

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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

For the quarterly period ended October 1, 1995

OR

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

For the transition period from to

For Quarter Ended Commission File Number  
October 1, 1995 0-12390

QUANTUM CORPORATION  
(Exact name of registrant as specified in its charter)

DELAWARE 94-2665054  
(State or other jurisdiction of (IRS Employer Identification Number)  
incorporation or organization)

500 McCarthy Blvd. 95035  
Milpitas, California  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (408) 894-4000

Indicate by check mark whether the registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934, during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports), and (2) has been subject to  
such filing requirements for the past 90 days.

Yes X No

Indicate the number of shares outstanding of each of the issuer's classes of  
common stock, as of October 29, 1995: 52,816,774  
QUANTUM CORPORATION

10-Q REPORT

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QUANTUM CORPORATION

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

CONSOLIDATED STATEMENTS OF INCOME  
(In thousands except share and per share data)  
(unaudited)

	Three Months Ended		Six Months Ended	
	Oct. 1, 1995	Oct. 2, 1994	Oct. 1, 1995	Oct. 2, 1994
Sales	\$1,033,048	\$726,169	\$1,974,363	\$1,451,473
Cost of sales	890,622	593,439	1,707,448	1,172,666
Gross profit	142,426	132,730	266,915	278,807
Operating expenses:				
Research and development	55,147	28,554	110,258	57,153
Sales and marketing	34,802	23,106	68,505	45,866
General and administrative	15,453	11,353	27,635	21,684
	105,402	63,013	206,398	124,703
Income from operations	37,024	69,717	60,517	154,104
Other (income) expense:				
Interest expense	7,318	3,448	15,465	7,004
Interest and other income	(1,315)	(3,164)	(4,197)	(5,534)
	6,003	284	11,268	1,470
Income before income taxes	31,021	69,433	49,249	152,634
Income tax provision	8,996	20,830	14,282	45,790
Net income	\$ 22,025	\$ 48,603	\$ 34,967	\$106,844
Net income per share:				
Primary	\$0.39	\$1.03	\$0.65	\$2.27
Fully diluted	\$0.37	\$0.85	\$0.61	\$1.87
Weighted average common and common equivalent shares:				
Primary	56,239,763	47,326,797	54,016,054	47,090,888
Fully diluted	63,566,680	59,037,402	62,942,630	58,800,191

See accompanying notes to consolidated financial statements.

QUANTUM CORPORATION

CONSOLIDATED BALANCE SHEETS  
(In thousands)  
(unaudited)

	Oct. 1, 1995	March 31, 1995
Assets		
Current assets:		
Cash and cash equivalents	\$ 158,805	\$ 187,753
Accounts receivable, net of allowance for doubtful accounts of \$9,971 and \$11,963	635,013	497,887
Inventories	508,807	324,650
Deferred taxes	43,888	44,054
Other current assets	26,383	35,580
Total current assets	1,372,896	1,089,924
Property and equipment, net of accumulated depreciation of \$149,174 and \$119,831	346,812	280,099
Purchased intangibles, net	82,936	95,818
Other assets	14,292	15,187
	\$1,816,936	\$1,481,028
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 529,660	\$355,117

Accrued warranty expense	56,470	57,001
Accrued compensation	39,273	54,917
Income taxes payable	1,858	17,566
Accrued exit costs	32,213	32,213
Short-term debt	50,000	50,000
Other accrued liabilities	35,004	77,227
Total current liabilities	744,478	644,041
Subordinated debentures	132,933	212,500
Long-term debt	290,000	115,000
Shareholders' equity:		
Common stock	246,265	141,154
Retained earnings	403,260	368,333
Total shareholders' equity	649,525	509,487
	\$1,816,936	\$1,481,028

See accompanying notes to consolidated financial statements.

QUANTUM CORPORATION

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(unaudited)

	Six Months Ended	
	Oct. 1, 1995	Oct. 2, 1994
Cash flows from operating activities:		
Net income	\$ 34,967	\$106,844
Items not requiring the current use of cash:		
Depreciation and amortization	46,976	14,888
Changes in assets and liabilities:		
Accounts receivable	(137,126)	(111,792)
Inventories	(184,157)	(6,795)
Accounts payable	174,543	43,258
Income taxes payable	(10,479)	12,651
Accrued warranty expense	(531)	3,660
Other assets and liabilities	(51,283)	(26,947)
Net cash provided by (used in) operating activities	(127,090)	35,767
Cash flows from investing activities:		
Purchase of short-term investments	-	(20,474)
Sales and maturities of short-term investments	-	113,774
Investment in property and equipment, net	(98,018)	(37,232)
Net cash provided by (used in) investing activities	(98,018)	56,068
Cash flows from financing activities:		
Proceeds from revolving line of credit and term loan borrowings	225,000	-
Principal payments on revolving line of credit	(50,000)	-
Proceeds from issuance of common stock, net	21,160	7,485
Net cash provided by financing activities	196,160	7,485
Net increase (decrease) in cash and cash equivalents	(28,948)	99,320
Cash and cash equivalents at beginning of period	187,753	217,531
Cash and cash equivalents at end of period	\$158,805	\$316,851
Supplemental disclosure of cash flow information:		
Cash paid during the period for:		
Interest	\$ 13,249	\$ 6,870
Income taxes	\$ 24,874	\$ 29,835

See accompanying notes to consolidated financial statements.

QUANTUM CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(unaudited)

1. Basis of presentation

The accompanying unaudited consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments which, in the opinion of management, are necessary for a fair presentation of the results for the periods shown. The results of operations for such periods are not necessarily indicative of the results expected for the full fiscal year. The accompanying financial statements should be read in conjunction with the audited financial statements of Quantum Corporation for the fiscal year ended March 31, 1995.

## 2. Inventories

Inventories consisted of the following:  
(In thousands)

	Oct. 1, 1995	March 31, 1995
Materials and purchased parts	\$134,471	\$116,732
Work in process	129,915	42,091
Finished goods	244,421	165,827
	\$508,807	\$324,650

## 3. Net income per share

Net income per share is computed using the weighted average number of common and dilutive common equivalent shares outstanding. For fiscal 1995, net income per share computed on a fully diluted basis assumes conversion of the Company's outstanding 6 3/8% convertible subordinated debentures having a principal value of \$212,500,000. During the six months ended October 1, 1995, approximately 37% of the outstanding debentures were converted to common stock (See Note 4 in Notes to Consolidated Financial Statements). Therefore, net income per share for the three and six months ended October 1, 1995, computed on a fully diluted basis, assumed conversion of the outstanding debentures having a principal value of \$132,933,000.

## 4. Debt

In October 1994, the Company entered into a three year \$350 million senior credit facility structured as a \$225 million revolving credit line and a \$125 million term loan. The revolving credit is governed by a borrowing base of eligible accounts receivable and inventory, and the term loan amortizes in five equal semiannual installments commencing October 1995. The borrowings, at the ongoing option of the Company bear interest at either LIBOR plus a margin or a base rate with option periods of one to six months. The facility is secured by all the Company's domestic assets and 66% of the Company's ownership of certain of its subsidiaries.

In September 1995, the Company executed an amendment to the senior credit facility. This amendment extended the revolving line of credit term one year to September 1998 and increased the total amount available under the revolving credit line portion of the facility from \$225 million to \$325 million.

Also in September 1995, the Company entered into a one-year \$85 million unsecured Letter of Credit facility with certain banks to issue standby letters of credit to Matsushita-Kotobuki Electronics and its affiliates.

The Company's convertible subordinated debentures became redeemable at the Company's option on or after April 2, 1995, at prices ranging from 104.5% of the principal to 100% at maturity. Each debenture is convertible, at the option of the holder into the Company's common stock at a conversion price of approximately \$18.15 per share. During the three months ended October 1, 1995, \$16,123,000, approximately 7%, of the outstanding convertible subordinated debentures were converted into the Company's Common Stock. This conversion resulted in the issuance of 887,716 shares. In the six months ended October 1, 1995, a total of \$79,567,000 of the debentures, approximately 37%, were converted, resulting in the issuance of 4,383,477 shares.

## 5. Acquisition of businesses from Digital Equipment Corporation

On October 3, 1994, Quantum Corporation ("Quantum" or "the Company") acquired the Hard Disk Drive, Heads and Tape Drives Business of the Storage Business Unit of Digital Equipment Corporation ("the acquired Business"), in a transaction accounted for as a purchase. The operating results of the acquired Business from the date of the purchase through October 1, 1995, have been reflected in the Company's consolidated financial statements. The purchase price of the Acquisition was finalized during the second quarter of fiscal 1996, resulting in a reduction of the purchase price of approximately \$5.7 million.

The unaudited pro forma combined condensed results of operations for the Company for the three months and six months ended October 2, 1994, had the Acquisition occurred at the beginning of the period and which eliminates the non-recurring charges, are as follows:

(In thousands except per share data)

	Three Months Ended		Six Months Ended	
	Oct. 1, 1995 (actual)	Oct. 2, 1994 (pro forma)	Oct. 1, 1995 (actual)	Oct. 2, 1994 (pro forma)
Net sales	\$1,033,048	\$ 884,619	\$1,974,363	\$1,874,258
Net income	\$ 22,025	\$ (14,265)	\$ 34,967	\$ 29,947
Net income per share:				
Primary	\$0.39	(\$0.30)	\$0.65	\$0.64
Fully diluted	\$0.37	(\$0.30)	\$0.61	\$0.58

The unaudited pro forma results for the three months and six months ended October 2, 1994, exclude the effects of the charge for purchased research and development and other merger costs of \$73 million, as such amounts are non-recurring. The pro forma results for the three months and six months ended October 2, 1994, and the actual results for the three months and six months ended October 1, 1995, reflect intangible asset amortization, depreciation of acquired fixed assets, amortization of loan fees and interest expense on the new debt related to the Acquisition.

The unaudited pro forma information is presented for illustrative purposes only and is not necessarily indicative of the operating results that would have occurred had the transaction been completed at the beginning of the period indicated, nor is it necessarily indicative of future operating results.

#### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

On October 3, 1994, Quantum acquired the Hard Disk Drive, Heads and Tape Drive Business of the Storage Business Unit of Digital Equipment Corporation (the "acquired Business"), in a transaction (the "Acquisition") accounted for as a purchase. The operating results of the acquired Business from the date of the purchase through October 1, 1995, have been reflected in the Company's consolidated financial statements.

Consolidated sales for the three and six months ended October 1, 1995, were \$1,033 million and \$1,974 million, respectively, compared to \$726 million and \$1,451 million for the corresponding periods in fiscal 1995. The increase in consolidated sales year to year is attributable to increased unit shipments due in part to products acquired in the Acquisition, and a change in sales mix to higher-priced products. These increases were partially offset by a decline in average unit sales prices on a comparable unit basis. Unit shipments for the second quarter of fiscal 1996 increased 22% compared to the corresponding period in fiscal 1995, with sales for the second quarter of fiscal 1996 increasing 42% over the second quarter of fiscal 1995. For the six months ended October 1, 1995, unit shipments increased 20% and sales increased 36% over the comparable period in fiscal 1995. Historically, a limited number of disk drive products have contributed the majority of the consolidated sales for the Company. The Company anticipates that this trend will continue in the future.

Subsequent to the end of the second quarter, the Company learned that a major customer was experiencing problems integrating a specific configuration of a product family qualified and shipped during the quarter. The Company agreed to accept a return of the drives for credit, and the Company reversed the \$32 million in revenue from the second quarter results.

Sales to the top five customers for the three and six months ended October 1, 1995, represented 49% and 48% of consolidated sales, respectively, with three customers having sales greater than 10% of consolidated sales for each period. For the corresponding periods in fiscal 1995, sales to the top five customers represented 51% and 49% of consolidated sales, with two customers having sales greater than 10% of consolidated sales for each period.

Any significant decrease in sales to a major customer or the loss of a major customer could have a material adverse effect on the Company's results of operations.

In conjunction with the Acquisition, the Company and Digital signed a multi-year supply agreement pursuant to which the Company will provide a substantial percentage of Digital's internal hard disk drive requirements for its StoraGeworks subsystems and core computer systems businesses, subject to the Company meeting Digital's qualification standards. During the second quarter of fiscal 1996, Digital did not complete its internal qualification procedures for certain of the Company's new products. There can be no assurance that Digital's future requirements for hard disk products will increase or remain at the current levels or that the Company will be able to meet Digital's qualification requirements on a timely basis.

Gross margin for the quarter ended October 1, 1995, decreased to 13.8% from 18.3% for the quarter ended October 2, 1994. For the six months ended October 1, 1995, gross margin was 13.5%, compared to 19.2% for the six

months ended October 2, 1994. This decrease was due to the acquired Business and slower than anticipated transition to higher margin products in the high capacity product line, as well as component availability issues. The Company anticipates that there will continue to be component availability issues through at least the third quarter of fiscal 1996 ending December 31, 1995, which may potentially constrain shipment of product. Although the Company is making efforts to avoid significant component shortages, the Company may not be able to meet all orders for certain products. In the future, gross margin may be affected by pricing and other competitive conditions, as well as the Company's ability to integrate the acquired Business, including phasing out the older, lower gross margin product lines and transitioning the manufacturing of its high capacity disk drive products to its lower-cost facility.

Over the past ten years, Quantum has established a strong business relationship with Matsushita-Kotobuki Electronics Industries, Ltd. ("MKE") of Japan. This relationship has been built on Quantum's engineering and design expertise and MKE's high-volume, high-quality manufacturing expertise. The Company's master agreement with MKE, which covers the general terms of the business relationship, was renegotiated during fiscal 1993 for a period of five years. In the first half of fiscal 1996, 73% of Quantum's sales were derived from products manufactured by MKE. For the comparable period of the prior fiscal year, products manufactured by MKE represented approximately 90% of the Company's sales. The decline in MKE products as a percentage of sales is a result of Quantum's manufacturing of the products acquired from Digital. There can be no assurance that the increase in Quantum manufactured products will not adversely influence the gross margin rate. In the event MKE is unable to supply such products or increases its prices for manufacturing services, the Company's results of operations would be adversely affected.

In conjunction with the acquisition of the thin film heads business from Digital, the Company assumed Digital's relationship with Lafe Computer Magnetics Ltd. ("Lafe"). The Company has reached an agreement with Lafe, in principal, on providing manufacturing services and a contract is expected to be completed in the third quarter. In the event Lafe is unable to supply manufacturing services, the Company could experience an interruption in business.

The Company's transactions with MKE and Lafe are denominated in dollars with prices for product purchases negotiated periodically. Thus, fluctuations in the exchange rate have no material short-term impact on Quantum's results of operations. However, such fluctuations may impact future negotiated prices.

Quantum operates in an extremely competitive industry and its rapid growth has been the result of the Company's ability to identify customer needs and develop quality products to meet those requirements. The Company expects that sales from new products will account for a significant portion of sales for the latter half of fiscal 1996 and will replace sales of some current products. The Company's ability to produce new products economically and manage the transition of customers to these new products is essential for continued success. The hard disk drive industry is characterized by increasingly shorter product life cycles and is dependent on the strength of unit demand in the personal computer market. As a result, the industry tends to experience periods of excess product inventory and intense price competition. These and other factors may affect the Company's results of operations, and past financial performance should not be considered a reliable indicator of future performance. Investors should not use historical trends to anticipate results or trends in future periods.

Operating Expenses

Research and development expenses in the second quarter of fiscal 1996 were \$55 million, or 5.3% of sales, compared to \$29 million, or 3.9% of sales in the corresponding period in fiscal 1995. For the first half of fiscal 1996, research and development expenses were \$110 million, or 5.6% of sales, compared to \$57 million, or 3.9% of sales, in the corresponding period in fiscal 1995. The increase is due primarily to the acquired Business and reflects spending for both the vertically integrated heads business and the additional high capacity disk drive products, which are more research and development intensive than the Company's other businesses. Principally as a result of the Acquisition, the Company expects to continue this higher level of expenditures for research and development. The hard disk drive industry is subject to rapid technological advances, and the future success of the Company is dependent upon continued development and timely introduction of new products and technologies.

Sales and marketing expenses in the second quarter of fiscal 1996 were \$35 million, or 3.4% of sales, compared to \$23 million, or 3.2% of sales in the corresponding period in fiscal 1995. Sales and marketing expenses for the first half of fiscal 1996 were \$69 million, or 3.5% of sales, compared to \$46 million, or 3.2% of sales, in the corresponding period in fiscal 1995. The increase is principally due to the Acquisition and the costs associated with supporting the higher sales volume and the expanded Company infrastructure. The Company anticipates a continued higher level of absolute dollar spending for sales and marketing related to the Acquisition, with expenditures as a

percentage of sales remaining relatively consistent.

General and administrative expenses in the second quarter of fiscal 1996 were \$15 million, or 1.5% of sales, compared to \$11 million, or 1.6% of sales in the corresponding period in fiscal 1995. General and administrative expenses for the first half of fiscal 1996 were \$28 million, or 1.4% of sales, compared to \$22 million, or 1.5% of sales, in the corresponding period in fiscal 1995. The increase in absolute dollars is primarily related to the infrastructure required to operate the acquired Business. The percentage decline is due to the increase in consolidated sales. The Company expects a continued higher level of general and administrative absolute dollar spending, principally due to the Acquisition, with expenditures as a percentage of sales remaining relatively consistent.

Net interest and other income/expense in the quarter ended October 1, 1995, was \$6 million net expense, compared to \$0.3 million net expense in the corresponding period in fiscal 1995. Net interest and other income/expense for the six months ended October 1, 1995, were \$11.3 million, compared to \$1.5 million in the corresponding period in fiscal 1995. The increase in net expense in the fiscal 1996 period can be principally attributed to higher interest expense resulting from the Acquisition financing and lower cash balances due to cash used for the Acquisition.

The Acquisition will continue to have an effect on both operating and net income resulting from the amortization of intangibles, depreciation of the acquired fixed assets and interest expense on the debt. The purchase price of the Acquisition was finalized during the second quarter of fiscal 1996, resulting in a reduction of the purchase price of approximately \$5.7 million. The Company estimates that charges for the amortization of intangibles and the depreciation of the fixed assets acquired in the Acquisition will approximate \$25 million and \$30 million, respectively, over each of the next three fiscal years. Interest expense on the debt will be dependent on the loan balance and interest rate. See Note 4 of Notes to the Financial Statements.

On November 8, 1995, the Company announced plans to reorganize the High Capacity Storage Group ("HCSG"), as part of a plan to improve its operating results. The reorganization will include closing the production launch line in Shrewsbury, Massachusetts, canceling the Empire II development program and accelerating end-of-life plans for less cost effective products. The Company expects to record a non-recurring charge of \$35 to \$40 million, pre-tax, primarily to cost of goods sold, in the third quarter of fiscal 1996. Additionally, the Company is accelerating the shutdown of the Colorado Springs disk drive manufacturing plant and now expects to close the plant by December 31, 1995.

#### Income Taxes

The effective tax rate for the quarter and six months ended October 1, 1995, was 29%, compared to 30% for the corresponding periods in fiscal 1995. The effective tax rates are below the combined U.S. federal and state statutory rates primarily as a result of the tax benefit associated with the income of foreign subsidiaries taxed at lower than the combined U.S. federal and state income tax rates.

#### Liquidity and Capital Resources

At October 1, 1995, the Company had \$159 million in cash and cash equivalents and short-term investments, compared to \$188 million at March 31, 1995. The decrease in cash is a result of cash used in operating and investing activities offset by cash provided by financing activities. Cash used in operating and investing activities is primarily a result of increases in accounts receivable and inventories and investing in property and equipment, partially offset by an increase in accounts payable. Cash provided by financing activities is primarily a result of borrowing under the credit facility described below.

In October 1994, the Company entered into a three year \$350 million senior credit facility structured as a \$225 million revolving credit line and a \$125 million term loan. The revolving credit is governed by a borrowing base of eligible accounts receivable and inventory, and the term loan amortizes in five equal semiannual installments commencing October 1995. The borrowings, at the ongoing option of the Company bear interest at either LIBOR plus a margin or a base rate with option periods of one to six months. The facility is secured by all the Company's domestic assets and 66% of the Company's ownership of certain of its subsidiaries.

In September 1995, the Company executed an amendment to the senior credit facility. This amendment extended the revolving line of credit term one year to September 1998 and increased the total amount available under the revolving credit line portion of the facility from \$225 million to \$325 million.

Also in September 1995, the Company entered into a one-year \$85 million unsecured Letter of Credit facility with certain banks to issue standby

letters of credit to MKE and its affiliates.

The Company's convertible subordinated debentures became redeemable at the Company's option on or after April 2, 1995, at prices ranging from 104.5% of the principal to 100% at maturity. Each debenture is convertible, at the option of the holder into the Company's common stock at a conversion price of approximately \$18.15 per share. During the first half of fiscal 1996, \$79,567,000, or approximately 37%, of the outstanding convertible subordinated debentures were converted into the Company's Common Stock. This conversion resulted in the issuance of 4,383,477 shares.

The Company expects to spend approximately \$200 million for leasehold improvements, capital equipment and expansion of the Company's facilities during fiscal 1996. Included in this amount is a significant amount of additional capital expenditures that will be required to expand the Asia manufacturing facilities and to support the recording heads business of the acquired Business. In conjunction with the Acquisition, the Company recorded an accrual for exit costs related to exiting facilities and operations acquired from Digital. The Company anticipates that cash outlays during fiscal 1996 for the exit activities will be approximately \$23 million. During the six months ended October 1, 1995, there were no cash outlays related to the exit costs.

In conjunction with the HCSG reorganization announced November 8, 1995, the Company expects to record a non-recurring charge of \$35 to \$40 million during the third quarter of fiscal 1996. The Company anticipates that cash outlays during fiscal 1996 for the reorganization will be approximately \$20 to \$25 million.

The Company believes that its existing capital resources, including its credit facilities and any cash generated from operations, will be sufficient to meet all currently planned expenditures and sustain operations through the 1996 fiscal year. However, the Company continues to work to identify additional sources of cash and there can be no assurance that the Company will not be required, or choose, to raise capital in advance of that date. There can be no assurance that the Company will be able to obtain any such financing on acceptable terms, or at all.

QUANTUM CORPORATION

PART II - OTHER INFORMATION

Item 1. Legal proceedings

As previously reported, Quantum's declaratory judgment lawsuit against Rodime PLC of Glasgow, Scotland, resulted in a summary judgment that claims of Rodime's U.S. Patent No. 4,638,383 were invalid because of impermissible broadening in reexamination proceedings. This summary judgment was affirmed on September 22, 1995, by the U.S. Court of Appeals for the Federal Circuit. Subsequently, Rodime has petitioned the court for a rehearing and a hearing in banc. This petition remains pending. If the appellate decision is left undisturbed by any further appellate proceedings, Quantum believes that it is fully dispositive of its dispute with Rodime. Due to the inherent uncertainties of ongoing litigation, there can be no assurance that the appellate decision will become finally dispositive.

Item 2. Changes in securities - Not Applicable.

Item 3. Defaults upon senior securities - Not Applicable.

Item 4. Submission of matters to a vote of security holders.

The 1995 Annual Meeting of Shareholders was held on September 6, 1995. The matters voted upon were the election of directors, an amendment to the Company's Employee Stock Purchase Plan, and the appointment of the independent auditors.

The shareholders approved the election of directors as follows:

	For	Against
Stephen M. Berkley	42,804,909	157,308
David A. Brown	42,818,359	143,858
Robert J. Casale	42,818,259	143,958
Edward M. Esber, Jr.	42,818,409	143,808
William J. Miller	42,804,759	157,458
Steven C. Wheelwright	42,820,309	141,908

The shareholders approved and ratified an amendment to the Company's Employee Stock Purchase Plan, increasing the number of shares reserved for issuance thereunder from 6,300,000 to 8,500,000 shares of Common Stock. The number of affirmative votes cast for this matter was 39,991,891. The number of negative votes cast with respect to this matter were 2,071,627, with 135,977 votes abstaining and 8,528,004 broker non-votes.



The appointment of Ernst & Young LLP as independent auditors of the Company for the fiscal year ending March 31, 1996, was approved with 42,834,738 affirmative votes, 32,844 negative votes, 64,635 votes abstaining and 7,795,282 broker non-votes.

In addition, the shareholders voted to allow the directors to vote on any other matters of business that might come before the meeting with 28,417,202 affirmative votes, 5,514,456 negative votes, 9,000,289 abstaining votes, and 7,795,552 broker non-votes.

Item 5. Other information.

William J. Miller resigned as Chairman of the Board of Directors and Chief Executive Officer ("CEO") for personal reasons, effective August 23, 1995. Stephen M. Berkley, who was Chairman and CEO until Mr. Miller joined the company in 1992, became Chairman of the Board. On September 26, 1995, Michael A. Brown was named to the position of Chief Executive Officer of the Company. Mr. Brown has been at Quantum since 1984, and was most recently President of the Desktop and Portable Storage Group ("DPSG"), which represents approximately 70% of Quantum's revenues. Mark Jackson, who was previously Vice President of Worldwide Logistics reporting to Mr. Brown, succeeded Mr. Brown as President of DPSG.

Effective November 1, 1995, Robert K. Maeser resigned as President and General Manager of the Company's High Capacity Storage Group ("HCSG"). He was replaced by Kenneth Lee, Executive Vice President, Engineering and Technology, and Chief Technical Officer. Mr. Lee will continue to lead the advanced technology and engineering efforts of the Company in addition to his new role.

Item 6. Exhibits and reports on Form 8-K.

(a) Exhibits. The exhibits listed on the accompanying index to exhibits immediately following the signature page are filed as part of this report.

(b) Reports on Form 8-K. None

SIGNATURE

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

QUANTUM CORPORATION  
(Registrant)

Date: November 20, 1995 By: /s/ Joseph T. Rodgers  
Joseph T. Rodgers  
Executive Vice President, Finance  
and Chief Financial Officer

QUANTUM CORPORATION

INDEX TO EXHIBITS

Exhibit Number	Sequentially Numbered Page
10.31	Third Amendment, dated September 29, 1995, to Credit Agreement (dated October 3, 1994) among Quantum Corporation and the Banks named therein and ABN AMRO BANK N.V., San Francisco International Branch,

	BARCLAYS BANK PLC and CIBC INC. as Managing Agents for the Banks, and CANADIAN IMPERIAL BANK OF COMMERCE as Administrative Agent and Collateral Agent for the Banks	19
10.32	Credit Agreement dated September 22, 1995, among Quantum Corporation and the Banks named therein and THE SUMITOMO BANK, LIMITED, acting through its San Francisco branch, as Agent for the Banks and as Issuer	49
10.33	Lease Agreement, dated August 31, 1995, between CRAY COMPUTER CORPORATION, as Landlord, and QUANTUM Corporation, as Tenant	88
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## QUANTUM CORPORATION

## THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "AMENDMENT"), dated as of September 29, 1995, is entered into by and among:

- (1) QUANTUM CORPORATION, a Delaware corporation ("BORROWER");
- (2) Each of the financial institutions listed in SCHEDULE I TO THE CREDIT AGREEMENT referred to in RECITAL A below, (such financial institutions to be referred to herein collectively as the "EXISTING BANKS");
- (3) ABN AMRO BANK N.V., San Francisco International Branch ("ABN"), BARCLAYS BANK PLC ("BARCLAYS") and CIBC INC. ("CIBC"), as managing agents for the Existing Banks (collectively in such capacity, the "MANAGING AGENTS");
- (4) BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, THE FIRST NATIONAL BANK OF BOSTON, CHEMICAL BANK and THE INDUSTRIAL BANK OF JAPAN, LIMITED, as co-agents for the Existing Banks;
- (5) CANADIAN IMPERIAL BANK OF COMMERCE, as administrative and collateral agent for the Existing Banks (in such capacities, the "ADMINISTRATIVE AGENT"); ABN, as syndication agent for the Existing Banks; and Barclays, as documentation agent for the Existing Banks; and
- (6) THE FUJI BANK, LIMITED, a Japanese banking corporation (the "NEW BANK").

