATIVE TO SUCH CONDITION OR FITNESS, INCLUDING BUT NOT LIMITED TO ANY CLAIM ON THE GROUNDS THAT:

(1) THERE ARE ANY DEFECTS (WHETHER LATENT OR PATENT) IN THE PROPERTY OR ANY STRUCTURE ON THE PROPERTY OR IN THE PROVISION OF SERVICES ERECTED OR TO BE ERECTED ON THE PROPERTY OR WORKS CARRIED OUT OR TO BE CARRIED OUT ON THE PROPERTY OR ANY ADJOINING OR CONTINUOUS LAND OR STRUCTURE ERECTED ON THAT LAND; OR

(2) THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING BUT NOT LIMITED TO THE SOIL AND SUB-SURFACE) IS OR MAY BE SUCH AS TO RENDER THE PROPERTY UNSUITABLE OR UNFIT FOR THE CARRYING OUT OF THE PROPOSED DEVELOPMENT OR THE CONSTRUCTION OF ANY BUILDING OR ANY DEVELOPMENT UPON THE PROPERTY.

#### 7. ENVIRONMENTAL CONDITIONS

##### 7.1 PURCHASER RELIES ON OWN ENQUIRIES

(A) THE PURCHASER RELIES ENTIRELY ON ITS OWN INSPECTIONS AND ITS OWN ENQUIRIES (FROM PARTIES OTHER THAN THE VENDOR, ITS SERVANTS AND AGENTS) AS TO:

(1) THE PAST AND PRESENT USES OF THE PROPERTY AND ANY IMPROVEMENTS ON IT FROM TIME TO TIME;

(2) ANY MATERIALS ON THE PROPERTY FROM TIME TO TIME, INCLUDING ANY MATERIALS USED IN OR AS PART OF THE CONSTRUCTION OF THE IMPROVEMENTS ON THE PROPERTY FROM TIME TO TIME;

(3) ANY LICENCES, PERMITS, CONSENTS OR APPROVALS IN RESPECT OF THE PROPERTY, ANY IMPROVEMENTS AND ANY ACTIVITIES CARRIED OUT ON THE PROPERTY FROM TIME TO TIME; AND

(4) ANY ENVIRONMENTAL LIABILITY ASSOCIATED WITH THE PROPERTY, ANY IMPROVEMENTS AND ANY ACTIVITIES CARRIED OUT ON THE PROPERTY FROM TIME TO TIME.

(B) THE REPORT ANNEXED HERETO MARKED "K" REFERS TO FILL. IN ALL RESPECTS OTHER THAN SUCH FILL, AND WITHOUT LIMITING SPECIAL CONDITION 7.1(E), THE VENDOR WARRANTS THAT IT IS NOT AWARE OF ANY ENVIRONMENTAL LIABILITY AS AT THE DATE OF THIS CONTRACT. SUBJECT THERETO THE PURCHASER ACKNOWLEDGES THAT NEITHER THE VENDOR NOR ANY OF THE VENDOR'S SERVANTS OR AGENTS HAVE MADE ANY WARRANTIES IN RELATION TO THE MATTERS REFERRED TO IN PARAGRAPHS (A)(L)-(4) ABOVE.

(C) IF THE VENDOR IS NOT IN BREACH OF ITS WARRANTY UNDER SPECIAL CONDITION 7.1(B) THE PURCHASER IS NOT ENTITLED TO MAKE ANY OBJECTIONS,

REQUISITIONS OR CLAIMS FOR DAMAGES OR COMPENSATION NOR RESCIND THIS CONTRACT IN RELATION TO ANY MATTER REFERRED TO IN PARAGRAPHS (A)(L)-(4) ABOVE.

(D) THE PURCHASER INDEMNIFIES THE VENDOR AGAINST ANY LIABILITY, CLAIMS, DEMANDS, SUITS, PROCEEDINGS, LOSSES, COSTS, PENALTIES OR DAMAGES RELATED TO OR ARISING OUT OF THE MATTERS REFERRED TO IN PARAGRAPHS (A)(1)-(4) ABOVE WHERE THE MATTERS RELATE TO THE PERIOD DURING WHICH THE PURCHASER HAS POSSESSION OF THE PROPERTY OR IS THE REGISTERED PROPRIETOR OF THE PROPERTY.

(E) ANNEXED HERETO MARKED "K" IS A REPORT DATED 30 JUNE 2000 BY GEOTECHNIQUE PTY LTD. THE PURCHASER EXPRESSLY ACKNOWLEDGES THAT IT IS AWARE OF ALL OF THE INFORMATION CONTAINED IN SUCH REPORT AND WILL MAKE NO OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION IN RELATION TO ANY SUCH INFORMATION.

#### 7.2 VENDOR'S OBLIGATIONS

THE VENDOR MUST NOT PRIOR TO COMPLETION OF THIS CONTRACT:

(A) DO OR CAUSE TO BE DONE ANYTHING ON THE PROPERTY WHICH WOULD RESULT IN ANY AUTHORITY ISSUING ANY NOTICE, DIRECTION OR ORDER REQUIRING ANY CLEAN-UP, DECONTAMINATION, REMEDIAL ACTION OR MAKING GOOD UNDER ANY ENVIRONMENTAL LAW; OR

(B) DO OR CAUSE TO BE DONE ANYTHING ON THE PROPERTY WHICH WOULD CONSTITUTE A VIOLATION OR CONTRAVENTION OF ANY ENVIRONMENTAL LAW.

#### 8. PLAN

8.1 COMPLETION OF THIS CONTRACT IS CONDITIONAL ON REGISTRATION OF THE PLAN WITHIN A PERIOD OF 12 MONTHS FROM THE DATE OF THIS CONTRACT. IN CLAUSE 28.2 OF THE PRINTED CONDITIONS, "6 MONTHS" IS REPLACED BY "12 MONTHS".

8.2 THE VENDOR MUST AS SOON AS PRACTICABLE AND AT ITS COST:

(A) PREPARE THE PLAN IN A FORM REGISTRABLE AT THE LAND TITLES OFFICE;

(B) OBTAIN ALL APPROVALS OR CONSENTS FOR REGISTRATION REQUIRED FROM ANY AUTHORITY OR PERSON WITH A REGISTERED INTEREST IN THE PROPERTY;

(C) LODGE THE PLAN FOR REGISTRATION AT THE LAND TITLES OFFICE.

8.3 THE VENDOR MUST AT ITS COST USE REASONABLE DILIGENCE AND DO EVERYTHING REASONABLY REQUIRED FOR THE PLAN TO BE REGISTERED.

8.4 THE PARTIES MUST NOT UNREASONABLY OBJECT TO MINOR ALTERATIONS TO THE AREA OR BOUNDARIES OF THE PLAN REQUIRED BY ANY AUTHORITY AND, IF REQUIRED, MUST GIVE THEIR WRITTEN CONSENT TO THE MINOR ALTERATIONS.

8.5 THE PURCHASER MUST NOT REFUSE TO ACCEPT TITLE TO THE PROPERTY AND MUST NOT MAKE ANY CLAIM FOR COMPENSATION IN RESPECT OF ANY MINOR ALTERATIONS TO THE PLAN.

8.6 THE PURCHASER MUST NOT OBJECT TO OR CLAIM COMPENSATION FOR ANY EASEMENT FOR BATTER ON TERMS AS SET OUT IN SCHEDULE 8 OF THE CONVEYANCING ACT 1919 CREATED UPON REGISTRATION OF THE PLAN (AND AS SHOWN ON ANNEXURE "F") WHERE SUCH EASEMENT IS REQUIRED BY ANY RELEVANT AUTHORITY.

THE PURCHASER MUST CONSENT TO THE CREATION OF EASEMENTS FOR DRAINAGE BENEFITING THE ROAD AUTHORITY OF THE PUBLIC ROAD TO BE DEDICATED WITHIN LOT 6003 OVER THE AREAS COLOURED RED IN THE PLAN ANNEXED MARKED "M".

8.7 NOTWITHSTANDING SPECIAL CONDITION 8.6 THERE SHALL BE REGISTERED IN CONJUNCTION WITH THE PLAN AN INSTRUMENT UNDER THE PROVISIONS OF SECTION 88B OF THE CONVEYANCING ACT CREATING A RESTRICTION ON USER BURDENING THE PROPERTY AND BENEFITING LOT 2 IN DEPOSITED PLAN 816340 OWNED BY THE ASSOCIATION IN THE TERMS SET FORTH IN ANNEXURE "J".

8.8 ANNEXED HERETO MARKED "'C" IS A SUBDIVISION APPROVAL OF THE PLAN ISSUED BY THE COUNCIL DATED 28 SEPTEMBER 2001. THE PURCHASER ACKNOWLEDGES THE CONDITIONS OF SUCH APPROVAL AND WILL MAKE NO OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION IN RELATION THERETO.

8.9 WITHOUT LIMITING THE PURCHASER'S RIGHTS UNDER THIS CONTRACT, THE PURCHASER MAY RESCIND THIS CONTRACT IF:

(A) THE TOTAL AREA OF THE PROPERTY IS REDUCED BY MORE THAN 5% FROM THAT SHOWN IN ANNEXURE "F"; OR

(B) THE VENDOR OR AN AUTHORITY REQUIRES A PUBLICLY ACCESSIBLE PEDESTRIAN FOOTPATH OR RIGHT OF WAY TO BE LOCATED WITHIN THE PROPERTY; OR

(C) THE EASEMENTS AND RESTRICTIONS REFERRED TO IN THE FOLLOWING SUB-CLAUSE AFFECT THE PROPERTY AFTER REGISTRATION OF THE PLAN.

8.10 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, THE VENDOR SHALL DO ALL THINGS REQUIRED TO PROCURE LAND AND PROPERTY INFORMATION NSW TO ISSUE THE TITLE FOR THE PROPERTY FOLLOWING REGISTRATION OF THE PLAN FREE AND CLEAR OF, AND ON COMPLETION OF THIS SALE THE PROPERTY SHALL NOT BE SUBJECT TO, THE FOLLOWING

EASEMENTS AND RESTRICTIONS:

DP 835983 RESTRICTION(S) ON THE USE OF LAND;

DP 844927 RESTRICTION(S) ON THE USE OF LAND;

DP 854838 RESTRICTION(S) ON THE USE OF LAND;

DP 835983 EASEMENT FOR SERVICES 31 WIDE, 18 WIDE AND VARIABLE AFFECTING THE PROPERTY (OR PART);

DP 835983 EASEMENT FOR LANDSCAPING 31 WIDE, 18 WIDE AND VARIABLE AFFECTING THE PROPERTY (OR PART); AND

DP 835983 EASEMENT FOR SIGNAGE, FLAGPOLES AND STREET FURNITURE 31 WIDE, 18 WIDE AND VARIABLE AFFECTING THE PROPERTY (OR PART).

9. DEVELOPMENT APPLICATION AND LANDSCAPING

9.1 AS SOON AS PRACTICABLE AFTER THE DATE OF THIS CONTRACT THE PURCHASER SHALL LODGE THE DEVELOPMENT APPLICATION WITH THE ASSOCIATION FOR ITS APPROVAL TO THE DEVELOPMENT APPLICATION UNDER THE CONSTITUTION AND WITHIN 5 BUSINESS DAYS OF RECEIPT OF THE ASSOCIATION'S APPROVAL THE PURCHASER MUST LODGE THE DEVELOPMENT APPLICATION WITH THE COUNCIL FOR THE COUNCIL'S APPROVAL. THE VENDOR SHALL CONSENT IN WRITING TO SUCH LODGEMENT AS OWNER OF THE PROPERTY IF SUCH LODGEMENT OCCURS BEFORE COMPLETION OF THIS CONTRACT.

9.2 THE LANDSCAPE MANAGEMENT PLAN TO BE INCLUDED WITH THE DEVELOPMENT APPLICATION MUST:

(A) PROVIDE FOR LANDSCAPING OF THE FULL PERIMETER BOUNDARY OF THE PROPERTY SIMULTANEOUSLY WITH LANDSCAPING TO BE PLANTED FOR THE PROPOSED DEVELOPMENT;

(B) PROVIDE FOR THE BALANCE OF THE PROPERTY NOT REQUIRED FOR THE PROPOSED DEVELOPMENT TO BE GRASSED AT THE SAME TIME AS THE LANDSCAPING REFERRED TO IN (A) IS PERFORMED AND THEREAFTER TO MAINTAIN THAT GRASS UNTIL THAT AREA IS FURTHER DEVELOPED;

(C) PROVIDE FOR THE LANDSCAPING REFERRED TO IN (A) TO INCLUDE MOUNDING TO A MINIMUM 1.5 METRES IN HEIGHT ALONG ANY FRONTAGE OF THE PROPERTY ALONG A PUBLIC ROAD WHERE THAT FRONTAGE IS ADJACENT TO ANY CARPARKING AREA.

