

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-K

Annual report pursuant to section 13 and 15(d)

Filing Date: **1996-12-30** | Period of Report: **1996-09-30**  
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### FILER

#### PHOENIX TECHNOLOGIES LTD

CIK: **832767** | IRS No.: **042685985** | State of Incorporation: **DE** | Fiscal Year End: **0930**  
Type: **10-K** | Act: **34** | File No.: **000-17111** | Film No.: **96688034**  
SIC: **7372** Prepackaged software

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-K

(Mark One)

Annual Report Pursuant to Section 13 or 15(d) of the Securities  
Exchange Act of 1934  
For the fiscal year ended September 30, 1996

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities  
Exchange Act of 1934  
For the transition period \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 0-17111

PHOENIX TECHNOLOGIES LTD.

-----  
(Exact name of registrant as specified in its charter)

DELAWARE

04-2685985

-----  
(State or other jurisdiction of  
incorporation or organization)

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

411 EAST PLUMERIA DRIVE, SAN JOSE, CALIFORNIA 95134

-----  
(Address of principal executive offices, including zip code)

(408) 570-1000

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

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

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

COMMON STOCK, PAR VALUE \$.001

-----  
(Title of Class)

PREFERRED STOCK PURCHASE RIGHTS

-----  
(Title of Class)

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

The aggregate market value of the voting stock held by non-affiliates of the registrant as of November 30, 1996, was \$ 281,433,929 based upon the last reported sales price of the Common Stock in the National Market System, as reported by NASDAQ.

The number of shares of the registrant's Common Stock outstanding as of November 30, 1996 was 16,554,937.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed pursuant to Regulation 14A in connection with the 1996 annual meeting of its stockholders are incorporated by reference into Part III of this Form 10-K.

The Exhibit Index begins on page 17 of this Report.

THIS REPORT ON FORM 10-K, INCLUDING WITHOUT LIMITATION THE BUSINESS SECTION AND MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF CONTINUING OPERATIONS, CONTAIN FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS AND UNCERTAINTIES. THE COMPANY'S ACTUAL RESULTS MAY DIFFER SIGNIFICANTLY FROM THE RESULTS DISCUSSED IN THE FORWARD LOOKING STATEMENTS. FACTORS THAT MIGHT CAUSE SUCH A DIFFERENCE INCLUDE, BUT ARE NOT LIMITED TO, THOSE DISCUSSED IN PART II, ITEM 7 (MANAGEMENT'S DISCUSSION OF FINANCIAL CONDITION AND RESULTS OF CONTINUING OPERATIONS) UNDER THE HEADING "BUSINESS FACTORS" AND IN OTHER DOCUMENTS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

## Item 1. BUSINESS

### GENERAL

Phoenix Technologies Ltd. was incorporated in the Commonwealth of Massachusetts on September 17, 1979, and was reincorporated in the State of Delaware on December 24, 1986. Unless the context indicates otherwise, the "Company" or "Phoenix" refers to Phoenix Technologies Ltd. and its subsidiaries.

Phoenix designs, develops and markets essential software to manufacturers of personal computer products ("PCs"). This software presently consists of system software, software for implementation as hardware, and related applications software products for PCs. The Company provides these products primarily to PC manufacturers, PC peripheral equipment manufacturers, integrated circuit manufacturers, and system board manufacturers ("OEMs"). Phoenix's products permit OEMs to introduce new products quickly while enabling product differentiation and increasing system value. Phoenix system software products can reduce an OEM's product time to market, development risks, and support costs.

The Company markets and licenses its products and services worldwide, primarily to OEMs. The Company's system software customers range from large PC manufacturers to small system integrators. The Company's revenue consists of license and engineering fees. Phoenix markets its products and services through a direct sales force, regional distributors, and sales representatives. Phoenix also promotes its products through Company newsletters and technical bulletins, coverage in trade and business press articles, advertising, and participation in industry trade shows and conferences.

Rapid technological change and the frequent introduction of new products incorporating new technologies characterize the personal computer industry. The introduction of products embodying new technologies often results in the emergence of new industry standards, rendering existing products obsolete. To remain competitive, manufacturers must respond quickly to such technological changes. This rapid pace of PC industry change can benefit Phoenix as it provides a continuous flow of opportunities for the Company to provide high value technology and support to its customers. However, if the Company or its customers are unable, for technological or other reasons, to develop products in a timely manner in response to changes in the PC industry, the Company's business would be materially and adversely affected.

The Company develops, and licenses (or purchases) from others, software products to market to OEMs. Because the PC industry is subject to rapid technological changes, the Company expects to continue to dedicate significant resources to the development and acquisition of new products and enhancements to existing products. However, there can be no assurance that the Company's product development efforts will be successful or, even if they are successful, that any resulting products will achieve market acceptance.

Research and development costs from continuing operations, before the capitalization of internally developed software costs, were 32%, 25% and 11% of total revenue in fiscal 1996, 1995, and 1994, respectively. On an actual dollar basis, these costs grew to \$22,764,000 in fiscal 1996, an 84% increase from fiscal 1995. Fiscal 1995 research and development costs rose 35% from \$9,133,000 in fiscal 1994. With respect to continuing operations, the Company capitalized approximately \$2,136,000, \$1,336,000, and \$2,246,000 of internally developed software in fiscal 1996, 1995, and 1994, respectively. The Company believes continued investment in new and evolving technologies is essential to meet rapidly changing industry requirements. In addition, the Company purchased or licensed additional technology related assets for use in its continuing operations in the amount of \$544,000 in fiscal 1996, \$338,000 in fiscal 1995, and \$405,000 in fiscal 1994. These assets consist primarily of prepaid royalties under licenses from third parties for PC compatibility, sub-notebook and fax modem products.

In fiscal 1996, one of the Company's customers accounted for 10% of total revenue. No customer accounted for more than 10% of revenue in fiscal 1995. Two customers did account for more than 10% of the Company's

total revenue during fiscal year 1994. One customer was 19% of revenue for fiscal year 1994, while the other customer was 14%. In fiscal 1996, 1995, and 1994, approximately 55%, 52%, and 44%, respectively, of the Company's revenue from continuing operations was attributable to customers outside the United States. For purposes of this report, revenue from continuing operations includes all revenue from the Publishing Division and excludes revenue from the Printer Software Division.

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In December 1995, the Company entered into a seven-year agreement (the "Technology Agreement") with Intel Corporation. Under the Technology Agreement, Phoenix licensed certain of its system-level software to Intel for incorporation into Intel's motherboard products for desktop and server computers. The Technology Agreement requires Phoenix to provide Intel with a dedicated engineering team to support Intel under the agreement and develop agreed-on enhancements to the licensed software. In addition, Phoenix will assist Intel in its transition to Phoenix's system-level software. In consideration of the license grants and other commitments made by Phoenix, the agreement requires Intel to pay Phoenix minimum annual fees and royalties. These minimum amounts can be exceeded depending on levels of shipment by Intel of Intel products containing the licensed software. The maximum license fees payable by Intel to Phoenix under the Technology Agreement during its seven-year term is \$82 million; however, there can be no assurances that Intel will ship the volume of products required to entitle Phoenix to such maximum fees.

Concurrently with the signing of the Technology Agreement, Phoenix and Intel entered into a Common Stock and Warrant Purchase Agreement (the "Equity Agreement") whereby Intel agreed to purchase 894,971 shares of Phoenix common stock (or 6% of the outstanding shares), together with a warrant to purchase an additional 1,073,965 shares. The closing of the sale of the stock and the warrant occurred on February 15, 1996.

#### DESCRIPTION OF BUSINESS

The Company is divided into two related product divisions: the PC Systems Division (PCSD) and the Special Products Division (SPD). PCSD includes the Company's desktop and server system software, portable system software, and PC application software product lines, along with the Company's core system software and strategic development groups. SPD includes the Company's PhoenixCard software, PhoenixPICO, and Virtual Chips Product Lines.

During fiscal 1996, Phoenix focused on expanding the capabilities of its PC firmware through enhancements to its core PhoenixBIOS 4.0 product, playing a significant role in new PC industry initiatives with Intel, Microsoft, Compaq, Dell Computer, and IBM, developing and delivering Plug and Play firmware, enhancing its PCMCIA software and enhancing the PICO product line for the major emerging Information Appliance market.

PC SYSTEMS DIVISION: In the PC system-level software product area, the Company develops and markets software products that enable PC, peripheral, and motherboard manufacturers to integrate existing and emerging industry standards and new technologies into PC platforms. The Company offers an extensive line of system software, including BIOS (Basic Input/Output System) products, for desktop, portable, and server PC systems based on x86 microprocessors. The system software products include system BIOS products, system core logic chipsets, system busses, video subsystems, keyboard controllers, power management chipsets, flash read-only memory ("ROM") chips, and other emerging PC technologies.

The introduction of new hardware architectures, microprocessors, peripheral equipment and operating systems within the PC industry has increased the complexity, time, and cost to develop system-level, firmware-based software products. The Company believes that OEM customers license the Company's system software products, rather than develop these products internally, in order to release products to market faster, reduce product development risks, reduce product development and support costs, and differentiate their system offerings with advanced features. A number of computer manufacturers develop their own BIOS products to achieve compatibility with other computers based on PC standards and to integrate new technologies. Price competition and time to market pressures are causing manufacturers to re-examine in-house development and deployment of their new systems. The Company believes there is an increasing trend of OEMs to outsource system software requirements to third parties.

The demand for the Company's PC system software products depends principally on 1) PC manufacturers licensing rather than developing their own PC system software, 2) the sales success of the Company's OEM customers, 3) the emergence of new PC technologies requiring system-level software to achieve increased system functionality, user value, and performance, and (4) the functions and features offered in the Company's products compared to

those of its competitors. The growth rate of sales in the personal computer industry fluctuates based on numerous factors, including general economic conditions, capital spending levels, new product introductions and shortages of key components. In addition, the market for personal computers is intensely competitive.

In fiscal 1996, Phoenix announced Release 6 of PhoenixBIOS 4.0. Release 6 includes over 50 enhancements designed to improve manufacturing customers' ability to more easily develop their own extensions for products differentiation or to improve support, and to deploy new products with reduced costs for customization work.

PHOENIXBIOS 4.0: Phoenix introduced PhoenixBIOS 4.0 as its core desktop systems firmware product in 1993. Since then, the Company has continuously released improvements to the core product, including Release 6 discussed above. Company's most successful system firmware product. The Company believes the success of this product is attributable to its reliability and advanced features, including its fourth generation modular architecture, Plug and Play support, and advanced development tools and methodology. PhoenixBIOS 4.0 is designed to help PC manufacturers gain important market advantages, by decreasing the time it takes those manufacturers to get their products to market through increased reusability of firmware and compatibility with evolving PC standards.

In fiscal 1996, Phoenix announced further key extensions to PhoenixBIOS 4.0 to further improve the performance of desktop PCs and makes them easier to use and support. Key fiscal 1996 advances

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included support for Microsoft's Simple Interactive PC (SIPC) requirements, support for APM 1.2 advanced power management, and creation of the ability to boot PC systems directly from Iomega Zip Drive and LS120 large removable media.

NOTEBIOS 4.0 AND ADVANCED SYSTEMS SOFTWARE AND APPLICATIONS FOR PORTABLE SYSTEMS: Phoenix offers its NoteBIOS system software for use with portable or notebook computers. The product's capabilities include advanced power management, SMI support, Save to Disk, Plug and Play, Portable Pentium CPU support, and smart batteries. The Company believes that a majority of notebook PCs shipped worldwide in fiscal 1996 with commercial BIOS were delivered with Phoenix's NoteBIOS.

During fiscal 1996, the Company expanded its licensing of NoteBIOS 4.0 and Power Panel products, and introduced the BatteryScope product. In July 1996 Phoenix was the first in the industry to announce power management and PC Card support for Microsoft's new Windows NT 4.0 operating systems. This will enable portable systems users to use this major new operating system in systems with NoteBIOS 4.0 for NT 4.0 and the Company's new Phoenix Card Executive for NT 4.0 software. NoteBIOS 4.0 provides a highly modular, robust structure for the NoteBIOS product line based on the fourth generation of PhoenixBIOS core software. Power Panel is a Windows-based application that provides portable PC users with an advanced, intuitive, easy-to-use way to manage power use and battery life. BatteryScope is a second generation "Smart Battery" software utility resulting from development by Phoenix, DuraCell, Intel and Microsoft to extend battery life in portable PCs.