## RECITALS

- A. Borrower, the Existing Banks, Managing Agents and Administrative Agent are parties to a Credit Agreement dated as of October 3, 1994, as amended by a First Amendment to Credit Agreement dated as of February 15, 1995 and a Second Amendment to Credit Agreement dated as of June 26, 1995 (as so amended, the "CREDIT AGREEMENT"), pursuant to which the Existing Banks have provided certain credit facilities to Borrower.
- B. Borrower has requested the Existing Banks, Managing Agents and Administrative Agent to amend the Credit Agreement to increase the amount of the credit facilities, to add the New Bank and to make certain other changes.
- C. The Existing Banks, Managing Agents and Administrative Agent are willing so to amend the Credit Agreement upon the terms and subject to the conditions set forth below.

## AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower, the Existing Banks, Managing Agents, Administrative Agent and the New Bank hereby agree as follows:

1. DEFINITIONS, INTERPRETATION. All capitalized terms defined above and elsewhere in this Amendment shall be used herein as so defined. Unless otherwise defined herein, all other capitalized terms used herein shall have the respective meanings given to those terms in the Credit Agreement, as amended by this Amendment, except that the terms "Issuing Bank," "Issuing Banks' Fee Letter," "LC Applications," "LC Issuance Fees," "LC Paying Agent" and "LC Usage Fees" are used in PARAGRAPHS 4, 5 AND 6 below with the respective meanings given to those terms in the Credit Agreement prior to this Amendment. The rules of construction set forth in SECTION I OF THE CREDIT AGREEMENT shall, to the extent not inconsistent with the terms of this Amendment, apply to this Amendment and are hereby incorporated by reference.

2. AMENDMENTS TO CREDIT AGREEMENT. Subject to the satisfaction of the conditions set forth in PARAGRAPH 4 below,

the Credit Agreement is hereby amended as follows:

(a) PARAGRAPH 1.01 is amended by changing the definitions of the following terms set forth therein to read in their entirety as follows:

"BANKS" shall have the meaning given to that term in CLAUSE (2) OF THE INTRODUCTORY PARAGRAPH HEREOF.

"COMMITMENTS" shall mean, collectively, the Revolving Loan Commitments and the Term Loan Commitments.

"CREDIT DOCUMENTS" shall mean and include this Agreement, the Notes, the Security Documents and the Agents' Fee Letters; all documents, instruments and agreements delivered to any Agent or any Bank pursuant to PARAGRAPH 3.01; and all other documents, instruments and agreements delivered by Borrower or any of its Subsidiaries to any Agent or Bank in connection with this Agreement on or after the date of this Agreement.

"CREDIT EVENT" shall mean the making of any Loan, the conversion of any Revolving Base Rate Loan or Term Base Rate Borrowing Portion into a Revolving LIBOR Loan or Term LIBOR Borrowing Portion or the selection of a new Interest Period for any Revolving LIBOR Loan or Term LIBOR Borrowing Portion.

"DEBT SERVICE COVERAGE RATIO" shall mean, with respect to any Person for any period, the ratio, determined on a consolidated basis in accordance with GAAP where applicable, of;

(a) The Adjusted Net Income of such Person and its Subsidiaries for such period;

TO

(b) The sum of (i) all principal payments on indebtedness for borrowed money of such Person and its Subsidiaries scheduled for payment during such period, (ii) fifty percent (50%) of all Capital Expenditures of such Person and its Subsidiaries for such period, and (iii) all dividends paid by such Person and its Subsidiaries during such period (excluding any dividends paid to such Person).

(In calculating the Debt Service Coverage Ratio of Borrower for any period, the principal payments "scheduled for payment during such period" on the Term Loans shall be the Term Loan principal payments actually scheduled for payment during such period pursuant to SUBPARAGRAPH 2.02(F), except that, for the period January 1, 1995 through December 31, 1995, the principal payments "scheduled for payment during such period" on the Term Loans shall be deemed to be the principal payment due on the Term Loans on September 30, 1995 and one-half of the principal payment due on the Term Loans on March 31, 1996.)

"DEFAULTING BANK" shall mean a Bank which has failed to fund its portion of any Borrowing which it is required to fund under this Agreement and has continued in such failure for three (3) Business Days after written notice from Administrative Agent.

"DESIGNATED ASSET SALE PROCEEDS" shall mean, for any fiscal year of Borrower, the Net Proceeds payable to Borrower and its Subsidiaries (to the extent of Borrower's ownership interest therein) from the sale of assets (including the direct or indirect sale of any stock or other Equity Securities of any Subsidiary) during such year, other than any sale permitted by CLAUSE (I), (II), (III), (IV), (VI) OR (IX) OF SUBPARAGRAPH 5.02(C) or any license permitted by CLAUSE (V) OF SUBPARAGRAPH 5.02(C).

"FIXED CHARGE COVERAGE RATIO" shall mean, with respect to any Person for any period, the ratio, determined on a consolidated basis in accordance with GAAP where applicable, of;

(a) The remainder of (i) EBITDA of such

Person and its Subsidiaries for such period, MINUS  
(ii) fifty percent (50%) of all Capital  
Expenditures of such Person and its Subsidiaries  
for such period;

TO

(b) All Interest Expenses of such Person and  
its Subsidiaries for such period.

"MATURITY" shall mean, with respect to any Loan,  
interest, fee or other amount payable by Borrower under  
this Agreement or the other Credit Documents, the date  
such Loan, interest, fee or other amount becomes due,  
whether upon the stated maturity or due date, upon  
acceleration or otherwise.

"PROPORTIONATE SHARE" shall mean, with respect to  
each Bank at any time, a fraction (expressed as a  
percentage rounded to the sixth digit to the right of  
the decimal point), the numerator of which is the sum  
at such time of such Bank's Revolving Loan Commitment  
and Term Loan and the denominator of which is the sum  
at such time of the Total Revolving Loan Commitment and  
the Term Loan Borrowing.

"QUICK RATIO" shall mean, with respect to any  
Person at any time, the ratio, determined on a  
consolidated basis in accordance with GAAP, of:

(a) The sum at such time of all cash, cash  
equivalents (less than ninety (90) days in term),  
short-term marketable securities (less than one  
(1) year in term) and accounts receivable of such  
Person and its Subsidiaries (less all reserves  
therefor);

TO

(b) The current liabilities of such Person  
and its Subsidiaries at such time.

"REQUIRED BANKS" shall mean (a) at any time Loans are  
outstanding and the Banks are obligated to make  
Revolving Loans pursuant to their Revolving Loan  
Commitments, Banks holding more than sixty-six and two  
thirds percent (66 2/3%) of the aggregate principal  
amount of all Loans outstanding, calculated as if  
Revolving Loans in the full amount of the Banks'  
Revolving Loan Commitments were outstanding, (b) at any  
time Loans are outstanding and the Banks are not  
obligated to make Revolving Loans pursuant to their  
Revolving Loan Commitments, Banks holding more than  
sixty-six and two thirds percent (66 2/3%) of the  
aggregate principal amount of all Loans outstanding and  
(c) at any time no Loans are outstanding, Banks whose  
aggregate Revolving Loan Commitments exceed sixty-six  
and two thirds percent (66 2/3%) of the Total Revolving  
Loan Commitment at such time.

"REVOLVING LOAN COMMITMENT" shall mean, with  
respect to any Bank at any time, such Bank's Revolving  
Loan Proportionate Share at such time of the Total  
Revolving Loan Commitment at such time.

"TERM LOAN COMMITMENT" shall mean, with respect to  
any Bank at any time, such Bank's Term Loan  
Proportionate Share at such time of the Total Term Loan  
Commitment at such time.

"UNUSED COMMITMENT" shall mean, at any time after  
this Agreement is executed by Borrower, the Agents and  
Banks, the remainder of (a) the Total Revolving Loan  
Commitment at such time minus (b) the sum of the  
aggregate principal amount of all Revolving Loans then  
outstanding.

(b) PARAGRAPH 1.01 is further amended by changing the  
definitions of "Eligible Borrower Accounts," "Eligible  
Borrower Inventory" and "Eligible Quantum Europe Accounts"  
as follows:

(i) The definition of "ELIGIBLE BORROWER  
ACCOUNTS" is amended by changing CLAUSE (G) and CLAUSE  
(J) thereof to read in their entirety as follows:

(g) Any account payable by (i) the United States government or any department, agency or other subdivision thereof (except to the extent Borrower complies with the Federal Assignment of Claims Act of 1940, as amended) or (ii) an Affiliate of Borrower;

(j) Accounts owed by an account debtor having either (i) a long-term debt rating of at least BBB (or its equivalent) from Standard and Poor's Ratings Group or (ii) a short-term debt rating of at least A-1 (or its equivalent) from Standard and Poor's Ratings Group, to the extent the total accounts owed by such account debtor to Borrower exceed thirty percent (30%) of Borrower's total accounts;

(ii) The definition of "ELIGIBLE BORROWER INVENTORY" is amended by changing CLAUSE (B) thereof to read in its entirety as follows:

(b) Any inventory consisting of work-in-process or any other inventory not constituting raw materials or finished inventory;

(iii) The definition of "ELIGIBLE QUANTUM EUROPE ACCOUNTS" is amended by changing CLAUSE (J) thereof to read in its entirety as follows:

(j) Accounts owed by an account debtor having either (i) a long-term debt rating of at least BBB (or its equivalent) from Standard and Poor's Ratings Group or (ii) a short-term debt rating of at least A-1 (or its equivalent) from Standard and Poor's Ratings Group, to the extent the total accounts owed by such account debtor to Quantum Europe exceed thirty percent (30%) of Quantum Europe's total accounts;

(c) PARAGRAPH 1.01 is further amended by adding thereto, in the appropriate alphabetical order, the following definitions to read in their entirety as follows:

"OUTSTANDING REVOLVER CREDIT" shall have the meaning given to that term in SUBPARAGRAPH 2.03(A).

"REVOLVING LOAN BANK" shall mean, at any time, a Bank which then has a Revolving Loan Commitment or then holds an outstanding Revolving Loan.

"REVOLVING LOAN MATURITY DATE" shall have the meaning given to that term in SUBPARAGRAPH 2.01(A).

"REVOLVING LOAN PROPORTIONATE SHARE" shall mean, with respect to each Bank, the percentage set forth under the caption "Revolving Loan Proportionate Share" opposite such Bank's name on SCHEDULE I, or, if changed, such percentage as may be set forth for such Bank in the Register.

"SUMITOMO LC AGREEMENT" shall mean the Credit Agreement dated as of September 22, 1995 among Borrower, The Sumitomo Bank, Limited and other banks from time to time parties thereto.

"SUMITOMO LC BANKS" shall mean The Sumitomo Bank, Limited, and the other banks from time to time parties to the Sumitomo LC Agreement.

"TERM LOAN BANK" shall mean, at any time, a Bank which then has a Term Loan Commitment or then holds an outstanding Term Loan.

"TERM LOAN MATURITY DATE" shall have the meaning given to that term in SUBPARAGRAPH 2.02(F).

"TERM LOAN PROPORTIONATE SHARE" shall mean, with respect to each Bank, the percentage set forth under the caption "Term Loan Proportionate Share" opposite such Bank's name on SCHEDULE I, or, if changed, such percentage as may be set forth for such Bank in the Register.

(d) PARAGRAPH 1.01 is further amended by deleting the

definitions of the following terms set forth therein:

"DRAWING PAYMENT"  
"EXISTING LC AGREEMENT"  
"EXISTING LC APPLICATIONS"  
"EXISTING LETTERS OF CREDIT"  
"EXPIRATION DATE"  
"ISSUING BANK"  
"ISSUING BANKS' FEE LETTER"  
"LC AMENDMENT APPLICATION"  
"LC APPLICATIONS"  
"LC COMMITMENT"  
"LC FACILITY EXPIRATION DATE"  
"LC ISSUANCE APPLICATION"  
"LC ISSUANCE FEES"  
"LC PAYING AGENT"  
"LC PAYING AGENT AGREEMENT"  
"LC PERCENTAGE SHARE"  
"LC USAGE FEES"  
"LETTER OF CREDIT"  
"MATURITY DATE"  
"OUTSTANDING LC CREDIT"  
"OUTSTANDING REVOLVER/LC CREDIT"  
"REIMBURSEMENT DUE DATE"  
"REIMBURSEMENT OBLIGATION"  
"REIMBURSEMENT PAYMENT"  
"SECOND AMENDMENT EFFECTIVE DATE"  
"TOTAL LC COMMITMENT"

(e) SUBPARAGRAPH 2.01(A) is amended to read in its entirety as follows:

(a) REVOLVING LOAN AVAILABILITY. Subject to the terms and conditions of this Agreement (including the amount limitations set forth in PARAGRAPH 2.03), each Bank severally agrees to advance to Borrower from time to time during the period beginning on the Closing Date and ending on September 30, 1998 (the "REVOLVING LOAN MATURITY DATE") such revolving loans as Borrower may request under this PARAGRAPH 2.01 (individually, a "REVOLVING LOAN"); PROVIDED, HOWEVER, that (i) the aggregate principal amount of all Revolving Loans made by such Bank at any time outstanding shall not exceed such Bank's Revolving Loan Commitment at such time and (ii) the aggregate principal amount of all Revolving Loans made by all Banks at any time outstanding shall not exceed Three Hundred Twenty-Five Million Dollars (\$325,000,000) (such amount, as reduced from time to time pursuant to this Agreement, to be referred to herein as the "TOTAL REVOLVING LOAN COMMITMENT"). All Revolving Loans shall be made on a pro rata basis by the Banks in accordance with their respective Revolving Loan Proportionate Shares, with each Revolving Loan Borrowing to be comprised of a Revolving Loan by each Bank equal to such Bank's Revolving Loan Proportionate Share of such Revolving Loan Borrowing. Except as otherwise provided herein, Borrower may borrow, repay and reborrow Revolving Loans until the Revolving Loan Maturity Date.

(f) SUBPARAGRAPH 2.01(E) is amended by changing the term "Maturity Date" in the one place it appears in CLAUSE (I)(C) thereof to "Revolving Loan Maturity Date".

(g) SUBPARAGRAPH 2.01(F) is amended by changing the term "Maturity Date" in the one place it appears in the first sentence thereof to "Revolving Loan Maturity Date".

(h) PARAGRAPH 2.01A is deleted in its entirety.

(i) SUBPARAGRAPH 2.02(A) is amended by changing the term "Proportionate Shares" in the two places it appears in the second sentence thereof to "Term Loan Proportionate Shares".

(j) SUBPARAGRAPH 2.02(E) is amended by changing the term "Maturity Date" in the one place it appears in CLAUSE (I)(C) thereof to "Term Loan Maturity Date".

(k) SUBPARAGRAPH 2.02(F) is amended by changing the first sentence thereof to read in its entirety as follows:

Subject to SUBPARAGRAPH 2.05(D), Borrower shall repay the principal amount of the Term Loans in five (5) equal installments of \$25,000,000 each payable on the last day of each March and September, commencing September 30, 1995 and ending on September 30, 1997 (each such date to be referred to herein as a "TERM LOAN INSTALLMENT DATE"); PROVIDED, HOWEVER, that the principal payment due on September 30, 1997 (the "TERM LOAN MATURITY DATE") shall be in the amount necessary to pay all remaining unpaid principal on all Term Loans.

(l) SUBPARAGRAPH 2.03(A) is amended by changing CLAUSE (I) thereof to read in its entirety as follows:

(i) The aggregate principal amount of all Revolving Loans outstanding at any time (the "OUTSTANDING REVOLVER CREDIT") shall not exceed an amount (the "BORROWING BASE") equal to the lesser at such time of:

(A) The Total Revolving Loan Commitment at such time; and

(B) The sum at such time of:

(1) Ninety percent (90%) of Eligible Borrower Accounts owed by an account debtor having either (y) a long-term debt rating of at least BBB (or its equivalent) from Standard and Poor's Ratings Group or (z) a short-term debt rating of at least A-1 (or its equivalent) from Standard and Poor's Ratings Group;

(2) Eighty percent (80%) of Eligible Borrower Accounts owed by other account debtors;

(3) The lesser at such time of (y) thirty percent (30%) of Eligible Borrower Inventory and (z) \$60,000,000; and

(4) If the Quantum Europe Note and Borrower's Lien in the accounts of Quantum Europe securing the Quantum Europe Note are then subject to a first priority perfected security interest (or Similar Lien) in favor of Administrative Agent for the benefit of the Agents and Banks, the least at such time of (x) the outstanding principal amount of the Quantum Europe Note, (y) \$65,000,000 and (z) sixty percent (60%) of the Eligible Quantum Europe Accounts securing the Quantum Europe Note.

(m) SUBPARAGRAPH 2.03(B) is amended by changing CLAUSES (I) AND (II) thereof to read in their entirety as follows:

(i) Borrower may not reduce the Total Revolving Loan Commitment if, after giving effect to such reduction, the Outstanding Revolver Credit would exceed



the Total Revolving Loan Commitment as so reduced; and

(ii) Borrower may not cancel the Total Revolving Loan Commitment if, after giving effect to such cancellation, any Revolving Loan would remain outstanding.

(n) SUBPARAGRAPH 2.04(C) is amended by changing the term "Maturity Date" in the one place it appears in the first sentence thereof and the two places it appears in the last sentence thereof to "Revolving Loan Maturity Date".

(o) SUBPARAGRAPH 2.04(D) is deleted in its entirety.

(p) SUBPARAGRAPH 2.05(C) is amended by changing the term "Outstanding Revolver/LC Credit" in the one place it appears in CLAUSE (I) thereof to "Outstanding Revolver Credit".

(q) SUBPARAGRAPH 2.05(C) is further amended by changing CLAUSES (IV), (V), (VI) AND (VII) thereof to read in their entirety as follows:

(iv) If, at any time on or after twelve (12) months from the Closing Date, Borrower issues or sells any MKE Subordinated Debt, Borrower shall, immediately after such issuance or sale, prepay Term Loans in an aggregate principal amount equal to fifty percent (50%) of the Net Proceeds of such debt.

(v) If, at any time after the Closing Date, Borrower issues or sells any other Subordinated Debt (other than any MKE Subordinated Debt), Borrower shall, immediately after such issuance or sale, prepay Term Loans in an aggregate principal amount equal to fifty percent (50%) of the Net Proceeds of such debt.

(vi) If, at any time after the Closing Date, Borrower issues or sells any other Indebtedness for borrowed money, including Indebtedness evidenced by notes, bonds, debentures or other similar instruments (other than Subordinated Debt or any Indebtedness permitted by CLAUSE (I), (III), (XI), (XV) OR (XVIII) OF SUBPARAGRAPH 5.02(A)), Borrower shall, immediately after such issuance or sale, prepay Term Loans in an aggregate principal amount equal to one hundred percent (100%) of the Net Proceeds of such debt.

(vii) If, at any time after the Closing Date, Borrower issues or sells any Equity Securities (other than an issuance or sale where the total proceeds are less than \$10,000,000), Borrower shall, immediately after such issuance or sale, prepay Term Loans in an aggregate principal amount equal to fifty percent (50%) of the Net Proceeds of such Equity Securities.

(r) SUBPARAGRAPH 2.05(D) is amended by changing the term "Maturity Date" in the one place it appears in the second sentence thereof to "Term Loan Maturity Date".

(s) SUBPARAGRAPH 2.06(C) is amended by changing the parenthetical on the third and fourth lines thereof to read in its entirety as follows:

(including, without limitation, principal or interest payable on any Loan or interest thereon, any fees or other amounts)

(t) SUBPARAGRAPH 2.06(D) is amended to read in its entirety as follows:

(d) APPLICATION OF PAYMENTS. All payments hereunder shall be applied first to unpaid fees, costs and expenses then due and payable under this Agreement or the other Credit Documents, second to accrued interest then due and payable under this Agreement or the other Credit Documents and finally to reduce the principal amount of outstanding Loans.

(u) SUBPARAGRAPH 2.08(A) is amended by changing the first sentence thereof to read in its entirety as follows:

Each Bank shall, before 11:00 A.M. on the date of each Borrowing, make available to Administrative Agent at its office specified in PARAGRAPH 8.01, in same day or

immediately available funds, such Bank's pro rata share of such Borrowing.

(v) SUBPARAGRAPH 2.08(B) is amended to read in its entirety as follows:

(b) BANK FAILURE TO FUND. Unless Administrative Agent shall have received notice from a Bank prior to the date of any Borrowing that such Bank will not make available to Administrative Agent such Bank's pro rata share of such Borrowing, Administrative Agent may assume that such Bank has made such portion available to Administrative Agent on the date of such Borrowing in accordance with SUBPARAGRAPH 2.08(A), and Administrative Agent may, in reliance upon such assumption, make available to Borrower (or otherwise disburse) on such date a corresponding amount. If any Bank does not make the amount of its pro rata share of any Borrowing available to Administrative Agent on or prior to the date of such Borrowing, such Bank shall pay to Administrative Agent, on demand, interest which shall accrue on such amount until made available to Administrative Agent at rates equal to (i) the daily Federal Funds Rate during the period from the date of such Borrowing through the third Business Day thereafter and (ii) the Base Rate thereafter. A certificate of Administrative Agent submitted to any Bank with respect to any amounts owing under this SUBPARAGRAPH 2.08(B) shall be conclusive absent manifest error. If any Bank's pro rata share of any Borrowing is not in fact made available to Administrative Agent by such Bank within three (3) Business Days after the date of such Borrowing, Borrower shall pay to Administrative Agent, on demand, an amount equal to such pro rata share together with interest thereon, for each day from the date such amount was made available to Borrower until the date such amount is repaid to Administrative Agent, at the interest rate applicable at the time to the Loans comprising such Borrowing.

(w) SUBPARAGRAPH 2.08(C) is amended to read in its entirety as follows:

(c) BANKS' OBLIGATIONS SEVERAL. The failure of any Bank to make the Loan to be made by it as part of any Borrowing shall not relieve any other Bank of its obligation hereunder to make its Loan on the date of such Borrowing, but no Bank shall be responsible for the failure of any other Bank to make the Loan to be made by such other Bank on the date of any Borrowing.

(x) SUBPARAGRAPH 2.09(A) is amended by changing CLAUSE (I) thereof to read in its entirety as follows:

(i) Each Revolving Loan Borrowing and each reduction of the Total Revolving Loan Commitment shall be made by or shared among the Banks pro rata according to their respective Revolving Loan Proportionate Shares; the Term Loan Borrowing shall be made by the Banks pro rata according to their respective Term Loan Proportionate Shares;

(y) SUBPARAGRAPH 2.09(A) is further amended by (i) changing the term "Proportionate Share" in the one place it appears in CLAUSE (IV) thereof to "Revolving Loan Proportionate Share"; (ii) adding the word "and" at the end of CLAUSE (V) thereof; (iii) deleting CLAUSES (VI) AND (VII) in their entirety; and (iv) changing the designation of CLAUSE (VIII) to "(vi)".

(z) SUBPARAGRAPH 2.09(B) is amended by changing the phrase "Loans or Reimbursement Obligations" in the three places it appears in the first sentence thereof to "Loans".

(aa) SUBPARAGRAPH 2.10(C) is amended by changing the phrase "Revolving LIBOR Loan, Term LIBOR Borrowing Portion or Letter of Credit or such Bank's Commitments" where it appears in CLAUSE (III) thereof and in the third and fourth lines thereafter to "Revolving LIBOR Loan or Term LIBOR Borrowing Portion or such Bank's Commitments".

(bb) SUBPARAGRAPH 2.10(D) is amended by deleting the words ", the Letters of Credit" where they appear once in CLAUSE (II) of the first sentence thereof.

(cc) SUBPARAGRAPH 2.13(A) is amended by adding thereto, immediately after CLAUSE (VI), a new proviso to read in its entirety as follows:

PROVIDED, HOWEVER, that, after any sale of the property covered by the Borrower Mortgage as permitted by CLAUSE (IX) OF SUBPARAGRAPH 5.02(C), (A) the Obligations shall not be secured by the Borrower Mortgage and (B) Administrative Agent shall execute such documents, instruments and agreements as Borrower may reasonably request to release the Borrower Mortgage.

(dd) SUBPARAGRAPH 3.02(A) is amended to read in its entirety as follows:

(a) Borrower shall have delivered to Administrative Agent the Notice of Borrowing, Notice of Conversion or Notice of Interest Period Selection, as the case may be, for such Credit Event in accordance with this Agreement;

(ee) SUBPARAGRAPH 3.02(B) is amended by changing CLAUSE (III) thereof to read in its entirety as follows:

(iii) In the case of Credit Events with respect to Revolving Loan Borrowings, no adverse change in the Borrowing Base shall have occurred since the date of the most recent Borrowing Base Certificate; and

(ff) PARAGRAPH 3.02 is further amended by changing the last sentence thereof to read in its entirety as follows:

The submission by Borrower to Administrative Agent of each Notice of Borrowing, each Notice of Conversion (other than a notice for a conversion to a Revolving Base Rate Loan or a Term Base Rate Loan Portion) and each Notice of Interest Period Selection shall be deemed to be a representation and warranty by Borrower as of the date thereon as to the above.

(gg) SUBPARAGRAPH 5.02(A) is amended by changing CLAUSES (III), (VI), (VIII), (XI), (XVII) AND (XVIII) thereof to read in their entirety as follows:

(iii) Indebtedness under purchase money loans and Capital Leases incurred by Borrower or any of its Subsidiaries to finance the acquisition by such Person of real property, fixtures or equipment provided that (A) in each case, (y) such Indebtedness is incurred by such Person at the time of, or not later than forty-five (45) days after, the acquisition by such Person of the property so financed and (z) such Indebtedness does not exceed the purchase price of the property so financed and (B) the aggregate amount of such Indebtedness outstanding at any time does not exceed \$40,000,000;

(vi) Indebtedness of Borrower under the Sumitomo LC Agreement, provided that (A) the only credit extended to Borrower by the Sumitomo LC Banks pursuant to the Sumitomo LC Agreement consists of letters of credit issued for the benefit of MKE or its affiliates to secure obligations owed by Borrower to the beneficiaries for the purchase price of inventory; (B) the sum at any time of the aggregate face amount of all letters of credit issued by the Sumitomo LC Banks under the Sumitomo LC Agreement plus the aggregate amount of all unreimbursed drawings under such letters of credit does not exceed eighty-five million Dollars (\$85,000,000); (C) the Indebtedness of Borrower under the Sumitomo LC Agreement is at all times unsecured; and (D) the financial covenants of Borrower set forth in the Sumitomo LC Agreement are not more restrictive than the financial covenants of Borrower set forth in SUBPARAGRAPH 5.02(M);

(viii) Indebtedness of Borrower to MKE, provided that (A) such Indebtedness is subordinated to the Obligations on terms and conditions no less favorable to the Agents and Banks than those set forth on EXHIBIT R or as otherwise approved by the Required Banks; (B) the Net Proceeds of such Indebtedness are applied to prepay the Term Loans as required by SUBPARAGRAPH 2.05(C); and (C) the aggregate amount of all

Subordinated Debt of Borrower (including MKE Subordinated Debt) does not exceed \$300,000,000;

(xi) Indebtedness of Borrower and its Subsidiaries under initial or successive refinancings of any Indebtedness permitted by CLAUSE (II), (III) OR (VI) above, provided that (A) the principal amount of any such refinancing does not exceed the principal amount of the Indebtedness being refinanced and (B) the material terms and provisions of any such refinancing (including maturity, redemption, prepayment, default and subordination provisions) are no less favorable to the Banks than the Indebtedness being refinanced;

(xvii) Indebtedness of Borrower (other than MKE Subordinated Debt) which is subordinated to the Obligations, provided that (A) the payment terms, interest rate, subordination provisions and other terms of such Indebtedness are reasonably acceptable to the Required Banks; (B) the Net Proceeds of such Indebtedness are applied to prepay the Term Loans as required by SUBPARAGRAPH 2.05(C); and (C) the aggregate amount of all Subordinated Debt of Borrower (including MKE Subordinated Debt) does not exceed \$300,000,000; and

(xviii) Other Indebtedness of Borrower and its Subsidiaries, provided that the aggregate principal amount of all such Indebtedness does not exceed \$40,000,000 at any time;

(hh) SUBPARAGRAPH 5.02(C) is amended by (i) deleting the word "and" at the end of CLAUSE (VIII) thereof; (ii) changing the designation of CLAUSE (IX) to "(x)"; and (iii) adding thereto, immediately after CLAUSE (VIII), a new CLAUSE (IX) to read in its entirety as follows:

(ix) Sale by Borrower of the property covered by the Borrower Mortgage in a sale and leaseback transaction; and

(ii) SUBPARAGRAPH 5.02(E) is amended by changing the amount "\$50,000,000" in the one place it appears in CLAUSE (X) (A) thereof to "\$65,000,000".