9.3 (A) ON COMPLETION THE PURCHASER SHALL PAY TO THE VENDOR A SECURITY DEPOSIT OF \$330,000.00 OR A BANK GUARANTEE IN LIKE AMOUNT IN FAVOUR OF THE VENDOR ISSUED BY A BANK LICENSED TO OPERATE IN AUSTRALIA AND IN TERMS ACCEPTABLE TO THE VENDOR AS SECURITY TO ENSURE THAT THE PROVISIONS OF CLAUSE 9.2 ARE SATISFIED. SUCH SECURITY DEPOSIT OR BANK GUARANTEE SHALL BE RETURNED TO THE PURCHASER WITHIN 14 DAYS OF THE PURCHASER NOTIFYING THE VENDOR IN WRITING THAT THE REQUIREMENTS OF CLAUSE 9.2 HAVE BEEN FULLY PERFORMED PROVIDED THAT THE SAID WORKS HAVE BEEN DONE TO THE VENDOR'S REASONABLE SATISFACTION.

(B) AT ANY TIME PRIOR TO THE RETURN OF THE SECURITY DEPOSIT OR BANK GUARANTEE REFERRED TO IN THIS CONDITION THE VENDOR MAY APPLY THE SECURITY DEPOSIT, OR PROCEEDS OF THE BANK GUARANTEE, TOWARDS THE REASONABLE COST OF CARRYING OUT THE PURCHASER'S OBLIGATIONS UNDER CLAUSE 9.2 PROVIDED THAT NO SUCH WORKS SHALL BE CARRIED OUT BY THE VENDOR UNLESS THE PURCHASER HAS FAILED TO DO SUCH WORKS WITHIN A REASONABLE TIME OF THE VENDOR NOTIFYING THE PURCHASER IN WRITING OF THE WORKS WHICH THE VENDOR REQUIRES THE PURCHASER TO DO TO SATISFY THE REQUIREMENTS OF CLAUSE 9.2. THE PURCHASER HEREBY IRREVOCABLY GRANTS ACCESS TO THE PROPERTY TO THE VENDOR AND ITS CONTRACTORS FOR THE PURPOSE OF PERFORMING WORKS WHICH THE PURCHASER FAILS TO PERFORM IN ACCORDANCE WITH A NOTICE ISSUED PURSUANT TO THIS CONDITION.

9.4 THE PURCHASER COVENANTS WITH THE VENDOR THAT IT WILL SUBSTANTIALLY COMMENCE WORK ON THE PROPOSED DEVELOPMENT PURSUANT TO AND IN ACCORDANCE WITH THE DEVELOPMENT CONSENT WITHIN 2 YEARS OF THE DATE OF ISSUE OF THE DEVELOPMENT CONSENT BY THE COUNCIL. IN THE EVENT THAT THE PURCHASER FAILS TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SPECIAL CONDITION THEN THE VENDOR MAY AT ITS DISCRETION PURCHASE THE PROPERTY FROM THE PURCHASER PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THE DEED OF OPTION AND RIGHT OF FIRST REFUSAL. FOR THE PURPOSE OF THIS CLAUSE "SUBSTANTIALLY COMMENCE" SHALL HAVE THE SAME MEANING AS DEFINED IN CLAUSE 1.1 OF THE SAID DEED OF OPTION AND RIGHT OF FIRST REFUSAL.

10. ASSOCIATION

10.1 COMPLETION OF THIS CONTRACT IS CONDITIONAL UPON THE PURCHASER BECOMING A PROVISIONAL MEMBER OF THE ASSOCIATION BEFORE THE DATE OF ACTUAL COMPLETION.

10.2 THE PURCHASER MUST PRIOR TO OR SIMULTANEOUSLY WITH THE DATE OF THIS CONTRACT APPLY IN WRITING TO THE ASSOCIATION TO BECOME REGISTERED AS A MEMBER OF THE ASSOCIATION IN THE MANNER SET OUT IN THE CONSTITUTION.

10.3 THE VENDOR MUST PROVIDE ALL NECESSARY ASSISTANCE TO THE PURCHASER IN RESPECT OF THE PURCHASER'S APPLICATION (WHERE SUCH ASSISTANCE IS WITHIN ITS

POWER AND CONTROL).

10.4 (A) IF THE PURCHASER FAILS TO COMPLY WITH ITS OBLIGATIONS UNDER SPECIAL CONDITION 10.2, THEN THE PURCHASER IRREVOCABLY AUTHORISES THE VENDOR, AS ITS AGENT, TO MAKE AND PURSUE THE APPLICATION TO THE ASSOCIATION ON BEHALF OF THE PURCHASER AND TO PAY ALL FEES AND DO ALL THINGS REQUIRED TO HAVE THE PURCHASER REGISTERED AS A MEMBER OF THE ASSOCIATION.

(B) THE PURCHASER MUST INDEMNIFY AND KEEP THE VENDOR INDEMNIFIED FROM AND AGAINST ALL COSTS SUFFERED OR INCURRED BY THE VENDOR IN RESPECT OF ANY EXERCISE BY THE VENDOR OF THE AUTHORITY GRANTED TO IT UNDER PARAGRAPH (A) OF THIS SUB-PARAGRAPH.

11. FIRB APPROVAL

11.1 COMPLETION OF THIS CONTRACT IS CONDITIONAL UPON FIRB APPROVAL, BEING OBTAINED BY THE PURCHASER.

11.2 THE PURCHASER WARRANTS THAT:

(A) ITS SOLICITORS HAVE ADVISED IT THAT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF, THE TREASURER IS MORE LIKELY THAN NOT TO APPROVE OF THE PURCHASER'S PURCHASE OF THE PROPERTY;

(B) ON OR BEFORE 5 BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT, THE FIRB APPLICATION WILL HAVE BEEN LODGED WITH THE TREASURER;

(C) IT WILL USE ITS BEST ENDEAVOURS TO OBTAIN FIRB APPROVAL AS EXPEDITIOUSLY AS IS REASONABLY POSSIBLE; AND

(D) IT WILL GIVE THE VENDOR'S SOLICITORS COPIES OF THE FIRB APPLICATION AND ALL SUBSEQUENT CORRESPONDENCE IN RESPECT OF THE FIRB APPLICATION AS SOON AS SENT OR RECEIVED BY IT OR BY THE PURCHASER'S SOLICITOR.

11.3 THE PURCHASER HEREBY AUTHORISES THE VENDOR AND THE VENDOR'S SOLICITORS TO MAKE ANY ENQUIRIES OF THE TREASURER AT ANY TIME IN RELATION TO THE FIRB APPLICATION AND WILL WITHIN 2 BUSINESS DAYS OF THIS CONTRACT CONFIRM THIS AUTHORISATION TO THE TREASURER BY NOTICE IN WRITING.

12. PROPOSED AFFECTATIONS

12.1 THE PURCHASER ACKNOWLEDGES THAT AS PART OF THE MASTER SCHEME IT IS PROPOSED THAT THE PROPOSED AFFECTATIONS ARE CREATED OVER THE NORWEST BUSINESS PARK.

12.2 THE PROPOSED AFFECTATIONS SHALL BE AN ITEM OR ITEMS LISTED IN THE SIXTH SCHEDULE AND MAY, AS DETERMINED BY THE VENDOR ACTING REASONABLY, BENEFIT ANY AUTHORITY OR ANY LAND OWNED BY:

- (A) THE VENDOR OR ITS SUCCESSORS AND ASSIGNS;
- (B) THE PURCHASER OR ITS SUCCESSOR AND ASSIGNS;
- (C) ANY RELEVANT AUTHORITY;
- (D) THE ASSOCIATION;
- (E) OWNERS OF LOTS IN THE NORWEST BUSINESS PARK; OR
- (F) THE OWNER OF ANY LAND ADJOINING THE NORWEST BUSINESS PARK.

12.3 THE PURCHASER MUST:

(A) CONSENT TO, JOIN IN AND EXECUTE ANY OR ALL DOCUMENTS AND INSTRUMENTS TO ENSURE THE DUE AND EFFECTIVE CREATION AS REFERRED TO IN SPECIAL CONDITION 12.2 OF ANY OF THE PROPOSED AFFECTATIONS AS AND WHEN REQUESTED SO TO DO BY THE VENDOR WHETHER PRIOR TO, ON OR AFTER THE COMPLETION DATE;

(B) NOT MAKE ANY OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION OR ANY OTHER CLAIM BY REASON OF THE CREATION AS REFERRED TO IN SPECIAL CONDITION 12.2 BY ANY MEANS WHATSOEVER OF ANY OF THE PROPOSED AFFECTATIONS THE EFFECT OF WHICH IN SUBSTANCE ACCORDS WITH THE MATTERS NOTED IN THE SIXTH SCHEDULE AS THEY RELATE TO THE PROPERTY AND THE PURCHASER MUST IF REQUIRED BY THE VENDOR INCLUDE IN THE FORM REQUIRED BY THE VENDOR IN THE APPROPRIATE ASSURANCE OF THE PROPERTY ANY SUCH PROPOSED AFFECTATIONS; AND

(C) NOTWITHSTANDING SPECIAL CONDITIONS 12.3(A) OR (B), NOT RESCIND THIS CONTRACT DUE TO THE CREATION OF AN EASEMENT, COVENANT OR RESTRICTION EXCEPT WHERE THE EASEMENT, COVENANT OR RESTRICTION RELATES TO AND AFFECTS THE PROPERTY AND IN THE OPINION OF THE PURCHASER ACTING REASONABLY, SUBSTANTIALLY DETRACTS FROM THE PROPOSED USE AND ENJOYMENT OF THE PROPERTY BY THE PURCHASER AS DISCLOSED IN THE PROPOSED DEVELOPMENT THEN THE PURCHASER MAY RESCIND THIS CONTRACT BY NOTICE IN WRITING TO THE VENDOR.

12.4 THE PURCHASER HEREBY IRREVOCABLY AUTHORISES THE VENDOR TO CONSENT IN THE NAME OF AND ON BEHALF OF THE PURCHASER IN RESPECT OF THE APPROVAL OF COUNCIL AND/OR THE REGISTRATION OF ANY PLAN OR INSTRUMENT (WHETHER OR NOT SUCH

INSTRUMENT OPERATES BY VIRTUE OF SECTIONS 88B OR 88E OF THE CONVEYANCING ACT 1919 (NSW) WHICH CREATES ANY EASEMENT, COVENANT OR RESTRICTION OVER THE PROPERTY WHERE SUCH EASEMENT, COVENANT OR RESTRICTION DOES NOT, IN THE OPINION OF THE PURCHASER ACTING REASONABLY, SUBSTANTIALLY DETRACT FROM THE PROPOSED USE AND ENJOYMENT OF THE PROPERTY BY THE PURCHASER IN ACCORDANCE WITH THE PROPOSED DEVELOPMENT.

THE PURCHASER HEREBY IRREVOCABLY APPOINTS THE VENDOR AS ITS LAWFUL ATTORNEY FOR THE ABOVE PURPOSES.

12.5 PRIOR TO EXERCISING ITS POWER OF ATTORNEY UNDER OR PURSUANT TO SPECIAL CONDITION 12.4, THE VENDOR MUST NOTIFY THE PURCHASER IN WRITING OF ITS INTENTION TO EXERCISE THE RIGHTS AND UNLESS THE PURCHASER NOTIFIES THE VENDOR IN WRITING WITHIN 10 BUSINESS DAYS OF BEING NOTIFIED BY THE VENDOR, THAT, IN THE OPINION OF THE PURCHASER ACTING REASONABLY THE RELEVANT EASEMENT, COVENANT OR RESTRICTION DOES SUBSTANTIALLY DETRACT FROM THE PROPOSED USE AND ENJOYMENT OF THE PROPERTY BY THE PURCHASER IN ACCORDANCE WITH THE PROPOSED DEVELOPMENT, THEN, AT ANY TIME AFTER THE EXPIRATION OF THE PERIOD OF 10 BUSINESS DAYS, THE VENDOR MAY IMMEDIATELY EXERCISE ITS POWER OF ATTORNEY GRANTED UNDER SPECIAL CONDITION 12.4 WITHOUT RESTRICTION OR FURTHER NOTICE TO THE PURCHASER.

12.6 THE PURCHASER ACKNOWLEDGES THAT THE VENDOR IS, AS AT THE DATE OF THIS CONTRACT, A MEMBER OF THE ASSOCIATION AND THAT THE VENDOR IS ENTITLED TO VOTE AS SUCH IN RESPECT OF ANY RESOLUTION OF THE ASSOCIATION IN SUCH MANNER AND TO SUCH EFFECT AS IT DEEMS FIT.

13. RESTRICTIONS AS TO USER

SUBJECT TO SPECIAL CONDITIONS 8.6, 8.9, 8.10, 31.3 AND 31.4 THE PURCHASER ACKNOWLEDGES THAT THE RESTRICTIONS AS TO USER HAVE BEEN REGISTERED AND AFFECT THE PROPERTY AND THE PURCHASER MUST NOT MAKE ANY OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION IN RESPECT OF THE RESTRICTIONS AS TO USER.