PC APPLICATION SOFTWARE: The Company develops or acquires and markets application software to provide new functionality to the consumer and small office/home office (SOHO) PC environment. These products are marketed through the OEM channel, and typically the products are modified for each OEM in order for the OEM to achieve brand identification through product differentiation. The Company marketed two principal products during fiscal 1995 and 1996, one of which (PhoenixMUSE-TM-) was discontinued in 1996.

In September 1996, the Company announced that it had become the exclusive distributor to OEMs of the user assistance software developed by CyberMedia, Inc. This agreement is the first part of Compaq's User Assistance Initiative (UAI), a development and marketing program from Phoenix designed to reduce an OEM's support costs by providing new technology to help PCs resolve many of their own problems automatically. The products are marketed under CyberMedia's First Aid and Oil Change trademarks. First Aid 97 is designed to allow PC users to analyze and fix their hardware and software problems. Oil Change enables users to automatically update the software in their PCs over the Internet.

#### SPECIAL PRODUCTS DIVISION

PICO: The PICO product line provides system enabling and system enhancing software for Industrial, Hand-held, and Consumer Appliances in the emerging new Information Appliance market. Examples of these appliances are PDAs, Smart Phones, Point-of-Sale Terminals, Factory Automation Devices, Car

Navigation Units, or Smart Home Entertainment (TV, stereo) units. PhoenixPICO BIOS provides leading edge PC software technology for these appliances, while PhoenixPICO Embedded Extensions provide unique and innovative software technologies to enhance these appliances. PhoenixPICO OAK (OEM Adaptation Kit) provides OEMs with development and educational tools.

**PHOENIX PC CARD SOFTWARE:** The Phoenix PC Card software family includes support for identification, configuration, and use of all PC Card types on the market today. Support is available for all of the major Microsoft Windows operating system environments. Phoenix PC Card software products are compliant with the most current version of the PC Card Standard published by the PCMCIA and thus significantly reduce hardware compatibility problems. CardBus, the latest 32-bit high bandwidth standard option for PC Cards is supported by Phoenix as is Zoomed Video, the latest standard for live full motion video playback and video capture PC Card applications. Phoenix PC Card software is shipped by major OEMs including: Toshiba, Texas Instruments, Dell, AST, Fujitsu, Olivetti, and Siemens-Nixdorf, Inc.

**VIRTUAL CHIPS AND INTERCONNECTIVITY SOFTWARE:** In August 1996, the Company completed the acquisition of Virtual Chips, Inc., a leading supplier of synthesizable cores for the computer industry. Synthesizable cores are prepackaged circuit descriptions, delivered in a high level language known as a Hardware Description Language (HDL), and used as building blocks for system-level application specific integrated circuits (or ASICs). The resulting ASICs are used in computers and peripheral devices to provide connectivity using various interconnect standards (e.g., peripheral component interface (PCI), universal serial bus (USB) and other emerging standards such as IEEE 1394). Virtual Chips products include a full line of PCI SATELLITE and PCI HOST BRIDGE SYNTHESIZABLE CORES, plus a PCI TEST ENVIRONMENT to help customers verify their PCI-based designs. In October of 1996, Virtual Chips introduced a line of 66 MHZ PCI SATELLITE SYNTHESIZABLE CORES, to handle the needs for increased bandwidth in the graphics and server markets in particular. In 1996, Virtual Chips also introduced a USB product line, the first products of which are the USB FUNCTION SYNTHESIZABLE CORE and USB TEST ENVIRONMENT. These products complement the USB OHCI HOST CONTROLLER SYNTHESIZABLE CORE which Compaq Computer Corporation Licensed to Phoenix in the first half of 1996. Under the license agreement with Compaq, Phoenix has certain rights to sell, license and make derivatives of the licensed Compaq design. The Compaq design has already been licensed by twelve of the leading chipset and PC manufacturers, and, the Company believes, represents a key standard which compatibility will be measured for USB peripherals.

**WORLDWIDE DEPLOYMENT SERVICES AND SUPPORT:**

To support its worldwide customer base, Phoenix employs over 300 engineers and has offices in Japan, Taiwan, England, France, California, Oregon, Massachusetts and Texas. The Company's support services are provided by means of telephone and on-site service.

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**LEADERSHIP IN MAJOR INDUSTRY INITIATIVES:**

Phoenix has entered into a number of major initiatives with industry leaders and standards-setting organizations to develop next generation, firmware-level software products. These initiatives include: (1) developing the Plug and Play system enumerator which was licensed to Microsoft Corporation ("Microsoft") for its Windows 95 operating system; (2) developing specifications and firmware for the new SmartBattery program with Duracell and Intel; (3) developing a CD Boot specification with IBM to allow direct PC system booting from CD-ROMs; and (4) developing the "CardBus" (PCMCIA 3.0) specifications as an executive member of the Personal Computer Memory Card International Association (PCMCIA).

Phoenix's relationships with Intel, Microsoft, Compaq, and other industry leaders give the Company early access to new technology requirements, which the Company believes facilitates the development of its products. By building upon its core technology base, the Company is able to tailor its system software products to conform to the specific requirements of its OEM customers, allowing its customers to integrate new technologies and introduce their products to market more effectively.

**COMPETITION:**

In marketing its BIOS, NoteBIOS, PICO, and PCMCIA products, Phoenix competes primarily with three other independent suppliers of BIOS technology: American Megatrends, Inc., Award Software International Inc. and SystemSoft Corporation. It also competes for BIOS business with in-house research and development departments of PC manufacturers that have significantly greater financial and technical resources than those of Phoenix. These companies include Compaq Computer Corporation, International Business Machines Corporation, and Toshiba Corporation. The Company's primary competitors for user assistance products are Symantec Corporation and SystemSoft. In the

synthesizable core business begun with the acquisition of Virtual Chips, Phoenix competes with major EDA suppliers such as Mentor Graphics and Synopsys who are attempting to broaden their design tool business to include synthesizable cores, and small design houses such as Sand Microelectronics, Inc. who provide synthesizable cores, often as part of a design consulting contract. The bases for competition for the PC system-level software are primarily product performance and availability, engineering experience and expertise, product support, and price. Phoenix believes it competes favorably on these bases.

#### REVENUE:

Revenue attributable to the Company's PC Systems Division products accounted for 78%, 82%, and 89% of the Company's revenue from continuing operations (other than revenue from the Company's Publishing Division (see below)) in fiscal 1996, 1995, and 1994, respectively. Revenue attributable to the Special Products Division products accounted for 22%, 18% and 11% of total revenue from continuing operations for fiscal 1996, 1995 and 1994, respectively.

#### SALE OF PUBLISHING AND PRINTER SOFTWARE DIVISIONS:

During fiscal 1994, Phoenix disposed of majority interests in its Publishing and Printer Software Divisions as part of its strategy to refocus on essential enabling software for OEMs.

**PUBLISHING DIVISION:** Throughout fiscal 1994, the Company operated its Publishing Division (formerly named the Packaged Products Division), which provided technical publishing software, documentation and services for OEM licensees of Microsoft and IBM operating systems and other software. The division supplied the documentation and disk duplication services required for bundling software with OEM system offerings.

In September 1994, the Company sold 80% of its Publishing Division to Softbank Corporation of Japan ("Softbank") for total cash consideration of \$30,000,000. Also in September 1994, Softbank and the Company established a new entity, Phoenix Publishing Systems, Inc. ("PPSI"), and each contributed their respective interests in the Publishing Division to PPSI in exchange for 80% and 20%, respectively, of the equity of PPSI. PPSI assumed substantially all of the liabilities of the Division's business. The Company has certain rights to designate nominees to PPSI's board of directors and to require PPSI to purchase the PPSI shares owned by the Company at a price equal to the greater of \$7.5 million or a performance-based price.

By maintaining an ownership interest in the entity which acquired the Division, Phoenix can participate in any future growth of PPSI and continue to leverage the technologies now owned by PPSI to support the Company's

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customers, while freeing up new resources for advancing the Company's PC firmware and end user application software products.

**REVENUE:** Phoenix's revenue attributable to the Company's Publishing Division accounted for 53% of the Company's total revenue from continuing operations in fiscal 1994.

**PRINTER SOFTWARE DIVISION** Throughout 1994, the Company operated its Printer Software Division (formerly named the Peripherals Division) which designed, developed and supplied printer emulation software, page description languages, and controller hardware designs for the printer industry. In the printer market, where multiple standards exist, OEMs and software developers have been required to adapt their products to accommodate diverse page description languages, different font libraries and other printer standards. The business developed the PhoenixPage imaging software architecture to enable OEMs to design and manufacture printers that can support multiple page description languages (such as the PostScript language and the HP-PCL language), printer emulations, and font technologies. More than 40 printer manufacturers have used PhoenixPage in their printer product lines.

In November 1994, the Company sold all the assets of its Printer Software Division to Xionics Document Technologies, Inc. The Company received an 8% promissory note in the principal amount of \$4,849,000, collateralized by the assets sold and payable in twenty quarterly installments commencing January 15, 1997. The Company also received a minority equity interest in the purchaser. In fiscal 1995, the Company provided an additional loan of \$350,000 to the purchaser. Subsequently, the Company participated in a stock offering to new and existing investors by exchanging \$1,900,000 of principal under these two notes for additional shares and later converted an additional \$340,000 into shares of stock. In September and October 1996, the Company participated in Xionics' initial public offering of shares and sold an aggregate of 575,000 shares. Following these sales, the Company owns

approximately 1.4 million shares of Xionics common stock. The 8% note was repaid in full.

As was the case in the sale of the Publishing Division business, the maintenance of a minority ownership position in Xionics will let Phoenix participate in that business's future growth, while making new resources available for its remaining businesses.

REVENUE: The consolidated financial statements were restated to reflect the Printer Software Division as a discontinued operation. Revenue from discontinued operations was \$9,439,000 for fiscal 1994. The net liabilities of discontinued operations of \$1,335,000 and \$724,000 at September 30, 1996 and 1995, respectively, consist primarily of accrued costs to be incurred in connection with the sale of the division, offset by accounts receivable. Payments were \$289,000 and \$4,479,000 in fiscal 1996 and 1995, respectively.

#### EMPLOYEES

As of November 30, 1996, the Company employed 490 persons worldwide, of whom 324 are in research and development, 111 are in sales and marketing, and 55 are in finance and administration.

#### INTELLECTUAL PROPERTY AND OTHER PROPRIETARY RIGHTS

The Company relies primarily on trade secret, trademark and copyright laws and contractual agreements to protect its proprietary rights. The Company protects the source code of its products as trade secrets and as unpublished copyrighted works. The Company licenses the source code for its products to its customers for limited uses. The Company licenses its software products to its customers. Wide dissemination of the Company's software products makes protection of the Company's proprietary rights difficult, particularly outside the United States. Although it is possible for competitors or users to make illegal copies of the Company's products, the Company believes the rate of technology change and the continual addition of new product features lessen the impact of illegal copying. At November 30, 1996, the Company had been issued three patents and had 18 patent applications pending.

Although the Company believes that its products do not infringe on any copyright or other proprietary rights of third parties, there are currently significant legal uncertainties relating to the application of copyright and patent law in the field of software. The Company has no assurance that third parties will not obtain, or do not have, patents covering features of the Company's products, in which event the Company or its customers might be required to obtain licenses to use such features. If a patent holder refuses to grant a license on reasonable terms or at all, the Company may be

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required to alter certain products or stop marketing them. In recent years, there has been a marked increase in the number of patents applied for and issued with respect to software products.

The Company makes certain of its application software products available pursuant to shrink-wrap licenses that are not signed by customers and, therefore, may be unenforceable under the laws of certain jurisdictions.

#### Item 2. PROPERTIES

The Company's principal offices are located in a 86,602 square foot building in San Jose, California which the Company leases pursuant to a lease expiring in November 2003. Minimum annual lease payments for the San Jose facility are approximately \$1,235,000 plus certain additional costs. In December 1996, the Company completed the move of its principal offices from Santa Clara, California to this San Jose Facility.

The Company also leases smaller office facilities in other locations including: Irvine, California; Norwood, Massachusetts; Beaverton, Oregon; Houston, Texas; Taipei, Taiwan; Tokyo, Japan; Guildford, England; and Archamps, France.

The Company considers its leased properties to be in good condition, well maintained, and generally suitable and adequate for its present and foreseeable future needs.

#### Item 3. LEGAL PROCEEDINGS

None.