(jj) SUBPARAGRAPH 5.02(F) is amended by deleting the word "and" at the end of CLAUSE (I) thereof.

(kk) SUBPARAGRAPH 5.02(G) is amended to read in its entirety as follows:

(g) CAPITAL EXPENDITURES. Borrower and its Subsidiaries shall not pay or incur (without duplication) in any of the periods set forth below Capital Expenditures in an aggregate amount which exceeds the amount set forth opposite such period below (plus, during the first sixty (60) days of any such period, any portion of such permitted amounts of Capital Expenditures not paid or incurred during the immediately preceding period):

Closing Date -	
March 31, 1995	\$100,000,000;
April 1, 1995 -	
March 31, 1996	\$225,000,000;
April 1, 1996 -	
March 31, 1997	\$250,000,000;
April 1, 1997 -	
March 31, 1998	\$250,000,000;
April 1, 1998 -	
Revolving Loan Maturity Date	\$125,000,000.

(ll) SUBPARAGRAPH 5.02(I) is amended to read in its entirety as follows:

(i) CERTAIN INDEBTEDNESS PAYMENTS, ETC. Neither Borrower nor any of its Subsidiaries shall pay, prepay, redeem, purchase, defease or otherwise satisfy in any manner prior to the scheduled payment thereof any Subordinated Debt; amend, modify or otherwise change the terms of any document, instrument or agreement evidencing Subordinated Debt so as to increase its obligations thereunder or accelerate the scheduled payment thereof; or amend, modify or otherwise change any of the subordination or other provisions of any

document, instrument or agreement evidencing Subordinated Debt in a manner which adversely affects the material rights of the Agents and Banks; except as follows:

(i) Borrower shall prepay the DEC Note as required under SUBPARAGRAPH 5.01(H);

(ii) Borrower may redeem the Convertible Subordinated Debentures in part in an aggregate amount not exceeding \$6,647,250, provided that no Default or Event of Default has occurred and is continuing or would result from such redemption; and

(iii) Borrower may redeem the Convertible Subordinated Debentures in whole provided that:

(A) (1) No Default or Event of Default has occurred and is continuing or would result from such redemption; (2) such redemption is made pursuant to a written agreement with an underwriter of recognized standing, whereby the underwriter agrees (x) to purchase all of the Convertible Subordinated Debentures from Borrower on the date of redemption for the aggregate redemption price paid or to be paid by Borrower for such debentures, (y) to convert all of the Convertible Subordinated Debentures so purchased to stock on the date of redemption pursuant to the terms of such debentures and (z) to market such stock in the secondary market; and (3) the net effect of such redemption on Borrower is otherwise the same as a conversion of all of the Convertible Subordinated Debentures by the holders thereof pursuant to the terms of such debentures with no cash payment by Borrower; or

(B) Such redemption is otherwise approved by Required Banks.

(mm) SUBPARAGRAPH 5.02(M) is amended by changing CLAUSE (I) thereof to read in its entirety as follows:

(i) Borrower shall not permit its cumulative Fixed Charge Coverage Ratio for each period set forth below to be less than the ratio set forth opposite such period below:

October 1, 1994 - December 31, 1994	1.50;
October 1, 1994 - March 31, 1995	1.50;
October 1, 1994 - June 30, 1995	2.00;
October 1, 1994 - September 30, 1995	2.50;
January 1, 1995 - December 31, 1995	2.50;
April 1, 1995 - March 31, 1996	2.50;
Each consecutive four- quarter period ending on the last day of each quarter thereafter	3.00.

(nn) SUBPARAGRAPH 5.02(M) is further amended by changing CLAUSE (III)(C) thereof to read in its entirety as follows:

(C) One hundred percent (100%) of the Net Proceeds of all Equity Securities issued by Borrower and its Subsidiaries (excluding any issuance where the total proceeds are less than \$10,000,000) during the period commencing on the base date and ending on the determination date; and

(oo) SUBPARAGRAPH 5.02(M) is further amended by changing CLAUSE (IV) thereof to read in its entirety as follows:

(iv) Borrower shall not permit its Leverage Ratio during any period set forth below to be more than the

ratio set forth opposite such period below:

From the Closing Date to March 31, 1996	1.35;
Thereafter	1.10.

(pp) SUBPARAGRAPH 5.02(M) is further amended by changing CLAUSE (VI) thereof to read in its entirety as follows:

(vi) Borrower shall not permit its Quick Ratio to be less than 0.85 at any time.

(qq) SUBPARAGRAPH 6.01(A) is amended to read in its entirety as follows:

(a) Borrower (i) shall fail to pay when due any principal or interest on the Loans or (ii) shall fail to pay when due any other payment required under the terms of this Agreement or any of the other Credit Documents and such failure shall continue for two (2) Business Days after notice thereof has been given to Borrower by any Agent; or

(rr) SUBPARAGRAPH 6.01(E) is amended to read in its entirety as follows:

(e) (i) Borrower or any of Borrower's Subsidiaries (A) shall fail to make a payment or payments in an aggregate amount of \$1,000,000 or more when due under the terms of any bond, debenture, note or other evidence of indebtedness to be paid by such Person (excluding this Agreement and the other Credit Documents or any intercompany Indebtedness between Borrower and any of its Subsidiaries, but including any other evidence of indebtedness of Borrower or any of its Subsidiaries to any Bank) and such failure shall continue beyond any period of grace provided with respect thereto, or (B) shall fail to make any other payment or payments when due under or otherwise default in the observance or performance of any other agreement, term or condition contained in any such bond, debenture, note or other evidence of indebtedness, and the effect of such failure or default is to cause, or permit the holder or holders thereof to cause indebtedness in an aggregate amount of \$5,000,000 or more to become due prior to its stated date of maturity; or (ii) the beneficiaries of any letters of credit issued under the Sumitomo LC Agreement shall make a drawing or drawings under such letters of credit, Borrower or any of its Subsidiaries shall provide cash collateral or any other security for Borrower's obligations under the Sumitomo LC Agreement, any of the Sumitomo LC Banks or any agent therefor shall demand any such cash collateral or other security or any event of default shall occur under the Sumitomo LC Agreement; or

(ss) PARAGRAPH 6.02 is amended to read in its entirety as follows:

Upon the occurrence or existence of any Event of Default (other than an Event of Default referred to in SUBPARAGRAPH 6.01(F) or 6.01(G)) and at any time thereafter during the continuance of such Event of Default, Administrative Agent may, with the consent of the Required Banks, or shall, upon instructions from the Required Banks, by written notice to Borrower, (a) terminate the Commitments and the obligations of the Banks to make Loans and/or (b) declare all outstanding Obligations payable by Borrower to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in SUBPARAGRAPH 6.01(F) or 6.01(G), immediately and without notice, (1) the Commitments and the obligations of the Banks to make Loans shall automatically terminate and (2) all outstanding Obligations payable by Borrower hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly

waived, anything contained herein or in the Notes to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Administrative Agent may exercise any right, power or remedy permitted to it by law, either by suit in equity or by action at law, or both. Immediately after taking any action under this PARAGRAPH 6.02, Administrative Agent shall notify and each Bank of such action.

(tt) PARAGRAPH 8.01 is amended by (i) changing the reference to "Borrower, Administrative Agent or LC Paying Agent" on the fifth and sixth lines thereof to "Borrower or Administrative Agent"; (ii) deleting from the proviso at the end of the second sentence thereof the words "or LC Paying Agent"; (iii) deleting the address and telephone and facsimile numbers for the "LC Paying Agent;" and (iv) changing the first sentence after the address of Borrower to read in its entirety as follows:

Each Notice of Borrowing, Notice of Loan Conversion and Notice of Interest Period Selection shall be given by Borrower to Administrative Agent to the office of such Person located at the address referred to above during such Person's normal business hours; PROVIDED, HOWEVER, that any such notice received by any such Person after 1:00 P.M. on any Business Day shall be deemed received by such Person on the next Business Day.

(uu) PARAGRAPH 8.02 is amended by changing CLAUSES (B), (C) AND (D) of the first sentence thereof to read in their entirety as follows:

(b) all reasonable Attorney Costs and other reasonable fees and expenses payable to third parties incurred by Agents in connection with the preparation, negotiation, execution, delivery and syndication of this Agreement and the other Credit Documents, and the preparation, negotiation, execution and delivery of amendments and waivers hereunder and thereunder; (c) all reasonable Attorney Costs and other reasonable fees and expenses payable to third parties incurred by Agents in connection with the exercise of their rights or duties under this Agreement and the other Credit Documents; and (d) all reasonable Attorney Costs and other reasonable fees and expenses payable to third parties incurred by any Agent or any Bank in the enforcement or attempted enforcement of any of the Obligations or in preserving any of Agents' or the Banks' rights and remedies (including all such fees and expenses incurred in connection with any "workout" or restructuring affecting the Credit Documents or the Obligations or any bankruptcy or similar proceeding involving Borrower or any of its Subsidiaries)

(vv) PARAGRAPH 8.03 is amended by changing CLAUSE (A) of the first sentence thereof to read in its entirety as follows:

(a) any use by Borrower of any proceeds of the Loans,

(ww) SUBPARAGRAPH 8.04 is amended to read in its entirety as follows:

8.04. WAIVERS; AMENDMENTS. Any term, covenant, agreement or condition of this Agreement or any other Credit Document may be amended or waived if such amendment or waiver is in writing and is signed by Borrower and the Required Banks; PROVIDED, HOWEVER that:

(a) Any amendment, waiver or consent which (i) amends this PARAGRAPH 8.04, (ii) releases any substantial part of the Collateral (other than sales or dispositions of assets permitted under SUBPARAGRAPH 5.02(C)) or (iii) amends the definition of Required Banks must be in writing and signed or approved in writing by all Banks;

(b) Any amendment, waiver or consent which (i) increases the Total Revolving Loan Commitment, (ii) extends the Revolving Loan Maturity Date, (iii) reduces the principal of or interest on the Revolving Loans or any fees or other amounts payable for the account of the Revolving Loan

Banks hereunder, or (iv) postpones any date fixed for any payment of the principal of or interest on the Revolving Loans or any fees or other amounts payable for the account of the Revolving Loan Banks hereunder must be in writing and signed or approved in writing by all Revolving Loan Banks;

(c) Any amendment, waiver or consent which (i) increases the Total Term Loan Commitment, (ii) extends the Term Loan Maturity Date, (iii) reduces the principal of or interest on the Term Loans or any fees or other amounts payable for the account of the Term Loan Banks hereunder, or (iv) postpones any date fixed for any payment of the principal of or interest on the Term Loans or any fees or other amounts payable for the account of the Term Loan Banks hereunder must be in writing and signed or approved in writing by all Term Loan Banks;

(d) Any amendment, waiver or consent which increases or decreases the Revolving Loan Proportionate Share or Term Loan Proportionate Share of any Bank must be in writing and signed by such Bank; and

(e) Any amendment, waiver or consent which affects the rights or obligations of any Agent must be in writing and signed by such Agent.

No failure or delay by any Agent or any Bank in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

(xx) SUBPARAGRAPH 8.05(B) is amended by changing the reference "CLAUSE (I), (II), (III) OR (IV) OF SUBPARAGRAPH 8.04(A)" where it appears once in the proviso to the second sentence thereof to "CLAUSE (I), (II), (III) OR (IV) OF SUBPARAGRAPH 8.04(B) OR SUBPARAGRAPH 8.04(C), as appropriate".

(yy) SUBPARAGRAPH 8.05(C) is amended by (i) changing the phrase "Borrower, Administrative Agent and each Issuing Bank" in the two places it appears in CLAUSE (I) thereof to "Borrower and Administrative Agent" and (ii) changing the portion of such subparagraph which appears after CLAUSE (IV) thereof to read in its entirety as follows:

Upon such execution, delivery, acceptance and recording of each Assignment Agreement, from and after the Assignment Effective Date determined pursuant to such Assignment Agreement, (A) each Assignee Bank thereunder shall be a Bank hereunder with a Revolving Loan Proportionate Share and/or Term Loan Proportionate Share as set forth on ATTACHMENT 1 TO SUCH ASSIGNMENT AGREEMENT and shall have the rights, duties and obligations of such a Bank under this Agreement and the other Credit Documents, and (B) the Assignor Bank thereunder shall be a Bank with a Revolving Loan Proportionate Share and/or Term Loan Proportionate Share as set forth on ATTACHMENT 1 TO SUCH ASSIGNMENT AGREEMENT, or, if the Revolving Loan Proportionate Share and Term Loan Proportionate Share of the Assignor Bank have each been reduced to 0%, the Assignor Bank shall cease to be a Bank; PROVIDED, HOWEVER, that any such Assignor Bank which ceases to be a Bank shall continue to be entitled to the benefits of any provision of this Agreement which by its terms survives the termination of this Agreement. Each Assignment Agreement shall be deemed to amend SCHEDULE I to the extent, and only to the extent, necessary to reflect the addition of each Assignee Bank, the deletion of each Assignor Bank which reduces its Revolving Loan Proportionate Share and Term Loan Proportionate Share to 0% and the resulting adjustment of Revolving Loan Proportionate Shares and/or Term Loan Proportionate Shares arising from the purchase by each Assignee Bank of all or a portion of the rights and obligations of an Assignor Bank under this Agreement and the other Credit



Documents. On or prior to the Assignment Effective Date determined pursuant to each Assignment Agreement, Borrower, at its own expense, shall execute and deliver to Administrative Agent, in exchange for the surrendered Revolving Loan Note and/or Term Loan Note of the Assignor Bank thereunder, a new Revolving Loan Note and/or Term Loan Note to the order of each Assignee Bank thereunder (with each new Revolving Loan Note to be in an amount equal to the Revolving Loan Commitment assumed by such Assignee Bank and each new Term Loan Note to be in the original principal amount of the Term Loan then held by such Assignee Bank) and, if the Assignor Bank is continuing as a Bank hereunder, a new Revolving Loan Note and/or Term Loan Note to the order of the Assignor Bank (with the new Revolving Loan Note to be in an amount equal to the Revolving Loan Commitment retained by it and the new Term Loan Note to be in the original principal amount of the Term Loan retained by it). Each such new Note shall be dated the Closing Date and otherwise be in the form of the Note replaced thereby (provided that Borrower shall not be obligated to pay any additional interest to any Assignee Bank in respect to any principal payments made prior to the Effective Date of the Assignment to such Assignee Bank). The Notes surrendered by the Assignor Bank shall be returned by Administrative Agent to Borrower marked "replaced". Each Assignee Bank which was not previously a Bank hereunder and which is not incorporated under the laws of the United States of America or a state thereof shall, within three (3) Business Days of becoming a Bank, deliver to Borrower and Administrative Agent either two duly completed copies of United States Internal Revenue Service Form 1001 or 4224 (or successor applicable form), as the case may be, certifying in each case that such Bank is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes.

(zz) SUBPARAGRAPH 8.05(D) is amended by changing the phrase "Proportionate Share" where it appears once in the first sentence thereof to "Revolving Loan Proportionate Share and Term Loan Proportionate Share".

(aaa) SUBPARAGRAPH 8.05(E) is amended by changing the phrase "Proportionate Shares" where it appears once in the last sentence thereof to "Revolving Loan Proportionate Shares and Term Loan Proportionate Shares".

(bbb) SCHEDULE I is amended to read in its entirety as set forth in ATTACHMENT 1 hereto.

(ccc) SCHEDULE II is deleted in its entirety.

(ddd) SCHEDULE 2.01A(K) is deleted in its entirety.

(eee) EXHIBIT P is amended by changing ATTACHMENT 1 thereto to read in its entirety as set forth in ATTACHMENT 2 hereto.

(fff) EXHIBIT S is amended by (i) changing the term "Proportionate Share" where it appears once in PARAGRAPH 2 thereof, twice in PARAGRAPH 4 thereof, once in PARAGRAPH 5 thereof and twice in PARAGRAPH 10 thereof to "Revolving Loan Proportionate Share and Term Loan Proportionate Share"; (ii) changing the phrase "set forth under the caption 'Proportionate Share' opposite such Assignee Bank's name on ATTACHMENT 1 hereto" at the end of PARAGRAPH 2 thereof to "set forth under the captions 'Revolving Loan Proportionate Share' and 'Term Loan Proportionate Share,' respectively, opposite such Assignee Bank's name on ATTACHMENT 1 hereto"; and (iii) changing ATTACHMENT 1 thereto to read in its entirety as set forth in ATTACHMENT 3 hereto.

(ggg) EXHIBIT U is amended by (i) changing the amount "US\$50,000,000" where it appears twice therein to "US\$[\_\_\_\_\_]"; (ii) changing the word and year "[Date], 1994" where it appears once therein to "[Date]"; and (iii) changing the words "Fifty Million U.S. Dollars" where it appears once therein to "[\_\_\_\_\_] U.S. Dollars".

(hhh) EXHIBIT V, EXHIBIT W and EXHIBIT X are deleted in their entirety.

3. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to the Existing Banks and the New Bank (collectively, the "BANKS") and the Agents that the following are true and correct on the date of this Amendment and that, after giving effect to the amendments set forth in PARAGRAPH 2 above, the following also will be true and correct on the Effective Date (as defined below):

(a) The representations and warranties of Borrower and its Subsidiaries set forth in PARAGRAPH 4.01 OF THE CREDIT AGREEMENT and in the other Credit Documents are true and correct in all material respects as if made on such date (except for representations and warranties expressly made as of a specified date, which shall be true and correct as of such date);

(b) No Default or Event of Default has occurred and is continuing; and

(c) Each of the Credit Documents is in full force and effect.

(Without limiting the scope of the term "Credit Documents," Borrower expressly acknowledges in making the representations and warranties set forth in this PARAGRAPH 3 that, on and after the date hereof, such term includes this Amendment.)

4. EFFECTIVE DATE. The amendments effected by PARAGRAPH 2 above shall become effective on September 29, 1995 (such date, if the conditions set forth in this paragraph are satisfied, to be referred to herein as the "EFFECTIVE DATE"), subject to receipt by Administrative Agent and the Banks on or prior to the Effective Date of the following, each in form and substance satisfactory to Administrative Agent, the Banks and their respective counsel:

(a) This Amendment duly executed by Borrower, each Bank and Agent;

(b) A new Revolving Loan Note for each Bank which will have a Revolving Loan Commitment after the Effective Date in the amount of such Revolving Loan Commitment, duly executed by Borrower;

(c) A letter in the form of EXHIBIT A hereto, dated the Effective Date and duly executed by each Subsidiary which has executed a Subsidiary Security Agreement;

(d) A Certificate of the Secretary of Borrower, dated the Effective Date, certifying that the Certificate of Incorporation, Bylaws and Board resolutions of Borrower, in the forms delivered to Agent on the Effective Date, are in full force and effect and have not been amended, supplemented, revoked or repealed since such date;

(e) A favorable written opinion of Cooley, Godward, Castro, Huddleson & Tatum, counsel to Borrower, dated the Effective Date, addressed to the Administrative Agent for the benefit of the Agents and the Banks, covering such legal matters as Agents may reasonably request and otherwise in form and substance satisfactory to the Agents;

(f) An amendment to the Borrower Mortgage to reflect the increase in the "Obligations" secured thereby from \$350,000,000 to \$450,000,000 duly executed by Borrower and Administrative Agent and appropriately notarized for recording in Massachusetts;

(g) A date-down endorsement (or similar endorsement) to the title insurance policy issued by Stewart Title Guaranty Company and delivered to Administrative Agent as ITEM E(10) OF SCHEDULE 3.10 TO THE CREDIT AGREEMENT, which endorsement insures that no encumbrances or other Liens have been recorded against the real property covered by the Borrower Mortgage since the date on which the Borrower Mortgage was recorded;

(h) A copy of the Credit Agreement dated as of September 22, 1995 among Borrower, The Sumitomo Bank, Limited and certain other banks, duly executed by each of the parties thereto;

(i) An amendment fee for each Bank which currently is

a party to the Credit Agreement, in an amount equal to 0.0625% of the sum of (i) such Bank's current Revolving Loan Commitment plus (ii) the current amount of such Bank's Term Loan;

(j) A participation fee (i) for each Existing Bank which increases its Revolving Loan Commitment pursuant to this Amendment, in an amount equal to 0.25% of the remainder of (A) such increase minus (B) the principal payment on such Bank's Term Loan due on October 2, 1995; and (ii) for the New Bank in an amount equal to 0.25% of the New Bank's Revolving Loan Commitment;

(k) All LC Issuance Fees, LC Usage Fees and all other fees and amounts, if any, payable to Administrative Agent, the Banks, the Issuing Banks and the LC Paying Agent and accrued through and unpaid on the Effective Date pursuant to the Issuing Banks' Fee Letter, the LC Applications or any other existing Credit Document; and

(l) Such other evidence as any Agent, LC Paying Agent or any Bank may reasonably request to establish the accuracy and completeness of the representations and warranties and the compliance with the terms and conditions contained in this Amendment and the other Credit Documents.

On the Effective Date, Administrative Agent shall calculate the Revolving Loan Proportionate Share of each Bank which then has a Revolving Loan Commitment (a "REVOLVER BANK") in each Revolving Loan Borrowing which is then outstanding. Based upon such calculation, the Revolver Banks shall purchase from and sell to each other on the Effective Date such participations in the outstanding Revolving Loans as Administrative Agent determines are necessary to cause each Revolver Bank to hold a Revolving Loan in each Revolving Loan Borrowing in a principal amount equal to such Revolver Bank's Revolving Loan Proportionate Share of such Revolving Loan Borrowing.

5. EFFECT OF THIS AMENDMENT. On and after the Effective Date, each reference in the Credit Agreement and the other Credit Documents to the Credit Agreement shall mean the Credit Agreement as amended hereby. Except as specifically amended above, (a) the Credit Agreement and the other Credit Documents shall remain in full force and effect and are hereby ratified and confirmed and (b) the execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power, or remedy of any Bank or Agent, nor constitute a waiver of any provision of the Credit Agreement or any other Credit Document. Without limiting the generality of the foregoing, Borrower expressly agrees that the execution, delivery and effectiveness of this Amendment shall not terminate any obligation of Borrower to any Issuing Bank or any other Bank or to LC Paying Agent or any other Agent in connection with the Existing Letters of Credit, including, without limitation, any obligation of Borrower to pay (a) any accrued and unpaid fees payable under the Issuing Bank's Fee Letter, the LC Applications, the Letters of Credit or the LC Paying Agent Agreement; (b) any increased costs, indemnity amounts, fees and disbursements of counsel (including the allocated cost, and disbursements, of internal counsel) or other losses, costs, charges, expenses or disbursements which may be incurred or suffered by the LC Paying Agent or any of the Issuing Banks which are payable under the Issuing Bank's Fee Letter, the LC Applications, the Letters of Credit or the LC Paying Agent Agreement on account of actions, omissions, events or conditions occurring prior to the Effective Date or in connection with the enforcement or defense of the rights and claims described in CLAUSE (A) above and this CLAUSE (B) after the Effective Date; and (c) any accrued and unpaid interest on amounts payable to the LC Paying Agent or an Issuing Bank described in CLAUSES (A) AND (B) above.

6. EXPENSES. Pursuant to PARAGRAPH 8.02 OF THE CREDIT AGREEMENT, Borrower shall pay to Agents, the Issuing Banks and LC Paying Agent all reasonable Attorney Costs and other reasonable fees and expenses payable to third parties incurred by Agents, the Issuing Banks and LC Paying Agent in connection with the preparation, negotiation, execution and delivery of this Amendment and the additional Credit Documents.

7. MISCELLANEOUS.

(a) COUNTERPARTS. This Amendment may be executed in

any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

(b) HEADINGS. Headings in this Amendment are for convenience of reference only and are not part of the substance hereof.

(c) GOVERNING LAW. This Amendment shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules.

[The next page is the first signature page.]

IN WITNESS WHEREOF, Borrower, the Banks and Agents have caused this Amendment to be executed as of the day and year first above written.

BORROWER: QUANTUM CORPORATION

By: G. Edward McClammy  
Name: G. Edward McClammy  
Title: Director of Finance  
and Treasurer

MANAGING AGENTS: ABN AMRO BANK N.V., San Francisco  
International Branch,  
As a Managing Agent

By: Robin S. Yim  
Name: Robin S. Yim  
Title: Vice President

By: Robert N. Hartinger  
Name: Robert N. Hartinger  
Title: Group Vice President

BARCLAYS BANK PLC,  
As a Managing Agent

By: James C. Tan  
Name: James C. Tan  
Title: Associate Director

CIBC INC.,  
As a Managing Agent

By: Stanley Sakai  
Name: Stanley Sakai  
Title: Vice President

ADMINISTRATIVE AGENT: CANADIAN IMPERIAL BANK OF COMMERCE,  
As Administrative Agent

By: Stanley Sakai  
Name: Stanley Sakai  
Title: Vice President

LC PAYING AGENT: BANK OF AMERICA NATIONAL TRUST &  
SAVINGS ASSOCIATION,  
As LC Paying Agent

By: Wendy M. Young  
Name: Wendy M. Young  
Title: Vice President

EXISTING BANKS: ABN AMRO BANK N.V., San Francisco  
International Branch,

As a Bank

By: Robin S. Yim  
Name: Robin S. Yim  
Title: Vice President

By: Robert N. Hartinger  
Name: Robert N. Hartinger  
Title: Group Vice President

BARCLAYS BANK PLC,  
As a Bank

By: James C. Tan  
Name: James C. Tan  
Title: Associate Director

By: James K. Downey  
Name: James K. Downey  
Title: Associate Director

CIBC INC.,  
As a Bank

By: Stanley Sakai  
Name: Stanley Sakai  
Title: Vice President

BANK OF AMERICA NATIONAL TRUST &  
SAVINGS ASSOCIATION,  
As a co-agent and as a Bank

By: Kevin McMahon  
Name: Kevin McMahon  
Title: Vice President

CHEMICAL BANK,  
As a co-agent and as a Bank

By: John J. Huber III  
Name: John J. Huber III  
Title: Managing Director

THE FIRST NATIONAL BANK OF BOSTON,  
As a co-agent and as a Bank

By: Melissa S. Forbes  
Name: Melissa S. Forbes  
Title: Vice President

THE INDUSTRIAL BANK OF JAPAN,  
LIMITED,  
As a co-agent and as a Bank

By: Makoto Masuda  
Name: Makoto Masuda  
Title: Joint General Manager

THE BANK OF NOVA SCOTIA,  
As a Bank

By: Chris Johnson  
Name: Chris Johnson  
Title: Sr. Relationship Mgr.