14. TRANSFER

14.1 THE VENDOR MUST UPON LODGEMENT OF THE PLAN FOR REGISTRATION WITH THE LAND TITLES OFFICE NOTIFY THE PURCHASER IN WRITING OF THE DEPOSITED PLAN NUMBER OF THE PLAN.

14.2 THE PURCHASER MUST AT ITS EXPENSE AT LEAST 10 BUSINESS DAYS PRIOR TO THE COMPLETION DATE DELIVER TO THE VENDOR FOR EXECUTION THE TRANSFER FOR THE PROPERTY.

15. SITE WORKS REBATE

ON COMPLETION AND IN ACCORDANCE WITH CONDITION 35 THE VENDOR SHALL REBATE TO THE PURCHASER AN AMOUNT OF \$500,000.00 (INCLUSIVE OF GST) OFF THE PRICE AS A CONTRIBUTION TOWARDS SITE WORKS WHICH WILL BE REQUIRED TO BE PROVIDED TO THE PROPERTY BY THE PURCHASER IN RELATION TO THE PROPOSED DEVELOPMENT AND OTHER DEVELOPMENT PROPOSED BY THE PURCHASER FOR THE PROPERTY.

16. ENCUMBRANCE ON CERTIFICATE OF TITLE

IF ANY ENCUMBRANCE TO WHICH THE PROPERTY IS SUBJECT IS NOTED ON THE CERTIFICATE OF TITLE FOR THE PROPERTY ON COMPLETION, THEN:

(A) THE PURCHASER MUST ACCEPT A DULY EXECUTED DISCHARGE IN REGISTERABLE FORM WHICH IN THE VENDOR'S REASONABLE OPINION WILL REMOVE THE ENCUMBRANCE, TOGETHER WITH THE APPLICABLE REGISTRATION FEE; AND

(B) WHEN THE VENDOR GIVES THE PURCHASER A DISCHARGE, THE VENDOR IS REGARDED AS HAVING GIVEN THE PURCHASER A TRANSFER OF THE PROPERTY FREE FROM THE ENCUMBRANCE.

17. DEED OF OPTION AND RIGHT OF FIRST REFUSAL

COMPLETION OF THIS CONTRACT IS CONDITIONAL UPON THE PARTIES ENTERING INTO THE DEED OF OPTION AND RIGHT OF FIRST REFUSAL SIMULTANEOUSLY WITH ENTERING INTO THIS CONTRACT.

18. CAVEAT

THE PURCHASER MUST NOT LODGE ANY CAVEAT UPON THE TITLE OF THE LAND WHICH HAS THE EFFECT OF PRECLUDING REGISTRATION OF ANY PLAN, INSTRUMENT, RESTRICTION, EASEMENT, RIGHT OR OTHER MATTER CONTEMPLATED BY THIS CONTRACT OR ANY MORTGAGE OR VARIATION MORTGAGE OR THE SALE OF ANY OTHER PART OF THE LAND NOT BEING THE SUBJECT OF THIS CONTRACT.

19. ASSIGNMENT

19.1 THE PURCHASER MUST NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE VENDOR (WHICH MAY BE GIVEN OR WITHHELD IN ITS ABSOLUTE DISCRETION AND WITHOUT THE DISCLOSURE OF ANY REASON), ASSIGN ANY OF ITS RIGHTS, OBLIGATIONS OR INTERESTS UNDER THIS CONTRACT. THIS CONDITION SHALL NOT APPLY TO ANY ASSIGNMENT TO A RELATED BODY CORPORATE (AS DEFINED IN THE CORPORATIONS ACT) OF THE PURCHASER.

19.2 THE VENDOR MAY AT ANY TIME ASSIGN, CHARGE OR ENCUMBER ITS RIGHT, TITLE AND INTEREST UNDER THIS CONTRACT OR ANY PART WITHOUT THE CONSENT OF THE PURCHASER. ANY ASSIGNMENT BY THE VENDOR MUST NOT AFFECT THE PURCHASER'S RIGHTS AGAINST THE VENDOR UNDER THIS CONTRACT.

20. RIGHT TO RESCIND  
BEFORE COMPLETION ANY PARTY MAY RESCIND THIS CONTRACT BY GIVING THE OTHER PARTIES WRITTEN NOTICE, IF ANY OTHER PARTY:

(A) IS A NATURAL PERSON AND DIES OR BECOMES MENTALLY ILL; OR

(B) IS A COMPANY AND:

(1) IS WOUND UP; OR

(2) A RECEIVER, RECEIVER AND MANAGER, OFFICIAL MANAGER, ADMINISTRATOR, TRUSTEE OR SIMILAR OFFICIAL IS APPOINTED OVER ITS ASSETS OR UNDERTAKING.

21. PASSING OF RISK

21.1 DIVISION 7 OF PART IV OF THE CONVEYANCING ACT 1919 (NSW) DOES NOT APPLY TO THIS CONTRACT.

21.2 ON EXECUTION OF THIS CONTRACT THE PURCHASER BEARS THE RISK OF DAMAGE TO THE PROPERTY.

22. AGENT

22.1 THE PURCHASER WARRANTS THAT IT WAS NOT INTRODUCED TO THE VENDOR OR THE PROPERTY BY ANY AGENT OTHER THAN THE VENDOR'S AGENT REFERRED TO ON THE FRONT PAGE OF THIS CONTRACT IN CIRCUMSTANCES WHICH COULD GIVE RISE TO A CLAIM FOR COMMISSION OR EXPENSES IN RESPECT OF THE SALE OF THE PROPERTY AGAINST THE VENDOR.

22.2 THE PURCHASER INDEMNIFIES THE VENDOR AGAINST ANY CLAIM REFERRED TO IN SPECIAL CONDITION 22.1.

23. INCOMPLETE WORK

23.1 DESPITE PRINTED CONDITION 11, ANY WORK REQUIRED TO BE DONE ON THE PROPERTY BY ANY WORK ORDER REFERRED TO IN PRINTED CONDITION 11 WHICH IS NOT COMPLETED BY COMPLETION DOES NOT:

(A) CONSTITUTE A DEFECT IN TITLE; OR

(B) ENTITLE THE PURCHASER TO MAKE ANY OBJECTION, REQUISITION OR CLAIM FOR COMPENSATION OR TO RESCIND OR TERMINATE OR TO DELAY COMPLETION OF THIS CONTRACT.

23.2 IF NOT COMPLIED WITH THE VENDOR MUST COMPLY AFTER COMPLETION WITH ANY WORK ORDER ISSUED BEFORE THE DATE OF THIS CONTRACT.

24. SEWAGE PIPES

THE PURCHASER ACKNOWLEDGES THAT THE SYDNEY WATER CORPORATION DOES NOT AT THE DATE OF THIS CONTRACT HAVE AVAILABLE A DRAINAGE DIAGRAM FOR OR IN RELATION TO THE PROPERTY AND THE PURCHASER MUST MAKE NO OBJECTION REQUISITION OR CLAIM FOR COMPENSATION NOR DOES THE PURCHASER HAVE ANY RIGHT OF RESCISSION IN RESPECT OF OMISSION FROM THIS CONTRACT OF ANY SUCH DIAGRAM EVEN IF A DIAGRAM COMES UNDER EXISTENCE PRIOR TO COMPLETION OF THIS CONTRACT.

25. NON-MERGER ON COMPLETION

THE OBLIGATIONS, WARRANTIES, COVENANTS, CONTRACTS, GUARANTEES AND INDEMNITIES CONTAINED IN OR REQUIRED OR CONTEMPLATED BY OR IN CONNECTION WITH THIS CONTRACT WHICH REMAIN TO BE PERFORMED OR ARE CAPABLE OF HAVING EFFECT OR APPLICATION (EXPRESS OR IMPLIED) AFTER THE COMPLETION DATE WILL NOT MERGE ON COMPLETION OF THIS CONTRACT AND WILL ENURE TO THE BENEFICIARY THEREOF AND WILL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING COMPLETION OF THIS CONTRACT.

26. GOVERNING LAW AND JURISDICTION

26.1 THIS CONTRACT IS GOVERNED BY THE LAWS OF THE STATE OF NEW SOUTH WALES.

26.2 THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF NEW SOUTH WALES.

27. SEVERABILITY

27.1 UNENFORCEABILITY OF A PROVISION OF THIS CONTRACT DOES NOT AFFECT THE ENFORCEABILITY OF ANY OTHER PROVISION.

27.2 SPECIAL CONDITION 27.1 DOES NOT APPLY IF ITS APPLICATION MATERIALLY AFFECTS THE COMMERCIAL ARRANGEMENT CONSTITUTED BY THIS CONTRACT.

28. ENTIRE AGREEMENT

THIS CONTRACT IS THE ENTIRE CONTRACT BETWEEN THE PARTIES IN RESPECT OF ITS SUBJECT MATTER.

29. FILL

THE PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES THAT FILLING MATERIAL HAS BEEN PLACED ON OR WITHIN THE PROPERTY AND SUBJECT TO SPECIAL CONDITION 36 THE PURCHASER COVENANTS WITH THE VENDOR THAT IT SHALL MAKE NO REQUISITION, OBJECTION OR CLAIM FOR COMPENSATION FOR OR IN RELATION TO THE EXISTENCE OF THE SAID FILLING MATERIAL AND/OR THE EFFECT, IF ANY, OF SAME ON THE PROPERTY.



30. INTENTIONALLY OMITTED  
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31. SITE REQUIREMENTS

31.1 PRIOR TO COMPLETION THE VENDOR MUST PROVIDE THE PURCHASER A LETTER FROM THE COUNCIL TO THE EFFECT THAT THE COUNCIL SHALL NOT REQUIRE ANY PUBLICLY ACCESSIBLE PEDESTRIAN FOOTPATH OR RIGHT OF WAY GIVING ACCESS FROM OLD WINDSOR ROAD TO BELLA VISTA FARM PARK TO BE LOCATED WITHIN THE PROPERTY.

31.2 THE VENDOR SHALL NOT OBJECT TO ANY PERIMETER SECURITY FENCING BEING ERECTED ON THE PROPERTY IF:

(A) SUCH FENCING IS LOCATED WITHIN THE PROPERTY AND BEHIND ANY LANDSCAPING SETBACK AREA FROM THE PERSPECTIVE OF ANY PUBLIC ROAD ADJOINING THE PROPERTY; AND

(B) SUCH FENCING SATISFIES THE INTENT OF THE MASTER SCHEME.

31.3 PRIOR TO COMPLETION THE VENDOR MUST REMOVE FROM THE PROPERTY ALL APPARATUS, WIRES, CABLES AND POSTS PROVIDING THE SERVICES REFERRED TO IN TRANSFER I467344.

31.4 PRIOR TO COMPLETION THE VENDOR MUST ALSO PROCURE FROM THE COUNCIL (BEING THE GRANTEE FOR THE TIME BEING REFERRED TO IN TRANSFER I467344) A LEGALLY ENFORCEABLE RIGHT AVAILABLE TO THE PURCHASER WHEREBY THE COUNCIL IS CAPABLE OF BEING RESTRAINED FROM EXERCISING ITS RIGHTS PURSUANT TO THE RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES CREATED BY TRANSFER I467344. THE VENDOR AND PURCHASER AGREE THAT THE MAKING OF A DEED BETWEEN THE VENDOR AND THE COUNCIL, IN OR SUBSTANTIALLY IN, THE FORM ATTACHED MARKED "L" WILL SATISFY THE REQUIREMENTS OF THIS CONDITION.

31.5 NOT LATER THAN THE DEDICATION OF THE PUBLIC ROAD REFERRED TO IN SPECIAL CONDITION 34.1 THE VENDOR MUST COMPLY WITH CLAUSES 1.2 AND 1.3 OF THE DEED ATTACHED MARKED "L".

31.6 FORTHWITH UPON COMPLETION OF THIS CONTRACT THE VENDOR MUST NOTIFY THE COUNCIL IN WRITING OF THE SALE OF THE PROPERTY TO THE PURCHASER AND REQUEST THE COUNCIL TO ENTER INTO THE FURTHER DEED CONTEMPLATED BY CLAUSE 2.5 IN THE DEED ATTACHED MARKED "L". THE PURCHASER MUST ENTER INTO SUCH FURTHER DEED WITH THE COUNCIL PROVIDED THAT SUCH DEED IS IN REASONABLE TERMS. IF THE COUNCIL FAILS TO ENTER INTO SUCH DEED THE PURCHASER MAY COMMENCE AND MAINTAIN LEGAL PROCEEDINGS AGAINST THE COUNCIL TO ENFORCE THE COUNCIL'S OBLIGATIONS, IN THE NAME OF THE VENDOR (BUT AT THE COST OF THE PURCHASER) AND THE VENDOR SHALL PROVIDE ANY NECESSARY AUTHORITY AS REASONABLY REQUIRED BY THE PURCHASER TO THAT EFFECT.