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

Not applicable.



## PART II

## Item 5. MARKET FOR REGISTRANT'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS

The Company's Common Stock is traded in the NASDAQ National Market System under the symbol PTEC. The following table presents the quarterly high and low bid quotations in the over the counter market, as quoted by NASDAQ. These quotations reflect the inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

	HIGH	LOW
-----		
Year ended September 30, 1996:		
First quarter	\$ 16.33	\$ 9.88
Second quarter	15.75	12.88
Third quarter	20.38	13.00
Fourth quarter	19.50	12.75
Year ended September 30, 1995:		
First quarter	\$ 8.13	\$ 5.38
Second quarter	8.50	6.13
Third quarter	11.13	6.75
Fourth quarter	14.38	10.25

The Company has approximately 320 shareholders of record as of September 30, 1996. The Company has never paid cash dividends on its common stock. The Company currently intends to retain all earnings for use in its business and does not anticipate paying any cash dividends in the foreseeable future. In addition, the Company's line of credit agreement restricts the payment of cash dividends.

## Item 6. SELECTED FINANCIAL DATA

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## SELECTED UNAUDITED QUARTERLY DATA

&lt;TABLE&gt;

&lt;CAPTION&gt;

(IN THOUSANDS, EXCEPT PER SHARE DATA)	FISCAL 1996, QUARTER ENDED			
	DEC 31	MAR 31	JUN 30	SEP 30
<S>	<C>	<C>	<C>	<C>
Revenue	\$14,807	\$17,935	\$18,645	\$20,749
Gross margin	11,762	13,849	14,933	16,850
Income from operations	2,503	3,329	2,876	1,968
Income from continuing operations	2,092	2,519	2,338	2,098
Net income	2,092	2,519	2,338	5,850
Income per share from continuing operations	0.13	0.15	0.13	0.11
Net income per share	0.13	0.15	0.13	0.32

&lt;CAPTION&gt;

(IN THOUSANDS, EXCEPT PER SHARE DATA)	FISCAL 1995, QUARTER ENDED			
	DEC 31	MAR 31	JUN 30	SEP 30
<S>	<C>	<C>	<C>	<C>
Revenue	\$11,119	\$12,204	\$13,320	\$13,297
Gross margin	9,040	9,844	10,879	10,596
Income from operations	1,730	1,992	2,390	2,154
Net income	1,569	1,738	2,030	3,474
Net income per share	0.10	0.11	0.13	0.22

&lt;CAPTION&gt;

SELECTED PERCENTAGE DATA

	FY96	FY95	FY94	
			PRO FORMA*	ACTUAL
<S>	<C>	<C>	<C>	<C>
Revenue:				
License fees	86.6 %	87.0 %	86.0 %	93.4 %
Services	13.4	13.0	14.0	6.6
Total revenue	100.0	100.0	100.0	100.0
Cost of revenue:				
License fees	10.4	7.3	10.0	43.8
Services	10.0	11.9	13.0	6.1
Total cost of revenue	20.4	19.2	23.0	49.9

Gross margin	79.6	80.8	77.0	50.1
Operating expenses:				
Research and development	28.6	22.1	16.6	8.0
Sales and marketing	21.5	28.7	27.0	19.2
General and administrative	13.5	13.4	15.8	9.8
Other operating expenses	1.2	-	-	10.6
Total operating expenses	64.8	64.2	59.4	47.6
Income from operations	14.8	16.6	17.7	2.5
Other income, net	3.1	4.1	3.5	27.3
Income before income taxes	17.9	20.7	21.2	29.8
Provision for income taxes	5.4	3.0	7.4	7.5
Income from continuing operations	12.5	17.7	13.8	22.3
Gain (Loss) on discontinued operations	5.2	-	-	(14.4)
Net income	17.7 %	17.7 %	13.8 %	7.9 %

</TABLE>

\* The Company sold its Publishing and Printer Software Divisions in fiscal 1994. The Publishing Division accounted for 53% of fiscal 1994 revenue. The Printer Software Division was classified as discontinued operations. The pro forma results exclude the charge for other operating expenses, reflect the elimination of Publishing revenue and direct expenses, treats its sale as if it had occurred at the beginning of fiscal 1994, and exclude the loss from discontinued operations.

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

RESULTS OF OPERATIONS

The Company's primary business is to provide system level software and engineering services to original equipment manufacturers ("OEMs") and integrators of personal computers ("PCs") and information appliances (special purpose computers). The Company sold its Publishing and Printer Software Divisions in fiscal 1994, which marketed technical publishing software and documentation to OEMs and system software for laser printers, respectively. The Company discontinued marketing software products through the retail channel in fiscal 1995.

In August 1996, the Company acquired Virtual Chips, Inc. in exchange for 1,241,842 shares of newly issued common stock. The transaction was accounted for as a pooling of interests and financial information for the quarters in fiscal 1996 has been restated to reflect Virtual Chips' results of operations. The financial statements for the fiscal 1995 and 1994 have not been restated as the results of operations of Virtual Chips were not material in relation to those of the Company. Shares used in the computation of net income per share have been restated for all periods presented to give effect to the shares issued and options assumed by the Company in the transaction. Virtual Chips is a leading supplier of synthesizable cores for the computer industry. Synthesizable cores are pre-packaged circuit descriptions used as building blocks for system level application specific integrated circuits (ASICs). ASICs are used in computers and peripheral devices to connect them using PCI, USB and other emerging industry standard protocols.

REVENUE. Revenue increased \$22.2 million (44%) to \$72.1 million in fiscal 1996 from \$49.9 million in fiscal 1995. The increase resulted primarily from an increase in royalty revenue from the Company's expanding customer base as well as additional revenue from existing customers. Revenue increased in all geographic areas. Revenue decreased \$36.2 million (42%) to \$49.9 million in fiscal 1995 from \$86.2 million in fiscal 1994. This decrease in revenue is primarily due to the sale of the Company's Publishing Division in fiscal 1994. In fiscal 1996, one customer accounted for 10% of revenues. No customers accounted for 10% or more of revenue in fiscal 1995. In fiscal 1994, one customer accounted for 19% of revenue and another customer accounted for 14%. Software revenue increased 44% from fiscal 1995 to fiscal 1996 and 24% from fiscal 1995 to fiscal 1994.

GROSS MARGIN. Gross margin as a percent of revenue was 80%, 81% and 50% for fiscal 1996, 1995 and 1994, respectively. The gross margin for fiscal 1994, excluding the Publishing Division sold during the year, was 77%. License fee gross margin was 88%, 92% and 88% for fiscal 1996, 1995 and 1994, respectively. The decrease from fiscal 1995 to fiscal 1996 is primarily due

to increases in royalty expense and amortization of capitalized computer software costs. Service gross margin was 25%, 8% and 7% in fiscal 1996, 1995 and 1994, respectively. The increase in service gross margin is attributable to productivity improvements in service engineering.

RESEARCH AND DEVELOPMENT EXPENSES. Research and development expenses were \$20.6 million, \$11 million and \$6.9 million in fiscal 1996, 1995 and 1994, respectively. The increases in research and development expenses are primarily due to the hiring of additional engineers devoted to the development of system level software. The increase as a percent of revenue in fiscal 1996 is primarily due to the creation of a new product line to develop and market software to connect computers and peripheral devices and the acquisition of Virtual Chips, Inc.

The Company capitalized approximately \$2.1 million, \$1.3 million and \$2.5 million of internally developed software costs in fiscal 1996, 1995 and 1994, respectively. These amounts were offset by

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amortization of capitalized software costs of \$3.2 million, \$1.2 million and \$0.8 million in fiscal 1996, 1995 and 1994, respectively. The Company believes that continued investment in new and evolving technologies is essential to meet rapidly changing industry requirements.

SALES AND MARKETING EXPENSES. Sales and marketing expenses were \$15.5 million, \$14.4 million, and \$16.6 million in fiscal 1996, 1995 and 1994, respectively. The increase in fiscal 1996 was primarily due to an increase in headcount in sales and marketing as well as an increase in commission expense associated with an increase in revenues. The decrease in fiscal 1995 and the decrease as a percent of revenue in fiscal 1996 resulted primarily from the discontinuance of advertising expenses related to products marketed through the retail channel. The Company discontinued retail distribution in the second half of fiscal 1995. As a percent of revenue, sales and marketing expenses were 22%, 29% and 19% in fiscal 1996, 1995 and 1994, respectively.

GENERAL AND ADMINISTRATIVE EXPENSES. General and administrative expenses were \$9.7 million, \$6.7 million and \$8.5 million in fiscal 1996, 1995 and 1994, respectively. The increase in fiscal 1996 resulted primarily from increased salaries and related benefits associated with headcount growth and increased recruiting and relocation costs. The decrease in fiscal 1995 from 1994 was due to the employment of fewer people and the use of less outside consulting or professional services as a result of improved internal operating efficiency over the previous year. As a percent of revenue, general and administrative expenses were 13%, 13% and 10% in fiscal 1996, 1995 and 1994, respectively.

OTHER OPERATING EXPENSES. Other operating expenses were \$0.9 million and \$9.1 million in fiscal 1996 and 1994. Other operating expenses in fiscal 1996 include the costs associated with the acquisition of Virtual Chips, Inc. in August 1996.

Other operating expenses in fiscal 1994 include the write-off of \$6,777,000 of non-refundable advance royalties in connection with its termination of an agreement to distribute a BIOS and other software for IBM. Also included in other operating expenses in fiscal 1994 is a provision of \$2,318,000 related to the relocation of the Company's headquarters from Massachusetts to California which occurred in fiscal 1995. In fiscal 1996 and 1995, \$525,000 and \$876,000 of the accrual was paid, respectively.

INTEREST INCOME. Net interest income was \$2.2 million, \$1.7 million and \$0.2 million in fiscal 1996, 1995 and 1994, respectively. The increase in interest income over the years is primarily due to the increase in cash available for investment in the respective periods.

DISCONTINUED OPERATIONS. In September 1996, the Company sold 500,000 shares of common stock of Xionics Document Technologies, Inc.'s ("Xionics") in its initial public offering. In addition, the Company received payment on a promissory note. The gain on the repayment of the note and sale of the stock in the amount of \$6.5 million was recorded as a gain from discontinued operations, net of income taxes, to the extent such amounts were previously written off in fiscal 1994 by a charge to discontinued operations. The remaining amount of \$294,000, which represents investment gains, was recorded in continuing operations as other income on the Company's income statement. At September 30, 1996, the Company held 1,455,381 shares of Xionics stock at a market value of \$15 per share. In October 1996, the underwriters of the offering exercised their option to purchase additional shares, which included 75,000 shares from Phoenix. Following these sales, Phoenix owned 1,380,381 shares, or approximately 13% of the outstanding Xionics common stock.

PROVISION FOR INCOME TAXES. The Company recorded income tax provisions of \$3.9 million, \$1.5 million and \$6.4 million in fiscal 1996, 1995 and 1994, respectively. The Company's effective tax rate was 30%, 14% and 25% in fiscal 1996, 1995 and 1994, respectively. The higher tax rate in fiscal 1996 is due to the increase in nondeductible expenses and a decrease in the tax benefit from losses in the prior years. The Company's effective tax rate has been lower than the statutory rate primarily due to available net operating losses carried forward and various tax credits. The provision for fiscal 1995 includes an income tax benefit in the fourth quarter of \$1.3 million resulting from a decision to reduce the Company's valuation allowance related to its deferred tax assets

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in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes." Statement No. 109 requires recognition of deferred tax assets when the probability of recovery is more likely than not.

#### QUARTERLY RESULTS OF OPERATIONS

The tables in Part II, Item 6 of this Form 10-K include selected unaudited quarterly consolidated results of operations for fiscal 1996 and 1995. This information was derived from the Company's unaudited consolidated financial statements that, in the opinion of management, reflect all recurring adjustments necessary to fairly present this information, when read in conjunction with the Company's Consolidated Financial Statements. The results of operations for any quarter are not necessarily indicative of the results to be expected for any future quarter.