FLEET BANK OF MASSACHUSETTS, N.A.,  
As a Bank

By: Thomas W. Davies  
Name: Thomas W. Davies  
Title: Vice President

THE LONG-TERM CREDIT BANK OF JAPAN,  
LTD.,  
As a Bank

By: Motokazu Uematsu  
Name: Motokazu Uematsu  
Title: Deputy General Mgr.

THE NIPPON CREDIT BANK, LTD.,  
As a Bank

By: Kenneth W. McNerny  
Name: Kenneth W. McNerny  
Title: V.P. and Sr. Manager

By: Masaki Iwataki  
Name: Masaki Iwataki  
Title: Vice President and Mgr.

SANWA BANK CALIFORNIA,  
As a Bank

By: Robert R. Shutt  
Name: Robert R. Shutt  
Title: Vice President

SHAWMUT BANK, N.A.,  
As a Bank

By: Frank H. Benesh, III  
Name: Frank H. Benesh III  
Title: Director

THE SUMITOMO BANK, LIMITED,  
As a Bank

By: Yuji Harada  
Name: Yuyi Harada  
Title: General Manager

By: Herman White, Jr.  
Name: Herman White, Jr.  
Title: Vice President

UNION BANK,  
As a Bank

By: N. Brusati Dias  
Name: N. Brusati Dias  
Title: VP and District Mgr.

\_NEW BANK:

THE FUJI BANK, LIMITED,  
As a Bank

By: Kazuo Kamio  
Name: Kazuo Kamio  
Title: General Manager

QUANTUM CORPORATION

U.S. \$85,000,000

CREDIT AGREEMENT

DATED AS OF SEPTEMBER 22, 1995

AMONG

QUANTUM CORPORATION,

THE SUMITOMO BANK, LIMITED

AS AGENT AND ISSUER

AND

THE OTHER BANKS PARTY HERETO

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of September 22, 1995, among QUANTUM CORPORATION, a Delaware corporation (the "Company"), the several financial institutions party to this Agreement (collectively, the "Banks," and individually, a "Bank"), and THE SUMITOMO BANK, LIMITED, acting through its San Francisco Branch, as agent for the Banks (in such capacity, the "Agent") and as Issuer (as defined below).

WHEREAS, at the request of the Company, the Banks have agreed to make available to the Company a letter of credit facility upon, and subject to, the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

#### ARTICLE I. DEFINITIONS.

1.1 DEFINED TERMS. In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

"AGGREGATE COMMITMENT" means the Commitments of the Banks in the aggregate amount of eighty-five million dollars (\$85,000,000), as such amount may be reduced from time to time pursuant to this Agreement.

"AGREEMENT" means this Credit Agreement, as amended, supplemented or modified from time to time.

"AVAILABILITY PERIOD" means the period commencing on the Closing Date and ending on the Termination Date.

"BUSINESS DAY" means any day other than a Saturday, Sunday or other day on which commercial banks in San Francisco are authorized or required by law to close.

"CLOSING DATE" means the date on which the initial Letter of Credit is issued hereunder.

"COMMITMENT" means, for each Bank, the amount set forth opposite such Bank's name in Schedule 2.1 under the heading "Commitment", as the same may be reduced pursuant to Section 2.6 or as a result of one or more assignments pursuant to Section 9.8, or, where the context so requires, the obligation of each Bank to participate in Letters of Credit (including in drawings thereunder) in the aggregate up to such amount on the terms and conditions set forth in this Agreement.

"CREDIT EXTENSION" means (a) the issuance of (including the participation by a Bank in), any Letters of Credit under subsection 2.1; and (b) the amendment (including the participation by a Bank in), of any Letters of Credit under subsection 2.2.



"DEFAULT" means any event which, with the giving of notice, the lapse of time, or both, would constitute an Event of Default.

"DOCUMENTS" means this Agreement, the Letters of Credit, and all other documents delivered and to be delivered to the Agent, the Issuer or the Banks in connection therewith.

"DOLLARS", and "dollars" and "\$" each mean lawful money of the United States.

"EFFECTIVE AMOUNT" means with respect to any outstanding Letter of Credit Obligations on any date the amount of such Letter of Credit Obligations on such date after and giving effect to any issuances and amendments of Letters of Credit occurring on such date and any other changes in the aggregate amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"EVENT OF DEFAULT" means any of the events specified in Section 7.1.

"EXISTING CREDIT FACILITY" means the Credit Agreement dated as of October 3, 1994, as amended by that certain First Amendment to Credit Agreement dated as of February 15, 1995, and that certain Second Amendment to Credit Agreement dated as of June 26, 1995, among the Company, the banks named therein, ABN AMRO Bank, N.V., Barclays Bank PLC and CIBC Inc., as managing agents and Canadian Imperial Bank of Commerce, as administrative agent and collateral agent, as the same may be amended, modified, supplemented or restated from time to time.

"EXISTING LETTERS OF CREDIT" means all letters of credit issued for the account of the Company pursuant to the Existing Credit Facility and outstanding thereunder as of the Closing Date.

"FED FUNDS RATE" shall have the meaning set forth for such term in Schedule 1.1 hereto.

"FEDERAL RESERVE BOARD" means the Board of Governors of the Federal Reserve System or any successor thereof.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such other entity as may be in general use by significant segments of the U.S. accounting profession, which are applicable to the circumstances as of the date of determination.

"GOVERNMENTAL AUTHORITY" means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority), thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"IKEI" means Ireland-Kotobuki Electronics Industries, Ltd., a subsidiary of MKE.

"INSOLVENCY PROCEEDING" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case of (a) and (b) undertaken under U.S. Federal, State or foreign law.

"ISSUER" means The Sumitomo Bank, Limited, and its successors and assigns.

"ISSUING OFFICE" means, with respect to the Issuer or any Bank, the office or offices of the Issuer or such Bank from which it may make, or at which it may maintain, any extension of credit hereunder (or in the case of the Issuer, issue a Letter of

Credit), as the Issuer or such Bank may from time to time specify to the Company and the Agent.

"LETTER OF CREDIT" means any standby letter of credit issued pursuant to Article II and all amendments thereto.

"LETTER OF CREDIT OBLIGATIONS" means at any time the sum of (a) all Letter of Credit Outstandings, plus (b) all drawings under all Letters of Credit which are unreimbursed or unpaid by the Company.

"LETTER OF CREDIT OUTSTANDINGS" means the aggregate undrawn amount of all Letters of Credit.

"MAJORITY BANKS" means at any time Banks holding at least 66-2/3% of the aggregate participations of the Banks in the Letter of Credit Obligations then outstanding, or if no such Letter of Credit Obligations are outstanding, Banks holding at least 66-2/3% of the Aggregate Commitment.

"MATERIAL ADVERSE EFFECT" means a material adverse change in, or a material adverse effect upon, any of (a) the operations, business, properties, or condition (financial or otherwise) of the Company or the Company and its Subsidiaries taken as a whole; (b) the ability of the Company to perform under any Document or to avoid any Event of Default; or (c) the legality, validity, binding effect or enforceability of any Document.

"MATERIAL SUBSIDIARIES" means, with reference to the Company, (a) Quantum Peripherals (Malaysia) Sdn. Bhd., Quantum Data Storage B.V., and Rocky Mountain Magnetics, Inc., provided that, if the Company sells all of the equity securities held by the Company in any of the foregoing Subsidiaries, and such sale does not breach the terms of the Existing Credit Agreement, such Subsidiary shall cease to be a Material Subsidiary; (b) Quantum Peripherals (Europe) S.A.; (c) each other Subsidiary of the Company whose obligation is secured by a Letter of Credit; and (d) each other Subsidiary of the Company which has assets with a total book value greater than \$50,000,000.

"MKE" means Matsushita-Kotobuki Electronics Industries, Ltd.

"NET INCOME" means, for any period, the net positive income, if any, of the Company on a consolidated basis for such period after provision for income taxes.

"NET WORTH" means, at any time, the remainder at such time, determined on a consolidated basis in accordance with GAAP, of (a) the total assets of the Company on a consolidated basis MINUS (b) the sum (without limitation and without duplication of deductions) of (i) the total liabilities of the Company and its Subsidiaries and (ii) all reserves established by the Company and its Subsidiaries for anticipated losses and expenses (to the extent not deducted in calculating total assets in clause (a) above).

"OBLIGATIONS" means all Letter of Credit Obligations, and other indebtedness advances, debts, liabilities, obligations, covenants and duties owing by the Company to any Bank, the Agent, the Issuer or any other Person required to be indemnified under any Document, of any kind or nature, present or future, whether or not evidenced by any note, guaranty or other instrument, arising under this Agreement, under any other Document, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

"PERCENTAGE SHARE" means as to any Bank, the percentage equivalent of such Bank's Commitment divided by the Aggregate Commitment. The initial Percentage Share of each Bank is set forth opposite such Bank's name in Schedule 2.1 under the heading "Percentage Share."

"PERSON" means an individual, partnership, company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

"PRIME RATE" means the rate of interest publicly announced from time to time by Sumitomo Bank of California in San Francisco, California, as its prime or base rate. Any change in

prime or base rate announced by Sumitomo Bank of California shall take effect at the opening of business on the day specified in the public announcement of such change. The Prime Rate is determined by Sumitomo Bank of California from time to time as a means of pricing credit extensions to some customers and is neither directly tied to any external rate of interest or index nor necessarily the lowest rate of interest charged by Sumitomo Bank of California at any given time for any particular class of customers or credit extensions.

"QUICK RATIO" shall mean, at any time, the ratio, determined on a consolidated basis in accordance with GAAP, of (a) the sum at such time of all cash, cash equivalents (less than 90 days in term), short term marketable securities (less than one year in term) and accounts receivable of the Company and its Subsidiaries (less all reserves therefor); to (b) the current liabilities of the Company and its Subsidiaries at such time.

"REQUIREMENT OF LAW" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"SUBSIDIARY" of any Person means any corporation, company, partnership, joint venture or other entity of which more than 50% of the outstanding voting securities or equivalent interests having ordinary voting power to elect a majority of the board of directors or comparable body of such corporation, company, partnership, joint venture or other entity (irrespective of whether or not at the time voting securities or equivalent interests or any other class or classes shall or might have voting power upon the occurrence of any contingency) is at the time owned or controlled, directly or indirectly, by such Person or by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"SUMITOMO" means The Sumitomo Bank, Limited.

"TERMINATION DATE" means the date which is the first anniversary of the Closing Date, unless such Termination Date is otherwise extended in accordance with Section 2.14 hereof.

"UNITED STATES" and "U.S." each means the United States of America.

## 1.2 OTHER DEFINITIONAL PROVISIONS.

(A) DEFINED TERMS. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms.

(B) THE AGREEMENT. The words "hereof," "herein," "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and section, schedule and exhibit references are to this Agreement unless otherwise specified.

(C) CAPTIONS. The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(D) INDEPENDENCE OF PROVISIONS. The parties acknowledge that this Agreement and other Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

1.3 ACCOUNTING PRINCIPLES. (a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied, (b) References herein to "fiscal year" and "fiscal quarter" refer to such fiscal periods of the Company.

## ARTICLE II. THE LETTER OF CREDIT FACILITY.

### 2.1 THE LETTERS OF CREDIT.

(A) Subject to the terms and conditions of this Agreement (including those set out in Article IV hereof) and to

the receipt by the Agent of the Company's completed irrevocable written request in the form of EXHIBIT A hereto no later than 11:00 a.m. (San Francisco time) on the third Business Day (except for the initial Letter of Credit, in which case such request must be received by no later than 11:00 a.m. (San Francisco time) one Business Day) prior to the requested date of issuance, and in reliance upon the representations and warranties of the Company set forth herein, at any time and from time to time on any Business Day during the Availability Period, the Issuer (as fronting bank on behalf of the Banks) shall issue for the account of the Company such Letters of Credit as the Company may request pursuant to the terms and conditions hereof, each in the form of EXHIBIT B hereto (or in such other form as may be agreed upon by the Banks, the Issuer, the Agent and the Company). Each such Letter of Credit shall be denominated in Dollars and in an amount not less than \$1 million; provided that the sum of (i) the maximum face amount of all Letters of Credit to be issued on the proposed day of issuance plus (ii) the amount of the Letter of Credit Obligations outstanding on that day (as a result of issuances, amendments or otherwise) shall not exceed the Aggregate Commitment. The beneficiary of each such Letter of Credit shall be MKE, IKEI, or, upon the consent of the Majority Banks, any other 100% wholly owned Subsidiary of MKE. Notwithstanding anything to the contrary contained in this Agreement, no Letter of Credit shall have a term in excess of six months, or an expiration date that is later than the Termination Date.

(B) Simultaneously with (and automatically upon) the issuance of each Letter of Credit, the Banks shall be deemed to have purchased a 100% participation from the Issuer, without recourse to or warranty from the Issuer, in such Letter of Credit (as it may be amended from time to time pursuant hereto), including in all amounts payable by the Issuer in respect thereof; each Bank's share in such 100% participation shall be proportionate to such Bank's Percentage Share of the Aggregate Commitment.

(C) Upon the making of any drawing under a Letter of Credit by such beneficiary, the full amount of such drawing shall be immediately due and payable by the Company to the Issuer, and the Company shall, on demand of the Issuer, pay the full amount of such drawing to the Issuer (through the Agent) on the date of such drawing.

(d) Within the limits of the Aggregate Commitment, and subject to the other terms and conditions hereof, this is a revolving letter of credit facility, and the Company may, during the Availability Period, request Letters of Credit to replace Letters of Credit which have expired or which have been drawn upon and been fully reimbursed by the Company.

## 2.2 AMENDMENTS TO LETTERS OF CREDIT.

(A) The Issuer and the Banks agree that, at the request of the Agent and on and subject to the terms and conditions hereinafter set forth (including Article IV hereof and the receipt by the Agent of the Company's completed irrevocable written request in the form of EXHIBIT C hereto no later than 11:00 a.m. (San Francisco time) on the third Business Day prior to the requested date of issuance of such amendment and, where required as determined by the Agent and the Issuer, the consent of the corresponding beneficiaries), from time to time on any Business Day during the Availability Period, the Issuer shall issue on the date requested by the Company the following types of amendments to Letters of Credit as requested by the Company: (i) amendments extending or accelerating the expiry dates of Letters of Credit, provided that no extended expiry date shall be later than the earlier of (A) six months after the expiry date of such Letter of Credit immediately prior to such amendment, and (B) the Termination Date; and (ii) amendments increasing or decreasing the maximum amounts available for drawings under Letters of Credit, provided that no such increase shall cause the Effective Amount of the Letter of Credit Obligations as of the date of the amendment to exceed the Aggregate Commitment.

(B) The Agent shall request the consent of the Banks and the Issuer to the Company's request for any amendments to Letters of Credit not described in subsection (a). Such amendments may be issued only pursuant to the agreement of the Agent, the Banks, the Issuer and the Company.

## 2.3 REIMBURSEMENTS.

(A) PAYMENTS UNDER LETTERS OF CREDIT. Without

limiting any other obligations of the Company hereunder including under Section 2.1, the Company shall pay and reimburse the Agent, for the account of (and for payment to) the Issuer and each Bank, for all amounts paid by the Issuer and such Bank under or in respect of each Letter of Credit issued by the Issuer for the Company's account hereunder. Each payment or reimbursement shall be made on the same Business Day as, or, upon the request of the Issuer or the Agent, one Business Day prior to, the date on which each such payment is to be made by the Issuer under a Letter of Credit.

(B) INTEREST. The Company shall pay interest on the amounts paid by the Issuer and each Bank under or in respect of a Letter of Credit (and any other overdue amounts payable hereunder), at a rate per annum equal to the Prime Rate plus two percent (2.00%) until such amounts are paid or reimbursed by the Company in full. The Company shall pay interest on each such amount on demand of the Agent, and on the day on which it pays or reimburses the Agent for drawings under Letters of Credit such amount in accordance with Section 2.

(C) CHARGES AND EXPENSES. The Company shall reimburse the Agent for the account of the Agent, the Issuer and each Bank, as applicable, for all charges and expenses incurred by the Agent, the Issuer and such Bank with respect to the issuance, amendment and payment of a Letter of Credit issued by the Issuer for the Company's account. The Agent shall bill the Company for all such charges and expenses incurred by the Agent, the Issuer and each Bank, provided that the failure of the Agent to so bill the Company, shall not affect the Company's obligations to pay the relevant amount. The Company shall pay each such bill within ten Business Days after the date of the billing statement.

#### 2.4 FEES.

(A) FACILITY AND ADMINISTRATIVE FEES. The Company shall pay to the Agent (i) for the ratable benefit of the Banks, on the Closing Date, a one-time facility fee in the amount of \$42,500; and (ii) for the account of the Agent and the Issuer, an administrative fee as separately agreed by a letter dated as of September 22, 1995 between the Agent and the Company.

(B) LETTER OF CREDIT FEE. So long as any Letter of Credit Outstandings exist the Company shall pay to the Agent (i) for the ratable benefit of each Bank, a Letter of Credit fee with respect to the Letters of Credit equal to 0.36% per annum, and (ii) for the benefit of the Issuer a Letter of Credit fee equal to 0.04% per annum, of the amount at such time of the Letter of Credit Outstandings, in arrears on the last Business Day of each calendar quarter (commencing September 30, 1995) and on the Termination Date.

2.5 LOAN ACCOUNTS. All sums owing to the Agent, the Issuer and each Bank shall be evidenced by one or more accounts maintained by the Agent in the ordinary course of business. The accounts maintained by the Agent shall be conclusive evidence absent manifest error of the amount of all sums owing to Agent, the Issuer and the Banks by the Company and the interest and payments thereon and other amounts due and payable hereunder. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Company hereunder to pay any amount owing with respect thereto.

2.6 VOLUNTARY TERMINATION OR REDUCTION OF COMMITMENTS. The Company may, upon not less than 10 Business Days' prior notice to the Agent (which notice, absent consent of the Agent, shall be binding and irrevocable) terminate the Aggregate Commitment or permanently reduce the Aggregate Commitment by an aggregate minimum amount of Five Million Dollars (\$5,000,000) or any multiple thereof; provided that no such reduction or termination shall be permitted if the Effective Amount of Letter of Credit Obligations on the effective date thereof would exceed the amount of the Aggregate Commitment then in effect; and, provided, further, that once reduced in accordance with this Section 2.6, the Aggregate Commitment may not be increased. Any reduction of the Aggregate Commitment shall be applied to each Bank's Commitment in accordance with its respective Percentage Share. The Agent shall give each Bank prompt notice of any such request for reduction or termination of the Aggregate Commitment received from the Company.

2.7 COMPUTATION OF FEES AND INTEREST. All computations of fees and interest payable hereunder and under any other Document shall be made on the basis of a year of 360 days and accrual days elapsed, which results in more interest being paid than if

computed on the basis of a 365-day year. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof. Each determination by the Agent of an interest rate or fee or other amount owing pursuant to any provision of this Agreement shall be conclusive and binding on the Company and the Banks in the absence of manifest error.

## 2.8 ISSUANCE AND DRAWINGS.

(A) REQUESTS FOR ISSUANCE AND AMENDMENT. The Agent shall give notice to the Issuer and each Bank of written requests received by the Agent from the Company for issuance of Letters of Credit pursuant to Section 2.1 or for amendment to Letters of Credit pursuant to Section 2.2, within one Business Day of their receipt by the Agent, provided that the Agent shall incur no liability whatsoever for its failure to do so.

(B) ISSUANCE BY THE ISSUER OF LETTERS OF CREDIT. Subject to the terms and conditions set forth herein, the Issuer shall issue each Letter of Credit not later than 3:00 p.m. (San Francisco time) on the date of issuance requested by the Company. The Issuer shall deliver each Letter of Credit to the advising bank named in such Letter of Credit or to the beneficiary thereof if no advising bank is named. The Issuer shall also deliver to the Agent a true and complete copy of each such Letter of Credit.

### (C) DRAWINGS.

(i) The Issuer shall promptly notify the Company, the Agent and each Bank of a drawing by a beneficiary under a Letter of Credit. In determining whether to pay a drawing under any Letter of Credit, the Issuer shall be solely responsible for determining that the documents and certificates required to be delivered under the Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit.

(ii) As between the Company and the Banks and the Issuer, the Company assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, the respective beneficiaries of the Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuer shall not be responsible: (1) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of or any drawing under the Letters of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged, or for any breach, default or non-compliance with any related agreement; (2) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (3) for failure of the beneficiary of any Letter of Credit to comply fully with conditions required in order to draw upon any Letter of Credit; (4) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, facsimile, telex or otherwise; (5) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (6) for the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; and (7) for any consequences arising from causes beyond the control of the Issuer, including any acts of a Government Authority. None of the above shall affect, impair, or prevent the vesting of any of the Issuer's rights or powers hereunder.

In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by the Issuer under or in connection with the Letters of Credit, if taken or omitted in good faith, shall not put the Issuer under any resulting liability to the Company or the Banks.

(iii) The Issuer shall have no obligation whatsoever to make any factual or legal determinations as to the correctness of any demand or payment under any Letter of Credit or other related agreements or as to any other matters before the Issuer makes any payment under the Letter of Credit.

2.9 PAYMENTS BY THE COMPANY.

(A) PAYMENTS TO AGENT. (i) All payments to be made by the Company on account of reimbursements for drawings under Letters of Credit, interest, fees and other amounts required hereunder shall be made, except as otherwise expressly provided herein, to the Agent for the account of the Agent, the Issuer or the ratable account of the Banks, as applicable, at the Agent's office specified for payments set forth on the signature pages hereof, in dollars and in immediately available funds, no later than 11:00 a.m. (San Francisco time) on the relevant date. The Agent will promptly distribute to the Agent, the Issuer and each Bank its Percentage Share (or other applicable share as expressly provided herein) of, such reimbursement, interest, fees or other amounts, as applicable, in like funds as received. Any payment which is received by the Agent later than 11:00 a.m. (San Francisco time) shall be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee payable by the Company shall continue to accrue. (ii) All payments to be made by the Company on account of reimbursements and payments for drawings under Letters of Credit, interest, fees and other amounts payable hereunder shall be made without setoff, counterclaim or defense, and free and clear of any deductions or withholdings for taxes or otherwise.

(B) TAXES. If the Company is prohibited by law from paying such sums free and clear of deductions or withholdings for taxes, then (x) the Company shall pay or withhold in respect of such taxes as required, and (y) such sums payable shall be increased as necessary so that, after making all required deductions and withholdings (including deductions applicable to additional sums payable under this Section), the relevant party receives an amount equal to the sum it would have received had no such deductions or withholdings been made. In each instance when the Company pays any taxes contemplated by this Section, the Company shall forward to the Agent (for the account of the relevant party) within thirty days of such payment original official receipts therefor or such other evidence of payment as is satisfactory to the Agent (or such relevant party).

(C) EXTENSION. Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(D) OBLIGATIONS OF COMPANY ABSOLUTE. The reimbursement obligations of the Company in respect of any Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including: (i) any lack of validity or enforceability of any Letter of Credit or any of the other Documents, or any other agreement or instrument relating to any thereof (all of the foregoing collectively called the "LETTER OF CREDIT DOCUMENTS"); (ii) any amendment or waiver of, or any consent to departure from, the terms of all or any of the Letter of Credit Documents; (iii) the existence of any claim, setoff, defense or other right that the Company may have at any time against any beneficiary, or any transferee, of any Letter of Credit (or any Person for which any such beneficiary or transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated herein or in any Letter of Credit Document, or any unrelated transaction; (iv) any statement or any document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect, or any statement therein being untrue or inaccurate in any respect; (v) payment in good faith by the Issuer under any Letter of Credit against presentation of a draft or certificate that does not comply with the terms of such Letter of Credit or (vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing. The provisions of this Section 2.9 shall survive the payment of all Obligations and the occurrence of the Termination Date.

(E) NON-RECEIPT OF FUNDS. Unless the Agent shall have received notice from the Company prior to the date on which any payment is due to the Issuer or the Banks hereunder that the Company will not make such payment in full, the Agent may assume that the Company has made such payment in full to the Agent on such date and the Agent may (but shall not be so required), in reliance upon such assumption, cause to be distributed to the Issuer and each Bank on such due date an amount equal to the amount then due the Issuer or such Bank. If and to the extent the Company shall not have made such payment in full to the

Agent, the Issuer and each Bank shall repay to the Agent on demand such amount distributed to the Issuer or such Bank, together with interest thereon for each day from the date such amount is distributed to the Issuer or such Bank until the date the Issuer or such Bank repays such amount to the Agent, at the Fed Funds Rate.

## 2.10 FUNDING OF BANKS' PARTICIPATIONS

(A) In the event that the Issuer shall not be paid or reimbursed by the Company for any drawing under any Letter of Credit as provided and by the date required under Section 2, the Agent, upon notice from the Issuer, shall promptly notify each Bank and the Issuer of the unpaid or unreimbursed amount of such drawing and of such Bank's respective pro rata portion thereof and participation therein. Each Bank irrevocably and unconditionally agrees (irrespective of the occurrence of a Default or Event of Default or failure of condition precedent or any other circumstance whatsoever) that it shall make available to the Agent (for the account of the Issuer) an amount equal to its respective participation in same day funds plus interest thereon as set forth in the following sentence, at the office of the Agent specified in such notice, not later than 3:00 p.m. (San Francisco time) on the date of such notice from the Issuer (or, if earlier, from the Agent on behalf of the Issuer). In the event that any Bank fails to make available to the Agent the amount of such Bank's participation in such Letter of Credit as provided in this Section 2.10), the Issuer (through the Agent) shall be entitled to recover such amount on demand from such Bank together with interest thereon, for each day from the date of such drawing until the date such amount is paid to the Issuer, at the rate per annum equal to the Fed Funds Rate.

(B) OBLIGATIONS OF BANKS TO ISSUER SEVERAL. The failure of any Bank to make any payment to the Issuer or reimbursement in respect of Letters of Credit shall not relieve any other Bank of its obligation hereunder to make such payment or reimbursement; provided that no Bank shall be responsible for the failure of any other Bank to make any payment or reimbursement to be made by it. The payment by any Bank of any such payment or reimbursement to the Issuer in respect of Letters of Credit shall not relieve the Company of its Obligations with respect thereto.