32. ACCESS

THE VENDOR HEREBY GRANTS THE PURCHASER ACCESS TO THE PROPERTY FOR THE PURPOSE OF GEOTECHNICAL AND ENVIRONMENTAL TESTING PROVIDED THAT THE PURCHASER BEFORE UNDERTAKING ANY SUCH TESTING PROVIDES THE VENDOR WITH COMPLETE DETAILS OF THE PROPOSED TESTING AND PROVIDED THAT SUCH DETAILS ARE ACCEPTABLE TO THE VENDOR, ACTING REASONABLY, (AS EVIDENCED IN WRITING BY THE VENDOR) AND FURTHER PROVIDED THAT THE PURCHASER AGREES TO COMPLY WITH ALL FURTHER CONDITIONS, IF ANY, IMPOSED ON SUCH ACCESS BY THE VENDOR AND THAT THE PURCHASER SHALL PAY THE COST OF ANY SUCH TESTING.

33. DRAINAGE

IN ANY DEVELOPMENT TO BE CONSTRUCTED UPON THE PROPERTY BY THE PURCHASER OR ITS CONTRACTORS THE PURCHASER MUST MEET ALL RELEVANT REQUIREMENTS OF THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 AND THE MASTER SCHEME IN RELATE TO SITE DRAINAGE.

34. CONSTRUCTION OF ROAD

34.1 THE VENDOR AGREES TO CONSTRUCT A TRAFFICABLE PUBLIC ROAD WITHIN THE AREA MARKED "FUTURE ROAD" BEING LOT 6003 ON THE COPY OF THE UNREGISTERED PLAN ANNEXED HERETO AND TO CREATE A RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES 18 WIDE AND VARIABLE OVER SUCH AREA INTER ALIA IN FAVOUR OF THE PROPERTY PENDING DEDICATION OF SUCH ROAD AS A PUBLIC ROAD. SUCH RIGHT OF CARRIAGEWAY AND EASEMENT MUST BE CREATED AT OR BEFORE COMPLETION AND THE SAID ROAD MUST BE COMPLETED AND DEDICATED IN CONJUNCTION WITH THE PURCHASER'S CONSTRUCTION OF THE PROPOSED DEVELOPMENT TO THE INTENT THAT IT WILL BE CONSTRUCTED AND AVAILABLE FOR USE BY THE PURCHASER AND ITS INVITEES WHEN THE PROPOSED DEVELOPMENT OPENS FOR BUSINESS AS EVIDENCED BY THE ISSUE OF AN OCCUPATION CERTIFICATE WITHIN THE MEANING OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979.

34.2 NOTWITHSTANDING THE RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES REFERRED TO IN 34.1 THE PURCHASER AGREES WITH THE VENDOR THAT IT WILL NOT EXERCISE ITS RIGHTS PURSUANT TO THE SAID RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES DURING THE PERIOD OF CONSTRUCTION OF THE ROADWAY BY THE VENDOR OR ITS SUB-CONTRACTORS WITHIN THE AREA OF THE SAID RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES AND DURING SUCH PERIOD THE PURCHASER SHALL ACCESS THE PROPERTY FROM NORWEST BOULEVARDE OR FROM PARTS OF THE SAID LOT 6003 NOMINATED BY THE VENDOR. THE VENDOR SHALL CONSTRUCT AT THE VENDOR'S EXPENSE TEMPORARY ROADS WITHIN THE PROPERTY AND ALONG THE LENGTH OF AND ADJACENT TO LOT 6003 DURING CONSTRUCTION OF THE PERMANENT ROADWAY. SUCH TEMPORARY ROADS SHALL BE OF SUCH STANDARD AS IS REASONABLY NECESSARY TO ACCOMMODATE CONSTRUCTION TRAFFIC TO AND FROM THE

PURCHASER'S CONSTRUCTION WORKS ON THE PROPERTY AND SHALL BE MADE AVAILABLE TO THE PURCHASER DURING SUCH CONSTRUCTION WORK BUT SHALL BE REQUIRED ONLY FOR SUCH PERIODS AS ACCESS TO THE PURCHASER'S CONSTRUCTION WORKS ON THE PROPERTY IS UNAVAILABLE VIA ANY PERMANENT OR OTHER ROAD CONSTRUCTED BY THE VENDOR WITHIN LOT 6003.

34.3 FOLLOWING CONSTRUCTION OF THE PROPOSED ROADWAY OVER THE SAID AREA OF PROPOSED ROAD THE PURCHASER MUST UPON WRITTEN REQUEST OF THE VENDOR CONSENT TO, AND PROCURE THE CONSENT OF ANY MORTGAGEE OR LESSEE OF THE PROPERTY TO THE RELEASE OF THE SAID RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES 18 WIDE WHICH RELEASE WILL TAKE EFFECT UPON REGISTRATION OF THE DEDICATION OF THE SAID AREA OF THE PROPOSED ROAD AS A PUBLIC ROAD.

35. DEFERRED PAYMENT OF PRICE

35.1 NOTWITHSTANDING ANYTHING OTHERWISE HEREIN CONTAINED THE BALANCE OF THE PRICE SHALL NOT BE FULLY PAID ON COMPLETION BUT SHALL BE PAID IN THE AMOUNTS AND ON THE DATES SET FORTH IN CONDITION 35.2.

35.2 THE BALANCE OF THE PRICE SHALL BE PAID AS FOLLOWS:

(A) THE DEPOSIT SHALL BE RELEASED TO THE VENDOR ON THE COMPLETION DATE;

(B) A FURTHER AMOUNT OF \$20,580,000.00 SHALL BE PAID ON COMPLETION. SUCH AMOUNT SHALL BE ADJUSTED BY THE AMOUNT OF THE SITE WORKS REBATE REFERRED TO IN SPECIAL CONDITION 15 AND ANY ADJUSTMENTS TO THE PRICE ARISING PURSUANT TO SPECIAL CONDITION 4.3;

(C) A FURTHER AMOUNT OF \$10,500,000.00 SHALL BE PAID ON THE DATE SIX MONTHS AFTER COMPLETION;

(D) THE BALANCE OF \$10,500,000.00 PAYABLE UNDER THIS CONTRACT SHALL BE PAID ON THE DATE 12 MONTHS AFTER COMPLETION.;

(E) ADJUSTMENTS PURSUANT TO CLAUSE 14 OF THE CONTRACT SHALL BE PAID ON COMPLETION.

35.3 TIME SHALL BE OF THE ESSENCE IN RELATION TO THE DATE FOR PAYMENT OF THOSE PARTS OF THE PRICE REFERRED TO IN CONDITIONS 35.2(A), 35.2(C) AND 35.2(D).

35.4 ON COMPLETION THE PURCHASER MUST DELIVER TO THE VENDOR A BANK GUARANTEE OR GUARANTEES DRAWN ON A BANK LICENCED TO OPERATE IN AUSTRALIA REASONABLY ACCEPTABLE TO THE VENDOR AND ON TERMS ACCEPTABLE TO THE VENDOR IN THE AMOUNT OF \$21,000,000.00 AS SECURITY FOR THE PAYMENTS REFERRED TO IN CONDITIONS 35.2(C) AND 35.2(D). IF THE PURCHASER FAILS TO MAKE EITHER OF THE PAYMENTS REFERRED TO CONDITIONS 35.2(C) AND 35.2(D) ON THE RELEVANT DUE DATE FOR PAYMENT THEN THE VENDOR, WITHOUT REFERENCE TO THE PURCHASER, MAY DRAW DOWN UPON THE SAID BANK GUARANTEE OR GUARANTEES FOR THE FULL AMOUNT OF THE PART OF THE PRICE WHICH THE PURCHASER HAS FAILED TO PAY ON THE RELEVANT DUE DATE.

35.5 IF THE PAYMENT DUE ON THE DATE REFERRED TO IN CONDITION 35.2(C) IS PAID BY THE PURCHASER THEN THE VENDOR SHALL FACILITATE THE RELEASE OF ANY EXISTING BANK GUARANTEE SUCH THAT THERE REMAINS HELD BY THE VENDOR A BANK GUARANTEE OR GUARANTEES FOR AN AMOUNT NOT EXCEEDING \$10,500,000.00.

35.6 IF THE PAYMENT DUE ON THE DATE REFERRED TO IN CONDITION 35.2(D) IS PAID BY THE PURCHASER THEN THE VENDOR SHALL FACILITATE THE RELEASE OF ANY REMAINING BANK GUARANTEE.

36. STOCKPILED SOILS

36.1 THE PARTIES ACKNOWLEDGE THAT THERE IS SITUATED ON THE PROPERTY AT THE DATE OF THIS CONTRACT A LARGE STOCKPILE OF SOIL.

36.2 AS SOON AS PRACTICABLE THE PURCHASER SHALL (WHETHER BEFORE OR AFTER COMPLETION) NOTIFY THE VENDOR IN WRITING OF THE QUANTUM OF SUCH STOCKPILED SOIL WHICH THE PURCHASER REQUIRES OR HAS USED FOR THE DEVELOPMENT PROPOSED BY THE PURCHASER FOR THE PROPERTY.

36.3 AS SOON AS PRACTICABLE AFTER RECEIPT OF THE NOTICE REFERRED TO IN SPECIAL CONDITION 36.2 THE VENDOR AT THE VENDOR'S COST SHALL REMOVE FROM THE PROPERTY THE SAID STOCKPILED SOIL WHICH IS NOT REQUIRED FOR USE OR HAS NOT BEEN USED BY THE PURCHASER. THE PURCHASER HEREBY AUTHORISES THE VENDOR AND ITS CONTRACTORS TO ENTER UPON THE PROPERTY TO REMOVE THE SAID UNUSED STOCKPILED SOIL.

37. REMOVAL OF EASEMENT

THE VENDOR AND THE PURCHASER SHALL EACH USE THEIR BEST ENDEAVOURS TO REMOVE THE PROPOSED EASEMENT FOR BATTER AND SUPPORT AFFECTING THE PROPERTY AND PROPOSED LOT 6002 AFTER CONSTRUCTION OF THE PERMANENT ROAD WITHIN LOT 6003 AFTER ITS DEDICATION AS A PUBLIC ROAD.

SIXTH SCHEDULE (SPECIAL CONDITION 12)  
PROPOSED AFFECTATIONS

THE PROPOSED AFFECTATIONS MAY INCLUDE:

(A) EASEMENTS, RESTRICTIONS AND RIGHTS WITHIN THE NORWEST BUSINESS PARK FOR:

(1) OMITTED

(2) SERVICES AND UTILITIES INCLUDING BUT NOT LIMITED TO:

- ELECTRICITY
- WATER
- SEWERAGE
- GAS
- SECURITY
- TELEPHONE
- COMMUNICATIONS
- DRAINAGE ON AN INFRASTRUCTURE OR INTER-ALLOTMENT BASIS
- SECURITY AND MONITORING
- PRIVATE COMMUNICATION
- LANDSCAPING - FORMAL/INFORMAL
- LIGHTING
- VIDEO AND AUDIO CABLE
- MICROWAVE
- IRRIGATION
- AUTHORISED ACCESS FOR LANDSCAPE/MAINTENANCE
- FLAGPOLES
- SIGNAGE AND INFORMATION SCHEMES AND STRUCTURE
- DISPLAY OF STRUCTURES/MURALS
- STREET FURNITURE
- DRAINAGE
- CCS MONITORING
- CCTV MONITORING SERVICES;

(3) LANDSCAPING BUFFER ZONES INCLUDING BUT NOT LIMITED TO AN EASEMENT AND/OR RESTRICTION AS TO THE USE OF A LANDSCAPE BUFFER ZONE OF APPROXIMATELY 15 METRES INSIDE AND PARALLEL TO THE BOUNDARIES OF ANY LOT WHICH IS ADJOINING OR CONTIGUOUS WITH THE BOUNDARY OF THE PROPOSED OPEN SPACE CORRIDOR TO THE FOLLOWING EFFECT:

"NO BUILDING OR OTHER STRUCTURE SHALL BE ERECTED WITHIN THE LANDSCAPE BUFFER ZONE 15 METRES WIDE SHOWN ON THE PLAN AND NO FENCE SHALL BE ERECTED ALONG ANY SUCH BOUNDARY.";

(4) OMITTED

(5) OMITTED

(6) ;OMITTED

(7) ;OMITTED

(8) MAINTENANCE OF LANDSCAPED AREAS BY THE ASSOCIATION;

(9) LAKES AND FORESHORE AREAS, INCLUDING BUT NOT LIMITED TO, MATTERS CONNECTED WITH:

- WATER STORAGE
- POLLUTION ARRESTING DEVICES
- STRUCTURES
- PUMPING STATIONS
- IRRIGATION
- LIGHTING
- LANDSCAPE - FORMAL/INFORMAL
- DRAINAGE
- COMMUNICATION
- FLAGPOLE
- PONTOON AND JETTIES
- CONSTRUCTION AND MAINTENANCE OF ABOVE
- PONTOONS
- CHEMICAL WORKS/ADDITIVES
- RIGHTS TO RESTRICT FISHING
- RIGHT TO REGULATE ALL ACTIVITIES ON OR AROUND THE LAKE
- NO BUILDING OR DEVELOPMENT EXISTING WITHOUT THE FORMAL APPROVAL