Phoenix's future operating results may vary substantially from period to period. The timing and amount of its license fees are subject to a number of factors that make estimating revenues and operating results prior to the end of a quarter uncertain. While Phoenix receives recurring revenue on royalty-based license agreements and some agreements contain minimum quarterly royalty commitments, a significant amount of license fees in any quarter is dependent on signing agreements and delivering the licensed software in that quarter. Generally, Phoenix has experienced a pattern of recording 50% of its quarterly revenues in the third month of the quarter. Phoenix has historically monitored its revenue bookings through regular, periodic worldwide forecast reviews during the quarter. However, while these reviews keep management informed of areas where additional selling effort may be needed in order to meet the internal plans and market expectations, there can be no assurances that this process will result in revenue expectations being met. Operating expenses for any year are normally based on the attainment of planned revenue levels for that year and are incurred ratably throughout the period. As a result, if revenues are less than planned in any quarter while expense levels remain relatively fixed, Phoenix's operating results would be adversely affected for that quarter. In addition, the incurring of unplanned expenses could adversely affect operating results for the period in which such expenses were incurred.

#### BUSINESS RISKS

The additional following factors should be considered carefully when evaluating Phoenix and its business.

UNCERTAINTIES RELATING TO THE INTEGRATION OF VIRTUAL CHIPS. Phoenix and Virtual Chips entered into the acquisition agreement with the expectation that the merger will result in beneficial synergies for the combined companies. Achieving the anticipated benefits of the merger will depend in part upon whether the integration of the two companies' businesses is achieved in an efficient and effective manner and there can be no assurance that this will occur. Virtual Chips' products address new and emerging technologies and its customer base includes peripheral device manufacturers which have not been among Phoenix's traditional customers. The combination of the two companies will require, among other things, the integration of the two companies' sales forces. There can be no assurance that such integration will be accomplished smoothly, on time, or successfully. Phoenix's operating results could be adversely affected if Phoenix does not adequately train its sales force to sell the products based on these new technologies into this new market.

PRODUCT DEVELOPMENT. Phoenix's long-term success will depend on its ability to enhance its existing products and to introduce new products on a timely and cost-effective basis that meet the needs of its current customers in their present markets and of current and future customers in new and emerging markets. There can be no assurance that Phoenix will be successful in developing new products or in enhancing existing products or that new or enhanced products will meet market requirements. Phoenix has from time to time experienced delays in introducing new products which could adversely impact acceptance and revenue generated from the sale of such products.

Finally, Phoenix's software products and their enhancements contain complex code which may contain undetected errors or bugs when first introduced, despite testing. There can be no assurance that new products or enhancements will not contain errors or bugs that will adversely affect commercial acceptance of such products or enhancements.

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**PROTECTION OF INTELLECTUAL PROPERTY.** Phoenix relies on a combination of trade secret, copyright, trademark laws and contractual provisions to protect its proprietary rights in its software products. There can be no assurance that these protections will be adequate or that competitors will not independently develop technologies that are substantially equivalent or superior to Phoenix's technology. In addition, copyright and trade secret protection for Phoenix's products may be unavailable or unreliable in certain foreign countries. The Company has been issued one patent with respect to its current product offerings and has a number of patent applications pending with respect to certain of the products it markets. Phoenix maintains an active internal program designed to identify internally developed inventions worthy of being patented. There can be no assurance that any of the applications pending will be approved and patents issued or that Phoenix's engineers will be able to develop technologies capable of being patented. As the number of software patents increases, Phoenix believes that software developers may become increasingly subject to infringement claims. There can be no assurance that a third party will not assert that its patents or other proprietary rights are violated by products offered by Phoenix. Any such claims, whether or not meritorious, can be time consuming and expensive to defend, and could have an adverse effect on Phoenix's business, results of operations and financial condition. Infringement of valid patents or copyrights or misappropriation of valid trade secrets could also have an adverse effect on Phoenix's business, results of operations and financial condition.

**DEPENDENCE ON THIRD-PARTY PROVIDERS OF TECHNOLOGY.** Phoenix's products use certain products and technologies of various third party software developers, including both complete products offered as extensions of Phoenix's product lines and technology used in the enhancement of internally developed products. In addition, Phoenix recently announced that it had become the exclusive distributor to OEMs of First Aid, a diagnostic and repair utility from CyberMedia, Inc. for PCs and PC software. These products are licensed under contractual agreements, which in some cases are for limited time periods and in some cases provide for termination under certain circumstances. There can be no assurance that the technology plans and directions for the third party products will remain compatible with Phoenix's needs, that these third-party providers will commit adequate development resources to maintain or enhance these products and technologies, or that the license agreements with limited duration will be renewed upon expiration. In such circumstances, Phoenix may not be able to obtain or develop substitute products or technology, which could adversely affect Phoenix's business, results of operation and financial condition.

**IMPORTANCE OF MICROSOFT AND INTEL.** For a number of years, Phoenix has worked closely with Microsoft Corporation and Intel Corporation in developing standards for the PC industry. In addition, Phoenix has been a supplier of its system-level software technology to Intel and in December 1995 the two companies entered into a significant, long-term technology agreement pursuant to which Phoenix licensed its desktop and server BIOS products for Intel to include with its motherboard products. Phoenix presently expects its ongoing relationships with these two industry leaders to remain good. There can, however, be no assurance that either Microsoft or Intel will not develop alternative product strategies which could conflict with Phoenix's product plans and marketing strategies and, accordingly, adversely impact Phoenix's business and results of operations. Presently, there is little overlap or conflict in Phoenix's product offerings and strategies and those of Intel. Windows NT and Windows CE, Microsoft's newer operating systems, incorporate some functionality that has traditionally resided in the BIOS. However, PCs which support multiple operating systems still require this support in the BIOS. To provide products to OEMs which are manufacturing systems using only these newer Microsoft operating systems, Phoenix must migrate its intellectual property from the BIOS to the lower levels of these operating systems. There can be no assurances that Phoenix will be successful in these efforts.

**RETENTION OF KEY PERSONNEL.** Phoenix believes it employs more BIOS engineers than any other company in the PC industry. Virtual Chips' products are based on new and emerging technologies which are different than BIOS technologies. Phoenix's ability to achieve its revenue and operating performance objectives will depend in large part on its ability to attract and retain technically qualified engineers. The available pool of engineering talent is

limited for both operations. Accordingly, failure to retain and grow its research and development teams could adversely affect Phoenix's business and operating results.

**COMPETITION.** The market for Phoenix's products is extremely competitive. Phoenix competes primarily with three other independent suppliers with respect to its system-level software products: American Megatrends, Inc., Award Software International Inc. and SystemSoft Corporation. It also competes for BIOS business with in-house research and development departments of PC manufacturers that have significantly greater financial and technical resources than those of Phoenix. These companies include Compaq Computer Corporation, International Business Machines Corporation, Dell Computer Corporation and Toshiba Corporation. In the synthesizable core business begun with the acquisition of Virtual Chips, Phoenix competes with businesses such as Mentor Graphics Corporation, Synposys Corporation and Cadence Systems who have resources far greater than those of Phoenix and with other companies such as Sand Microsystems and CAE Technology. There can be no assurance that Phoenix will continue to compete successfully with its current competitors or that it will be able to compete successfully with new competitors.

**INTERNATIONAL SALES AND ACTIVITIES.** Revenue derived from Phoenix's international operations comprises a majority of total revenues. There can be no assurances that Phoenix will not experience significant fluctuations in international revenues. While virtually all of Phoenix's license fee or royalty contracts are U.S dollar denominated, Phoenix is considering permitting its overseas offices to invoice in local currencies. Phoenix has sales and engineering offices in England, France, Japan and Taiwan and uses a Madras, India software engineering firm for assistance in the synthesizable core business. Phoenix's operations and financial results could be adversely affected by factors associated with international operations such as changes in foreign currency exchange rates, uncertainties relative to regional economic circumstances, political instability in emerging markets, and difficulties in staffing and managing foreign operations, as well as by other risks associated with international activities.

**VOLATILE MARKET FOR PHOENIX STOCK.** The market for Phoenix's stock is highly volatile. The trading price of Phoenix common stock has been and will continue to be subject to fluctuations in response to operating and financial results, announcements of technological innovations, new products of customer contracts by Phoenix and its competitors, changes in Phoenix's or its competitors' product mix or product direction, changes in Phoenix's revenue mix and revenue growth rates, changes in expectations of growth for the PC industry, as well as other events or factors which Phoenix may not be able to influence or control. Statements or changes in opinions, ratings or earnings estimates made by brokerage firms and industry analysts relating to the market in which Phoenix does business, companies with which Phoenix competes or relating to Phoenix specifically could have an immediate and adverse effect on the market price of Phoenix's stock. In addition, the stock market has from time to time experienced extreme price and volume fluctuations that have particularly affected the market price for many high-technology companies and that often have been unrelated to the operating performance of these companies.

**CERTAIN ANTI-TAKEOVER EFFECTS.** Phoenix's Certificate of Incorporation, Bylaws and Stockholder Rights Plan and the Delaware General Corporation Law include provisions that may be deemed to have anti-takeover effects and may delay, defer or prevent a takeover attempt that stockholders might consider in their best interests. These include provisions under which members of the Board of Directors are divided into three classes and are elected to serve staggered three year terms. The Stockholder Rights Plan permits holders of Phoenix common stock to purchase shares of Series A Junior participating preferred stock in the event of the acquisition by a third party of 20% or more of Phoenix's outstanding common stock or if a third party announces its tender offer for at least 30% of Phoenix's outstanding common stock. If Phoenix is acquired in a merger or other business combination, each right will entitle its holder to purchase a number of shares of Phoenix common stock which equals the exercise price of the right divided by one-half of the then current market price of Phoenix common stock. In addition, in connection with the February 1996 sale of shares representing 6% of the outstanding Phoenix common stock and of a warrant to purchase an additional 7%, Phoenix granted Intel Corporation certain rights in the event of solicited or unsolicited offers to acquire Phoenix.

LIQUIDITY AND CAPITAL RESOURCES. At September 30, 1996, the Company's primary sources of liquidity included cash, cash equivalents and short-term investments of \$57 million and available borrowings under a bank credit facility of \$10 million. There were no borrowings outstanding under the bank credit facility at September 30, 1996. The Company believes that its existing sources of liquidity will be sufficient to satisfy the Company's cash requirements for at least the next twelve months.

CHANGES IN FINANCIAL CONDITION. Net cash generated from operating activities during fiscal 1996 was \$11 million, resulting primarily from cash provided by net income, adjusted for non-cash items. Net cash used in investing activities was \$24.4 million which consisted primarily of purchases of short-term investments of \$45.4 million, purchases of property and equipment of \$4.3 million, and additions to computer software costs of \$2.7 million for use in the Company's operations and was partially offset by maturities of short-term investments of \$21.3 million and proceeds from sale of marketable securities of \$6.8 million. Cash generated from financing activities during fiscal 1996 was \$13.3 million resulting from the issuance of common stock and a warrant to Intel Corporation for \$10.4 million, issuance of convertible debt securities of \$0.7 million and the exercise of common stock options and issuance of stock under the Company's employee stock purchase plan of \$4.2 million, partially offset by \$2 million of purchases of treasury stock.

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Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The following financial statements which are filed as a part of Item 14 of this report are incorporated herein by this reference:

Consolidated Balance Sheets as of September 30, 1996 and 1995.

Consolidated Statements of Income for the years ended September 30, 1996, 1995 and 1994.

Consolidated Statements of Cash Flows for the years ended September 30, 1996, 1995 and 1994.

Consolidated Statements of Stockholders' Equity for the years ended September 30, 1996, 1995 and 1994.

Notes to Consolidated Financial Statements.

Independent Auditor's Report.

Selected Quarterly Financial Data.

Item 9. CHANGES IN, AND DISAGREEMENTS WITH, ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

PART III

Item 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this Item with respect to directors of the Company will be contained in the Company's definitive proxy statement to be filed pursuant to Regulation 14A in connection with the 1997 annual meeting of its stockholders (the "Proxy Statement") and is incorporated herein by this reference.

The executive officers of the Company, each of whom serve at the discretion of the Board of Directors, as of the date of this Form 10-K are as follows:

NAME	AGE	POSITION
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Jack Kay	50	President and Chief Executive Officer
Robert J. Riopel	55	Vice President, Finance, Chief Financial Officer and Treasurer
Gayn B. Winters	54	Vice President, Engineering and Chief Technology Officer
David A. Everett	54	Vice President, Worldwide Field Operations
Craig Slayter		Vice President and General Manager, Special Products Division

Mr. Kay joined the Company as Vice President of Worldwide Sales in May 1990. In January, 1992, he was appointed Senior Vice President and Chief Operating Officer. In June, 1994, he was promoted to President and Chief Operating Officer. Effective October 1, 1995, he was promoted to President and Chief Executive Officer.