(C) OBLIGATIONS OF BANKS TO ISSUER ABSOLUTE. The obligations of each Bank to make payments in respect of their participations pursuant to this Section 2.10 shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, without regard to (i) any lack of validity or enforceability of, or any release or discharge of the Company from liability; (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations or any other amendment, modification, renewal, addition, supplement, extension, acceleration or waiver of, or any consent to departure from, this Agreement or any other Document; (iii) any subordination, compromise, exchange, release, nonperfection or liquidation of any collateral, or any release, amendment or waiver of, or consent to departure from, any other guaranty, for any or all of the Obligations; (iv) any exercise or nonexercise by the Agent or Issuer of any right or privilege under this Agreement or any of the other Documents; (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Company, any other Bank, the Issuer or the Agent or any action taken with respect to this Agreement by any trustee, receiver or court in any such proceeding, whether or not such Bank shall have had notice or knowledge of any of the foregoing; (vi) any assignment or other transfer by the Agent, the Issuer or any other Bank, in whole or in part, of its rights in respect of the Obligations or this Agreement or any of the other Documents; (vii) any acceptance of partial performance of the Obligations; (viii) the failure of any party or parties to execute this Agreement or any other Document; (ix) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company, any Bank, the Agent or the Issuer; or (x) any of the circumstances referred to in Section 2.09(c). The provisions of this Section 2.10 shall survive the payment of all Obligations and the occurrence of the Termination Date.

(D) NON-RECEIPT OF FUNDS. Unless the Agent shall have received notice from the Bank prior to the date of any reimbursement of a Letter of Credit hereunder that the Bank will not make available to the Agent such Bank's ratable portion of such reimbursement, the Agent may assume that the Bank has made



\_ such portion available to the Agent on such date and the Agent  
\_ may (but shall not be so required), in reliance upon such  
\_ assumption, distribute a corresponding amount to the Issuer on  
\_ such due date. If and to the extent such Bank shall not have  
\_ made such portion available to the Agent, such Bank shall repay  
\_ to the Agent on demand such corresponding amount, together with  
\_ interest thereon for each day from the date such amount is  
\_ distributed to the Issuer until the date such Bank repays such  
\_ amount to the Agent, at the Fed Funds Rate.

—  
\_ (E) RETURN OF PAYMENTS. In the event that any payment  
\_ or reimbursement made by or on behalf of the Company in  
\_ connection with any Letter of Credit is rescinded or must  
\_ otherwise be restored or returned to the Company or other  
\_ relevant party, as applicable, including as a result of any  
\_ insolvency, bankruptcy or reorganization or similar proceedings  
\_ in respect of the Company, the obligations of the Banks under  
\_ this Article II in respect of such rescinded, restored or  
\_ returned payment shall be reinstated in full and the Banks shall  
\_ be liable to indemnify the Issuer hereunder as fully as if such  
\_ payment had never been made.

—  
\_ (F) BANK AUTHORITY AND OBLIGATIONS, ETC. Each Bank  
\_ represents and warrants to the Issuer (i) that it has full power,  
\_ authority and legal right to execute and deliver this Agreement  
\_ and participate in the Letters of Credit as provided herein and  
\_ to perform and observe the terms and conditions hereof; (ii) that  
\_ it has taken all necessary legal and corporate action to  
\_ authorize the execution and delivery of this Agreement and the  
\_ performance and observance of the terms and conditions hereof;  
\_ and (iii) that this Agreement constitutes the legal, valid and  
\_ binding obligation of such Bank enforceable in accordance with  
\_ the terms hereof except as such enforceability may be limited by  
\_ application of any bankruptcy, receivership, conservatorship,  
\_ reorganization or other similar laws for the relief of debtors,  
\_ or by application of general principles of equity. Without  
\_ limiting any other provisions hereof or any other obligations of  
\_ the Banks or of the Company, the Banks shall from time to time  
\_ indemnify the Issuer and hold the Issuer harmless on demand (to  
\_ the extent that the Company has not done so) against any  
\_ liabilities, costs, claims, expenses, suits, or damages of  
\_ whatsoever nature incurred or suffered by the Issuer: (i) in  
\_ connection with or relating to the Letters of Credit to the  
\_ extent of such Bank's Percentage Share; or (ii) as a result of  
\_ the enforcement hereof or such Bank's failure to make timely  
\_ payment to the Issuer on the relevant date of any amount due from  
\_ such Bank pursuant hereto (including without limitation the  
\_ Issuer's costs of funding any unpaid portion of such amount as  
\_ notified by the Issuer to such Bank from such relevant date until  
\_ the date of payment in full by such Bank of any such unpaid  
\_ amounts to the Issuer hereunder). The indemnification set forth  
\_ in this paragraph shall survive the termination of this Agreement  
\_ and the payment of all amounts due in connection with the Credit  
\_ Agreement.

—  
\_ 2.11 PAYMENTS TO BANKS.

—  
\_ (A) CHARGES AND EXPENSES. Reimbursements received by  
\_ the Agent from the Company for charges and expenses incurred for  
\_ the issuance, amendment, and payment of Letters of Credit shall  
\_ be distributed first, to the charges and expenses incurred by the  
\_ Issuer, and second, to each Bank in proportion to the ratio of  
\_ (i) the unreimbursed charges and expenses incurred in connection  
\_ with Letters of Credit participated in by such Bank, to (ii) the  
\_ aggregate amount of unreimbursed charges and expenses incurred in  
\_ connection with Letters of Credit then outstanding.

—  
\_ (B) PAYMENTS RECEIVED. Any payments made to the Agent  
\_ or hereunder for its own account or for the account of the Issuer  
\_ or the Banks, as relevant, shall be applied FIRST against costs,  
\_ expenses and indemnities (other than indemnities in respect of  
\_ drawings under Letters of Credit) due hereunder (to the extent  
\_ the Agent has been notified such amounts are due); SECOND against  
\_ fees due to the Agent and the Issuer and the Banks; THIRD against  
\_ interest; FOURTH against amounts due in respect of drawings under  
\_ Letters of Credit; and FIFTH against any other amounts payable or  
\_ to be deposited hereunder. If any payment is insufficient to pay  
\_ any such category in full, the Agent shall apply the payment  
\_ received pro rata on the basis of the amount due to each party  
\_ entitled to payment in such category.

—  
\_ 2.12 STATEMENTS OF CHARGES AND EXPENSES. Each Bank shall  
\_ deliver to the Agent, on or before the fifth Business Day of each  
\_ calendar quarter, a statement of the charges and expenses for the  
\_ preceding calendar quarter for which such Bank seeks

reimbursement pursuant to subsection 2.3(c), provided that a Bank's failure to provide such statement by such date shall not impair its rights to the relevant payment. The Agent shall then bill the Company in accordance with subsection 2.3(c).

2.13 SHARING OF PAYMENTS, ETC. If, other than as expressly contemplated elsewhere herein, any Bank shall obtain on account of its Letter of Credit Obligations any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Percentage Share of payments on account of the Letter of Credit Obligations obtained by all the Banks, such Bank shall forthwith (a) notify the Agent of such fact, and (b) purchase from the other Banks such participations in the Letter of Credit Obligations made by them as shall be necessary to cause such purchasing Bank to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Bank, such purchase shall to that extent be rescinded and each other Bank shall repay to the purchasing Bank the purchase price paid thereto together with an amount equal to such paying Bank's Percentage Share (according to the proportion of (i) the amount of such paying Bank's required repayment to (ii) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. The Company agrees that any Bank so purchasing a participation from another Bank pursuant to this Section 2.13 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 9.9) with respect to such participation as fully as if such Bank were the direct creditor of the Company in the amount of such participation. The Agent will keep records (which shall be conclusive and binding in the absence of manifest error), of participations purchased pursuant to this Section 2.13 and will in each case notify the Banks following any such purchases.

#### 2.14 EXTENSION OF TERMINATION DATE.

(A) The Company shall notify the Agent, not more than 120 days or less than 90 days prior to the original Termination Date, whether or not the Company wishes to extend the Termination Date for an additional one-year period; provided, that, if the Company fails so to notify the Agent, the Company shall be deemed to have given notice that the Company does not wish to extend the Termination Date. Upon receipt of any such notice requesting such extension, the Agent shall send a notice to the Issuer and the Banks requesting instructions as to whether or not the Issuer and the Banks consent (in their sole discretion) to the extension of the Termination Period for an additional one-year period. The Issuer and each Bank shall notify the Agent, in writing, whether or not it wishes so to extend the Commitment Period within thirty (30) Business Days of the date of the Agent's notice, and, if the Issuer or any Bank fails so to notify the Agent within thirty (30) Banking Days of the date of the Agent's notice, such Issuer or Bank shall be deemed to have withheld its consent to the extension of the Termination Date for an additional one-year period.

(B) If the Issuer and all of the Banks consent to the extension of the Termination Date, then the Termination Date shall be extended for an additional one-year period measured from the then scheduled Termination Date thereof; provided, however, that in no event shall the Termination Date be extended to a date later than September 22, 1997.

(C) If (x) the Company gives (or is deemed to have given) the Agent timely notice that the Company does not wish to extend the Termination Date, or (y) the Company has failed to give the Agent timely notice as provided by subsection 2.14(a) by 90 days prior to the original Termination Date, or (z) the Banks and the Issuer and the Agent do not unanimously consent (which consent may be given or withheld in their respective sole discretion) to the extension of the Termination Date as aforesaid, then (i) such date shall not be further extended, (ii) the Agent shall so notify the Issuer, and (iii) the Issuer may give notice to each beneficiary of any outstanding Letter of Credit that contains renewal or extension provisions that such Letter of Credit shall not be renewed beyond the then scheduled Termination Date.

### ARTICLE III. YIELD PROTECTION.

3.1 INCREASED COSTS AND REDUCTION OF RETURN (a) If the Issuer, any Bank or participant of a Bank shall determine that, due to either (i) the introduction of or any change in or in the

interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to such Issuer, Bank or participant of agreeing to issue, issuing or maintaining any Letter of Credit or of agreeing to make or making, funding or maintaining any unpaid drawing under any Letter of Credit or any other extension of credit under this Agreement, then the Company shall be liable for, and shall from time to time, upon demand therefor by such Issuer or Bank (or, in the case of a participant, by the Bank from which it has purchased its interest,) with a copy of such demand to the Agent), pay to the Agent for the account of such Issuer, Bank or participant, additional amounts as are sufficient to compensate such Issuer, Bank or participant for such increased costs. (b) If the Issuer, any Bank or participant of a Bank shall have determined that the introduction of any applicable law, rule, regulation or guideline regarding capital adequacy, or any change therein or any change in the interpretation or administration thereof by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or compliance by such Issuer, Bank or participant (or its Issuing Office) or any corporation controlling such Issuer, Bank or participant, with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such central bank or other authority, affects or would affect the amount of capital required or expected to be maintained by such Issuer, Bank or participant or any corporation controlling the same and (taking into consideration such Issuer's, Bank's, participant's or such corporation's policies with respect to capital adequacy and desired return on capital) determines that the amount of such capital is increased as a consequence of its obligations under this Agreement, then, upon demand of such Issuer, Bank or participant, the Company shall immediately pay to such Issuer, Bank or participant, from time to time as specified by such Issuer, Bank or participant, additional amounts sufficient to compensate it for such increase.

3.2 CERTIFICATES OF BANKS. The Issuer or any Bank claiming reimbursement or compensation pursuant to this Article III shall at the request of the Company deliver to the Company (with a copy to the Agent) a certificate setting forth in reasonable detail the amount payable to such Issuer or Bank (or its participant) hereunder and such certificate shall be conclusive and binding on the Company in the absence of manifest error.

3.3 SURVIVAL. The agreements and obligations of the Company in this Article III shall survive the payment of all other Obligations.

#### ARTICLE IV. CONDITIONS PRECEDENT.

4.1 CONDITIONS OF INITIAL CREDIT EXTENSIONS. The obligation of the Issuer to make its initial Credit Extension hereunder is subject to the condition that the Agent shall have received on or before the Closing Date all of the following, in form and substance satisfactory to the Agent and in sufficient copies for the Issuer and each Bank:

(A) copies of the resolutions of the board of directors of the Company approving and authorizing the execution, delivery and performance by the Company of this Agreement and the other Documents to be delivered hereunder, and authorizing the incurrence of the Company's obligations in respect of the Letters of Credit, certified as of the Closing Date by the Secretary or an Assistant Secretary of the Company;

(B) a certificate of the Secretary or Assistant Secretary of the Company, certifying the names and true signatures of the officers of the Company authorized to execute and deliver, as applicable, this Agreement, and all other Documents to be delivered hereunder;

(C) a certificate from the Company's certified public accountants or the Company's President, Chief Financial Officer, Treasurer or Controller that: (i) the Company for the fiscal quarter ended July 2, 1995 maintained a Net Worth in an amount which satisfies the requirements of section 6.8, and (ii) as of July 2, 1995, the Company maintained a Quick Ratio of not less than 0.75 to 1.0;

(D) a favorable opinion of counsel to the Company (reasonably acceptable to the Agent) and addressed to the Agent, the Issuer and the Banks substantially in the form of

EXHIBIT D and addressing such other matters as the Agent may reasonably request;

(E) the Company shall have paid all costs, accrued and unpaid fees and expenses (including legal fees and expenses) to the extent then due and payable on the Closing Date, including any arising under Sections 2.3, 2.4 and 9.4; and

(F) evidence satisfactory to the Agent of the agreement of MKE to cancel and return the Existing Letters of Credit.

4.2 CONDITIONS TO ALL CREDIT EXTENSIONS. The obligation of the Issuer to make any Credit Extension to be made by it hereunder (including its initial Credit Extension) is subject to the fulfilment of the following conditions precedent on the relevant date of such Credit Extension:

(A) the representations and warranties made by the Company contained in Article V shall be true and correct on and as of such Credit Extension date with the same effect as if made on and as of such Credit Extension date (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date);

(B) no Default or Event of Default shall exist or shall result from such Credit Extension;

(C) the sum of (i) the maximum face amount of all Letters of Credit to be issued on that day plus (ii) the amount of the Letter of Credit Obligations outstanding on that day (as a result of issuances, amendments or otherwise) shall not exceed the Aggregate Commitment;

(D) the Agent, the Issuer and each Bank shall have received to its satisfaction such confirmations of the foregoing, and such other documents, opinions and information (including beneficiary consents) as the Agent, the Issuer (through the Agent) or such Bank (through the Agent) may reasonably request; and

(E) the Issuer shall not have determined that it is unlawful for it to make the proposed Credit Extension.

Each request for a Credit Extension submitted by the Company hereunder shall constitute a representation and warranty by the Company hereunder, as of the date of each such notice and as of the date of such Credit Extension, that the conditions in this Section 4.2 are satisfied.

#### ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the Agent, the Issuer and each Bank, on the date hereof and on the date of each Credit Extension, that:

##### 5.1 CORPORATE EXISTENCE AND POWER; CONDUCT OF BUSINESS.

The Company: (a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (b) has the power and authority and all governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and to execute, deliver, and perform its obligations under, the Documents; (c) is duly qualified as a foreign corporation licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (d) is in compliance with all Requirements of Law. The Company has good and marketable title to all the property and assets, ownership of which is reflected on its most recent balance sheets referred to above, except for assets or properties that have been disposed of in the ordinary course of business. All such properties and assets are insured, and insurance against operational risks and liabilities is in force, with coverage and in amounts normal and customary in accordance with sound management in the fields of operations in which the Company is engaged and for the property and assets owned.

##### 5.2 CORPORATE AUTHORIZATION; NO CONTRAVENTION.

The execution, delivery and performance by the Company of this Agreement, and any other Document to which the Company is party, have been duly authorized by all necessary corporate action, and do not and will not: (a) contravene the terms of any of the

certificate of incorporation or bylaws of the Company; (b) conflict with or result in any breach or contravention of any material lease, contract, indenture or other document, agreement or instrument to which the Company is a party or any order, injunction, writ or decree of any Governmental Authority to which the Company or its property is subject; or (c) violate any Requirement of Law.

5.3 BINDING. This Agreement and each other Document to which the Company is a party constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and general principles of equity.

5.4 LITIGATION. As of the date hereof and as of the Closing Date, except as specifically disclosed in the Company's Form 10K for the year ended March 31, 1995 or its Form 10Q for the quarter ended July 2, 1995 on file with the Securities and Exchange Commission and previously provided to the Agent, the Issuer and the Banks, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of the Company, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against the Company or any of its properties which, if determined adversely to the Company, would reasonably be expected to have a Material Adverse Effect.

5.5 NO DEFAULT. The Company is not in default under or with respect to any lease, contract, indenture or other document, agreement or instrument to which it is a party in any respect which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect.

5.6 USE OF LETTERS OF CREDIT. The Letters of Credit and all other extensions of credit hereunder are intended to be and shall be used solely (a) to support importation by the Company or its Subsidiaries of equipment and inventory and products manufactured by or for MKE or its affiliates, and (b) not in contravention of any Requirement of Law. The Company is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock within the meaning of Regulations G, T, U or X of the Federal Reserve Board. No part of the proceeds of the Letters of Credit will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock, except in accordance with the provisions of Regulations G, T, U or X of the Federal Reserve Board.

5.7 NO MATERIAL ADVERSE EFFECT. Since the date of the most recent audited financial statements provided by the Company to Agent and the Banks, there has been no Material Adverse Effect.

5.8 FINANCIAL STATEMENTS. The Company has delivered to the Agent and each of the Banks copies of the unaudited consolidated balance sheet of the Company as at the end of, and its related unaudited consolidated statements of income, changes in shareholder's equity and cash flow of the Company for, the quarterly period ended July 2, 1995 certified by the Chief Financial Officer or Controller of the Company. Such financial statements have been accurately prepared from the books and records of the Company. There are no material liabilities, contingent or otherwise, of the Company as of such date, not reflected in such balance sheet of the Company as of such date. Since such date, there have not been any changes (whether or not covered by insurance) in assets, liabilities or financial position of the Company from those set forth in such balance sheet of the Company as of such date, other than changes in the ordinary course of business which have not, either individually or in the aggregate, been materially adverse. The Company does not know of any fact (other than matters of a general economic nature) that materially affects adversely the business, operations or properties of the Company, or the ability of the Company to perform its obligations under this Agreement.

5.9 PARI PASSU. The obligations of the Company hereunder rank at least pari passu in right of payment and priority with the Company's other senior (unsecured) obligations.

5.10 GOVERNMENTAL REGULATION. Neither the Company nor any Subsidiary of the Company is subject to regulation under the Public Utility Holding Company Act of 1934, the Federal Power Act, or the Investment Company Act of 1940, each as amended, or to any other federal or state statute or regulation limiting its

ability to incur debt or to create liens on any of its properties or assets to secure debt.

5.11 INFORMATION. Any and all information delivered by the Company to the Agent, the Issuer or any Bank in connection with this Agreement and the Letters of Credit is, taken as a whole, true and correct in all material respects, contains no misleading statement and does not omit to make any statement necessary to make such information not misleading.

#### ARTICLE VI. COVENANTS.

The Company covenants and agrees that, so long as any Bank shall have any Commitment hereunder, any Letter of Credit shall be outstanding hereunder or any other Obligation shall remain unpaid or unsatisfied, unless the Majority Banks waive compliance in writing:

6.1 FINANCIAL STATEMENTS; OTHER INFORMATION. The Company shall furnish to the Agent, with sufficient copies for each Bank and the Issuer: (a) as soon as available, but not later than 90 days after the end of each fiscal year, copies of the audited consolidated financial statements of the Company for such fiscal year, and accompanied by the unqualified opinion (or a qualified opinion reasonably acceptable to the Agent) of Ernst & Young or another nationally-recognized independent public accounting firm, in each case together with: (i) certificates of all such accountants to the Agent stating that, in making the examination necessary for their audit, nothing has come to their attention that would lead or cause them to believe that the Company has failed to comply with the provisions of Section 6.8 or 6.9, with the understanding that such audit was not directed toward obtaining knowledge of any such non-compliance, or if any such non-compliance has come to their attention, a statement as to the nature thereof, and (ii) a certificate executed by the Company's President, Chief Financial Officer, Treasurer or Controller setting forth all financial calculations necessary to determine compliance with the terms of this Agreement and stating that no Default or Event of Default has occurred hereunder (or describing in detail each Default or Event of Default, if any, that has occurred) (a "Compliance Certificate") for the fiscal quarter most recently ended; (b) as soon as available, but not later than 60 days after the end of each of the first three fiscal quarters of each year, (i) copies of the unaudited consolidated financial statements of the Company for such quarter, which may be in the form of a Form 10-Q Quarterly Report filed for such period with the Securities Exchange Commission ("SEC"), and (ii) a Compliance Certificate for the fiscal quarter most recently ended; (c) promptly after the same are sent, copies of all financial statements and reports which the Company sends to its shareholders, and within five days after the same are filed copies of all financial statements, regular, periodical or special reports and other items which the Company may make to, or file with, the SEC, including each Form 8-K Current Report, Form 10-K Annual Report, Form 10-Q Quarterly Report, Annual Report to Shareholders, proxy statement and registration statement; and (d) such other financial or other information pertaining to the Company and its Subsidiaries and affiliates and the transactions contemplated hereby as the Agent, the Issuer or any Bank may reasonably request.

6.2 NOTICES. The Company shall promptly notify the Agent and each Bank of: (a) the occurrence of any Default or Event of Default, and of the occurrence or existence of any event or circumstance that is reasonably likely to become an Event of Default; (b) the commencement of, or any material development in, any litigation or proceeding affecting the Company or any Subsidiary which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; (c) the occurrence of any "Default" or "Event of Default" under (and as defined in) the Existing Credit Facility; (d) the delivery of each "Compliance Certificate" (as defined in the Existing Credit Facility) or similar certificate required to be delivered by the Company pursuant to the Existing Credit Facility, together with a copy thereof; and (e) any Material Adverse Effect subsequent to the date of the most recent audited financial statements of the Company delivered to the Banks pursuant to subsection 6.1.

6.3 PRESERVATION OF CORPORATE EXISTENCE, ETC. The Company shall: (a) preserve and maintain in full force and effect its corporate existence and good standing under the laws of its state or jurisdiction of incorporation; and (b) preserve and maintain in full force and effect all rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business.

6.4 COMPLIANCE WITH LAWS. The Company shall comply in all material respects with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except such as may be contested in good faith by the Company.

6.5 PAYMENT OF TAXES, ETC. The Company will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, prior to the date on which penalties attach thereto, except to the extent such taxes, assessments or governmental charges or levies are being contested in good faith and are adequately reserved against in accordance with GAAP consistently applied.

6.6 KEEPING OF RECORDS AND BOOKS OF ACCOUNT. The Company will keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the Company in accordance with GAAP.

6.7 INSPECTION RIGHTS. The Company will at any reasonable time and from time to time upon reasonable prior notice, permit the Agent, the Issuer and the Banks or any of their respective agents or representatives to visit the Company's offices and examine and make copies of and abstracts from the records and books of account of the Company and discuss the affairs of the Company with its officers.

6.8 NET WORTH. The Company shall maintain a Net Worth at all times during any fiscal quarter of 75% of no less than (a) the amount of its Net Worth as at the end of its fiscal quarter, ending January 2, 1995, plus (b) 75% of Net Income, accrued quarterly, and 100% of the net proceeds of all equity from the conversion of existing subordinated indebtedness or a secondary offering of stock having net proceeds to the Company in excess of \$10 million.

6.9 QUICK RATIO. The Company shall not permit its Quick Ratio to be less than 0.75 to 1.0 at any time.

#### ARTICLE VII. EVENTS OF DEFAULT.

7.1 EVENT OF DEFAULT. Any of the following events shall constitute an "Event of Default":

(A) NON-PAYMENT. The Company fails to pay, (i) when and as required to be paid herein, any amount paid by the Issuer or any Bank under or in connection with a Letter of Credit, or (if) any interest, fee or any other amount payable hereunder or pursuant to any other Document, when and as required to be paid herein or therein; or

(B) REPRESENTATION OR WARRANTY; INFORMATION. Any representation or warranty by the Company made or deemed made herein, in any Document or which is contained in any certificate, document or financial or other statement, by the Company, or its officers, furnished at any time in or under or in connection with this Agreement or any Document, shall prove to have been false or misleading in any material respect on or as of the date made or deemed made; or any financial or other information delivered by the Company or any officer to the Agent or Bank hereunder or in connection herewith, shall prove to be false or misleading in any material respect; or

(C) BREACH OF COVENANTS. The Company (i) fails to perform or observe any term or covenant set forth in Sections 6.8 or 6.9 hereof; or (ii) fails to perform or observe any other term or covenant contained in this Agreement or any Document and such failure shall continue for 15 Business Days after the earlier of the date the Borrower obtains knowledge or notice of such failure or the date the Agent gives Borrower notice of such failure; or

(D) AGREEMENTS, ETC. This Agreement or any other Document ceases to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the Company; or

(E) CROSS-DEFAULT. The Company or any of its Subsidiaries (i) fails to make any payment of principal, interest, reimbursements of amounts paid under letters of credit, or the like in respect of, or "Origination Fees" or "Commitment Fees" under (and as defined in), the Existing Credit Facility and such failure continues after the

applicable grace or notice period, if any, specified in the document relating thereto; or (ii) (A) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to the Existing Credit Facility, and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto, and (B) the holder or holders of such indebtedness or beneficiary or beneficiaries of such indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) causes such indebtedness to be accelerated or otherwise declared to be due and payable prior to its stated maturity; or (iii) fails to make a payment or payments in an aggregate amount of \$1,000,000 or more when due under the terms of any bond, debenture, note or other evidence of indebtedness for borrowed money or credit extended to be paid by such Person (excluding this Agreement and the Existing Credit Facility and leases for real and personal property), and the effect of such failure or default is to cause such indebtedness to be accelerated or otherwise declared to be due and payable prior to its stated maturity; or (iv) or fails to pay before the same becomes materially overdue any material amount payable to MKE or any Subsidiary of MKE, or any drawing is made, or notice of drawing is given, under a Letter of Credit).

(F) BANKRUPTCY OR INSOLVENCY. The Company or any of its Material Subsidiaries (i) admits in writing its inability to pay its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(G) INVOLUNTARY PROCEEDINGS. (i) Any involuntary Insolvency Proceeding is commenced or filed against the Company or any Subsidiary of the Company and shall remain undismissed for a period of 60 days, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of the Company's or any of its Subsidiaries' properties or assets and shall remain unpaid, unbonded, unvacated or unstayed for a period of 60 days after the entry thereof; (ii) the Company or any of its Subsidiaries admits the material allegations of a petition against it in any Insolvency Proceeding or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) the Company or any of its Material Subsidiaries acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its properties or business.

7.2 REMEDIES. If any Event of Default occurs, the Agent shall, at the request of, or may, with the consent of, the Majority Banks, (a) declare the Commitment of each Bank to be terminated, whereupon such unutilized Commitments shall forthwith be terminated and the Issuer shall have no further obligation to issue new or amend existing Letters of Credit hereunder; (b) declare an amount equal to the Letter of Credit Obligations (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under the outstanding Letters of Credit), all unreimbursed drawings under the Letters of Credit and all other Obligations (the "Total Amount"), to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, upon which the Company shall immediately (A) pay all amounts owing under this Agreement and the other Documents and (B) immediately pay and deposit into the Letter of Credit Account (as defined below) with the Agent, cash in the amount determined by the Agent to be the aggregate maximum amount of the undrawn Letters of Credit and the Issuer's maximum contingent liability thereunder and all other Letter of Credit Obligations then outstanding, to be applied by the Agent (for the benefit of the Banks and the Issuer) to the payment and reimbursement of drawings thereunder and other amounts owing by the Company with respect to Letter of Credit Obligations (as provided below); and (c) exercise on behalf of itself, the Issuer and the Banks and together with such parties, all rights and remedies available to the Agent, the Issuer and the Banks under the Documents or applicable law; provided, however, that upon the occurrence of any event specified in subsection 7.1(f) or (g), the result which



\_ would otherwise occur only upon giving of notice by the Agent to  
\_ the Company as specified above shall occur automatically, without  
\_ the giving of notice or further act of the Agent or any Bank.