OF THE ASSOCIATION;

(10) THE GOLF COURSE AND ASSOCIATION MEMBERS;

(11) THE ACCESS, USE, MAINTENANCE AND CONSTRUCTION OF PIPELINES THROUGHOUT THE NORWEST BUSINESS PARK;

(12) THE ACCESS, USE, MAINTENANCE AND CONSTRUCTION OF DAMS, LAKES OR NATURAL WATERCOURSES INCLUDING BUT NOT LIMITED TO FILLING OR RECLAIMING THEREOF;

(13) ANY REQUIREMENTS OR RESTRICTIONS IMPOSED BY COUNCIL ANY AUTHORITY OR ANY BODY WHOSE CONSENT IS REQUIRED PRIOR TO THE REGISTRATION OF ANY PLAN OF SUBDIVISION OF THE NORWEST BUSINESS PARK;

(14) UNDERPASS RIGHTS AND ACCESS FOR MATTERS INCLUDING BUT NOT LIMITED TO:

- DRAINAGE
- LIGHTING
- COMMUNICATIONS
- LANDSCAPING;

(15) ALL OTHER MATTERS DISCLOSED OR REFERRED TO IN THIS CONTRACT;

(B) OMITTED

(C) A RESTRICTION THAT NO LOT WITHIN THE NORWEST BUSINESS PARK MAY BE USED IN SUCH A MANNER AS TO:

(1) PERMIT THE GROWTH OF GRASS OR WEEDS TO A HEIGHT GREATER THAN FIFTEEN CENTIMETRES (15CM) OR SUCH OTHER HEIGHT AS THE ASSOCIATION MAY, ACTING REASONABLY, FROM TIME TO TIME DETERMINE;

(2) MAINTAIN OR STORE THERE AN UNTIDY, UNSIGHTLY OR UNHEALTHY, ACCUMULATIONS OF DEBRIS, RUBBISH OR OTHER MATERIALS;

(3) PERMIT THE ACCUMULATION OF MATERIALS WHICH MAY CONSTITUTE A FIRE HAZARD;

(4) PERMIT THE ACCUMULATION OF REFUSE (WHICH SHALL BE TAKEN BY THE PROPRIETOR OR OCCUPIER OF THE BURDENED LOT TO THE DESIGNATED COLLECTION POINTS AT THE APPOINTED DAYS AND TIMES FOR COLLECTION);

(D) THE SEWERAGE SERVICE.

..

#### ANNEXURE "J"

NOT MORE THAN THIRTY PER CENTUM (30%) OF THE GROSS FLOOR AREA OF ANY BUILDING OR BUILDINGS ERECTED ON THE LOT BURDENED BY THIS RESTRICTION SHALL BE USED AND/OR OCCUPIED OTHERWISE THAN BY RESMED LIMITED (ABN 30 003 765 142) OR A RELATED BODY CORPORATE OF THAT CORPORATION WITHIN THE MEANING OF THE CORPORATIONS ACT 2001 FOR THE MANUFACTURE, STORAGE, MARKETING AND/OR DISTRIBUTION OF PRODUCTS AND SERVICES PRODUCED BY ANY OF SUCH CORPORATIONS AND THE MANAGEMENT OF SUCH CORPORATIONS WITHOUT THE CONSENT IN WRITING OF NORWEST ASSOCIATION LIMITED (ACN 003 443 883). THIS RESTRICTION SHALL CEASE TO BE OF ANY FORCE OR EFFECT ON AND FROM THE DATE FIVE YEARS AFTER THE REGISTRATION OF THIS PLAN BUT IN THE MEANTIME MAY BE RELEASED, VARIED OR MODIFIED BY THE SAID NORWEST ASSOCIATION LIMITED WITH THE CONSENT IN WRITING OF THE SAID RESMED LIMITED.

#### BETWEEN

1. NORWEST LIMITED, ABN 27 000 004 633
2. BAULKHAM HILLS SHIRE COUNCIL

#### DEED

ABBOTT  
TOUT  
SOLICITORS  
LEVEL 5  
TOWER LIFE BUILDING  
69 PHILLIP STREET  
PARRAMATTA NSW 2150  
  
DX 8285 PARRAMATTA  
TEL: (02) 9842 8888  
FAX: (02) 9842 8855  
REF: JRB

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DEED  
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THIS DEED DATED 19TH DECEMBER 2001

PARTIES

1. NORWEST LIMITED (ABN 27 000 004 633) OF 46 BROOKHOLLOW AVENUE, NORWEST BUSINESS PARK, BAULKHAM HILLS ("NORWEST"); AND
2. BAULKHAM HILLS SHIRE COUNCIL OF SHOWGROUND ROAD, CASTLE HILL ("COUNCIL").

RECITALS

- A. NORWEST IS THE REGISTERED PROPRIETOR OF LOT 601 IN DEPOSITED PLAN 882552 WHICH LAND FRONTS OLD WINDSOR ROAD, BELLA VISTA (THE "LAND").
- B. COUNCIL IS THE REGISTERED PROPRIETOR OF LOTS 102 AND 103 IN DEPOSITED PLAN 817929 (THE "FARM PARK LAND").
- C. THE FARM PARK LAND HAS THE BENEFIT OF THE RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES (THE "EASEMENTS") CREATED BY DEALING I467334 (THE "INSTRUMENT").
- D. THE LAND IS BURDENED BY THE EASEMENTS.
- E. PURSUANT TO THE INSTRUMENT:
  - (A) THE PROPRIETOR FOR THE TIME BEING OF THE LAND IS ENTITLED TO REQUEST THE MINISTER ADMINISTERING THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 TO EXTINGUISH THE SAID RIGHT OF CARRIAGEWAY FROM THE TITLE TO THE LAND UPON THE HAPPENING OF THE ACCESS TERMINATION DATE; AND
  - (B) THE SAID MINISTER SHALL EXTINGUISH THE SAID EASEMENT FOR SERVICES UPON THE SERVICE TERMINATION DATE.

- F. THE SAID "ACCESS TERMINATION DATE" MEANS THE DATE OF DEDICATION OF AN ACCESS ROAD.
- G. THE SAID "SERVICES TERMINATION DATE" MEANS THE DATE ON WHICH SUCH APPARATUS AS ARE NECESSARY TO PERMIT THE FULL, FREE AND UNINTERRUPTED PASSAGE AND RUNNING OF THE SERVICES REFERRED TO IN THE INSTRUMENT ARE INSTALLED IN, UNDER OR THROUGH AN ACCESS ROAD.
- H. UPON THE INSTRUMENT "ACCESS ROAD" MEANS ANY ROAD OR ROAD SURFACE WHICH IS CONTIGUOUS TO EITHER LOT COMPRISING THE FARM PARK LAND.
- I. NORWEST INTENDS TO SUBDIVIDE THE LAND (TOGETHER WITH OTHER LANDS) IN THE MANNER SHOWN ON THE ATTACHED PLAN ("THE PLAN").
- J. NORWEST INTENDS TO SELL LOT 6001 ON THE PLAN.
- K. NORWEST INTENDS TO DEDICATE LOT 6003 (AS SHOWN ON THE PLAN) TO THE COUNCIL NOT LATER THAN THE DATE OF THE OPENING FOR BUSINESS OF A DEVELOPMENT PROPOSED TO BE CONSTRUCTED ON LOT 6001 (AS SHOWN ON THE PLAN).

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- L. NORWEST INTENDS TO RELOCATE SUCH OF THE SERVICES (AS DEFINED IN THE INSTRUMENT) AS ARE LOCATED ON THE SAID LOT 6001 BY THE INSTALLATION, IN UNDER OR THROUGH THE SAID LOT 6003 OF SUCH APPARATUS AS ARE NECESSARY TO PERMIT THE FULL, FREE AND UNINTERRUPTED PASSAGE AND RUNNING OF SUCH SERVICES TO THE FARM PARK LAND.
- M. NORWEST HAS REQUESTED THE COUNCIL TO PERMIT THE CONSTRUCTION OF WORKS ON THAT PART OF THE SAID LOT 6001 AFFECTED BY THE EASEMENTS NOTWITHSTANDING THE EXPRESS AND IMPLIED TERMS OF SUCH EASEMENTS.
- N. THE COUNCIL HAS AGREED TO NORWEST'S SAID REQUEST SUBJECT TO THE TERMS AND CONDITIONS OF THIS DEED.

OPERATIVE CLAUSES

THIS DEED WITNESSES AS FOLLOWS:

67. NORWEST'S OBLIGATIONS
  - 1.1 SUBJECT TO CLAUSE 3 NOT LATER THAN THE DATE OF THE OPENING FOR BUSINESS OF THE FIRST COMMERCIAL DEVELOPMENT CONSTRUCTED ON THE LAND NORWEST MUST DEDICATE THE ACCESS ROAD (BEING THE SAID LOT 6003) TO COUNCIL AS ROAD.
  - 1.2 NOT LATER THAN THE DEDICATION OF THE ACCESS ROAD REFERRED TO IN CLAUSE 1.1 NORWEST MUST RELOCATE THE SERVICES REFERRED TO IN RECITAL L BY THE INSTALLATION OF SUCH APPARATUS AS IS NECESSARY TO PERMIT THE FULL AND UNINTERRUPTED PASSAGE AND RUNNING OF SUCH SERVICES FROM NORWEST BOULEVARD IN, UNDER OR THROUGH THE SAID ACCESS ROAD TO THE FARM PARK LAND. PENDING SUCH PERMANENT RELOCATION NORWEST MAY TEMPORARILY RELOCATE SUCH SERVICES THROUGH OTHER LAND OWNED BY NORWEST. SUCH RELOCATION (WHETHER TEMPORARY OR PERMANENT) MUST BE COMPLETED NOT LATER THAN 24 APRIL 2002.
  - 1.3 NORWEST MUST PERFORM THE WORKS REQUIRED TO RELOCATE THE SAID SERVICES REFERRED TO IN CLAUSE 1.2 IN A PROPER AND WORKMANLIKE MANNER TO THE REASONABLE SATISFACTION OF THE COUNCIL.
  - 1.4 NORWEST MUST PAY ALL COSTS ASSOCIATED WITH THE DEDICATION AND RELOCATION

REFERRED TO IN CLAUSES 1.1 AND 1.2 RESPECTIVELY.

1.5 NOT LATER THAN 24 APRIL 2002 NORWEST MUST REMOVE FROM THE LAND ALL APPARATUS, WIRES, CABLES AND POSTS ASSOCIATED WITH THE SERVICES.

1.6 NOT LATER THAN REGISTRATION OF THE PLAN NORWEST MUST:

(A) GRANT TO THE COUNCIL A RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES OVER LOT 6003 BENEFITING THE FARM PARK LAND; AND

(B) PROVIDE DEFACTO ACCESS WHETHER BY LICENCE OR EASEMENT FROM NORWEST BOULEVARDE TO LOT 102 DP 817929 OVER THE EXISTING TRACK USED BY THE CARETAKER OF THE HERITAGE FARM FOR ACCESS TO THE FARM PARK LAND.

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## 2. COUNCIL'S FORBEARANCE AND OBLIGATIONS

2.1 COUNCIL ACKNOWLEDGES THAT IT IS NOW THE "GRANTEE" REFERRED TO IN THE INSTRUMENT AND IS ENTITLED TO EXERCISE AND ENJOY THE RIGHTS AND POWERS GRANTED BY THE INSTRUMENT AND/OR IMPLIED BY LAW IN RESPECT OF THE LAND.

2.2 SUBJECT TO NORWEST FIRST:

(A) RELOCATING THE SERVICES (WHETHER PERMANENTLY OR TEMPORARILY) AS REQUIRED BY CLAUSE 1.2; AND

(B) PROVIDING THE ACCESS REQUIRED BY CLAUSE 1.6

COUNCIL HEREBY AGREES WITH NORWEST AND ITS SUCCESSORS IN TITLE TO THE LAND (OR PART THEREOF) THAT COUNCIL SHALL NOT EXERCISE OR ENFORCE IN ANY WAY THE RIGHTS AND POWERS REFERRED TO IN CLAUSE 2.1.

2.3 THE COUNCIL MUST SIGN ALL DOCUMENTS AND DO ALL THINGS REASONABLY NECESSARY AND WITHIN ITS POWER TO ENABLE THE EASEMENTS TO BE RELEASED UPON DEDICATION OF THE ACCESS ROAD INCLUDING, WITHOUT LIMITATION, REQUESTING THE SAID MINISTER TO EXTINGUISH THE EASEMENTS IF ANY ACTION BY THE MINISTER IS REQUIRED.