Mr. Riopel joined the Company as Vice President, Finance, Chief Financial Officer, and Treasurer in February 1995. For two years before joining the Company, Mr. Riopel was Senior Vice President, Finance and Administration and Chief Financial Officer for OpenVision Technologies, Inc., a developer of system management software for client-server systems. From 1989 to 1993, Mr. Riopel served as vice president, finance for the international division of Silicon Graphics, Inc.

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Dr. Winters joined the Company as Vice President, Engineering and Chief Technology Officer in August 1995. For more than five years before joining the Company, Dr. Winters worked for Digital Equipment Corporation, a leading supplier of computer systems, most recently as Group Engineering Manager and Corporate Consulting Engineer.

Mr. Everett joined the Company as Vice President, Worldwide Field Operations, in December 1995. From 1993 until joining the Company, Mr. Everett was Executive Vice President, Sales and Marketing, for Syquest Technology, a manufacturer of Winchester removable cartridge disk drives. From 1984 to 1993, Mr. Everett was employed by Wyse Technology, a worldwide supplier of video display and computer products, in sales and marketing positions, most recently as its Senior Vice President, Sales and Corporate Marketing.

Mr. Slayter has been employed in various management positions since he joined the Company in July 1987. Mr. Slayter served as General Manager, Asia-Pacific Division, from April 1988 through September 1994. He was promoted to Vice President, Asia Pacific Operations in October 1994. Since April 1996, Mr. Slayter has been employed as the Vice President and General Manager of the Special Products Division.

To the Company's knowledge, based solely on review of the copies of such reports furnished to the Company during, and with respect to, its most recent fiscal year and written representations that no other reports were required, if any, the filing requirements of Section 16(a) applicable to its officers, directors and 10% Stockholders were satisfied, except that the Forms 5 for fiscal 1996 for directors Charles Federman, Lawrence G. Finch and Anthony P. Morris were filed 36 days late.

Item 11. EXECUTIVE COMPENSATION

The information required by this section is incorporated by reference from the Proxy Statement.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this section is incorporated by reference from the Proxy Statement.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this section is incorporated by reference from the Proxy Statement.

PART IV

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

(a) 1. FINANCIAL STATEMENTS

Consolidated Balance Sheets as of September 30, 1996 and 1995.

Consolidated Statements of Income for the years ended September 30, 1996, 1995 and 1994.

Consolidated Statements of Cash Flows for the years ended September 30, 1996, 1995 and 1994.

Consolidated Statements of Stockholders' Equity for the years ended September 30, 1996, 1995 and 1994.

Notes to Consolidated Financial Statements.



Report of Independent Auditors.

Selected Quarterly Financial Data.

Report of Independent Accountants.

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## 2. FINANCIAL STATEMENT SCHEDULES

### Schedule II - Valuation and Qualifying Accounts

All other schedules are omitted because they are not required, are not applicable or the information is included in the financial statements or notes thereto. The financial statements and financial statement schedules follow the signature page hereto.

## 3. EXHIBITS

- 3.1 Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1, Registration No. 33-21793 (the "Form S-1"))
- 3.2 By-laws of the Registrant as amended through February 6, 1995 (incorporated herein by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-8, Registration No. 333-03065 (the "1996 ESPP S-8"))
- 3.3 Certificate of Correction to the Registrant's Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.3 to Amendment No. 2 to the Form S-1 ("Amendment No. 2"))
- 3.4 Certificate of Amendment to the Registrant's Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.4 to Amendment No. 2)
- 3.5 Certificate of Correction to the Registrant's Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.5 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 1988 (the "1988 Form 10-K"))
- 3.6 Certificate of Ownership (incorporated herein by reference to Exhibit 3.6 to the 1988 Form 10-K)
- 3.7 Certificate of Correction to the Registrant's Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.7 to the 1988 Form 10-K)
- 3.8 Rights Agreement dated as of October 31, 1989 between the Registrant and The First National Bank of Boston (incorporated herein by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated October 31, 1989 (the "1989 8-K"))
- 3.9 Certificate of Designations of the Registrant's Series A Junior Participating Preferred Stock (incorporated herein by reference to Exhibit 4.1 to the 1989 8-K)
- 3.10 Certificate of Amendment of Restated Certificate of Incorporation filed with the Delaware Secretary of State on April 18, 1996 (incorporated by reference to Exhibit 4.11 to the 1996 ESPP S-8).
- 3.11 Certificate of Increase of Shares Designated as Series A Junior Participating Preferred Stock filed with the Delaware Secretary of State on April 18, 1996 (incorporated by reference to Exhibit 4.12 to the 1996 ESPP S-8).
- 4.1 Rights Agreement dated as of October 31, 1989 between the Company and The First National Bank of Boston - filed as Exhibit 4.1 to the October 31, 1989 Form 8-K, and incorporated herein by this reference.
- 10.1 1986 Incentive Stock Option Plan, as amended - filed as Exhibit 4.1 to the Company's Registration Statement on Form S-8, Registration No. 33-30940, and incorporated herein by this reference.

10.2 Senior Management Stock Option Plan, as amended - filed as Exhibit 4.2 to the Company's Registration Statement on Form S-8, Registration No. 33-26996 (the "February 1989 Form S-8"), and incorporated herein by this reference.

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10.3 Senior Management Nonqualified Stock Option Plan, as amended - filed as Exhibit 4.3 to the February 1989 Form S-8 and incorporated herein by this reference.

10.4 Employment agreement dated June 9, 1994 between the Registrant and Jack Kay - filed as Exhibit 10.9 to the Company's Quarterly Report on Form 10-Q filed on August 15, 1994 and incorporated herein by this reference.

10.5 1992 Equity Incentive Plan - filed with the Company's preliminary proxy materials filed on December 17, 1992 (the "1992 Equity Incentive Plan") and incorporated herein by this reference.

10.6 Amendment dated April 15, 1993 to the Line of Credit Agreement dated November 25, 1991 between the Registrant and Silicon Valley Bank filed as exhibit 10.23 to the Company's Form 10-Q filed on August 16, 1993 and incorporated herein by this reference.

10.7 Amendment dated June 28, 1993 to the Line of Credit Agreement dated November 25, 1991 between the Registrant and Silicon Valley Bank filed as exhibit 10.24 to the Company's Form 10-Q filed on August 16, 1993 and incorporated herein by this reference.

10.8 Replication Agreement dated March 15, 1993 between the Company and Microsoft Corporation and Amendments One, Two, Three and Four thereto, filed as exhibit 10.16 to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 and incorporated herein by this reference.

10.9 Letter Amendment dated as of December 30, 1993 to Line of Credit Agreement dated November 25, 1991 between the Registrant and Silicon Valley Bank filed as exhibit 10.17 to the Company's Form 10-Q filed on February 14, 1994 and incorporated herein by this reference.

10.10 Purchase Agreement dated March 15, 1994 between the Company and Softbank Corporation filed as exhibit 10.18 to the Company's Form 10-Q filed May 16, 1994 and incorporated herein by this reference.

10.11 Amendment Number 1 to the 1992 Equity Incentive Plan filed as exhibit 10.19 to the Company's Form 10-Q filed May 16, 1994 and incorporated herein by this reference.

10.12 Amendment Number 1 to the 1991 Employee Stock Purchase Plan filed as exhibit 10.20 to the Company's Form 10-Q filed May 16, 1994 and incorporated herein by this reference.

10.13 Amendment No. 1 to Purchase Agreement by and between Phoenix Technologies Ltd. and Softbank Corporation dated as of March 15, 1994 -filed as Exhibit 2.02 to the Company's Current Report on Form 8-K dated September 30, 1994 and incorporated herein by this reference.

10.14 Asset Purchase Agreement made as of September 30, 1994 by and between the Registrant and Xionics International Holdings, Inc. - filed as Exhibit 2.01 to the Company's Current Report on Form 8-K dated November 8, 1994 and incorporated herein by this reference.

10.15 1994 Equity Incentive Plan, as amended through February 28, 1996 -filed as Exhibit 10.17 to the Company's Report on Form 10-K for the fiscal year ended September 30, 1995 (the "1995 10-K") and incorporated herein by this reference.

10.16 Amended and Restated Employee Stock Purchase Plan, as amended by through February 28, 1996 - filed as Exhibit

- 4.10 to the 1996 ESPP S-8 and incorporated herein by this reference.
- 10.17 Employment offer letter between the Company and Gayn B. Winters -filed as Exhibit 10.19 to the 1995 10-K and incorporated herein by this reference.
- 10.18 Loan Modification Agreement dated January 25, 1995 to the Line of Credit Agreement dated November 25, 1991 between Silicon Valley Bank and the Company - filed as Exhibit 10.20 to the 1995 10-K and incorporated herein by this reference.
- 10.19 Third Amendment dated as of June 8, 1995 to the Line of Credit Agreement dated November 25, 1991 between Silicon Valley Bank and the Company - filed as Exhibit 10.21 to the 1995 10-K and incorporated herein by this reference.
- 10.20 Amendment dated as of June 30, 1995 to the Line of Credit Agreement dated November 25, 1991 between Silicon Valley Bank and the Company - filed as Exhibit 10.22 to the 1995 10-K and incorporated herein by this reference.

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- 10.21 Amended and Restated Lease Agreement dated March 15, 1995 between The Prudential Insurance Company of America and the Company with respect to certain facilities located at 846 University Avenue, Norwood, MA - filed as Exhibit 10.23 to the 1995 10-K and incorporated herein by this reference.
- 10.22 Agreement dated December 18, 1995 between Intel Corporation and the Company filed as Exhibit 10.24 to the Company's Report on Form 10-Q for the quarter ended December 31, 1995 as amended by a Form 10-Q/A-1 (the "December 1995 10-Q") and incorporated herein by this reference. Portions have been omitted and filed separately with the Commission pursuant to a request for confidential treatment.
- 10.23 Common Stock and Warrant Purchase Agreement dated as of December 18, 1995 by and between the Company and Intel Corporation - filed as Exhibit 10.25 to the December 1995 10-Q and incorporated herein by this reference.
- 10.24 Warrant to Purchase Shares of Common Stock of the Company dated February 15, 1996 - filed as Exhibit 2 to the Schedule 13D of Intel Corporation dated February 23, 1996 with respect to the purchase by Intel of shares of the Company's common stock and of a warrant to purchase shares of the Company's common stock (the "Intel Schedule 13D") and incorporated herein by this reference
- 10.25 Investor Rights Agreement, dated December 18, 1995, between the Company and Intel Corporation - filed as Exhibit 3.2 to the Intel Schedule 13D and incorporated herein by this reference.
- 10.26 Standard Industrial Lease - Full Net between The Equitable Life Assurance Society of the United States as Landlord and Phoenix Technologies Ltd. as Tenant dated as of May 15, 1996 for that certain property located at 411 E. Plumeria Drive, San Jose, California - filed as Exhibit 10.20 to the Company's Report on Form 10-Q for the quarter ended June 30, 1996 and incorporated herein by this reference.
- 10.27 Loan Agreement dated as of February 29, 1996 by and between Silicon Valley Bank and Phoenix Technologies Ltd.
- 10.28 Industrial Lease (Single Tenant; Net) dated as of October 1, 1996 by and between The Irvine Company and Phoenix Technologies Ltd. For that certain property located at 135 Technology Drive, Irvine, California.
- 11.1 Statement re computation of earnings per share (primary earnings per share).
- 21.1 Subsidiaries of the Company.
- 23.1 Consent of Independent Auditors (Ernst & Young LLP).

23.2 Consent of Independent Accountants (Coopers & Lybrand LLP).

27 Financial Data Schedule.

(b) REPORTS ON FORM 8-K

No reports on Form 8-K were filed by the Company during the fourth quarter of fiscal 1996.

(c) EXHIBITS FILED

See listing under Item 14(a)(3) above for a list of Exhibits filed with this report.