\_ At the time that the Company is required to make any deposit  
\_ pursuant to Section 7.2(b)(B), the Company shall deposit all such  
\_ amounts into such account as the Agent may specify at its San  
\_ Francisco Branch (the "Letter of Credit Account"). All amounts  
\_ on deposit in the Letter of Credit Account shall be held by the  
\_ Agent as security for the Company's obligations to reimburse the  
\_ Agent, the Issuer and the Banks, as applicable, in respect of  
\_ drawings under Letters of Credit as hereinafter provided.

\_ The Company hereby pledges, assigns and grants to the Agent  
\_ on its own behalf and on behalf of the Issuer and the Banks a  
\_ security interest in amounts from time to time on deposit in the  
\_ Letter of Credit Account for the obligation of the Company to  
\_ reimburse the Agent, the Issuer and the Banks, as applicable, in  
\_ the event of any drawing under the Letters of Credit and as  
\_ security for the Company's Obligations. Upon any drawing under  
\_ any outstanding Letter of Credit in respect of which any amounts  
\_ have been deposited to the Letter of Credit Account, the Agent  
\_ shall apply such amounts to reimburse the Issuer, and if the  
\_ Issuer has been reimbursed by any Bank, the relevant Bank for the  
\_ amount of such drawing. In the event of the cancellation or  
\_ termination of any Letter of Credit in respect of which any  
\_ amounts have been deposited to the Letter of Credit Account, or  
\_ in the event of any reduction in the maximum amount available at  
\_ any time for drawing under such Letter of Credit, the Agent shall  
\_ apply the amount remaining in the Letter of Credit Account in  
\_ respect of such Letter of Credit (as the amounts in the following  
\_ categories are calculated by the Agent), FIRST to reimburse the  
\_ Issuer and the Banks for any unreimbursed drawings under such  
\_ Letter of Credit, SECOND to secure with cash any other  
\_ outstanding Letters of Credit and all Letter of Credit  
\_ Obligations, THIRD, to the payment in full of all other  
\_ Obligations of the Company to the Agent and Issuer and the Banks,  
\_ and FOURTH, after indefeasible payment and application in full of  
\_ all such amounts (including in respect of all Letter of Credit  
\_ Obligations), any excess to the Company (without interest).

\_ The Company agrees to execute and deliver from time to time  
\_ all such documents as shall be reasonably requested by the Agent  
\_ for the establishment and maintenance of the Letter of Credit  
\_ Account and for the perfection of the security interest granted  
\_ therein by the Company.

#### \_ ARTICLE VIII. THE AGENT.

\_ 8.1 APPOINTMENT AND AUTHORIZATION. Each Bank hereby  
\_ appoints, designates and authorizes the Agent to take such action  
\_ on its behalf under the provisions of this Agreement and each  
\_ other Document and to exercise such powers and perform such  
\_ duties as are expressly delegated to it by the terms of this  
\_ Agreement or any other Document, together with such powers as are  
\_ reasonably incidental thereto. Notwithstanding any provision to  
\_ the contrary contained elsewhere in this Agreement or in any  
\_ other Document, the Agent shall not have any duties or  
\_ responsibilities, except those expressly set forth herein, nor  
\_ shall the Agent have or be deemed to have any fiduciary  
\_ relationship with the Issuer, any Bank or the Company, and no  
\_ implied covenants, functions, responsibilities, duties,  
\_ obligations or liabilities shall be read into this Agreement or  
\_ any other Document or otherwise exist against the Agent.

\_ 8.2 DELEGATION OF DUTIES. The Agent may execute any of its  
\_ duties under this Agreement or any other Document by or through  
\_ agents, employees or attorneys-in-fact and shall be entitled to  
\_ advice of counsel concerning all matters pertaining to such  
\_ duties. The Agent shall not be responsible for the negligence or  
\_ misconduct of any agent or attorney-in-fact that it selects with  
\_ reasonable care.

\_ 8.3 LIABILITY OF AGENT AND ISSUER. None of the Agent, the  
\_ Issuer, their respective affiliates, or any of their respective  
\_ officers, directors, employees, agents, or attorneys-in-fact  
\_ shall (i) be liable for any action taken or omitted to be taken  
\_ by any of them under or in connection with this Agreement or any  
\_ other Document (except for its own gross negligence or willful  
\_ misconduct, it being agreed that the Issuer's exclusive reliance  
\_ on documents presented in connection with a Letter of Credit  
\_ shall not be deemed willful misconduct or gross negligence,  
\_ whether or not any such document, or any statement contained  
\_ therein, proves to be forged, fraudulent, invalid, insufficient,  
\_ untrue or inaccurate in any respect), or (ii) be responsible in

\_any manner to any of the Banks for any recital, statement,  
\_representation or warranty made by the Company or any Subsidiary,  
\_or affiliate of the Company, or any officer thereof, contained in  
\_this Agreement or in any other Document, or in any certificate,  
\_report, statement or other document referred to or provided for  
\_in, or received by the Agent or the Issuer under or in connection  
\_with, this Agreement or any other Document, or for the value of  
\_any collateral or the validity, effectiveness, genuineness,  
\_enforceability or sufficiency of this Agreement or any other  
\_Document, or for any failure of the Company or any other party to  
\_any Document to perform its obligations hereunder or thereunder.  
\_No such Person shall be under any obligation to any Bank to  
\_ascertain or to inquire as to the observance or performance of  
\_any of the agreements contained in, or conditions of, this  
\_Agreement or any other Document, or to inspect the properties,  
\_books or records of the Company or any of its Subsidiaries or  
\_affiliates.

8.4 RELIANCE BY AGENT. The Agent shall be entitled to  
\_rely, and shall be fully protected in relying, upon any writing,  
\_resolution, notice, consent, certificate, affidavit, letter,  
\_telegram, facsimile, telex or telephone message, statement or  
\_other document or conversation believed by it to be genuine and  
\_correct and to have been signed, sent or made by the proper  
\_Person or Persons, and upon advice and statements of legal  
\_counsel (including counsel to the Company), independent  
\_accountants and other experts selected by the Agent. The Agent  
\_shall be fully justified in failing or refusing to take any  
\_action under this Agreement or any other Document unless it shall  
\_first receive such advice or concurrence of the Majority Banks as  
\_it deems appropriate and, if it so requests, it shall first be  
\_indemnified to its satisfaction by the Banks against any and all  
\_liability and expense which may be incurred by it by reason of  
\_taking or continuing to take any such action. The Agent shall in  
\_all cases be fully protected in acting, or in refraining from  
\_acting, under this Agreement or any other Document in accordance  
\_with a request or consent of the Majority Banks and such request  
\_and any action taken or failure to act pursuant thereto shall be  
\_binding upon all of the Banks, provided that the Agent shall not  
\_be required to take any action which exposes the Agent to  
\_personal liability or which is contrary to this Agreement or any  
\_other Document or applicable law. For purposes of determining  
\_compliance with the conditions specified in Article IV, each Bank  
\_that has executed this Agreement shall be deemed to have  
\_consented to, approved or accepted or to be satisfied with each  
\_document or other matter required thereunder to be consented to  
\_or approved by or acceptable or satisfactory to such Bank, unless  
\_an officer of the Agent responsible for the transactions  
\_contemplated by the Documents shall have received notice from  
\_such Bank prior to the initial Credit Extension specifying its  
\_objection thereto and such objection shall not have been  
\_withdrawn by notice to the Agent to that effect.

8.5 NOTICE OF DEFAULT. The Agent shall not be deemed to  
\_have knowledge or notice of the occurrence of any Default or  
\_Event of Default, unless the Agent shall have received written  
\_notice from a Bank or the Company referring to this Agreement,  
\_describing such Default or Event of Default and stating that such  
\_notice is a "notice of default". In the event that the Agent  
\_receives such a notice, the Agent shall promptly give notice  
\_thereof to the Banks. The Agent shall take such action with  
\_respect to such Default or Event of Default as shall be  
\_requested by the Majority Banks in accordance with this Agreement  
\_and the other Documents; provided, however, that unless and until  
\_the Agent shall have received any such request and is indemnified  
\_to the Agent's satisfaction, the Agent may (but shall not be  
\_obligated to) take such action, or refrain from taking such  
\_action, with respect to such Default or Event of Default as it  
\_shall deem advisable or in the best interest of the Banks.

8.6 CREDIT DECISION. Each Bank expressly acknowledges that  
\_none of the Agent, its affiliates, or any of their respective  
\_officers, directors, employees, agents or attorneys-in-fact, has  
\_made any representation or warranty to it and that no act by the  
\_Agent hereinafter taken, including any review of the affairs of  
\_the Company and its Subsidiaries shall be deemed to constitute  
\_any representation or warranty by the Agent to any Bank. Each  
\_Bank represents to the Agent that it has made and will continue  
\_to make, independently and without reliance upon the Agent and  
\_based on such documents, information and investigations as it has  
\_deemed appropriate, its own credit analysis, and appraisal of and  
\_investigation into the business, prospects, operations, property,  
\_financial and other condition and creditworthiness of the Company  
\_and its Subsidiaries, and all applicable bank regulatory laws  
\_relating to the transactions contemplated thereby, and has made

its own decision to enter into this Agreement and extend credit to the Company hereunder. The Agent shall promptly deliver to each Bank a copy of each notice which it receives from the Company pursuant to the terms of this Agreement, provided that the Agent shall incur no liability whatsoever for its failure to do so. Except for notices, reports and other documents expressly herein required to be furnished to the Banks by the Agent, the Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Company which may come into the possession of the Agent or any of its Subsidiaries or affiliates.

8.7 INDEMNIFICATION. The Banks shall indemnify upon demand the Agent, the Issuer, their respective affiliates, and their respective officers, directors, employees, agents and attorneys-in-fact (to the extent not reimbursed by or on behalf of the Company and without limiting the obligation of the Company to do so), ratably from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind whatsoever which may at any time (including at any time following the termination of the Letters of Credit and repayment of the Letter of Credit Obligations) be imposed on, incurred by or asserted against any such Person any way relating to or arising out of this Agreement or any document contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any such Person under or in connection with any of the foregoing, provided, however, that no Bank shall be liable for the payment to any such Person of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from such Person's gross negligence or wilful misconduct (it being agreed that the Issuer's exclusive reliance on documents presented in connection with a Letter of Credit shall not be deemed wilful misconduct or gross negligence, whether or not any such document, or any statement contained therein, proves to be forged, fraudulent, invalid, insufficient, untrue or inaccurate in any respect). Without limitation of the foregoing, each Bank shall reimburse the Agent and the Issuer upon demand for its ratable share of any costs or out-of-pocket expenses (including fees and disbursements of any law firm or other counsel) incurred by the Agent and the Issuer in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal or bankruptcy proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any Letter of Credit or any other Document, or any document contemplated by or referred to herein to the extent that the Agent and the Issuer is not reimbursed for such expenses by or on behalf of the Company. The obligation of the Banks in this Section shall survive the payment of all Obligations hereunder.

8.8 AGENT IN INDIVIDUAL CAPACITY. Sumitomo and its affiliates may make loans to, issue letters of credit for the account of, accept deposits from and generally engage in any kind of business with the Company and its Subsidiaries and affiliates as though Sumitomo were not the Agent hereunder and without notice to the Banks. With respect to its Letters of Credit and participation herein and therein, Sumitomo shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though it were not the Agent, and the terms "Bank" and "Banks" shall include Sumitomo in its individual capacity.

8.9 SUCCESSOR AGENT. The Agent may, and at the request of the Majority Banks with cause shall, resign as Agent upon 30 days' notice to the Banks. If the Agent shall resign as Agent under this Agreement, the Majority Banks shall appoint from among the Banks a successor agent for the Banks. If no successor Agent is appointed prior to the effective date of the resignation of the Agent, the Agent shall appoint, after consulting with the Banks and the Company, a successor agent from among the Banks, or if no Bank is willing to act as Agent, a commercial bank with at least \$500,000,000 in assets and an office in San Francisco. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent and the retiring Agent's powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article VIII and Sections 9.4 and 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was

Agent under this Agreement.

ARTICLE IX. MISCELLANEOUS.

9.1 AMENDMENTS AND WAIVERS. No amendment or waiver of any provision of this Agreement or any other Document, and no consent with respect to any departure by the Company therefrom shall be effective unless the same shall be in writing and signed by the Agent, the Issuer and the Majority Banks, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by the Agent, the Issuer and all the Banks, do any of the following: (i) increase the amount of the Commitment of any Bank, extend the Termination Date (except as provided by Section 2.14 hereof) or subject the Issuer to any additional obligations; (ii) postpone or delay any date fixed for any reimbursement or payment by the Company in respect of any drawings under the Letters of Credit; (iii) reduce the amount of, or the rate of interest specified herein on, any Letter of Credit Obligations, or the amount of any facility fee or Letter of Credit fee payable to (or for the account of) the Banks pursuant to Section 2.4; (iv) change the Percentage Shares which shall be required for the Banks or any of them to take any action hereunder, or (v) amend this Section 9.1, Section 2.13 or the last two sentences of Section 2.1(a); and provided, further, that no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Majority Banks or all the Banks as the case may be, affect the rights or duties of the Agent under this Agreement or any other Document; and provided, further that no amendment, waiver or consent shall, unless in writing and signed by the Issuer in addition to the Agent and the Banks required hereinabove to take such action or affect the rights or duties of the Issuer under this Agreement or any other Document.

9.2 NOTICES. (a) All notices, requests and other communications provided for hereunder shall be in writing (including, unless the context expressly otherwise provides, telegraphic, telex, facsimile transmission or cable communication)

and mailed, telegraphed, telexed or delivered, (i) if to the Company, to its address specified on the signature pages hereof, (ii) if to any Bank, to its address set forth in the signature pages hereof, and (iii) if to the Agent or the Issuer, to its address specified on the signature pages hereof; or, as to the Company, the Issuer or the Agent, to such other address as shall be designated by such party in a written notice to the other parties, and as to each other party, at such other address as shall be designated by such party, in a written notice to the Company, the Issuer and the Agent. All such notices, requests, and communications shall, when transmitted by overnight delivery, telegraphed, telecopied by facsimile or telexed, be effective when delivered for overnight delivery or to the telegraph company, transmitted by telecopier or confirmed by telex answerback, respectively, or if delivered, upon delivery, except that notices to the Agent or the Issuer pursuant to Article II or VII shall not be effective until actually received. (b) The Company acknowledges and agrees that the agreement of the Agent, the Issuer and the Banks at Article II herein to receive certain notices by telephone and facsimile is solely for the convenience and at the request of the Company. The Agent and the Banks shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Company to give such notice and the Agent, the Issuer and the Banks shall not have any liability to the Company or other Person on account of any action taken or not taken by the Agent, the Issuer or the Banks in reliance upon such telephonic or facsimile notice. The obligation of the Company to repay the drawings under the Letters of Credit and all other Obligations shall not be affected in any way or to any extent by any failure by the Agent, the Issuer and the Banks to receive written confirmation of any telephonic or facsimile notice or the receipt by the Agent, the Issuer and the Banks of a confirmation which is at variance with the terms understood by the Agent, the Issuer and the Banks to be contained in the telephonic or facsimile notice.

9.3 NO WAIVER; RIGHTS NOT EXCLUSIVE. No failure to exercise and no delay in exercising, on the part of the Agent, the Issuer or any Bank, any right, remedy, power or privilege hereunder or under the other Documents, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under the other Documents preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights provided for in this Agreement and the other Documents are cumulative and

are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

9.4 COSTS AND EXPENSES. The Company shall (a) pay or reimburse the Agent on demand for all reasonable out-of-pocket costs and expenses incurred by the Agent in connection with the development, preparation, delivery, administration and execution of, and any amendment, supplement, waiver or modification to, this Agreement, any Document and any other documents prepared in connection herewith or therewith, and the consummation of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of any law firm or other counsel incurred by the Agent with respect thereto; (b) pay or reimburse each Bank, the Issuer and the Agent on demand for all reasonable out-of-pocket costs and expenses incurred by them in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies (including in connection with any "workout" or restructuring regarding the Letter of Credit Obligations) under this Agreement, any other Document, and any such other documents, including reasonable fees and disbursements of any law firm or other counsel incurred by the Agent and any Bank; and (c) pay or reimburse the Agent on demand for all appraisal, audit, search and filing costs, fees and expenses and the like, incurred or sustained by the Agent in connection with the matters referred to under clauses (a) and (b) of this Section.

9.5 INDEMNITY. The Company shall pay, indemnify, and hold each Bank, the Issuer, the Agent and each of their respective officers, directors, employees, counsel, agents and attorneys-in-fact (each an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including fees and disbursements of any law firm or other counsel) of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and any other Documents, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding related to this Agreement or the Letter of Credit Obligations or the use of the proceeds thereof, (all the foregoing, collectively, the "Indemnified Liabilities"), provided, that the Company shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of such Indemnified Person (it being agreed that the Issuer's exclusive reliance on documents presented in connection with a Letter of Credit shall not be deemed wilful misconduct or gross negligence, whether or not any such document, or any statement contained therein, proves to be forged, fraudulent, invalid, insufficient, untrue or inaccurate in any respect). The agreements in this Section shall survive payment of all other Obligations.

9.6 MARSHALLING; PAYMENTS SET ASIDE. Neither the Agent nor the Banks shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Agent, the Issuer or the Banks, or the Agent, the Issuer or the Banks exercise their rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any Insolvency Proceeding, or otherwise, then to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

9.7 SUCCESSORS AND ASSIGNS. The provisions of this Agreement and the other Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Company may not assign or transfer any of its rights or obligations under or in connection with this Agreement and the other Documents without the prior written consent of the Agent, the Issuer, and each Bank.

9.8 ASSIGNMENTS, PARTICIPATIONS, ETC.

(A) ASSIGNMENTS. Any Bank may, with the prior written consent of the Agent and the Issuer, at any time assign and delegate to one or more Banks or other financial institutions all

or any ratable part of such Bank's rights and obligations in respect of the Letters of Credit and its Commitment and the other rights and obligations of such Bank hereunder and under the other Documents; provided, however, that the Company, the Issuer and the Agent may continue to deal solely and directly with such Bank in connection with the interest so assigned to an assignee until (i) written notice of such assignment, together with payment instructions, addresses and related information with respect to the assignee, shall have been given to the Company and the Agent by such Bank and the assignee; (ii) such Bank and its assignee shall have delivered to the Company and the Agent the written agreement of the assignee that such assignee is bound by this Agreement as it would have been if it had been an original Bank party hereto, in form satisfactory to the Agent (an "Agreement to be Bound"); and (iii) any reasonable processing fees requested by the Agent shall have been paid. From and after the date of (A) notification by the Agent to the assignor Bank that the Agent has received an executed Agreement to be Bound, (B) payment to the Agent of any processing fees, and (C) delivery to the Agent and the Company of the tax forms and documents contemplated by Section 9.11, then the assignee shall be a party hereto and, to the extent of the rights and obligations hereunder assigned to it, shall have the rights and obligations of a Bank under the Documents, and the assignor Bank shall, to the extent that rights and obligations hereunder have been assigned by it, relinquish its rights and be released from its obligations under the Documents. Effective such date, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each assignee shall reduce such Commitments of the assigning Bank pro tanto. Notwithstanding anything to the contrary contained herein, the Issuer may not assign its obligations as Issuer hereunder without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.

(B) PARTICIPATIONS. Any Bank may at any time sell to one or more commercial banks or other institutions participating interests in such Bank's rights and obligations hereunder and in respect of Letters of Credit and the other Documents, interest in its Letters of Credit, the Commitment of that Bank and the other interests of that Bank hereunder and under the other Documents. In the case of any such participation, the participant shall not have any rights to claim amounts directly from the Company under this Agreement, or any of the other Documents, and all amounts payable by the Company hereunder shall be determined as if such Bank had not sold such participation (except as otherwise provided).

(C) CONFIDENTIALITY. Each Bank agrees to exercise reasonable care to maintain the confidentiality of all non-public information which is provided to it by the Company or any Subsidiary of the Company, or by the Agent on such Company's or Subsidiary's behalf, in connection with this Agreement or any other Document, and neither it nor any of its affiliates shall use or disclose any such information for any purpose or in any manner other than pursuant to the terms contemplated by this Agreement, except to the extent such information (i) was or becomes generally available to the public other than as a result of a disclosure by the Bank, or (ii) was or becomes available on a non-confidential basis from a source other than the Company, provided that such source is not bound by a confidentiality agreement with the Company known to the Bank; and provided further, however, that any Bank may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority or in connection with an examination of such Bank by any such authority; (B) pursuant to subpoena or other court process; (C) when required to do so in accordance with the provisions of any applicable Requirement of Law; and (D) to such Bank's auditors, counsel and other professional advisors, affiliates and regulators. Notwithstanding the foregoing, the Company authorizes each Bank to disclose to any participant or assignee (each a "Transferee") and to any prospective Transferee, and to a beneficiary or other Bank or the Agent or Issuer or participants of any such Person, financial and other information in such Bank's possession concerning the Company or its Subsidiaries which has been delivered to Agent or the Banks pursuant to this Agreement or which has been delivered to the Agent or the Banks by the Company in connection with the Banks' credit evaluation of the Company prior to entering into this Agreement; provided that, unless otherwise agreed by the Company, such prospective Transferee agrees in writing to such Bank to keep such information confidential on the same terms as set forth herein.

9.9 SET-OFF. In addition to any rights and remedies of the Banks provided by law, if an Event of Default exists, the Agent, the Issuer and each Bank is authorized at any time and from time to time, without prior notice to the Company, any such notice being waived by the Company to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing to, such Bank to or for the credit or the account of the Company against any and all Obligations owing to the Agent, the Issuer and such Bank, now or hereafter existing, irrespective of whether or not the Agent, the Issuer or such Bank shall have made demand under this Agreement or any Document and although such Obligations may be contingent or unmaturred. Each Bank agrees promptly to notify the Company and the Agent after any such set-off and application made by such Bank; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each of the Agent, the Issuer and each Bank under this Section 9.9 are in addition to the other rights and remedies (including other rights of set-off) which the Agent, the Issuer and such Bank may have.

9.10 NOTIFICATION OF ADDRESSES, ISSUING OFFICES, ETC. Each Bank and the Issuer shall notify the Agent in writing of any changes in the address to which notices to the Bank or the Issuer should be directed, of address of its Issuing Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Agent shall reasonably request.

9.11 TAXES. Each Bank that is incorporated under the laws of any jurisdiction outside the United States agrees, at the request of the Company, to deliver to the Agent and the Company on or prior to the Closing Date, and in a timely fashion thereafter, Form 1001, Form 4224 or such other documents and forms of the United States Internal Revenue Service, duly executed and completed by such Bank, as are required under United States law to establish such Bank's status for United States withholding tax purposes.

9.12 COUNTERPARTS. This Agreement may be executed by one or more of the parties to this Agreement in any number of separate counterparts, each of which, when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Company and the Agent.

9.13 SEVERABILITY. The illegality or unenforceability of any provision of this Agreement or any other Document or any other instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement, such other Document or any other instrument or agreement required hereunder.

9.14 NO THIRD PARTIES BENEFITTED. This Agreement and the other Documents are made and entered into for the sole protection and legal benefit of the Company, the Banks, the Issuer and the Agent, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

9.15 GOVERNING LAW AND JURISDICTION. (a) This Agreement shall be governed by, and construed in accordance with, the law of the State of California, and, to the extent not inconsistent therewith, the Uniform Customs and Practices for Documentary Practices as most recently published by the International Chamber of Commerce. (b) Any legal action or proceeding with respect to this Agreement and any other Documents related hereto may be brought in the federal or state courts located in San Francisco or Los Angeles, California; and by execution and delivery of this Agreement, the Company consents, for itself and in respect of its property, to the jurisdiction of those courts. The Company irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any Document related hereto. The Company, waives personal service of any summons, complaint or other process, which may be made by any other means permitted by California law; without limiting the foregoing, the Company consents to the service of process out of such courts by registered mail, postage prepaid, to its address set forth on the signature page hereof (as such address may be updated from time to time by notice given to each





Suite 3350  
San Francisco, CA 94104  
Attn: Herman A. White, Jr.  
Telephone: (415) 616-3009  
Fax: (415) 397-1475

By: Yuji Harada  
Title: General Manager

Address for payments to  
Issuer:

By: Herman A. White, Jr.  
Title: Vice President

Sumitomo Bank of California  
San Francisco, California  
ABA No. 121-002-042  
To the account of The Sumitomo  
Bank, Limited  
Reference: Quantum LC  
Attn: Herman A. White, Jr.

BANKS

THE SUMITOMO BANK, LIMITED,  
ACTING THROUGH ITS SAN FRANCISCO  
BRANCH

Address for notices:

San Francisco Branch  
555 California Street,  
Suite 3350  
San Francisco, CA 94104  
Attn: Herman A. White, Jr.  
Telephone: (415) 616-3009  
Fax: (415) 397-1475

By: Yuji Harada  
Title: General Manager

By: Herman A. White, Jr.  
Title: Vice President

THE FUJI BANK, LIMITED,  
ACTING THROUGH ITS SAN FRANCISCO  
AGENCY

Address for notices:

601 California Street  
San Francisco, CA 94108  
Attn: Michael P. Rogers  
Telephone: (415) 362-4740  
Fax: (415) 362-4613

By: Kazuo Kamio  
Title: General Manager

THE INDUSTRIAL BANK OF JAPAN,  
LIMITED, ACTING THROUGH ITS  
SAN FRANCISCO AGENCY

Address for notices:

555 California Street  
Suite 3110  
San Francisco, CA 94104  
Attn: Michael D. McCorriston  
Telephone: (415) 693-1822  
Fax: (415) 982-1917

By: Masuda Makoto  
Title: Joint General Manager

SCHEDULE 1.1

FED FUNDS RATE

"FED FUNDS RATE" means, on any day, the rate of interest charged by the Agent at its San Francisco office on such day (or its Los Angeles office, if the San Francisco office is not on such day selling Federal Funds) for the sale by the Agent to other prime banks of (or, if the Agent is not on such day selling Federal Funds, then the average, rounded upwards, if necessary, to the nearest 100th of 1% of the rate being offered for sale to the Agent by two other prime banks selected by the Agent for) Federal Funds for overnight deposits in an amount comparable to the amount to which such rate relates. If the Agent is not selling Federal Funds to, or purchasing from, other banks at the relevant time with respect to overnight deposits then such rate shall be the Prime Rate for each such day.

SCHEDULE 2.1

COMMITMENTS

BANK	COMMITMENT	PERCENTAGE SHARE
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— The Sumitomo Bank, Limited,	\$ 30,000,000	35.294117647%
— San Francisco Branch		
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— The Fuji Bank, Limited,	\$ 27,500,000	32.352941176%
— San Francisco Agency		
—		
— The Industrial Bank of Japan,	\$ 27,500,000	32.352941176%
— Limited, San Francisco Agency		
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—	\$ 85,000,000	100.000000000%
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## QUANTUM CORPORATION

## LEASE AGREEMENT

## WESTERN MANUFACTURING WING

## 1. PARTIES

This Lease, dated this 31st day of August, 1995, is entered into between CRAY COMPUTER CORPORATION, a Delaware corporation ("Landlord"), whose address is 1110 Bayfield Road, P.O. Box 17500, Colorado Springs, CO 80935, and QUANTUM CORPORATION, a Delaware corporation ("Tenant"), whose address is 500 McCarthy Drive, Milpitas, CA 95035.