2.4 IF THE COUNCIL WISHES TO TRANSFER OR OTHERWISE DISPOSE OF THE FARM PARK LAND (OR ANY PART THEREOF), BEFORE DOING SO IT SHALL OBTAIN FROM THE TRANSFEREE OR DISPONEE:

(A) A DEED CONTAINING THE SAME TERMS AS THIS DEED (INCLUDING THIS CLAUSE) FROM THE TRANSFEREE OR DISPONEE IN FAVOUR OF NORWEST. NORWEST AGREES TO ENTER INTO SUCH A DEED WITH A TRANSFEREE OR DISPONEE CONTAINING THE SAME RIGHTS AND OBLIGATIONS AS THIS DEED; AND

(B) IF A DEED WITH A NEW OWNER HAS BEEN ENTERED INTO PURSUANT TO CLAUSE 2.5, A DEED CONTAINING THE SAME TERMS AS THAT DEED (INCLUDING THIS CLAUSE) FROM THE TRANSFEREE OR DISPONEE IN FAVOUR OF THE NEW OWNER.

2.5 IF NORWEST TRANSFERS OR OTHERWISE DISPOSES OF ITS INTEREST IN THE LAND OR PART THEREOF THEN THE COUNCIL MUST ENTER INTO A DEED WITH THE NEW OWNER WHEREBY COUNCIL AGREES WITH SUCH NEW OWNER TO PERFORM ITS OBLIGATIONS AND NOT EXERCISE ITS RIGHTS REFERRED TO IN CLAUSE 2 OF THIS DEED.

## 3. LAND TRANSFER

3.1 NORWEST PROPOSES TO DEDICATE TO COUNCIL LOT 6003 SHOWN ON THE PLAN AS THE ACCESS ROAD, BUT HAS OFFERED TO DEDICATE OR TRANSFER TO THE COUNCIL THOSE PARTS OF LOT 6003 COLOURED GREEN ON THE SAID PLAN FOR INCLUSION IN COUNCIL'S ADJACENT PROPERTY KNOWN AS BELLA VISTA FARM PARK. SUCH DEDICATION OR TRANSFER SHALL NOT REQUIRE THE PAYMENT OF ANY CONSIDERATION BY COUNCIL TO NORWEST.

3.2 COUNCIL ACCEPTS THE OFFER FOR DEDICATION OR TRANSFER OF THE SAID PARTS OF LOT 6003 REFERRED TO IN CLAUSE 3.1.

3.3 NORWEST WILL DEDICATE AND/OR TRANSFER THE LAND REFERRED TO IN CLAUSE 3.1 WITHIN THE PERIOD REFERRED TO IN CLAUSE 1.1.

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## 4. COSTS

EACH PARTY WILL BEAR ITS OWN COSTS IN RELATION TO THIS DEED AND THE DEEDS CONTEMPLATED BY CLAUSES 2.4 AND 2.5. NORWEST WILL PAY THE STAMP DUTY, IF ANY, PAYABLE ON THIS DEED AND ANY TRANSFERS OF LAND PURSUANT TO CLAUSE 3 OF THIS DEED.

EXECUTION CLAUSE

EXECUTED AS A DEED.

<TABLE>

<CAPTION>

<S> THE COMMON SEAL OF BAULKHAM HILLS )  
<C> SHIRE COUNCIL WAS HEREUNTO AFFIXED ON THE )  
DAY OF 25TH DAY OCTOBER 2001 PURSUANT TO A )  
RESOLUTION MADE ON THE 25TH DAY DAY OF 2001 )

/S/ DAVID MEAD  
-----  
SIGNATURE OF GENERAL MANAGER

DAVID MEAD  
-----  
NAME OF GENERAL MANAGER - PLEASE PRINT

</TABLE>

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<CAPTION>

<S> THE COMMON SEAL OF NORWEST LIMITED )  
<C> WAS AFFIXED TO THIS DOCUMENT IN ACCORDANCE WITH ITS )  
CONSTITUTION AND IN THE PRESENCE OF: )

/S/ ALAN ZAMMIT  
-----  
DIRECTOR

ALAN ZAMMIT  
-----  
PRINT NAME  
</TABLE>

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BETWEEN

NORWEST LIMITED  
AND  
RESMED LIMITED

DEED OF OPTION AND RIGHT OF FIRST REFUSAL

ABBOTT  
TOUT  
SOLICITORS  
LEVEL 5  
TOWER LIFE BUILDING  
69 PHILLIP STREET  
PARRAMATTA NSW 2150

DX 8285 PARRAMATTA  
TEL: (02) 9842 8888  
FAX: (02) 9842 8855  
REF: JRB

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DEED OF OPTION AND RIGHT OF FIRST REFUSAL

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THIS DEED IS MADE ON 25TH DAY OF OCTOBER 2001 BETWEEN THE FOLLOWING PARTIES:

NORWEST LIMITED (ACN 000 004 633) ("NORWEST") OF 46 BROOKHOLLOW AVENUE, NORWEST BUSINESS PARK, BAULKHAM HILLS, NEW SOUTH WALES;

RESMED LIMITED (ABN 30 003 765 142) OF 97 WATERLOO ROAD, NORTH RYDE, NEW SOUTH WALES (THE "PURCHASER")

RECITALS

A. NORWEST AND THE PURCHASER HAVE AGREED TO EXECUTE AND ENTER INTO THE AGREEMENT FOR SALE PURSUANT TO WHICH THE PURCHASER IS TO PURCHASE THE PROPERTY FROM NORWEST.

B. IT IS A CONDITION OF THE AGREEMENT FOR SALE THAT THE PURCHASER EXECUTE AND ENTER THIS DEED.

C. THE PURCHASER HAS AGREED TO UNDERTAKE THE PROPOSED DEVELOPMENT ON THE PROPERTY.

THIS DEED WITNESSES THAT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL PROMISES CONTAINED IN THIS DEED THE PARTIES AGREE:

1. INTERPRETATION

1.1 DEFINITIONS

IN THIS DEED UNLESS INCONSISTENT WITH THE CONTEXT:

"AGREEMENT FOR SALE" MEANS THE AGREEMENT FOR SALE OF THE PROPERTY DATED 2001 BETWEEN NORWEST AND THE PURCHASER;

"CONSTRUCTION PERIOD" MEANS THE PERIOD COMMENCING ON THE DATE OF THIS DEED AND ENDING ON THE DATE WHEN THE PURCHASER PROVIDES NORWEST WITH A COPY OF THE OCCUPATION CERTIFICATE;

"COUNCIL" MEANS THE BAULKHAM HILLS SHIRE COUNCIL;

"DEVELOPMENT APPLICATION" MEANS THE APPLICATION FOR THE DEVELOPMENT CONSENT TO BE SUBMITTED TO AND APPROVED IN ACCORDANCE WITH SPECIAL CONDITION 9 OF THE AGREEMENT FOR SALE;

"DEVELOPMENT CONSENT" MEANS A DEVELOPMENT CONSENT INCLUDING A "DEFERRED COMMENCEMENT CONSENT" ISSUED PURSUANT TO THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 FOR THE PROPOSED DEVELOPMENT EITHER UNCONDITIONALLY OR ON CONDITIONS WHICH ARE ACCEPTABLE TO THE PURCHASER ACTING REASONABLY;

"GST" HAS THE SAME MEANING AS USED IN THE OPTION AGREEMENT FOR SALE.



"LAND" MEANS THAT PART OF THE LAND FORMERLY COMPRISING LOT 102 IN DEPOSITED PLAN 624844 BEING THE LAND FORMERLY COMPRISING CERTIFICATE OF TITLE FOLIO IDENTIFIER 102/624844 AND EACH AND EVERY PART OF THAT LAND AND ALL OTHER LAND IN ADDITION WHICH MAY FROM TIME TO TIME BE INCORPORATED OR CONSOLIDATED AS PART OF THE NORWEST BUSINESS PARK;

"NORWEST BUSINESS PARK" MEANS THE LAND SO DEFINED IN THE AGREEMENT FOR SALE.

"OCCUPATION CERTIFICATE" MEANS A CERTIFICATE OF THAT NAME ISSUED PURSUANT TO PART 4A OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 OR, IN THE EVENT THAT CERTIFICATES ISSUED PURSUANT TO THAT PART ARE NO LONGER ISSUED, ANY CERTIFICATE OR OTHER DOCUMENT ISSUED BY A LOCAL GOVERNMENT AUTHORITY WHICH SUBSTANTIALLY IS TO THE SAME EFFECT.

"OPTION" MEANS THE OPTION GRANTED PURSUANT TO CLAUSE 4 OF THIS DEED;

"OPTION AGREEMENT FOR SALE" MEANS THE AGREEMENT FOR SALE OF THE PROPERTY BEING THE 2000 EDITION OF THE CONTRACT FOR SALE OF LAND ISSUED BY THE LAW SOCIETY OF NEW SOUTH WALES AND THE REAL ESTATE INSTITUTE OF NEW SOUTH WALES TOGETHER WITH THE ADDITIONS SHOWN IN ANNEXURE "A" HERETO AND WITH FURTHER DETAILS INSERTED IN ACCORDANCE WITH CLAUSE 4 OF THIS DEED;

"PROPERTY" MEANS THE LAND SOLD TO THE PURCHASER BY NORWEST PURSUANT TO THE AGREEMENT FOR SALE;

"PROPOSED DEVELOPMENT" MEANS THE DEVELOPMENT TO BE UNDERTAKEN BY THE PURCHASER AS DESCRIBED IN THE DEVELOPMENT APPLICATION;

"PRICE" MEANS THE AMOUNT SHOWN IN THE TERMS OF THE AGREEMENT FOR SALE;

"SALE CONTRACT" MEANS ANY AGREEMENT, CONTRACT, DOCUMENT OR ARRANGEMENT FOR THE SALE OF LAND OR BY WHICH LAND IS CONVEYED OR TRANSFERRED;

"SUBSTANTIALLY COMMENCE" AND "SUBSTANTIAL COMMENCEMENT" MEANS, IN RELATION TO ANY PROPOSED DEVELOPMENT, THE CARRYING OUT OF WORKS IN RELATION TO AND IN ACCORDANCE WITH THE RELEVANT DEVELOPMENT CONSENT AND ANY BUILDING APPROVAL OBTAINED IN RESPECT THEREOF, WHICH WORKS HAVE BEEN PROGRESSED AND CARRIED OUT TO A STAGE OR LEVEL, WHICH, IN THE SOLE OPINION OF NORWEST, ACTING REASONABLY, CONSTITUTE WORKS:

(A) OF REAL AND NOT INSIGNIFICANT VALUE RELATIVE TO THE TOTAL VALUE OF THE PROPOSED DEVELOPMENT, AND NOT JUST A SHAM; AND

(B) WHICH HAVE INVOLVED A SIGNIFICANT COMMITMENT AND UTILISATION OF RESOURCES IN CARRYING OUT THE WORKS; AND

(C) WHICH ARE CONSISTENT WITH A COMMITMENT TO COMPLETE THE PROPOSED DEVELOPMENT; AND

(D) WHICH, AT LEAST, INCLUDE BUT ARE NOT RESTRICTED TO, THE COMPLETION OF ALL EXCAVATION AND SITE WORKS AND THE CONSTRUCTION OF ALL FOOTINGS AND FOUNDATIONS; AND

(D) WHICH ARE IN ADDITION TO ANY LANDSCAPING AND CARPARKING CONSTRUCTED ON THE PROPERTY.

"TERMS" MEANS THE TERMS OF THE OPTION AGREEMENT FOR SALE;

"THIRD PARTY" MEANS ANY PERSON OTHER THAN THE VENDOR OR THE PURCHASER;

"THIRD PARTY OFFER" MEANS ANY BONA FIDE OFFER MADE BY A THIRD PARTY OR TO A THIRD PARTY WHERE THAT THIRD PARTY:

(A) OFFERS TO OR IS OFFERED THE PURCHASE OF THE PROPERTY OR ANY PART OF THE PROPERTY; OR

(B) OFFERS TO LEASE THE PROPERTY OR ANY PART OF THE PROPERTY OR IS OFFERED A LEASE OF THE PROPERTY OR ANY PART OF THE PROPERTY WHERE THE TERM OF SUCH LEASE EQUALS OR EXCEEDS TWENTY-FIVE (25) YEARS; OR

(C) OFFERS TO OR IS OFFERED TO BECOME THE REGISTERED PROPRIETOR OR TO ASSUME OWNERSHIP OF THE PROPERTY.

1.2 INTERPRETATION  
IN THIS DEED, UNLESS INCONSISTENT WITH THE CONTEXT:

(A) HEADINGS AND UNDERLININGS ARE FOR CONVENIENCE ONLY AND DO NOT AFFECT THE INTERPRETATION OF THIS DEED;

(B) WORDS IMPORTING THE SINGULAR INCLUDE THE PLURAL AND VICE VERSA;

(C) WORDS IMPORTING A GENDER INCLUDE ANY GENDER.