(d) FINANCIAL STATEMENT SCHEDULES

See Schedule II - Valuation and Qualifying Accounts for the Three Years Ended September 30, 1996

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#### SIGNATURES

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

PHOENIX TECHNOLOGIES LTD.

by: /s/ Jack Kay

-----  
Jack Kay  
President and Chief Executive Officer  
Date: December 30, 1996

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

/s/ Jack Kay

-----  
Jack Kay  
Director and Principal Executive Officer

Date: December 30, 1996

/s/ Robert J. Riopel

-----  
Robert J. Riopel  
Principal Finance and Accounting Officer

Date: December 30, 1996

/s/ Lawrence G. Finch

-----  
Charles Federman  
Director

Date: December , 1996

-----  
Lawrence G. Finch  
Director

Date: December 30, 1996

/s/ Ronald D. Fisher

-----  
Ronald D. Fisher  
Director

Date: December 30, 1996

/s/ Lance E. Hansche

-----  
Lance E. Hansche  
Director

Date: December 30, 1996

/s/ Anthony P. Morris

-----  
Anthony P. Morris  
Director

Date: December 30, 1996

PHOENIX TECHNOLOGIES LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF INCOME

&lt;TABLE&gt;

&lt;CAPTION&gt;

(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
<S>	<C>	<C>	<C>
Revenue:			
License fees	\$ 62,497	\$ 43,448	\$ 34,913
Services	9,639	6,493	5,676
Publishing	-	-	45,584
	-----	-----	-----
Total revenue	72,136	49,941	86,173
Cost of revenue:			
License fees	7,482	3,633	4,053
Services	7,260	5,949	5,270
Publishing	-	-	33,698
	-----	-----	-----
Total cost of revenue	14,742	9,582	43,021
Gross margin	57,394	40,359	43,152
Operating expenses:			
Research and development	20,628	11,038	6,887
Sales and marketing	15,522	14,355	16,585
General and administrative	9,679	6,696	8,460
Other operating expenses	889	-	9,095
	-----	-----	-----
Total operating expenses	46,718	32,089	41,027
Income from operations	10,676	8,270	2,125
Gain on sale of Publishing Division	-	-	23,538
Interest income, net	2,177	1,725	213
Other income (expense), net	73	303	(226)
	-----	-----	-----
Income before income taxes	12,926	10,298	25,650
Provision for income taxes	3,879	1,483	6,420
	-----	-----	-----
Income from continuing operations	9,047	8,815	19,230
Discontinued operations:			
Loss from discontinued operations (after income tax benefit of \$1,199)	-	-	(1,792)
Gain (loss) from disposal (after income taxes of \$2,300 in 1996 and benefit of \$425 in 1994)	3,752	-	(10,644)
	-----	-----	-----
Net Income	\$ 12,799	\$ 8,815	\$ 6,794
	-----	-----	-----
Income (loss) per share:			
Income from continuing operations	\$ 0.52	\$ 0.56	\$ 1.32
Income (loss) from discontinued operations	0.21	-	(0.85)
	-----	-----	-----
Net income per share	\$ 0.73	\$ 0.56	\$ 0.47
	-----	-----	-----
Shares used in per share computations	17,456	15,763	14,567
	-----	-----	-----

&lt;/TABLE&gt;

SEE NOTES TO CONSOLIDATED FINANCIAL STATEMENTS.

PHOENIX TECHNOLOGIES LTD. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS

&lt;TABLE&gt;

&lt;CAPTION&gt;

(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)	SEPTEMBER 30,	
	1996	1995
<S>	<C>	<C>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 25,752	\$ 25,797
Short-term investments	31,287	7,147
Accounts receivable, net of allowances of \$467 in 1996 and \$430 in 1995	16,225	12,064
Deferred income taxes	2,719	1,105
Other current assets	2,809	2,585
Total current assets	78,792	48,698
Other marketable securities	21,831	-
Property and equipment, net	5,099	2,625
Computer software costs, net	3,694	3,823
Deferred income taxes	-	2,195
Other assets	4,133	5,049
Total assets	\$ 113,549	\$ 62,390
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 2,589	\$ 1,645
Payroll and related liabilities	3,279	2,536
Accrued license fees and royalties	1,299	889
Other accrued liabilities	2,702	2,721
Income taxes payable	3,955	2,765
Relocation accrual	97	622
Discontinued operations	1,335	724
Total current liabilities	15,256	11,902
Deferred income taxes	8,561	-
Other liabilities	155	70
Commitments	-	-
Stockholders' equity:		
Preferred stock, \$.10 par value, 500 shares authorized, none issued	-	-
Common stock, \$.001 par value, 40,000 shares authorized, 16,636 and 13,928 shares issued and outstanding at September 30, 1996 and 1995	17	14
Additional paid-in capital	68,509	53,710
Retained earnings (accumulated deficit)	8,113	(3,232)
Unrealized gain on available-for-sale securities	13,098	-
Accumulated translation adjustment	(160)	(74)
Total stockholders' equity	89,577	50,418
Total liabilities and stockholders' equity	\$ 113,549	\$ 62,390

</TABLE>

SEE NOTES TO CONSOLIDATED FINANCIAL STATEMENTS.

PHOENIX TECHNOLOGIES LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS

<TABLE>  
<CAPTION>

(IN THOUSANDS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
<S>	<C>	<C>	<C>
Cash flow from operating activities:			

Net income	\$ 12,799	\$ 8,815	\$ 6,794
Adjustments to reconcile net income to net cash provided by (used in) operating activities			
Depreciation and amortization	5,051	3,050	5,401
Provision for relocation	(525)	(876)	2,318
Gain on recovery of assets previously written off	(6,051)	-	-
Realized gain on sale of marketable securities	(294)	-	-
Compensation costs related to stock issuance	49	-	-
Gain on sale of Publishing Division	-	-	(23,538)
Equity investment	170	(170)	-
Provision for loss on discontinued operations	-	-	10,006
Write-off of prepaid royalties and capitalized software	-	-	6,777
Deferred income taxes	410	(1,300)	-
Change in operating assets and liabilities, net of effects of acquisitions and divestitures:			
Accounts receivable	(4,305)	4,020	(6,024)
Other current assets and other assets	(53)	(351)	(2,310)
Accounts payable	955	(1,798)	-
Payroll and related liabilities	788	74	2,142
Other accrued liabilities	147	(2,494)	(152)
Income taxes payable	1,234	(1,335)	2,991
Discontinued operations	611	(4,479)	(223)
	-----	-----	-----
Total adjustments	(1,813)	(5,659)	(2,612)
	-----	-----	-----
Net cash provided by operations	10,986	3,156	4,182
Cash flows from investing activities:			
Proceeds from sale of Publishing Division	-	-	30,000
Maturity of short-term investments	21,261	23,086	1,000
Purchases of short-term investments	(45,401)	(25,863)	(4,370)
Proceeds from recovery on assets previously written off	6,774	-	-
Purchases of property and equipment	(4,328)	(1,596)	(1,787)
Investments and acquisitions, net of cash acquired	-	-	(1,467)
Additions to computer software costs	(2,680)	(1,674)	(5,306)
Other investing activities	(32)	-	(838)
	-----	-----	-----
Net cash provided by (used in) investing activities	(24,406)	(6,047)	17,232
Cash flows from financing activities:			
Proceeds from issuance of common stock and warrant	10,442	-	-
Proceeds from issuance of convertible debt securities	706	-	-
Proceeds from stock purchases under stock option and stock purchase plans, net	4,188	3,317	1,171
Purchase of treasury stock	(2,005)	(2,980)	-
Repayment of short-term borrowings	-	(1,241)	(188)
	-----	-----	-----
Net cash provided by (used in) financing activities	13,331	(904)	983
	-----	-----	-----
Effect of exchange rate changes on cash and cash equivalents	44	73	-
	-----	-----	-----
Net increase (decrease) in cash and cash equivalents	(45)	(3,722)	22,397
Cash and cash equivalents at beginning of fiscal year	25,797	29,519	7,122
	-----	-----	-----
Cash and cash equivalents at end of fiscal year	\$ 25,752	\$ 25,797	\$ 29,519
	-----	-----	-----

</TABLE>

SEE NOTES TO CONSOLIDATED FINANCIAL STATEMENTS.

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PHOENIX TECHNOLOGIES LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(IN THOUSANDS)	THREE YEARS ENDED SEPTEMBER 30, 1996						TOTAL STOCKHOLDERS' EQUITY
	COMMON STOCK SHARES	COMMON STOCK AMOUNT	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS (ACCUMULATED DEFICIT)	UNREALIZED GAIN ON AVAILABLE-FOR-SALE SECURITIES	ACCUMULATED TRANSLATION ADJUSTMENT	
-----							

<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Balance, September 30, 1993	12,273	\$ 13	\$ 48,105	\$ (16,637)	\$ -	\$ -	\$ 31,481
Stock purchases under stock option and stock purchase plans	424	-	1,171	-	-	-	1,171
Net income	-	-	-	6,794	-	-	6,794
Balance, September 30, 1994	12,697	13	49,276	(9,843)	-	-	39,446
Stock purchases under stock option and stock purchase plans	892	1	3,317	-	-	-	3,318
Tax benefit on exercise of stock options	-	-	1,893	-	-	-	1,893
Cancellation of treasury shares	(30)	-	350	(350)	-	-	-
Repurchases of common stock	369	-	(1,126)	(1,854)	-	-	(2,980)
Net income	-	-	-	8,815	-	-	8,815
Accumulated translation adjustment	-	-	-	-	-	(74)	(74)
Balance, September 30, 1995	13,928	14	53,710	(3,232)	-	(74)	50,418
Effect of pooling of interests	658	1	6	(39)	-	-	(32)
Conversion of notes receivable	206	-	706	-	-	-	706
Deferred compensation, net	-	-	49	-	-	-	49
Sale of common stock and warrant, net of costs	961	1	10,441	-	-	-	10,442
Stock purchases under stock option and stock purchase plans	1,035	1	3,651	-	-	-	3,652
Tax benefit on exercise of stock options	-	-	536	-	-	-	536
Repurchases of common stock	(152)	-	(590)	(1,415)	-	-	(2,005)
Unrealized gain on available for sale securities	-	-	-	-	13,098	-	13,098
Net income	-	-	-	12,799	-	-	12,799
Accumulated translation adjustment	-	-	-	-	-	(86)	(86)
Balance, September 30, 1996	16,636	\$ 17	\$ 68,509	\$ 8,113	\$13,098	\$ (160)	\$ 89,577

</TABLE>

SEE NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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PHOENIX TECHNOLOGIES LTD. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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1. DESCRIPTION OF OPERATIONS

Phoenix designs, develops, markets and supports standards-based system software and application software for personal computers and other microprocessor-based products. The Company sells to original equipment manufacturers ("OEMs") and integrators of personal computers ("PCs"), information appliances and peripheral devices. Phoenix provides training, consulting, maintenance and engineering services to its customers. The Company operates seven development and support centers in four countries. Most sales are made through the Company's direct sales force, but sales through technically certified distributors is increasing as a percent of revenue. The Company's Publishing Division sold technical publishing software and documentation and its Printer Software Division sold system software for laser printers until the sales of those divisions in fiscal 1994. The Company also marketed software through a retail channel until fiscal 1995.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

FINANCIAL STATEMENT PRESENTATION. The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in the financial statements. Certain amounts in the prior years' financial statements have been reclassified to conform to the fiscal 1996 presentation.

USE OF ESTIMATES. The presentation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates. Such estimates include the allowance for doubtful accounts, sales returns and customer credits, net realizable value of capitalized



computer software costs, and the valuation allowance on deferred tax assets.

REVENUE RECOGNITION. The Company's revenue is derived from license fees and engineering services sold primarily to OEMs. License fees for system software are recorded as revenue when the products have been delivered to the OEMs and no significant vendor obligations remain. The costs of insignificant support obligations are accrued. The amount of revenue recognized under minimum license fee arrangements with extended payment terms is restricted to payments due within 90 days. Certain license agreements for new and customized products provide for customer acceptance periods that typically run for 30 days. Revenues on such products are recognized when accepted by the OEMs as determined by the Company.

Additional per copy license fees are recognized when the OEM ships products incorporating the Company's software in excess of the quantity covered by the initial or minimum license fee. Customers entering into license agreements with the Company for customized products are typically charged engineering fees that vary according to the amount of engineering work performed. Engineering fees are recognized as revenue on a time and materials basis or when contractual milestones are met. Maintenance revenues are recognizable ratably over the contract period.

Allowances for estimated returns and customer credits are recorded in the same period as the related revenues.

In fiscal 1996, one customer accounted for 10% of revenues. No customers accounted for 10% or more of revenues in fiscal 1995. In fiscal 1994, one customer accounted for 19% of revenues and another customer accounted for 14%.

CASH EQUIVALENTS. All highly liquid securities purchased with a maturity of less than three months are considered cash equivalents.