## 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises shown in cross-hatch on the plan attached hereto as EXHIBIT A (hereinafter referred to as the "Premises"), and hereby by reference thereto made a part hereof. The Premises consist of approximately 128,000 rentable square feet inclusive of the western wing or section of that certain building known as the Cray Computer Corporation building located at 1110 Bayfield Road, Colorado Springs, Colorado, and approximately 26.4891 acres of land, all as shown on EXHIBIT A attached hereto and legally described on EXHIBIT B attached hereto (the "Project"). The Project does not include the vacant land which is owned by Cray and which is adjacent to the Premises and, accordingly, no Additional Rent shall be payable with respect to said vacant land. Tenant shall also have the right to use in conjunction with other tenants in the building, all common facilities in the Project including hallways, conference rooms, restroom facilities, elevators and stairs.

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

## 3. USE

(a) The Premises are to be used for general office purposes the design and manufacture of electronic components, chips, semi-conductors and parts, and the assembly and storage of same, and all uses appurtenant to any of the foregoing from time to time hereafter, and for no other purpose without the prior written consent of Landlord. Tenant shall be deemed at all times to be in compliance with all terms and conditions of this paragraph 3(a) so long as Tenant's use of the Premises shall be substantially similar to the use of the Premises by Landlord prior to the commencement Date.

(b) Tenant shall not use, or permit said Premises or any part thereof to be used, for any purpose or purposes other than the purposes for which the said Premises are leased; and no use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Project, or cause a cancellation of any insurance policy covering the Project, or any part thereof (and Landlord represents and warrants that Tenant's use of the Premises permitted in paragraph 3(a) above shall not cause any such termination), nor shall Tenant sell, or permit to be kept, used or sold in or about the Premises any article which may be prohibited by Landlord's insurance policies. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant at the Project, nor without limiting the generality of the foregoing, shall Tenant allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant use any apparatus, machinery or device in or about the Premises which shall make any noise or set up any vibration which impairs the use of the Project by other tenants at the Project.

(c) Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any material way conflict with any applicable law, statute, ordinance or government rule or regulation now in force or which may hereafter be enacted or promulgated, unless the continuation of such use is permitted thereunder. Tenant shall, at its sole cost and expense, promptly and substantially comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the conditions, use or occupancy of the Premises, but Tenant shall not be required to alter the physical improvements in the Premises or make structural changes to the Project, which alterations and changes shall remain the responsibility of the Landlord and shall be made at Landlord's sole cost and expense.

(d) Tenant will not at any time, without obtaining Landlord's prior written consent, conduct or permit any fire, bankruptcy or auction sale at the Premises; or park, operate, load or unload any truck or other delivery vehicle any place other than the loading area designated for such use; or use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any foreign substance therein other than in conformity with applicable laws and permits; or install any amplifiers, loudspeakers, phonographs, microphones, or similar devices for any purpose, or use any advertising medium, which may be heard or seen outside of the building; permit any rubbish or garbage to accumulate on the Premises in other than rubbish removal areas; or install, maintain, alter or operate any sign or display visible to public view inside or outside the Project, except as provided in the section entitled "SIGNAGE" contained herein; or store materials, supplies, equipment or other materials outside the Project or outside of the Premises.

(e) Tenant will not, at any time, deface or injure any portion of the Premises; or burn anything in or about the Premises except in connection with the permitted use of the Premises hereunder; or keep or display any merchandise or other object on, or otherwise obstruct any sidewalks, stairways, walkways, streets, parks or parkways; or use or permit the use of any portion of the Premises as living quarters, sleeping rooms or for similar uses.

#### 4. RENT

Tenant shall pay to Landlord, without offset, deduction, notice, or demand, rent ("Rent") for the Premises as follows:

(a) BASE RENT. Tenant shall pay to Landlord as rent during the Primary Lease Term the amounts and the rates as follows:

Rental for the Primary Lease Term shall be \$2,248,000 ("Base Rent") payable in advance upon execution of this Lease by Landlord.

Rent shall be payable in advance, on or before the first day of each and every calendar month during the term hereof. Base Rent shall be paid to Landlord in lawful money of the United States of America at the address of Landlord set forth in Section 1 hereof, or such place as Landlord may from time to time designate in writing. Notwithstanding anything herein to the contrary, in the event the term of this Lease ends on a day other than the last day of a calendar month, then upon the first day of the last calendar month of the term hereof, Tenant shall pay to Landlord, as rental for the period from said first day of the last calendar month to and including the last day of the term hereof, that proportion of the monthly rental which the number of days between said first day of said calendar month and the last day of the term of said Lease bears to the actual number of days in said month.

(b) ADDITIONAL RENT. Tenant covenants and agrees to pay an Additional Rent amount equal to Tenant's proportionate share ("Tenant's Proportionate Share") of the amount of "Direct Operating Expense" and "Real Estate Taxes" (as said terms are hereinafter defined) incurred for the year 1995 and each year thereafter during the Term of this Lease, but in no event shall such terms include unpaid expenses or taxes for years prior to 1995. Additional Rent shall be paid to the management company which is a party to the Management Agreement ("Management Company") to be held separate from Landlord's funds for the

purposes set forth herein.

(i) DIRECT OPERATING EXPENSE: All direct costs of operation and maintenance of the Project determined by standard accounting practices according to GAAP which shall include the following costs by way of illustration, but shall not be limited to: fees paid to the Management Company pursuant to the Management Agreement, as hereinafter defined, payroll charges and/or taxes and workmen's compensation but only for personnel employed by the Management Company to work solely with respect to the Project or a pro rata share of such items if the personnel are employed to work on buildings other than the Project, insurance, electricity, lamps, florescent tubes, ballasts, steam, fuel, utility taxes, water (including sewer charges and/or rental), casualty and liability insurance, repairs and cleaning fees, security system and burglar alarm costs for the existing system and alarm, service contracts with independent contractors, telephone, stationery, and equipment necessary for the maintenance and operation of the Project. "Direct Operating Expenses" shall not include depreciation on the Project or equipment therein, loan payments, real estate brokers commissions, capital expenditures or tenant finish expenses for other Tenants. Concurrently herewith, Landlord has entered into the Management Agreement with Koll, The Real Estate Services Company, dated August 31, 1995, a copy of which is attached hereto as EXHIBIT C (the "Management Agreement").

Landlord will not take any action, except actions required by law, which will materially increase the amount of Direct Operating Expenses at the Project over the amount of such expenses for the calendar year 1994.

(ii) REAL ESTATE TAXES shall mean and include all general and special taxes and assessments levied upon or assessed against the Project. If at any time during the term of this Lease, the method of taxation of real estate prevailing at the time of execution hereof shall be or has been altered so as to cause the whole or any part of the taxes now or hereafter levied, assessed or imposed on real estate to be levied, assessed or imposed upon Landlord wholly or partially as a capital levy or measured by the rents received therefrom, then such new or altered taxes attributable to the Premises shall be deemed to be included within the term "Real Estate Taxes" for the purposes of this paragraph, except that such shall not be deemed to include any enhancement of said tax attributable to other income or other ownerships of Landlord. Tenant shall in no event be responsible to reimburse Landlord for any general income tax liabilities incurred by Landlord nor any franchise, excise, sales or excess profits tax levied upon or assessed against Landlord.

Tenant shall have the right, by itself or together with other tenants of the Project, and at its expense, to contest the validity of and seek an abatement of the Real Estate Taxes in the name of the Landlord, and the Landlord agrees to cooperate with Tenant in any such contest and in connection therewith shall make available to Tenant such information and shall execute such authorizations or instruments as Tenant may reasonably request. The proceeds of any abatement award shall be applied first to reimburse the parties for the costs and expenses, including attorney's fees, of obtaining such abatement; second, to reimburse Tenant and other tenants in the Project for any payments made to the Landlord which were attributable to the increased taxes; and, third, to the Landlord.

(iii) The Tenant shall pay the amount of Direct Operating Expenses and Real Estate Taxes multiplied by a fraction, the numerator of which is the Tenant's approximate rentable square footage and denominator of which is the square footage contained in the Project, which contains approximately 168,000 rentable square feet. The tenant's rentable square footage is agreed to be 128,000 square feet, which constitutes 76.20% of the Project, except if all tenants in the Project agree otherwise with the Management Company which agreement shall not be binding upon Landlord but shall be effective between and among the tenants at the Project.

Landlord shall give to Tenant on or before the first day of January of each year during the Term a statement of the estimated Additional Rent payable by Tenant hereunder, but failure by Landlord to give such statement by said date shall not constitute a waiver by Landlord of its right to collect Additional Rent. The amount so estimated shall be divided into twelve (12) equal installments, and Tenant shall pay the Landlord an amount equal to 1/12th of such estimate on or before the first day of each calendar month of each such year. Upon receipt by

Landlord of the actual statements for Direct Operating Expenses and Real Estate Taxes for the year, Landlord shall refund any excess of the estimated monthly payments of Additional Rental paid hereunder or Tenant shall pay Tenant's Proportionate Share of the amount by which the actual statements exceed the estimated monthly payments. Tenant upon prior written notice to Landlord shall be entitled to inspect Landlord's books and records for the Project (which Landlord agrees to maintain for a period of not less than five (5) years after the end of the applicable calendar year) as contemplated herein. Such right of inspection shall be limited to two (2) semi-annual inspections per year and Tenant shall not be entitled to withhold or delay the payment of Additional Rent until Tenant inspects or completes its inspection of Landlord's books and records.

(iv) Even if the Term has expired and Tenant has vacated the Premises when the final determination is made of Tenant's share of Direct Operating Expenses and/or Real Estate Taxes for the year in which this Lease terminates, Tenant shall immediately pay any such amounts due to Landlord.

(v) In the event that the Commencement Date of this Lease shall be a day other than the first day of the year or if the term of this Lease shall expire or be terminated on a day other than the last day of the year, then the Additional Rent due hereunder for the then current year shall be reasonably estimated by Landlord and shall be prorated and payable by Tenant on a monthly basis as set forth in subparagraph (iii) of this paragraph 4.

(c) LATE CHARGE. Tenant agrees that in the event any payment or installment of Additional Rent hereunder is not paid on or before the tenth day of each month, Tenant shall pay to Landlord a rental delinquency charge of One Hundred Dollars (\$100.00), which sum shall be due and payable upon such default. Any rent or sums due from Tenant which are more than one (1) month delinquent shall bear interest at the rate of 12% per annum from the due date.

#### 5. PREPARATION AND ACCEPTANCE OF PREMISES

(a) Landlord agrees that Tenant may cause the Premises to be modified in accordance with the plans, specifications and agreement approved by both parties and attached hereto as EXHIBIT C and made a part of this Lease. The work required to complete the Premises to the Tenant's specifications shall be completed at the cost and expense of Tenant.

Landlord represents that the Premises are suitable for purposes for which they are intended. Neither Landlord nor Landlord's agents have made any other representations, warranties or promises with respect to the physical condition of the Project, the land upon which it is erected, or the Premises, or any matter or thing affecting or related to the Premises except as herein expressly set forth in this Lease.

(b) The "Commencement Date" of this Lease is September 1, 1995. The Tenant, by taking possession of the Premises, shall be deemed to have agreed that the Premises are then in a satisfactory order, repair and condition, except as set forth on a list prepared by Landlord and Tenant prior to occupancy and Tenant shall provide Landlord, upon request, a written acknowledgement of acceptance.

#### 6. TERM

This Lease shall have a term of two years ("Primary Lease Term"), commencing on the Commencement Date. If the Commencement Date is not the first day of the month, Rent for the month in which the Commencement Date occurs shall be prorated based on the number of days during such month that the term is in effect. The first full monthly installment of rent shall be due on the first day of the next month and after the expiration of the number of years of the Primary Lease Term, the term shall be extended on the last day of the same month in which the Commencement Date of the Primary Lease Term occurred, it being the intent of the parties that the Primary Lease Term expire on the last day of a month. If, after the expiration of this Lease, Tenant shall remain in possession of the Premises the possession shall be pursuant to the Holdover Term as provided in Section 7 below. The Primary Lease Term and the Holdover Term are collectively referred to as the Combined Term.

#### 7. HOLDOVER TERM

Provided that (i) Tenant is not in default hereunder at the end of the Primary Lease Term beyond any grace period applicable thereto or (ii) neither Landlord nor Tenant has given to the other a notice at least twelve (12) months prior to the end of the Primary Lease Term in the case of the Landlord's notice or thirteen (13) months prior to the end of the Primary Lease Term in the case of the Tenant's notice terminating this Lease as of the end of the Primary Lease Term, Tenant may continue in possession of the Premises and this Lease shall be extended for an additional term of three (3) years (the "Holdover Term"). The terms and conditions of this Lease will govern the Holdover Term except that the Base Rent shall be \$720,000.00 per annum payable in monthly installments of \$60,000.00 per month.

This Lease may be terminated during the Holdover Term but not the Primary Lease Term by either Tenant or Landlord by election in writing to terminate, which election may be made during the Primary Lease Term or the Holdover Term. The termination date of this Lease shall be thirteen (13) months following the date of a notice of election to terminate from Tenant and twelve (12) months following the date of a notice of election to terminate from Landlord.

#### 8. SECURITY DEPOSIT

The prepaid rent paid hereunder is not a security deposit. If Tenant defaults with respect to any provisions of this Lease, including but not limited to the provisions relating to the payment of Rent, Landlord may apply any part of the prepaid rent to the payment of any sum in default, accrued interest, late payment fees, or for the payment of or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. Landlord shall not be required to keep the prepaid rent separate from its general funds, and Tenant shall not be entitled to a return of prepaid rent in any event or interest on the prepaid rent.

#### 8.A. PUT

In the event that a tenant at the Project gives to the Landlord a notice of termination under the paragraph entitled "Holdover Term" contained in such tenant's lease, Landlord shall notify the Tenant of the fact of the notice of termination and the anticipated date of vacation of the Project by the vacating tenant. Tenant shall have thirty (30) days after the date of the notice from the Landlord to agree to rent the premises of the vacating tenant (the "Additional Premises") on the same terms and conditions as rented to the vacating tenant. In the event that the Tenant elects to occupy the Additional Premises of the vacating tenant, the Tenant will accept all and not less than all of the Additional Premises. The Additional Premises shall be added to the Premises hereunder and the rent and terms and conditions of this Lease shall control except for amendments to add the Rent for the Additional Premises and Additional Premises to the Premises hereunder. Nothing contained herein shall affect the Tenant's or the Landlord's rights to terminate this Lease including the Additional Premises under the paragraph entitled "Holdover Term" below.

#### 9. ENVIRONMENTAL MATTERS

(a) ENVIRONMENTAL COMPLIANCE. Tenant and its agents and employees shall use the Premises and conduct any operations thereon in compliance with all applicable federal, state and local environmental health and safety statutes, regulations, ordinances and any permits, approvals or judicial or administrative orders issued thereunder ("Environmental Laws").

(b) ENVIRONMENTAL HAZARDS. Tenant covenants that:

(i) No Hazardous Substances other than those required in connection with the Tenant's business which will be handled and disposed of in accordance with all Environmental Laws shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Premises or the Project by Tenant or anyone for whom Tenant is legally responsible, including without limitation, the surface and subsurface waters of the Premises;

(ii) No activity shall be undertaken on the Premises or the Project by Tenant or anyone for whom Tenant is legally responsible, which would cause:

a. the Project or the Premises to become a hazardous waste treatment, storage or disposal facility within

the meaning of, or otherwise cause the Premises to be in violation of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., or any similar state law or local ordinance;

b. a release or threatened release from any source on the Project or the Premises of Hazardous Substances from the Premises within the meaning of, or otherwise cause the Premises to be in violation of, the Comprehensive Environmental Response Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq. or any similar law or local ordinance or any other environmental law; or

c. the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, without the appropriate permit under the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. Section 1251 et seq. or the Clean Air Act ("CAA"), 42 U.S.C. Section 7401 et seq., or any similar state law or local ordinance;

(iii) Under no circumstances will Tenant act as or be deemed to be the owner or operator of the underground storage tank located on the Premises containing diesel fuel used to power the emergency generator. Tenant will not be responsible for care, maintenance, filling, testing, or any other activity associated with the tank. Pursuant to the terms of the indemnity specified in this Lease, Landlord assumes all responsibilities of ownership and operation of the tank and all liabilities arising therefrom, except for Tenant's negligence.

(iv) The provisions of this Section shall not prohibit the use, storage, and disposal by Tenant of reasonable and necessary quantities of office equipment, supplies and other substances normally utilized by businesses engaged in the uses permitted hereunder, provided such use, storage, and disposal shall comply with all Environmental Laws.

Further, Landlord agrees that it will incorporate into any lease of space within the Project, a provision requiring any tenant to perform obligations substantially similar to those contained in this paragraph 9.

For purposes of this Lease, "Hazardous Substances" shall mean any and all hazardous or toxic substances, hazardous constituents, contaminants, wastes, pollutants or petroleum (including without limitation crude oil or any fraction thereof), including without limitation hazardous or toxic substances, pollutants and/or contaminants as such terms are defined in Environmental Laws including any modification or amendments of Environmental Laws as may occur during the Combined Term. Notwithstanding the foregoing to the contrary, Tenant shall not be responsible for the removal of any Hazardous Substances on or within the Premises or the Project which are addressed or listed in the attached Phase I and Phase II report attached hereto as Schedule I, including Hazardous Substances which are identified in the Phase I or Phase II report as probable to migrate to the Premises from an identified source (the "Pre-existing Condition").

## 10. SERVICES

(a) Landlord agrees to furnish to the Premises at all times during the Combined Term, water and electricity suitable for the intended use of the Premises, heat and air conditioning necessary for the intended use of the Premises, usual janitorial and maintenance service and elevator service and all other services specified in the Management Agreement. Landlord shall also maintain and keep lighted the common stairs, entries and toilet rooms in the Project.

(b) Landlord shall not be liable for failure or interruption of utility services systems or services so long as Landlord uses reasonable diligence to provide or restore such services. Landlord may discontinue services due to accident, repairs, strikes, acts of God, or any other event beyond the reasonable control of Landlord; provided, however, that Landlord shall diligently pursue the restoration of such services. In such event, Landlord shall not be liable for such failure or discontinuance, nor shall such failure or discontinuance be construed as a constructive eviction of Tenant unless such failure shall prevent Tenant from doing business for a period of ten (10) calendar days, then such failure shall be an abatement of Rent. Landlord's obligation to furnish systems for the delivery of electricity and gas is further conditioned upon the availability of adequate sources from the utility company



\_servicing the Project.

—  
\_ (c) If heat-generating machines or equipment, including  
\_ telephone equipment, are brought into the Premises after the  
\_ Commencement Date, which are in addition to the machines or  
\_ equipment that have been approved by Landlord and which affect  
\_ the temperature otherwise maintained by the air conditioning  
\_ system, Landlord reserves the right to install supplementary air  
\_ conditioning units in the Premises and the cost thereof,  
\_ including the reasonable cost of installation, and the cost of  
\_ operation and maintenance thereof, shall be paid by Tenant to  
\_ Landlord upon demand by Landlord. Landlord has reviewed the  
\_ equipment to be installed by Tenant in the Premises on the  
\_ commencement date of the Lease, which approved equipment is more  
\_ particularly described on EXHIBIT D (the "Approved Equipment")  
\_ and agreed that such equipment will not require supplementary air  
\_ conditioning units. Tenant will pay the costs for venting  
\_ noxious fumes, if any, from the Premises.

—  
\_ (d) If Tenant shall require water or electric current in  
\_ excess of that furnished or supplied for use of the Premises as  
\_ intended as of the Commencement Date of this Lease, Tenant shall  
\_ first procure the written consent of the Landlord, to the use  
\_ thereof and Landlord, in the event Landlord consents to the  
\_ excessive water or electric current usage, may cause a water  
\_ meter or electric current meter to be installed in the Premises,  
\_ so as to measure the amount of water and electric current  
\_ consumed for any such other use. The cost of any such meters and  
\_ of installation, maintenance and repair thereof, shall be paid  
\_ for by Tenant, and Tenant agrees to pay to Landlord promptly upon  
\_ demand therefore by Landlord for all such water and electric  
\_ current consumed, as shown by said meters, at the rates charged  
\_ for such services by the local public authority, or the local  
\_ public utility, as the case may be, furnishing the same, plus any  
\_ additional expense incurred keeping account of the water and  
\_ electric current so consumed.

#### \_11. TENANT REPAIRS AND ALTERATIONS

—  
\_ (a) Except for the improvements and alterations  
\_ contemplated by EXHIBIT D, Tenant shall not make any alterations,  
\_ additions or improvements to the Premises, or change any plumbing  
\_ or wiring exceeding the cost of \$50,000 in any one calendar year  
\_ or any structural changes, without the prior written consent of  
\_ Landlord. Plans and specifications for such work shall be  
\_ submitted to and approved in writing by Landlord prior to  
\_ commencement of any such work. No fixtures shall be removed from  
\_ the Premises. Landlord shall have the right to approve Tenant's  
\_ contractors as well as the general manner and method in which  
\_ such work is to be performed. Prior to commencement of any work,  
\_ Tenant shall provide Landlord with insurance certificates  
\_ evidencing that all contractors and subcontractors have workmen's  
\_ compensation insurance, and builder's risk insurance in amounts  
\_ and with coverages satisfactory to Landlord. Any such new  
\_ alterations, additions or improvements, including wall covering,  
\_ paneling and built-in cabinet work, but excepting movable  
\_ furniture and trade fixtures, shall at once become a part of the  
\_ realty and belong to Landlord and shall be surrendered with the  
\_ Premises. Upon the expiration of the term hereof, Tenant shall,  
\_ upon written demand by Landlord, at Tenant's sole cost and  
\_ expense, remove any alterations, additions or improvements made  
\_ by Tenant, designated by Landlord to be removed at the time of  
\_ giving of its consent; and Tenant shall, at its sole cost and  
\_ expense, repair any damage to the Premises caused by such  
\_ removal, except that Tenant shall have no obligation to make any  
\_ repairs with respect to the removal of the assets purchased by  
\_ Tenant from Landlord as of the date of execution of this Lease.  
\_ Notwithstanding the preceding sentence, Tenant, upon expiration  
\_ of the Lease, shall have no obligation to remove the improvements  
\_ and alterations contemplated by EXHIBIT D, except that Tenant, at  
\_ Landlord's election by notice to Tenant given at least ninety  
\_ (90) days prior to Lease expiration, shall re-install (a) the  
\_ drop ceiling to a height of ten (10) feet in the  
\_ warehouse/storage area on the second level (such restoration to  
\_ consist of the ceiling grid and ceiling tiles, lights, fire  
\_ sprinklers, and HVAC diffusers and (b) the vinyl tile on the  
\_ floor of the warehouse/storage area. At least twenty (20) days  
\_ prior to the commencement of any work on the Premises for which  
\_ Landlord's consent is required hereunder, Tenant shall notify  
\_ Landlord of the names and addresses of the persons supplying  
\_ labor and materials so that Landlord may give notice that it  
\_ shall not be subject for any lien for Tenant's work, in  
\_ accordance with Colorado's mechanics' lien statutes. Landlord  
\_ shall have the right to keep posted on the Premises notice to  
\_ such persons in accordance with such statute.

— (b) Tenant shall pay or cause to be paid all costs for work  
— done by or on behalf of Tenant or caused to be done by or on  
— behalf of Tenant on the Premises of a character which will or may  
— result in liens against Landlord's interest in the Premises or  
— the Project, or any part thereof and Tenant will keep the same  
— free and clear of all mechanics' liens and other liens on account  
— of work done for or on behalf of Tenant or persons claiming under  
— Tenant. Tenant hereby agrees to indemnify, defend and save  
— Landlord harmless of and from all liability, loss, damages, costs  
— or expenses, including attorneys' fees, incurred in connection  
— with any claims of any nature whatsoever for work performed for,  
— or materials or supplies furnished to Tenant, including lien  
— claims of laborers, materialmen or others. Should any such liens  
— be filed or recorded against the Premises or the Project with  
— respect to work done for or materials supplied to or on behalf of  
— Tenant or should any action affecting the title thereto be  
— commenced, Tenant shall cause such liens to be released of record  
— within twenty (20) days after notice thereof. If Tenant desires  
— to contest any such claim of lien, Tenant shall nonetheless cause  
— such lien to be released of record by discharge, bonding or the  
— posting of adequate security with a court of competent  
— jurisdiction as may be provided by Colorado's mechanics' lien  
— statutes. If Tenant shall be delinquent in paying any charge for  
— which such a mechanics' lien or suit to foreclose such a lien has  
— been recorded or filed and shall not have caused the lien to be  
— released as aforesaid, Landlord may (but without being required  
— to do so) pay such lien or claim and costs associated therewith,  
— and the amount so paid, together with interest thereon at the  
— Interest Rate and reasonable attorneys' fees incurred in  
— connection therewith, shall be immediately due from Tenant to  
— Landlord as Additional Rent.

#### — 12. PERSONAL PROPERTY TAXES

— During the term hereof, Tenant shall pay prior to  
— delinquency all personal property taxes assessed against and  
— levied upon fixtures, furnishings, equipment and all other  
— personal property of Tenant contained on the demised Premises,  
— and Tenant shall cause said fixtures, furnishings, equipment and  
— other personal property to be assessed and billed separately from  
— the real property of Landlord. In the event any or all of the  
— Tenant's fixtures, furnishings, equipment and other personal  
— property shall be assessed and taxed with the Landlord's real  
— property, the Tenant shall pay to Landlord its share of such  
— taxes within ten (10) days after delivery to Tenant by Landlord  
— of a statement, in writing accompanied by reasonable proof of the  
— allocation to personal property taxes set forth in such  
— statement, setting forth the amount of such taxes applicable to  
— the Tenant's property.

#### — 13. INDEMNITY

— Tenant shall indemnify and hold harmless Landlord against  
— and from any and all claims arising from Tenant's use of the  
— Premises or any claim arising from any breach or default on  
— Tenant's part under the terms of this Lease, or from any act,  
— omission, or negligence of Tenant, or any officer, agent,  
— employee, guest or invitee of Tenant, and from all costs,  
— attorneys' fees, and liabilities incurred in or about the defense  
— of any such claim or any action or proceeding brought thereon.  
— Tenant assumes all risk of damage to property or injury to  
— persons in, upon or about the Premises, from any cause other than  
— Landlord's negligence or the negligence of any person or entity  
— for whom Landlord is legally responsible. Tenant shall give  
— prompt notice to Landlord in case of casualty or accidents in the  
— Premises.

— Landlord shall indemnify, hold harmless, and defend (with  
— counsel reasonably acceptable to Tenant) Tenant from and against  
— any liabilities, claims, demands, obligations, responsibilities,  
— losses, damages, punitive damages, consequential damages, treble  
— damages, charges, costs and expenses (including without  
— limitation, attorneys', experts' and consultants' fees and costs  
— of investigation and feasibility studies), fines, penalties, and  
— monetary sanctions or interest which are incurred at any time  
— relating to the Landlord's use or ownership of the Premises that  
— (i) is the result of the existence of Landlord's operations on  
— the Premises; (ii) is the result of the existence Hazardous  
— Substances upon, about, or beneath the Premises prior to the  
— Commencement Date which are Pre-Existing Conditions as defined  
— above; or (iii) is the result of the existence of a violation of  
— Environmental Laws pertaining to the Premises that existed or  
— arose out of operations prior to the Closing Date (collectively  
— "Pre-Existing Liabilities"), that may be incurred by, imposed

upon, or asserted or awarded against Tenant, except for Pre-Existing Liabilities attributable to the gross negligence or willful misconduct of Tenant.