(D) AN EXPRESSION IMPORTING A NATURAL PERSON INCLUDES ANY COMPANY, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, CORPORATION OR OTHER BODY CORPORATE AND ANY GOVERNMENTAL AGENCY;

(E) A REFERENCE TO ANY THING INCLUDES A PART OF THAT THING;

(F) OTHER PARTS OF SPEECH AND GRAMMATICAL FORMS OF A WORD OR PHRASE DEFINED IN THIS DEED HAVE A CORRESPONDING MEANING;

(G) A REFERENCE TO A PART, PARTY, ANNEXURE, EXHIBIT OR SCHEDULE IS A REFERENCE TO A PART OF, AND A PARTY, ANNEXURE, EXHIBIT AND SCHEDULE TO, THIS DEED;

(H) A REFERENCE TO A STATUTE, REGULATION, PROCLAMATION, ORDINANCE OR BY-LAW INCLUDES ALL STATUTES, REGULATIONS, PROCLAMATIONS, ORDINANCES OR BY-LAWS VARYING, CONSOLIDATING OR REPLACING IT, AND A REFERENCE TO A STATUTE INCLUDES ALL REGULATIONS, PROCLAMATIONS, ORDINANCES AND BY-LAWS ISSUED UNDER THAT STATUTE;

(I) A REFERENCE TO A DOCUMENT INCLUDES ALL AMENDMENTS OR SUPPLEMENTS TO, OR REPLACEMENTS OR NOVATIONS OF, THAT DOCUMENT;

(J) A REFERENCE TO A PARTY TO A DOCUMENT INCLUDES THAT PARTY'S SUCCESSORS AND PERMITTED ASSIGNS;

(K) WHERE THE DAY ON OR BY WHICH ANY THING IS TO BE DONE IS NOT A BUSINESS DAY, THAT THING MUST BE DONE ON OR BY THE NEXT SUCCEEDING BUSINESS DAY;

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(L) NO RULE OF CONSTRUCTION APPLIES TO THE DISADVANTAGE OF A PARTY BECAUSE THAT PARTY WAS RESPONSIBLE FOR THE PREPARATION OF THIS DEED OR ANY PART OF IT;

(M) A COVENANT OR AGREEMENT ON THE PART OF TWO OR MORE PERSONS BINDS THEM JOINTLY AND SEVERALLY;

(N) A REFERENCE TO ANY DEED OTHER THAN THIS DEED INCLUDES AN UNDERTAKING, DEED, AGREEMENT OR LEGALLY ENFORCEABLE ARRANGEMENT OR UNDERSTANDING WHETHER OR NOT IN WRITING;

(O) A REFERENCE TO AN ASSET INCLUDES ALL PROPERTY OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, A BUSINESS, AND ALL RIGHTS, REVENUES AND BENEFITS;

(P) A REFERENCE TO A DOCUMENT INCLUDES ANY AGREEMENT IN WRITING, OR ANY CERTIFICATE, NOTICE, INSTRUMENT OR OTHER DOCUMENT OF ANY KIND;

(Q) A REFERENCE TO "DOLLARS", "A\$" OR "\$" IS A REFERENCE TO THE LAWFUL CURRENCY OF THE COMMONWEALTH OF AUSTRALIA;

(R) A REFERENCE TO A BODY, OTHER THAN A PARTY OF THIS DEED (INCLUDING, WITHOUT LIMITATION, AN INSTITUTE, ASSOCIATION OR AUTHORITY), WHETHER OR NOT IT IS A STATUTORY BODY;

(1) WHICH CEASES TO EXIST; OR

(2) WHOSE POWERS OR FUNCTIONS ARE TRANSFERRED TO ANY OTHER BODY.

IS A REFERENCE TO THE BODY WHICH REPLACES IT OR WHICH SUBSTANTIALLY SUCCEEDS TO ITS POWERS OR FUNCTIONS.

#### 1.3 GOVERNING LAW AND JURISDICTION

(A) THIS DEED IS GOVERNED BY THE LAWS OF THE STATE OF NEW SOUTH WALES.

(B) THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF NEW SOUTH WALES.

#### 1.4 SEVERABILITY

UNENFORCEABILITY OF A PROVISION OF THIS DEED DOES NOT AFFECT THE ENFORCEABILITY OF ANY OTHER PROVISION.

#### 2. PROPOSED DEVELOPMENT

THE PURCHASER COVENANTS AND AGREES THAT IT WILL:

(A) SUBSTANTIALLY COMMENCE THE PROPOSED DEVELOPMENT WITHIN 2 YEARS OF THE DATE ON WHICH THE PURCHASER OBTAINS THE DEVELOPMENT CONSENT; AND

(B) CAUSE TO BE CARRIED OUT AND COMPLETED THE CONSTRUCTION OF THE PROPOSED DEVELOPMENT WITHIN A REASONABLE TIME AFTER SUCH SUBSTANTIAL COMMENCEMENT;

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(C) PROCURE THE ISSUE OF A OCCUPATION CERTIFICATE UPON THE COMPLETION OF

CONSTRUCTION CONTEMPLATED IN PARAGRAPH (B) OF THIS CLAUSE 2.0.

### 3. RIGHT OF FIRST REFUSAL

#### 3.1 NORWEST'S RIGHT OF FIRST REFUSAL

ON EACH OCCASION DURING THE CONSTRUCTION PERIOD WHEN THE PURCHASER RECEIVES A THIRD PARTY OFFER THE PURCHASER MUST, PRIOR TO EXECUTING OR ENTERING ANY SALE CONTRACT IN RESPECT OF SUCH OFFER, OFFER TO SELL THE PROPERTY TO NORWEST OR ITS NOMINEE ON THE SAME TERMS AND CONDITIONS, MUTATIS MUTANDIS, WITH THOSE CONTAINED IN THE THIRD PARTY OFFER EXCEPT THAT:

(A) NORWEST WILL NOT BE OBLIGED TO PAY ANY AMOUNT BY WAY OF DEPOSIT TO THE PURCHASER;

(B) SETTLEMENT OF THE PURCHASE BY NORWEST WILL OCCUR ON THE DATE BEING TEN (10) WEEKS (OR SUCH OTHER PERIOD AS THE PARTIES MAY AGREE IN WRITING) FROM THE DATE THE SALE CONTRACT BETWEEN NORWEST OR ITS NOMINEE AND THE PURCHASE IS ENTERED INTO PURSUANT TO CLAUSE 3.4.

#### 3.2 FORM OF OFFER

ANY OFFER MADE BY THE PURCHASER AND REFERRED TO IN CLAUSE 3.1 MUST:

(A) BE IN WRITING AND ADDRESSED TO NORWEST AS PROVIDED FOR IN CLAUSE 9 OF THIS DEED;

(B) BE DELIVERED TO NORWEST WITHIN TEN (10) BUSINESS DAYS OF THE DATE OF RECEIPT OF THE THIRD PARTY OFFER BY THE PURCHASER;

(C) ATTACH A COPY OF THE THIRD PARTY OFFER;

#### 3.3 ACCEPTANCE OF OFFER

NORWEST MUST ACCEPT OR DECLINE THE OFFER MADE BY THE PURCHASER UNDER CLAUSE 3.1 WITHIN TEN (10) BUSINESS DAYS OF THE RECEIPT OF THE OFFER. IF NORWEST FAILS TO SO ACCEPT OR SO DECLINE THE OFFER, IT WILL BE DEEMED TO HAVE DECLINED THE OFFER. IF NORWEST DECLINES OR IS DEEMED TO HAVE DECLINED THE OFFER, THE PURCHASER CAN ENTER INTO A SALE CONTRACT WITH A THIRD PARTY ON TERMS WHICH ARE NOT MATERIALLY MORE FAVOURABLE THAN THOSE OFFERED TO NORWEST.

#### 3.4 ENTERING INTO SALE CONTRACT

IF NORWEST ACCEPTS THE OFFER MADE BY THE PURCHASER THE PARTIES MUST EXECUTE AND ENTER INTO A SALE CONTRACT BY EXCHANGE OF SIGNED DOCUMENTS AND DULY COMPLETE THE SALE IN ACCORDANCE WITH THE PROVISIONS OF THAT SALE CONTRACT. NORWEST AND THE PURCHASER MUST EXCHANGE THE SALE CONTRACT WITHIN TEN (10) BUSINESS DAYS OF THE DATE OF SUBMISSION OF A SALE CONTRACT BY NORWEST TO THE PURCHASER.

#### 3.5 PARTIES TO DO ALL THINGS NECESSARY

NORWEST AND THE PURCHASER MUST PERFORM ALL ACTS, DO ALL THINGS, ATTEND TO ALL MATTERS AND EXECUTE ALL DOCUMENTS AS MAY BE NECESSARY OR REQUIRED TO GIVE EFFECT TO THIS DEED AND TO COMPLETE THE SALE CONTRACT REFERRED TO IN CLAUSE 3.4.

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#### 3.6 POWER OF ATTORNEY TO EXECUTE SALE CONTRACT

IF THE PURCHASER FAILS TO EXECUTE AND ENTER INTO THE SALE CONTRACT IN ACCORDANCE WITH CLAUSE 3.4 THEN THE PURCHASER HEREBY APPOINTS NORWEST AS ITS LAWFUL ATTORNEY AND AGENT TO EXECUTE THE SALE CONTRACT AND ANY DOCUMENTS ARISING OUT OF OR INCIDENTAL THERETO IN THE NAME OF THE PURCHASER. THE PURCHASER HEREBY AUTHORIZES NORWEST TO REGISTER WITH THE REGISTRAR GENERAL OF NEW SOUTH WALES THE POWER OF ATTORNEY CONFERRED BY THIS CLAUSE.

### 4. OPTION

#### 4.1 GRANT OF OPTION

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS DEED AND THE PAYMENT OF THE AMOUNT OF ONE DOLLAR (\$1.00) BY NORWEST TO THE PURCHASER (THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED) THE PURCHASER HEREBY GRANTS TO NORWEST OR ITS NOMINEE AN IRREVOCABLE RIGHT FOR NORWEST OR ITS NOMINEE TO PURCHASE THE PROPERTY UPON SUCH TERMS AND SUBJECT TO SUCH CONDITIONS AS ARE PROVIDED IN THE OPTION AGREEMENT FOR SALE.

#### 4.2 OPTION EXERCISE PERIOD AND METHOD OF EXERCISE OF OPTION

(A) NORWEST MAY EXERCISE AND MAY ONLY EXERCISE THE OPTION AT ANY TIME DURING THE PERIOD COMMENCING ON THE DATE BEING TWO (2) YEARS FROM THE DATE ON WHICH THE PURCHASER OBTAINS DEVELOPMENT CONSENT FOR THE PROPOSED DEVELOPMENT AND ENDING ON THE DATE ON WHEN THE PURCHASER SUBSTANTIALLY COMMENCES THE PROPOSED DEVELOPMENT.

(B) AT ANY TIME DURING THAT PERIOD, NORWEST MAY DELIVER TO THE PURCHASER, IN THE MANNER PROVIDED IN THIS DEED, A NOTICE EXERCISING THE OPTION.

#### 4.3 DETAILS TO BE INSERTED IN OPTION AGREEMENT FOR SALE

(A) THE AMOUNT OF THE PURCHASE PRICE TO BE INSERTED IN THE TERMS OF THE OPTION AGREEMENT FOR SALE WILL BE THE AMOUNT SO AGREED PURSUANT TO CLAUSE 4.4(A) BUT IF THE PARTIES FAIL TO SO AGREE THEN THE AMOUNT OF THE SAID PURCHASE PRICE WILL BE THE LESSER OF THE AMOUNT DETERMINED PURSUANT TO CLAUSES 4.4(C) (PLUS GST) OR (D) (PLUS GST) AND 90% OF THE PRICE PROVIDED HOWEVER THAT IF THE DEVELOPMENT CONSENT IS NOT OBTAINED WITHIN NINE MONTHS OF THE DATE OF LODGEMENT OF THE DEVELOPMENT APPLICATION THEN THE SAID 90% SHALL BECOME 100%.

(B) THE PURCHASER HEREBY IRREVOCABLY AUTHORISES AND APPOINTS NORWEST AS ITS ATTORNEY FOR THE PURPOSES OF THE INSERTION OF THE AMOUNT DETERMINED PURSUANT TO THIS CLAUSE 4.3 AS THE PRICE IN THE OPTION AGREEMENT FOR SALE.

#### 4.4 DETERMINATION OF PURCHASE PRICE

(A) THE PARTIES MUST ENDEAVOUR TO AGREE ON THE AMOUNT TO BE INSERTED IN THE TERMS OF THE OPTION AGREEMENT FOR SALE WITHIN THE PERIOD OF TEN (10) BUSINESS DAYS FROM THE DATE OF DELIVERY OF THE NOTICE REFERRED TO IN CLAUSE 4.2.