SHORT-TERM INVESTMENTS AND OTHER MARKETABLE SECURITIES. The Company adopted the provisions of Statement of Financial Accounting Standards ("SFAS") No. 115, "Accounting for Certain Investments in Debt and Equity Securities," in fiscal 1995. SFAS 115 requires investment securities to be classified as trading, available for sale or held to maturity. Management determines the appropriate classification of each security at the purchase date.

Short-term investment securities consist of U.S. government and agency obligations, bankers' acceptances and commercial paper with original maturities generally ranging from three months to one year. Short-term investments are classified as held-to-maturity as the Company has the intent and the ability to hold them until maturity. Such investments are recorded at amortized cost under SFAS 115. At September 30, 1996

and 1995, the fair value of such short-term investments approximated amortized cost and gross unrealized holding gains and losses were not material.

Other marketable securities consist of the shares of Xionics Document Technologies, Inc. ("Xionics") (NASDAQ:XION) owned by the Company and classified as available-for-sale. In accordance with SFAS 115, the shares of Xionics common stock are recorded at fair value based on quoted market prices. The unrealized gain on this investment, less deferred income taxes has been recorded as a separate component of stockholders' equity. The market value, deferred taxes and unrealized gain will be adjusted to the current market value each period.

CREDIT RISK. Financial instruments which potentially subject the Company to concentrations of credit risk consist principally of temporary cash investments and trade receivables. The Company places its temporary cash investments with high credit qualified financial institutions. The Company does not require collateral for trade receivables, but the related credit risk is limited due to the Company's large number of customers and their geographic dispersion. One customer accounted for 12% and another customer accounted for 11% of accounts receivable at September 30, 1996 and one other customer accounted for 11% of accounts receivable at September 30, 1995.

PROPERTY AND EQUIPMENT. Property and equipment are carried at cost and depreciated using the straight-line method over their estimated useful lives, typically three to five years. Leasehold improvements are recorded at cost and amortized over the lesser of their useful lives or the remaining term of the related lease.

COMPUTER SOFTWARE COSTS. Computer software costs consist of internally developed and purchased software. Development costs incurred in the research and development of new software products and enhancements to existing products are

expensed as incurred until technological feasibility has been established, at which time, such costs are capitalized. Capitalized computer software costs are amortized over the economic life of the product, generally three years, using the straight-line method or a ratio of current revenues to total anticipated revenues.

The Company evaluates the net realizable value and amortization periods of computer software costs on an ongoing basis relying on a number of factors including operating results, business plans, budgets and economic projections. In addition, the Company's evaluation considers non-financial data such as market trends and customer relationships, buying patterns and product development cycles.

INCOME TAXES. Income taxes are accounted for in accordance with SFAS 109, "Accounting for Income Taxes." Under the asset and liability method of SFAS 109, deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities, and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period of enactment.

NET INCOME PER SHARE. Net income per share is computed using the weighted average number of common and dilutive common stock equivalents outstanding. Dilutive common equivalent shares consist of stock options and warrants and are calculated using the treasury stock method. Fully diluted earnings per share are not materially different from reported primary earnings per share.

STOCK BASED COMPENSATION. The Company intends to continue to account for its stock option and employee stock purchase plans in accordance with the provisions of APB Opinion Number 25, "Accounting for Stock Issued to Employees" and will adopt the "disclosure only" alternative described in SFAS 123, "Accounting for Stock-Based Compensation" in fiscal 1997.

CASH FLOW INFORMATION. Supplemental cash flow information is as follows:

(IN THOUSANDS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
-----			
Supplemental disclosure of cash flow information:			
Interest paid during the year	\$ 39	\$ 69	\$ 79
	27		
Income taxes paid during the year, net of refunds	\$2,905	\$1,125	\$ 181
Supplemental schedule of non-cash activities			
Conversion of debt securities to common stock	\$ 706	\$ -	\$ -
Tax benefit on stock options	\$ 536	\$1,893	\$ -

### 3. CASH AND INVESTMENTS

The short-term investments were as follows:

(IN THOUSANDS)	SEPTEMBER 30,	
	1996	1995
-----		
U.S. government and agency obligations	\$ 30,290	\$ 5,156
Bankers' acceptances	997	998
Commercial paper	-	993
	-----	-----
	\$ 31,287	\$ 7,147
	-----	-----
	-----	-----

### 4. PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

(IN THOUSANDS)	SEPTEMBER 30,	
	1996	1995
-----		
Equipment	\$ 10,618	\$ 7,833

Furniture and fixtures	2,496	2,808
Leasehold improvements	1,365	1,258
	-----	-----
	14,479	11,899
Less accumulated depreciation and amortization	9,380	9,274
	-----	-----
	\$ 5,099	\$ 2,625
	-----	-----

Depreciation and amortization expense related to property and equipment totaled \$1,825,000, \$1,278,000, and \$1,860,000 for fiscal 1996, 1995 and 1994, respectively.

#### 5. COMPUTER SOFTWARE COSTS

Computer software costs in the amounts of \$2,680,000, \$1,674,000 and \$2,933,000 were purchased or capitalized during fiscal 1996, 1995 and 1994, respectively.

Amortization charged to cost of revenue in fiscal 1996, 1995 and 1994 was \$3,224,000, \$1,244,000 and \$825,000, respectively. Amortization charged to discontinued operations for fiscal 1994 was \$1,604,000. In addition, the Company wrote off computer software costs of \$6,777,000 in fiscal 1994 in connection with a

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terminated distribution agreement and charged net computer software costs of \$1,584,000 to the discontinued printer software operation. Accumulated amortization of capitalized computer software costs at September 30, 1996 and 1995 totaled \$2,356,000 and \$1,128,000, respectively.

#### 6. UNSECURED LINE OF CREDIT

At September 30, 1996, there were no outstanding borrowings on the Company's \$10,000,000 unsecured bank line of credit. Borrowings on the line bear interest at the bank's prime rate of interest plus 1%. The line of credit agreement contains various covenants which require the Company to operate at a profit and meet certain financial ratios, and it restricts the payment of cash dividends. The line of credit expires in February 1997.

#### 7. INCOME TAXES

The components of the provision for income taxes from continuing operations are as follows:

(IN THOUSANDS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
Current:			
Federal	\$ 829	\$ 294	\$ 2,958
State	707	96	1,486
Foreign	4,213	1,093	2,081
Deferred:			
Federal	(1,462)	-	(87)
State	(408)	-	(18)
	-----	-----	-----
Provision for income taxes	\$ 3,879	\$ 1,483	\$ 6,420
	-----	-----	-----

Reconciliation of the United States federal statutory rate to the Company's effective tax rate is as follows:

(IN THOUSANDS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
Tax at U.S. federal statutory rate	\$ 4,524	\$ 3,501	\$ 8,721
State taxes, net of federal tax tax benefit	195	66	969
Foreign taxes not previously benefited	-	659	1,411
Tax benefit of prior year losses	(1,328)	(2,784)	(3,639)
Research and development tax credits	(269)	-	(1,116)
Nondeductible merger costs	311	-	-
Other nondeductible expenses	446	41	74
	-----	-----	-----
Provision for income taxes	\$ 3,879	\$ 1,483	\$ 6,420
	-----	-----	-----

The components of net deferred tax assets and liabilities are as follows:

(IN THOUSANDS)	SEPTEMBER 30,	
	1996	1995
Deferred tax assets:		
Foreign tax credits	\$ 1,308	\$ 2,735
Research and development tax credits	1,325	1,009
Minimum tax carryforward	864	566
Reserves and accruals	795	1,617
Depreciation	1,516	1,223
29		
Net operating loss carryforward	-	814
Other	1,611	-
Total	7,419	7,964
Less valuation allowance	3,185	3,185
Net deferred tax assets	4,234	4,779
Deferred tax liabilities:		
Capitalized software, net	1,343	1,479
Unrealized gain on available-for-sale securities	8,733	-
Total deferred tax liabilities	10,076	1,479
Net deferred tax assets (liabilities)	\$ (5,842)	\$ 3,300

Due to the uncertainty surrounding the timing of the realization of the benefit of its tax attributes in future tax returns, the Company has recorded a valuation allowance against otherwise recognizable net deferred tax assets.

At September 30, 1996, the Company had available for federal income tax purposes foreign tax credits of \$801,000, which expire in 2000 and 2001 and research and development tax credits of \$1,325,000, which expire in the years 2001 through 2011.

#### 8. COMMITMENTS

The Company leases office facilities under operating leases. Total rent expense was \$2,410,000, \$1,673,000 and \$2,672,000 in fiscal 1996, 1995 and 1994, respectively.

At September 30, 1996, future minimum operating lease payments are required as follows:

(IN THOUSANDS)	YEAR ENDING SEPTEMBER 30,
1997	\$ 3,330
1998	2,500
1999	1,696
2000	1,497
2001	1,466
2002 and thereafter	2,654
Total minimum lease payments	\$ 13,143

#### 9. STOCKHOLDERS' EQUITY

PREFERRED STOCK. As of September 30, 1996 and 1995, no preferred stock was issued or outstanding.

STOCKHOLDER RIGHTS PLAN. The Company has a stockholder rights plan which provides existing stockholders with the right to purchase one one-hundredth preferred share for each share of common stock held in the event of certain changes in the Company's ownership. These rights may serve as a deterrent to certain abusive takeover tactics which are not in the best interests of stockholders. This plan expires in fiscal 1999.

STOCK OPTION PLANS. During 1994, the Company established the 1994 Equity Incentive Plan (the "1994 Plan"). At September 30, 1996, the Company currently has 1,500,000 authorized shares under the plan. Except to the

extent that options remain outstanding under prior plans, the 1994 Plan replaced all prior option plans and all shares which were or become available for grant under any prior option plan are added to the 1994 Plan. In August 1996, the Company established the 1996 Equity Incentive Plan under which a total of 900,000 shares have been authorized for issuance. Both the 1994 and the 1996 Plans provide for the grant of nonqualified and incentive stock options, as well as restricted stock and stock bonus awards, to employees, officers, consultants and independent contractors; however, no officers or directors are eligible to receive any awards under the 1996

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plan until it is approved by the stockholders. Incentive stock options may not be granted at a price less than 100% (110% in certain cases) of the fair market value of the shares on the date of grant. Nonqualified options may not be granted at a price less than 85% of the fair market value of the shares on the date of grant. To date all grants have been made at fair market value or greater. Options vest over a period determined by the Board of Directors, generally four years, and have a term not exceeding 10 years.

Option activity under the plans, including the options assumed in the Virtual Chips acquisition, was as follows:

	SHARES	PRICE RANGE OF STOCK OPTIONS
-----		
Shares under option, September 30, 1993	2,824,784	\$ 0.450 - \$ 9.375
Options granted	1,421,800	\$ 3.875 - \$ 7.875
Options exercised	(282,588)	\$ 0.450 - \$ 4.500
Options canceled	(359,680)	\$ 2.380 - \$ 9.375
-----		
Shares under option, September 30, 1994	3,604,316	\$ 0.450 - \$ 9.375
Options granted	477,000	\$ 6.750 - \$12.875
Options exercised	(821,721)	\$ 0.450 - \$ 9.375
Options canceled	(292,674)	\$ 2.380 - \$ 9.375
-----		
Shares under option, September 30, 1995	2,966,921	\$ 0.450 - \$12.875
Options granted	1,334,377	\$ 0.310 - \$19.875
Options exercised	(812,049)	\$ 0.310 - \$13.375
Options canceled	(161,207)	\$ 4.125 - \$19.875
-----		
Shares under option, September 30, 1996	3,328,042	\$ 0.310 - \$19.875

At September 30, 1996, the number of shares exercisable under stock option plans was 1,640,470 and 996,747 shares were available for future grant.

SALE OF COMMON STOCK AND WARRANT. In February 1996, the Company sold 894,971 newly issued, unregistered shares of its common stock and a warrant to purchase 1,073,965 additional shares of the Company's common stock to Intel Corporation for \$10.4 million. The purchase rights under the warrant vest in annual increments of 214,793, 429,586, 644,379 and 1,073,965 shares beginning in December 1996. The warrant becomes fully exercisable in the event of an acquisition of the Company or termination of a technology agreement between the two parties. The per share purchase price at which the warrant may be exercised increases in annual increments from \$12.88 in 1997 to \$15.22 in 2001. The warrant expires in April 2001.