#### 14. INSURANCE

Tenant shall procure and maintain at its own cost at all times during the term of this Lease and any extensions hereof, fire, hazard and extended coverage insurance on Tenant's property and the contents of the Premises in an amount not less than full replacement value, comprehensive general liability insurance, including coverage for bodily injury, property damage, personal injury (employee and contractual liability, exclusions deleted), products and completed operations, contractual liability, owner's protective liability and broad form property damage with the following limits of liability: One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury, property damage and personal injury; One Million Dollars (\$1,000,000.00) aggregate for bodily injury and property damage for products and completed operations. All such insurance shall be procured from a responsible insurance company authorized to do business in Colorado and rated no lower by Best than A-, and shall be otherwise satisfactory to Landlord. All such policies shall name Landlord and Landlord's managing agent as an additional insured only with respect to Tenant's negligence, and shall provide that the same may not be canceled or altered except upon thirty (30) days prior written notice to Landlord. All insurance maintained by Tenant shall be primary to any insurance provided by Landlord. If Tenant obtains any general liability insurance policy on a claims-made basis, Tenant shall provide continuous liability coverage for claims arising during the entire term of this Lease, regardless of when such claims are made, either by obtaining an endorsement providing for an unlimited extended reporting period in the event such policy is canceled or not renewed for any reason whatsoever or by obtaining new coverage with a retroactive date the same as or earlier than the expiration date of the canceled or expired policy. Tenant shall provide certificate(s) of such insurance to Landlord upon commencement of the Lease term and at least thirty (30) days prior to any annual renewal date thereof and upon request from time to time and such certificate(s) shall disclose that such insurance names Landlord and Landlord's managing agent as an additional insured, in addition to the other requirements set forth herein. The limits of such insurance shall not, under any circumstances, limit the liability of Tenant hereunder.

Landlord shall maintain during the Combined Term of this Lease liability insurance and all-risk fire, hazard and extended coverage insurance on the Project in the amount of the replacement value from insurance companies conforming to the standards set forth in this paragraph 14. Landlord shall provide certificate(s) of the insurance which Landlord is obligated to carry hereunder to the Tenant upon the execution of this Lease, and at least thirty (30) days prior to any annual renewal date thereof, and upon request from time to time by Tenant, and such certificate(s) shall disclose that such insurance complies with the requirements set forth herein. The limits of such insurance shall not, under any circumstances, limit the liability of Landlord hereunder.

#### 15. SUBROGATION

As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss or damage to property insured by fire, extended coverage, or any other property insurance policies existing for the benefit of the respective parties. The foregoing waiver shall be in force only if both parties' insurance policies contain a clause providing that such a waiver shall not invalidate the insurance and such a policy can be obtained without additional premiums.

#### 16. LANDLORD REPAIRS

Landlord shall maintain all portions of the Project in good order, condition and repair, including without limitation the roof, foundation, and floor slab thereof, and of any structural portion of the Project which affects the Premises. There shall be no abatement of Rent and no liability of Landlord by reason of any injury to, or interference with, Tenant's business arising from the making of any repairs, alterations or improvements except as set forth in paragraphs 21 and 22 below.

#### 17. COMMON AREAS

All Common Areas shall be at all times under Landlord's exclusive control but subject to the right of Tenant to use the same at any time during the Term. Landlord shall keep common areas in clean and orderly condition. The term "Common Areas" means all the areas of the Project which are not intended for renting and, instead, designed for the common use and benefit of the Landlord and all of the tenants, their employees, agents, customers, and invitees. The Common Areas include, but, are not limited to, public restrooms, landscaped and vacant areas, parking areas (other than the exclusive areas thereof), driveways, walks, and curbs, and facilities appurtenant to each, as such areas may exist from time to time.

#### 18. SIGNAGE

Tenant may erect a sign on the door to the Premises and the entrance to the Project, provided that such sign shall meet all applicable municipal sign codes and the plans of which shall have been, previous to installation, submitted to Landlord for written approval which approval shall not be unreasonably withheld or delayed. All costs incurred in connection with any signage and the installation thereof shall be paid by Tenant.

#### 19. LIMITED LIABILITY

Landlord shall not be liable for any loss or damage resulting from: (a) fire, explosion, falling plaster, steam, (gas, electricity, water or rain); (b) the pipes, appliances or plumbing systems in the Project; (c) the roof, street, subsurface; (d) any variation or interruption of utility services so long as Landlord shall promptly use its best efforts to restore same; (e) theft or other criminal acts of third parties; or (f) any other cause whatsoever, unless due to the negligence or willful misconduct of Landlord or any person or entity for whom Landlord is legally responsible. Notwithstanding the foregoing, Landlord shall remain liable for the breach of contractual liabilities contained herein.

#### 20. ASSIGNMENT AND SUBLETTING

(a) Tenant shall not assign this Lease or sublet all or any part of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord's consent to any requested assignment or subletting shall be subject to the following conditions:

(i) Such consent and resulting subletting or assignment shall not relieve Tenant of its primary obligations hereunder, including the obligation for payment of all Rent due hereunder;

(ii) Landlord, at its option and from time to time, may collect the rent from the subtenant or assignee, and apply the net amount collected to the rent herein reserved, but no such collection shall be deemed an acceptance by Landlord of the subtenant or assignee as the tenant hereof, or a release of Tenant from further performance of covenants on the part of Tenant herein contained;

(iii) Any such subtenant or assignee shall be a company or other entity of good repute, engaged in a business or profession compatible with and in keeping with the standards of the Project and financially capable of performing its obligations with respect to the Premises;

(b) In the event of any assignment of this Lease or subletting of all or any part of the Premises by Tenant without Landlord's consent when Landlord's consent is required hereunder, Landlord in addition to any rights contained herein, shall have the right to collect and receive the excess of rent due to Tenant from such sublessee or assignee over the Rent charged to and due from Tenant hereunder;

(c) All subleases or assignments shall be in writing and a copy thereof provided to Landlord within ten (10) days prior to its effective date. All subleases shall further contain an express provision that in the event of any default by Tenant under this lease and upon notice thereof to the subtenant from Landlord, all rentals payable by the subtenant shall be paid directly to Landlord for the Tenant's account until subsequent notice from Landlord that such default has been cured. Notwithstanding the foregoing, receipt by Landlord of rent directly from the subtenant shall not be considered a waiver of the default on the part of Tenant, nor an acceptance of such subtenant.

(d) Any attempted assignment or subletting without Landlord's prior written consent, when Landlord's consent is required hereunder, shall be wholly void and shall constitute a breach of this Lease. Acceptance of Rent by Landlord from anyone other than Tenant shall not be construed as a release of Tenant from any obligation or liability under this Lease. The consent of Landlord to an assignment or underletting shall not be construed to relieve Tenant from obtaining the written consent of Landlord to any further assignment or underletting.

(e) Notwithstanding anything in this Lease to the contrary:

i) Tenant shall have the right to assign this Lease or to sublet all or any portion of the Premises, whether expressly or by operation of law (including without limitation by merger, consolidation, reorganization or the like) without the requirement of Landlord's consent, as follows:

a) To any corporation or entity which is a parent, subsidiary or affiliate of Tenant;

b) To any corporation or entity resulting from a merger or consolidation, or the formation of a joint venture or partnership; or

c) By a transfer of stock, whether or not a controlling interest, in Tenant;

d) or to M/A-COM.

ii) In no event shall any officer, director or shareholder of Tenant at any time be liable for any of Tenant's obligations under this Lease except to the extent such officer, director or shareholder shall be an assignee of this Lease or shall have executed a separate instrument of guaranty of this Lease.

## 21. DAMAGE BY CASUALTY

(a) Subject to Subsections (b), (c) and (d) of this paragraph, in the event the Premises are damaged by fire or other casualty, Landlord shall repair such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate abatement of Base Rent and Additional Rent based upon the extent to which the Premises are not usable.

(b) If the Premises are totally damaged, or if the Project is so damaged that Landlord shall decide to demolish it, then Landlord or Tenant may elect to terminate the Lease by written notice to the other given within forty-five (45) days following such fire or other casualty.

(c) In case of any damage mentioned in this Section 21 Tenant may cancel this Lease by written notice to Landlord if Landlord has not substantially completed the making of the required repairs within forty-five (45) days from the date of damage, which period shall be extended by the number of days lost in the event of labor strikes, acts of God, or any other similar causes beyond the control of Landlord; provided, however, that such notice be given to Landlord prior to substantial completion of the required repairs.

(d) Landlord shall not be required to make any repairs or replacements of any leasehold improvements or fixtures, installed by or the personal property of Tenant. Landlord's obligation to make any repairs or replacement to or of the Project or the Premises shall be limited by the insurance proceeds received and Landlord shall not be required to make such repairs or replacement the total cost of which exceeds the actual insurance proceeds received.

## 22. EMINENT DOMAIN AND CONDEMNATION

(a) TOTAL CONDEMNATION. If the whole of the Premises shall be taken by condemnation or eminent domain, then the term hereof shall cease as of the day of the vesting of title or as of the day possession shall be so taken, whichever is earlier.

(b) PARTIAL CONDEMNATION. If only a portion of the Project but none of the Premises is taken by condemnation or eminent domain, this Lease shall continue in full force and effect as written and Landlord shall restore the Project to the extent practicable. If a portion of the Premises is taken, Landlord or Tenant shall be entitled to terminate this Lease, effective on the day of vesting of title or the day possession is taken, whichever is earlier, upon giving written notice to the other

\_within ninety (90) days from the taking.

—  
\_ (c) DAMAGES. In the event of any taking, Landlord shall be  
\_ entitled to any and all awards and/or settlements which may be  
\_ given, and Tenant shall have no claim for the value of any  
\_ unexpired term of this Lease. Tenant shall have the right to  
\_ claim from the condemning authority a separate award for damage  
\_ to Tenant's business and moving expense.

—  
\_ 23. ENTRY BY LANDLORD

—  
\_ Landlord and its agents shall have the right to enter the  
\_ Premises at all reasonable times during normal business hours  
\_ (except in the case of emergency) for the purpose of examining or  
\_ inspecting the same, to supply janitorial services and any other  
\_ service to be provided by Landlord hereunder, to show the same to  
\_ prospective purchasers or Tenants of the building, and make such  
\_ alterations, repairs, improvements or additions to the Premises  
\_ or to the Project as Landlord may deem necessary or desirable  
\_ which do not materially interfere with the Tenant's business. If  
\_ during the last month of the term hereof Tenant shall have  
\_ removed all of its property therefrom, Landlord may immediately  
\_ enter and alter, renovate, and redecorate the Premises without  
\_ elimination or abatement of rent or incurring liability to Tenant  
\_ for any compensation. Landlord, during the entire term of this  
\_ Lease, shall have the right, upon ninety (90) days prior written  
\_ notice to Tenant, to change the name, number or designation of  
\_ the Project without liability to Tenant.

—  
\_ 24. DEFAULT BY TENANT

—  
\_ (a) EVENT OF DEFAULT DEFINED. The following events (herein  
\_ referred to as an "Event of Default") shall constitute a default  
\_ by Tenant hereunder (with respect to the Events of Default listed  
\_ in subsections (ii) through (iii) below, Landlord shall give  
\_ Tenant a written notice of default and Tenant shall have thirty  
\_ (30) days to cure such default):

—  
\_ (i) Tenant shall default in the due and punctual  
\_ payment of Rent, or any amounts payable hereunder, and such  
\_ default shall continue for ten (10) days after written notice to  
\_ Tenant of the default, unless otherwise specifically provided  
\_ herein.

—  
\_ (ii) Tenant shall vacate or abandon the Premises.

—  
\_ (iii) If this Lease shall be assigned or sublet in  
\_ violation of paragraph 20.

—  
\_ (iv) This Lease or the Premises, or any part thereof,  
\_ shall be taken upon execution or by any other process of law  
\_ directed against Tenant, or shall be taken upon or subject to any  
\_ attachment at the instance of any creditor or claimant against  
\_ Tenant, and any such taking or attachment shall not be discharged  
\_ or disposed of within ninety (90) days after the levy thereof.

—  
\_ (v) Tenant shall file a petition in bankruptcy or  
\_ insolvency or for reorganization or arrangement under the  
\_ bankruptcy laws of the United States, or under any insolvency act  
\_ of any state, or shall voluntarily take advantage of any such law  
\_ or act by answer or otherwise, or shall be dissolved or shall  
\_ make an assignment for the benefit of creditors.

—  
\_ (vi) Involuntary proceedings under any such bankruptcy  
\_ law or insolvency act, or for the dissolution of Tenant shall be  
\_ instituted against Tenant, or a receiver or trustee shall be  
\_ appointed for all or substantially all of the property of Tenant,  
\_ and such proceedings shall not be dismissed or such receivership  
\_ or trusteeship vacated within ninety (90) days after such  
\_ institution or appointment.

—  
\_ (vii) Tenant shall fail to perform any of the other  
\_ agreements, terms, covenants or conditions herein on Tenant's  
\_ part to be performed, and such nonperformance shall continue for  
\_ a period of thirty (30) days after notice thereof by Landlord to  
\_ Tenant, or if such performance cannot be reasonably had within  
\_ such thirty (30) day period, Tenant shall not, in good faith have  
\_ commenced such performance within such thirty (30) day period and  
\_ shall not diligently proceed therewith to completion;

—  
\_ (b) REMEDIES. In the event of any such Event of Default,  
\_ Landlord may at any time thereafter, in its sole discretion, with  
\_ or without further notice or demand and without limiting Landlord  
\_ in the exercise of a right or remedy which Landlord may have by  
\_ reason of such default or breach, elect to pursue one or more of

the following remedies:

(i) Re-enter and take possession of the Premises or any part thereof and repossess the same as Landlords' former estate without prejudice to any remedies for arrears of rent or preceding breach of covenants or conditions. Should Landlord elect to re-enter the Premises as provided in this (i) or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, re-let the Premises or any part hereof in Landlord's or Tenant's name, but for the account of Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Premises) as Landlord, in its discretion, may determine, and Landlord may collect and receive the rents therefore. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such re-entry and/or reletting, to exercise its right to terminate this Lease by giving Tenant such written notice in which event, this Lease will terminate as specified in said notice.

(ii) In the event that Landlord does not elect to terminate this Lease as permitted in subparagraph (1) hereof, but on the contrary, elects to take possession as provided in subparagraph (1), Tenant shall pay to Landlord: (1) the Rent and other sums as herein provided, which would be payable hereunder if such repossession had not occurred, less (b) the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's reasonable expenses in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration and repair costs and expenses of preparation for such reletting.

(iii) In the event this Lease is terminated, subject to Landlord's duty to mitigate damages, Landlord shall be entitled to recover forthwith against Tenant as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Lease, represents the excess, if any, of the aggregate of the Rent and all other sums payable by Tenant hereunder that would have accrued for the balance of the term over the aggregate rental value of the Premises (such rental value to be computed on the basis of a lessee paying not only Rent to Landlord for the use and occupation of the Premises, but also such other charges as are required to be paid by Tenant under the terms of this Lease) for the balance of such term, both discounted to present worth at the rate of eight percent (8%) per annum. Alternatively, at Landlord's option, Tenant shall remain liable to Landlord for damages in an amount equal to the Rent (including Base Rent and Additional Rent) and other sums arising under the Lease from the balance of the term had the Lease not been terminated, less the net proceeds, if any, from any subsequent reletting, after deducting all expenses associated therewith and as enumerated above. Landlord shall be entitled to receipt of such amounts from Tenant monthly on the days on which such sums would have otherwise been payable.

## 25. SUBORDINATION AND ATTORNMENT

This Lease is subordinate to any mortgage or deed of trust now or hereafter placed on the Project and to any renewal, modification, consolidation, replacement or extension of such mortgage or deed of trust and the addition of any other mortgage or deed of trust granted after the date of execution of this Lease, provided that, and only in the event that, the holder of such mortgage grants to Tenant the right to continued quiet enjoyment in the event of a foreclosure of the mortgage. Within five (5) days after written request by Landlord, Tenant shall execute any documents which may be desirable to conform the subordination of this Lease. Landlord shall obtain subordination and non-disturbance agreements from lenders when requested to do so. Tenant agrees that in the event of a sale, transfer, or assignment of the Landlord's interest in the Project or any part thereof, including the Premises, to attorn to and to recognize such sale, transfer or assignment and such purchaser, transferee, assignee or mortgagee as Landlord under the Lease. The successor in interest of the Landlord under this Lease shall be subject to

Tenant's rights under this Lease and Tenant's rights hereunder shall continue undisturbed while no Event of Default has occurred. Each party agrees to execute a separate agreement confirming the provisions of this paragraph upon written request but the failure to do so shall not affect the provisions of this paragraph. In the event of any sale or transfer of the Project by Landlord, Landlord shall be relieved of all liability hereunder ONLY with respect to matters arising or accruing after the date of such sale or transfer in connection with the performance or observance, or the failure or refusal to perform or observe, any obligation of the Landlord under, pursuant to, or in connection with this Lease required to be performed at any time after the date of such sale or transfer.

#### 26. ESTOPPEL CERTIFICATE

Landlord and Tenant shall, at any time and from time to time upon not less than ten (10) days prior written notice from the other, execute, acknowledge and deliver to the other a statement, in writing, certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which rental and other charges are paid in advance, if any, and acknowledging that there are not, to the certifying party's knowledge, any incurred defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. It is expressly understood and agreed that any such statements may be relied upon by prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Landlord's or Tenant's failure to deliver such statement within such time shall be conclusive upon such party that this Lease is in full force and effect, without modification, except as may be represented by the other party, that there are no incurred defaults in the other party's performance and that no more rental has been paid in advance except as provided in this Lease.

#### 27. ABANDONMENT

If Tenant shall abandon, vacate or surrender said Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, thirty (30) days after written notice to Tenant. All such abandoned property may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord as permitted by law.

#### 28. BROKERS

Each party hereby agrees to indemnify and hold the other harmless of and from any and all loss, costs, damages or expenses (including, without limitation, all attorney's fees and disbursements) by reason of any claim of or liability to any broker or person claiming through the indemnitor and arising out of or in connection with the negotiation, execution and delivery of this Lease. Additionally, indemnitor acknowledges and agrees that indemnitee shall have no obligation for payment of any brokerage fee or similar compensation to any person with whom indemnitor has dealt or may in the future deal with respect to leasing of any additional or expansion space in the Project or renewals or extensions of this Lease.

#### 29. NOTICE

All notices shall be in writing, delivered personally or mailed, postage prepaid, certified or registered mail, return receipt requested, addressed as set forth below, or to such other place as either party may designate by notice:

To Landlord at: Cray Computer Corporation  
1110 Bayfield Road  
Colorado Springs, CO  
Attention:

With Copies to: Holland & Hart  
P.O. Box 8749  
Denver, CO 80201  
Attn: David Butler

to Tenant at: Quantum Corporation  
333 South Street  
Shrewsbury, MA 41545  
Attn: Thomas H. Dill

#### 30. GENERAL PROVISIONS



—  
— (a) The waiver by Landlord of any term, covenant or  
— condition herein contained shall not be deemed to be a waiver of  
— any subsequent breach. The acceptance of Rent shall not be  
— deemed to be a waiver of any default by Tenant.

— (b) The headings to the sections of this Lease shall have  
— no effect upon the construction or interpretation of any part  
— hereof.

— (c) Time is of the essence.

— (d) The covenants and conditions herein contained bind the  
— heirs, successors, executors, administrators, and assigns of the  
— parties hereto.

— (e) Neither Landlord nor Tenant shall record this Lease,  
— but both parties shall execute, at the request of either party a  
— short form memorandum hereof which may be recorded at the  
— election of either party.

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

— (g) Whenever Landlord grants or withholds its consent or  
— exercises its discretion hereunder, Landlord agrees to exercise  
— it in a reasonable manner and without unreasonable delay.

— (h) Defined terms as used herein shall have the meanings  
— defined in this Lease or in that certain Transaction Agreement  
— dated July 21, 1995 by and between Landlord and Tenant  
— ("Transaction Agreement").

— (i) If Tenant is a corporation, each individual executing  
— this Lease on behalf of said corporation represents and warrants  
— that he is duly authorized to execute and deliver this Lease on  
— behalf of said corporation, in accordance with the bylaws and  
— resolutions of said corporation, and that this Lease is binding  
— upon said corporation.

— (j) No remedy or election hereunder shall be deemed  
— exclusive but shall, whenever possible, be cumulative with all  
— other remedies at law or in equity.

— (k) This Lease shall be governed by the laws of the State  
— of Colorado.

— (l) In the event of any action or proceeding brought by  
— either party against the other under this Lease, the prevailing  
— party shall be entitled to recover court costs and attorneys'  
— fees.

— (m) This Lease contains all of the agreements of the  
— parties hereto with respect to any matter covered or mentioned in  
— this Lease, and no prior agreements or understanding pertaining  
— to any such matters shall be effective for any purpose. No  
— provision of this Lease may be amended or added to except by an  
— agreement in writing signed by the parties hereto or their  
— respective successors in interest.

— (n) This Lease and the obligations of the Landlord or  
— Tenant hereunder shall not be affected or impaired because the  
— Landlord or Tenant is unable to fulfill any of its obligations  
— hereunder or is delayed in doing so, if such inability or delay  
— is caused by reason of strike, labor troubles, acts of God, or  
— any other cause beyond the reasonable control of the Landlord or  
— Tenant provided however that Tenant shall not be relieved or  
— excused from the payment of installments of Rent hereunder by  
— such event or shall such installments be delayed.

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

— (p) The submission or delivery of this document for  
— examination and review does not constitute an option, an offer to  
— lease space in the Project or an agreement to lease. This  
— document shall have no binding effect on the parties unless and  
— until executed by both Landlord and Tenant.

(q) Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord, in the exercise of its sole business judgment, determines to best promote the interest of the Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the term of this Lease, occupy any space in the Project. This Lease and the Transaction Agreement is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein, the Transaction Agreement, and all documents, instruments and agreements given in connection therewith. There are no other representations or warranties between the parties other than as contained in the Transaction Agreement and all reliance with respect to representations is solely upon the representations and agreements contained in this Lease and the Transaction Agreement.

(r) Notwithstanding anything contained in this Lease to the contrary, Landlord shall not lease or use any portion of the Project for uses involving high-impact equipment (i.e. which creates detectable vibrations within the Premises) or which involves chemical processes generating toxic or noxious fumes which may adversely affect the "clean rooms" located in the M/A-Com Premises.

(s) M/A-COM shall have a right of general access to and within the Premises in connection with the control of specific items, systems or operations which affect the operation, use, or occupancy of the M/A-COM Premises, and/or any of the equipment or improvements contained therein. Without implied limitation, the foregoing shall include the exclusive right of M/A-COM to have access to and control of that portion of the Delta D.D.C. Programmable Controller which controls the HVAC affecting the "clean rooms" in the Premises.

(t) M/A-COM shall have a limited right of access in favor of its officers, directors, employees, agents and invitees, through the main entrance of the Project located in the Premises, and through so much of the Premises as is necessary for access to the M/A-Com Premises, such right to be utilized only in connection with visitors, customers, V.I.P.s and other unusual circumstances, such access expressly to exclude day to day use by Tenant's employees.

(u) Landlord shall deliver the Premises to Tenant together with the following items which Tenant shall be entitled to use during the Combined term:

i) For an additional sum of \$10,208.33 per month:

Mail room and fixtures; conference room furniture and white boards; shipping/receiving dock material handling equipment, including pallet jacks, forklift, shipping scale and racking; 125 cubicle office set ups and 27 enclosed office set ups; personnel lockers; and 8 copying machines.

ii) For no additional consideration: cafeteria kitchen; seating areas and related equipment (including return of kitchen equipment currently located offsite); fire protection and security systems (except computer room Halon system); Liebert power conditioners; UPS systems; and Liebert AC units as necessary to support light manufacturing process.

(v) From time to time, upon reasonable prior oral notice to Tenant, and without interfering with the conduct of Tenant's business therein, M/A-COM shall have the right to use the loading dock located in the Premises, solely for purposes reasonably requiring a loading dock larger than that located in the M/A-Com Premises.

(w) In the event that Landlord shall be in default of any of its obligations under this Lease during the Combined Term, including without implied limitation payment to lienholders and mortgagees and Landlord shall fail to cure any such default within 30 days after written notice from tenant and then except in a case of emergency or imminent damage to Tenant's property or business in which event Tenant may proceed to cure immediately, Tenant may, but shall be under no obligation to, cure such default for and on behalf of Landlord. Tenant may not offset against any amounts due Landlord hereunder the amounts paid by Tenant in connection with any such cure; however, Tenant shall

have all of its other rights and remedies in connection thereto available hereunder at law or in equity, including the right to record and enforce a first priority lien against the Project, which Landlord hereby grants, for the amounts paid by Tenant in connection with any such cure, together with interest and collection costs, pursuant to the Order Under 11 U.S.C. S 363 and Federal Rule of Bankruptcy Procedure 6004(c) Authorizing the Sale of Certain Assets and the Leases of Certain Property to M/A-COM, Inc. ("M/A-COM") and Quantum Corporation ("Quantum") Free and Clear of Liens and Encumbrances.

(x) With respect to the rights reserved to M/A-COM in subsections (s), (t), and (v), M/A-COM shall have the right of specific performance in the event of any failure on the part of Tenant to comply.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

CRAY COMPUTER CORPORATION, debtor in possession under Bankruptcy Court filing 95-12697-CEM

By: Terry A. Willkom  
Its: President

TENANT:

QUANTUM CORPORATION

By: Andy Kryder  
Its: General Counsel and  
Assistant Secretary

## EXHIBIT 11.1

## QUANTUM CORPORATION

COMPUTATION OF NET INCOME PER SHARE  
(In thousands except per share data)

	Three Months Ended		Six Months Ended	
	Oct. 1, 1995	Oct. 2, 1994	Oct. 1, 1995	Oct. 2, 1994
<b>PRIMARY</b>				
Weighted average number of common shares during the period	52,498	45,305	50,266	45,027
Incremental common shares attributable to exercise of outstanding options	3,742	2,022	3,750	2,064
	-----	-----	-----	-----
Total shares	56,240	47,327	54,016	47,091
Net income	\$22,025	\$48,603	\$34,967	\$106,844
Net income per share	\$0.39	\$1.03	\$0.65	\$2.27
<b>FULLY DILUTED</b>				
Weighted average number of common shares during the period	52,498	45,305	50,266	45,027
Incremental common shares attributable to exercise of outstanding options and conversion of 6 3/8% convertible subordinated debentures	11,069	13,732	12,677	13,773
	-----	-----	-----	-----
Total shares	63,567	59,037	62,943	58,800
Net income (loss):				
Net income (loss)	\$22,025	\$48,603	\$34,967	\$106,844
Add 6 3/8% convertible subordinated debentures interest, net of income tax effect	1,500	1,663	3,337	3,340
Net income, as adjusted	\$23,525	\$50,266	\$38,304	\$110,184
Net income per share	\$0.37	\$0.85	\$0.61	\$1.87

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM  
THE FINANCIAL STATEMENTS OF QUANTUM CORPORATION FOR THE QUARTER ENDED  
OCTOBER 1, 1995.

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