(B) IF THE PARTIES FAIL TO AGREE ON THE AMOUNT TO BE INSERTED IN THE TERMS OF THE OPTION AGREEMENT FOR SALE WITHIN THAT PERIOD THEN EITHER PARTY MAY INSTRUCT THE PRESIDENT FOR THE TIME BEING OF THE AUSTRALIAN PROPERTY INSTITUTE TO NOMINATE A VALUER WHO IS A MEMBER OF THAT ORGANISATION AND WHO IS EXPERIENCED IN THE ASSESSMENT OF PROPERTY VALUES FOR A PROPERTY OF A TYPE SIMILAR TO THE PROPERTY.

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(C) THE VALUER MUST, WITHIN TWENTY (20) BUSINESS DAYS OF THE DATE OF HIS APPOINTMENT, DETERMINE THE MARKET VALUE OF THE PROPERTY (EXCLUDING GST) INCLUDING ANY IMPROVEMENTS AND MUST INFORM THE PARTIES IN WRITING OF THE VALUE. A VALUATION PROVIDED BY THE VALUER UNDER THIS CLAUSE MUST BE A "SPEAKING VALUATION" (THAT IS, THE VALUER MUST GIVE DETAILED REASONS FOR HIS OR HER DETERMINATION AND MUST SPECIFY THE MATTERS TO WHICH HE OR SHE HAD REGARD FOR THE PURPOSES OF MAKING HIS OR HER DETERMINATION).

(D) IF THE VALUER APPOINTED UNDER PARAGRAPH (B) DOES NOT COMPLY WITH THE CONDITIONS IN PARAGRAPH (C) THEN EITHER PARTY MAY AT ANY TIME AGAIN (AS APPROPRIATE) REQUEST A FURTHER APPOINTMENT IN ACCORDANCE WITH AND PURSUANT TO THIS CLAUSE UNTIL THE MARKET VALUE (EXCLUDING GST) HAS BEEN DETERMINED.

(E) THE PARTIES SHALL SHARE THE COSTS OF THE VALUER REFERRED TO IN THIS CLAUSE EQUALLY.

#### 4.5 DELIVERY OF OPTION AGREEMENT FOR SALE

(A) UPON THE DETERMINATION OF THE PURCHASE PRICE IN ACCORDANCE WITH CLAUSE 4.3, THE PURCHASER MUST IMMEDIATELY DELIVER TO NORWEST OR ITS SOLICITORS A COUNTERPART COPY OF THE OPTION AGREEMENT FOR SALE DULY EXECUTED BY THE PURCHASER AS VENDOR.

(B) UPON RECEIPT OF THAT OPTION AGREEMENT FOR SALE, A VALID AND BINDING AGREEMENT FOR SALE ON THE TERMS AND CONDITIONS OF THE OPTION AGREEMENT FOR SALE AND DATED THE DATE OF DELIVERY OF THE COUNTERPART UNDER CLAUSE 4.5(A) OR 4.8 (AS THE CASE MAY BE) WILL BE DEEMED TO EXIST NOTWITHSTANDING THAT NO FORMAL EXCHANGE OF CONTRACTS HAS OCCURRED.

#### 4.6 POWER OF ATTORNEY TO AMEND OR INSERT

EACH PARTY HEREBY IRREVOCABLY AUTHORISES AND APPOINTS THE OTHER AS ITS ATTORNEY FOR THE PURPOSES OF AMENDING, CORRECTING, UPDATING OR INSERTING ANY INFORMATION REQUIRED FOR OR INCIDENTAL TO THE FINALISATION OF THE FORM OF THE OPTION AGREEMENT FOR SALE, INCLUDING BUT NOT LIMITED TO:

(A) THE AMENDMENT OR INSERTION OF ANY DETAILS FOR EITHER PARTY;

(B) THE AMENDMENT OR INSERTION OF ANY DETAILS OF THE PARTIES' SOLICITORS;

(C) THE AMENDMENT OR INSERTION OF ANY DETAILS OF THE PROPERTY INCLUDING IMPROVEMENTS AND INCLUSIONS; AND

(D) THE INSERTION OF ANY UP TO DATE DOCUMENTS FOR VENDOR DISCLOSURE AS REQUIRED UNDER THE CONVEYANCING (SALE OF LAND) REGULATION 1995 OR ANY REGULATION IN SUBSTITUTION THEREFORE.

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#### 4.7 PARTIES TO DO ALL THINGS NECESSARY

NORWEST AND THE PURCHASER MUST PERFORM ALL ACTS, DO ALL THINGS, ATTEND TO ALL MATTERS AND EXECUTE ALL DOCUMENTS AS MAY BE NECESSARY OR REQUIRED TO GIVE EFFECT TO THIS DEED AND TO COMPLETE THE OPTION AGREEMENT FOR SALE IF NORWEST EXERCISES THE OPTION.

#### 4.8 POWER OF ATTORNEY TO EXECUTE AGREEMENT

IF THE PURCHASER FAILS TO EXECUTE AND DELIVER THE COUNTERPART COPY OF THE OPTION AGREEMENT FOR SALE IN ACCORDANCE WITH CLAUSE 4.5 THEN THE PURCHASER HEREBY APPOINTS NORWEST AS ITS LAWFUL ATTORNEY AND AGENT TO EXECUTE AND DELIVER THE OPTION AGREEMENT FOR SALE. THE PURCHASER HEREBY AUTHORISES NORWEST TO REGISTER WITH THE REGISTRAR GENERAL OF NEW SOUTH WALES A COPY OF THE POWER OF ATTORNEY CONFERRED BY THIS DEED.

#### 5. SALE TO THIRD PARTY

##### 5.1 THIRD PARTY DEED

NOTWITHSTANDING ANY OTHER PROVISION OF THIS DEED, THE PURCHASER MUST NOT SELL, TRANSFER OR ASSIGN ITS INTEREST OR ANY PART IN THE PROPERTY TO A THIRD PARTY

UNLESS AND UNTIL:

(A) THE PURCHASER PROCURES FROM THE THIRD PARTY A DEED IN THE SAME TERMS AS THIS DEED, MUTATIS MUTANDIS, DULY EXECUTED BY THAT THIRD PARTY AND DELIVERED TO NORWEST; AND

(B) THE RELEVANT DEED, AGREEMENT OR INSTRUMENT WHICH DEALS OR EFFECTS THE SALE, TRANSFER OR ASSIGNMENT CONTAINS AS A FUNDAMENTAL CONDITION PRECEDENT TO ITS COMPLETION, A CONDITION THAT THE RELEVANT PURCHASER, TRANSFEREE OR ASSIGNEE BECOMES REGISTERED AS A MEMBER OF THE NORWEST ASSOCIATION.

5.2 INDEMNITY

THE PURCHASER DOES HEREBY INDEMNIFY AND WILL KEEP INDEMNIFIED NORWEST AGAINST ALL CLAIMS, DEMANDS, SUITS, PROCEEDINGS, LOSSES, COSTS, EXPENSES, PENALTIES OR DAMAGES WHICH ARE BROUGHT OR CLAIMED AGAINST OR SUFFERED BY NORWEST AS A RESULT OF OR ARISING OUT OF OR INCIDENTAL TO A BREACH BY THE PURCHASER OF CLAUSE 5.1.

5.3 CAVEATABLE INTEREST

THE PURCHASER ACKNOWLEDGES THAT THE RIGHT OF FIRST REFUSAL GRANTED IN CLAUSE 3.1 AND THE OPTION GRANTED IN CLAUSE 4.1 EACH CREATE FOR NORWEST A CAVEATABLE INTEREST IN THE PROPERTY AND THE PURCHASER HEREBY IRREVOCABLY CONSENTS TO NORWEST LODGING A CAVEAT UPON THE TITLE OF THE PROPERTY TO PROTECT ITS SAID INTERESTS. AS CAVEATOR NORWEST SHALL NOT DELAY OR UNREASONABLY WITHHOLD ITS CONSENT TO ANY DEALING WHICH THE PURCHASER REASONABLY WISHES TO HAVE REGISTERED ON THE TITLE.

6. STAMP DUTY

(A) NORWEST AGREES TO PAY ALL STAMP DUTY PAYABLE ON OR IN CONNECTION WITH THE OPTION AGREEMENT FOR SALE.

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(B) NORWEST AGREES TO PAY ALL STAMP DUTY PAYABLE ON OR IN CONNECTION WITH THE SALE CONTRACT REFERRED TO IN CLAUSE 3.4

(C) THE PURCHASER AGREES TO PAY ALL STAMP DUTY PAYABLE ON OR IN CONNECTION WITH THIS DEED.

7. TERMINATION

7.1 7.1 TERMINATION

THIS DEED WILL CONTINUE IN FULL FORCE AND EFFECT UNTIL THE EARLIEST OF:

(A) THE DATE NORWEST NOTIFIES THE PURCHASER THAT NORWEST IS NO LONGER THE REGISTERED PROPRIETOR OF ANY LOT WITHIN THE NORWEST BUSINESS PARK;

(B) THE DATE OF THE END OF THE CONSTRUCTION PERIOD.

7.2 NORWEST'S DISCRETION TO TERMINATE

NORWEST MAY TERMINATE THIS DEED AT ANY TIME AND AT ITS ABSOLUTE DISCRETION BY NOTICE IN WRITING TO THE PURCHASER.

78. 8. ASSIGNMENT

NORWEST SHALL HAVE THE RIGHT TO ASSIGN THE RIGHT OF FIRST REFUSAL REFERRED TO IN CLAUSE 3 AND/OR THE OPTION REFERRED TO IN CLAUSE 4 TO ANY PERSON.

9. NOTICES

(A) ANY NOTICE OR OTHER COMMUNICATION INCLUDING, BUT NOT LIMITED TO, ANY REQUEST, DEMAND, CONSENT OR APPROVAL, TO OR BY A PARTY TO THIS DEED;

(1) MUST BE IN WRITING ADDRESSED AS SHOWN BELOW:

(A) IF TO NORWEST

ADDRESS: PO BOX 6887  
BAULKHAM HILLS BUSINESS CENTRE NSW 2153

ATTENTION: MANAGING DIRECTOR  
FACSIMILE: 9894 4988; AND

(B) IF TO THE PURCHASER:

ADDRESS: 97 WATERLOO ROAD, NORTH RYDE, NSW 2113  
ATTENTION: CHIEF FINANCIAL OFFICER  
FACSIMILE: 9878 0120

OR AS SPECIFIED TO THE SENDER BY ANY PARTY BY NOTICE;

(2) MUST BE SIGNED BY AN OFFICER OR UNDER THE COMMON SEAL OF THE SENDER;

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(3) IS REGARDED AS BEING GIVEN BY THE SENDER AND RECEIVED BY THE

ADDRESSEE:

(A) IF BY DELIVERY IN PERSON, WHEN DELIVERED TO THE ADDRESSEE;

(B) IF BY POST, 3 BUSINESS DAYS FROM AND INCLUDING THE DATE OF POSTAGE; OR

(C) IF BY LEGIBLE FACSIMILE TRANSMISSION WHEN TRANSMITTED TO THE ADDRESSEE,

BUT IF THE DELIVERY OR RECEIPT IS ON A DAY WHICH IS NOT A BUSINESS DAY OR IS AFTER 4.00 P.M. (ADDRESSEE'S TIME) IT IS REGARDED AS RECEIVED AT 9.00 A.M. ON THE FOLLOWING BUSINESS DAY; AND

(4) CAN BE RELIED UPON BY THE ADDRESSEE AND THE ADDRESSEE IS NOT LIABLE TO ANY OTHER PERSON FOR ANY CONSEQUENCES OF THAT RELIANCE IF THE ADDRESSEE BELIEVES IT TO BE GENUINE, CORRECT AND AUTHORISED BY THE SENDER.

(B) A FACSIMILE TRANSMISSION IS REGARDED AS LEGIBLE UNLESS THE ADDRESSEE TELEPHONES THE SENDER WITHIN 2 HOURS AFTER TRANSMISSION IS RECEIVED OR REGARDED AS RECEIVED UNDER CLAUSE 9(A) (3) AND INFORMS THE SENDER THAT IT IS NOT LEGIBLE.

(C) IN THIS CLAUSE 9, A REFERENCE TO AN ADDRESSEE INCLUDES A REFERENCE TO AN ADDRESSEE'S OFFICERS, AGENTS OR EMPLOYEES.

EXECUTED BY THE PARTIES AS A DEED:

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<TABLE>

<CAPTION>

<S>	<C>
THE COMMON SEAL OF NORWEST	)
LIMITED WAS AFFIXED TO THIS DOCUMENT IN	)
ACCORDANCE WITH ITS CONSTITUTION AND IN THE	)
PRESENCE OF:	)

/S/ ALAN ZAMMIT  
 -----  
 MANAGING DIRECTOR

ALAN ZAMMIT  
 -----  
 NAME - PLEASE PRINT

THE COMMON SEAL OF RESMED	)
LIMITED WAS AFFIXED TO THIS DOCUMENT IN	)
ACCORDANCE WITH ITS CONSTITUTION AND IN THE PRESENCE OF	)

/S/ CHRIS ROBERTS  
 -----  
 DIRECTOR

CHRIS ROBERTS  
 -----  
 NAME (PLEASE PRINT)

</TABLE>