STOCK PURCHASE PLAN. The Phoenix Technologies Ltd. 1991 Employee Stock Purchase Plan ("ESPP") allows eligible employees to purchase shares at six month intervals, through payroll deductions, at 85% of the fair market value of the Company's common stock at the beginning or end of the six-month period, whichever is less. The maximum amount each employee may contribute during an offering period is 10% of gross base pay. As of September 30, 1996, 419,133 shares had been issued under the ESPP and 230,867 shares remained reserved for future issuance.

#### 10. ACQUISITIONS AND INVESTMENTS

In August 1996, the Company acquired all of the outstanding capital of Virtual Chips, Inc. ("Virtual Chips") in exchange for 1,241,842 shares of the Company's common stock. Virtual Chips is a leading supplier of synthesizable cores for the computer industry. The Company also assumed Virtual Chip's

outstanding stock options, which were converted to options to purchase approximately 147,959 shares of the Company's common stock. The merger was accounted for as a pooling of interests and, accordingly the consolidated financial

statements of the Company for fiscal 1996 have been restated to include the operations of Virtual Chips. The financial statements for the fiscal 1995 and 1994 have not been restated as the results of operations of Virtual Chips were not material in relation to those of the Company. However, shares used to compute net income per share have been restated for all periods presented to give effect to the shares issued and options assumed by the Company in the transaction.

In 1994, the Company purchased certain assets of two related United Kingdom companies. The acquisition was recorded using the purchase method of accounting; accordingly, the purchase price, which was insignificant, was allocated to the assets based on their estimated fair market values at the date of acquisition. The operating results of these acquisitions have been included in the consolidated financial statements from the date of acquisition and are not material in relation to the Company's consolidated financial statements. Pro forma statements of operations prior to the acquisition dates would not differ significantly from reported results.

#### 11. OTHER OPERATING EXPENSES

Other operating expenses in fiscal 1996 of \$889,000 are the costs associated with the acquisition of Virtual Chips, Inc. in August 1996. Other operating expenses in fiscal 1994 include the write-off of \$6,777,000 of non-refundable advance royalties in connection with its termination of an agreement to distribute a BIOS and other software for IBM. Also included in other operating expenses in fiscal 1994 is a provision of \$2,318,000 related to the relocation of the Company's headquarters from Massachusetts to California which occurred in fiscal 1995. In fiscal 1996 and 1995, \$525,000 and \$876,000 of the accrual was paid, respectively.

#### 12. DISCONTINUED OPERATIONS AND DIVESTITURES

PRINTER SOFTWARE DIVISION. In November 1994, the Company sold all the assets of its Printer Software Division to Xionics Document Technologies, Inc. ("Xionics") in return for a promissory note and shares of Xionics stock. Interest at 8% per annum was received quarterly; no payments of principal were due before January 1997. During fiscal 1995 and fiscal 1996, the Company made an additional loan to Xionics, exchanged a portion of the note for additional shares and reflected certain adjustments to the purchase price in the note balance.

In September 1996, Xionics (NASDAQ: XION) completed an initial public offering of its common stock and repaid the net amount due to the Company. The Company sold 500,000 of its Xionics' shares in the offering. The amounts received were recorded as a gain on disposal of discontinued operations, net of income taxes, to the extent such amounts were previously written off by a charge to discontinued operations. The balance of the amount received of \$294,000 represents investment income and was recorded as other income. At September 30, 1996, the Company held 1,455,381 shares of Xionics stock with a market value of \$15 per share. In October 1996, the underwriters for the offering exercised their option to purchase additional shares, including 75,000 shares from the Company. Following these sales, the Company owned approximately 13% of the outstanding Xionics common stock.

The results of the Printer Software Division are reflected in discontinued operations. Revenue for fiscal 1994 was \$9,439,000. The net liabilities were \$1,335,000 and \$724,000 at September 30, 1996 and 1995, respectively, and consist primarily of accrued costs to be incurred in connection with the sale of the Division, offset by accounts receivable. Payments were \$289,000 and \$4,479,000 in fiscal 1996 and 1995, respectively.

PUBLISHING DIVISION. In fiscal 1994, the Company also sold 80% of its Publishing Division for cash payments of \$30,000,000 to Softbank Corporation of Japan ("Softbank"). The Company recognized a pre-tax gain of \$23,538,000 on the transaction. Softbank and the Company each contributed their respective interests in the net assets of the Publishing Division to Phoenix Publishing Systems, Inc. ("PPSI"); and the Company received 20% of the capital stock of PPSI. There is a put and a call on the Company's 20% interest, exercisable from September 30, 1997 to September 30, 1999, for the greater of \$7,500,000 or an amount based on PPSI's operating performance. The Company accounts for its interest in PPSI under the equity method of accounting.

OTHER INVESTMENTS. Included in other assets at September 30, 1996 and 1995 is \$2,388,000 of equity and other investments in Softbank, Inc., a joint venture

company formed to distribute software products on compact disks. In fiscal 1995, the Company exchanged its investment in Softbank, Inc. for the right to put the investment to its

joint venture partner for \$2,310,000, plus 7% annual interest, or for an amount based upon the valuation of a subsidiary of another jointly owned company in an initial public stock offering should that offering occur. The investment is recorded at cost, and any gain will be recorded upon realization.

13. INTERNATIONAL INFORMATION

The Company licenses its products worldwide. Export revenues were made principally to the following geographic areas:

(IN THOUSANDS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
Asia/Pacific	\$ 27,716	\$ 16,246	\$ 12,884
Europe	7,328	3,258	9,962
	\$ 35,044	\$ 19,504	\$ 22,846

A summary of foreign operations, principally represented by locations in the Asia/Pacific region, is presented below.

(IN THOUSANDS)	YEAR ENDED SEPTEMBER 30,		
	1996	1995	1994
Revenues	\$ 4,248	\$ 4,108	\$ 16,366
Operating income	2,120	1,136	2,751
Income before income taxes	2,107	1,304	2,754
Identifiable assets	4,849	6,777	3,430

14. RETIREMENT PLANS

The Company has a retirement plan which is qualified under Section 401(k) of the Internal Revenue Code. This plan covers substantially all U.S. employees who meet minimum age and service requirements and allows participants to defer a portion of their annual compensation on a pre-tax basis. In addition, Company contributions to the plan may be made at the discretion of the Board of Directors. In January 1996, the Company began making a matching contribution of 25% of each participant's contribution, up to a match of \$1,000 per year per participant. The matching contributions vest over a four year period which starts with the participant's employment start date with the Company. The Company's contributions for fiscal 1996 were \$158,000.

REPORT OF INDEPENDENT AUDITORS

To The Board of Directors and Stockholders of  
Phoenix Technologies Ltd.

We have audited the consolidated balance sheet of Phoenix Technologies Ltd. as of September 30, 1996, and the related consolidated statements of income, stockholders' equity and cash flows for the year then ended. Our audit also included the financial statement schedule listed in Part IV, Item 14(a) to the Company's Report on Form 10-K for the year ended September 30, 1996. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audit. The consolidated financial statements and schedules of Phoenix Technologies Ltd. for the years ended September 30, 1995 and 1994 were audited by other auditors whose report dated October 27, 1995 expressed an unqualified opinion on those statements and schedules.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis,

evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

In our opinion the 1996 consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Phoenix Technologies Ltd. as of September 30, 1996, and the consolidated results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements as a whole, presents fairly in all material respects the information set forth therein.

Ernst & Young LLP

Palo Alto, California  
October 29, 1996

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PHOENIX TECHNOLOGIES LTD.

SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS  
FOR THE THREE FISCAL YEARS ENDED SEPTEMBER 30, 1996

<TABLE>  
<CAPTION>

Allowance for Doubtful Accounts	Balance at Beginning of Year	Charged to Costs and Expenses	Charged to other Accounts	Deductions(1)	Recoveries	Balance at end of Year
-----	-----	-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Year Ended September 30, 1996	\$ 430,000	\$ 94,000	\$ -	\$ 88,000	\$ 31,000	\$ 467,000
Year Ended September 30, 1995	657,000	60,000	329,000	785,000	169,000	430,000
Year Ended September 30, 1994	1,558,000	351,000	320,000	1,623,000	61,000	657,000

</TABLE>

(1) Deductions primarily represent the write-off of uncollectable accounts receivable.

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REPORT OF INDEPENDENT ACCOUNTANTS

We have audited the consolidated financial statements and the financial statement schedule of Phoenix Technologies Ltd. as of September 30, 1995 and for the years ended September 30, 1995 and 1994 listed in Item 14(a) of this Form 10-K. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Phoenix Technologies Ltd. as of September 30, 1995, and the consolidated results of their operations and their cash flows for the years ended September 30, 1995 and 1994 in conformity with generally accepted accounting principles. In addition, in our opinion, the financial statement schedule for the years



ended September 30, 1995 and 1994 referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information required to be included therein.

Coopers & Lybrand, L.L.P.

San Jose, California  
October 27, 1996

## PHOENIX TECHNOLOGIES LTD.

## LOAN AGREEMENT

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This LOAN AGREEMENT is entered into as of February 29, 1996, by and between SILICON VALLEY BANK ("Bank") and PHOENIX TECHNOLOGIES LTD. ("Borrower").

RECITALS

Borrower wishes to obtain credit from time to time from Bank, and Bank desires to extend credit to Borrower. This Agreement sets forth the terms on which Bank will advance credit to Borrower, and Borrower will repay the amounts owing to Bank.

AGREEMENT

The parties agree as follows:

DEFINITIONS AND CONSTRUCTION

DEFINITIONS. As used in this Agreement, the following terms shall have the following definitions:

"Advance" or "Advances" means an Advance under the Revolving Facility.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Bank Expenses" means all reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents,

and Bank's reasonable attorneys' fees and expenses incurred in amending, enforcing or defending the Loan Documents, whether or not suit is brought.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

"Committed Line" means Ten Million Dollars (\$10,000,000).

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, Letter of Credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn Letters of Credit issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

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"Current Liabilities" means, as of any applicable date, all amounts that should, in accordance with GAAP, be included as current liabilities on the consolidated balance sheet of Borrower and its Subsidiaries, as at such date, plus, to the extent not already included therein, all outstanding Advances made under this Agreement, including all Indebtedness that is payable upon demand or within one year from the date of determination thereof unless such Indebtedness is renewable or extendable at the option of Borrower or any Subsidiary to a date more than one year from the date of determination, but excluding Subordinated Debt.

"Daily Balance" means the amount of the Obligations owed at the end of a given day.

"Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

"ERISA" means the Employment Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"GAAP" means generally accepted accounting principles as in effect from time to time.

"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and Letters of Credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

"Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Inventory" means all present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing.

"Investment" means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"IRC" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"LIBOR Supplement" means that certain LIBOR Supplement to Agreement between Borrower and Bank of even date herewith.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, the LIBOR

Supplement, any note or notes executed by Borrower, and any other agreement entered into between Borrower and Bank in connection with this Agreement, all as amended or extended from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business operations or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents.

"Maturity Date" means February 28, 1997.

"Obligations" means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Bank may have obtained by assignment or otherwise.

"Periodic Payments" means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

"Permitted Indebtedness" means:

(a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and disclosed to Bank in writing;

(c) Indebtedness secured by Permitted Liens;

(d) Capital leases or indebtedness incurred solely to purchase equipment or to finance improvements on real property or leaseholds, in each case which is secured in accordance with clause (c) of "Permitted Liens" below and is not in excess of the lesser of the purchase price of such equipment or the cost of such improvements, as the case may be, or the fair market value of such equipment or the price of the contract for such improvements, as the case may be, on the date of acquisition or the date of such contract, as the case may be;

(e) Subordinated Debt; and

(f) Indebtedness to trade creditors incurred in the ordinary course of business.

"Permitted Investment" means:

(a) Investments existing on the Closing Date disclosed to Bank

in writing; and

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper of any corporation maturing no more than one (1) year from the date of creation thereof and currently having the highest rating obtainable from either Standard & Poor's Corporation or Moody's Investors Service, Inc., and (iii) certificates of deposit, eurodollar time deposits, commercial paper, repurchase agreements or other obligations of the Bank or of any other bank organized or licensed to conduct a banking business under the laws of the United States or any State thereof having capital, surplus and undivided profits of not less than One Hundred Million Dollars (\$100,000,000) in each case maturing no more than one (1) year from the date of investment therein issued by Bank;

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(c) Investments in stock or obligations issued to the Borrower in settlement of claims against others by reason of an event of bankruptcy or a composition or the readjustment of debt or a reorganization of any debtor of the Borrower;

(d) Investments in Subsidiaries in an aggregate amount not to exceed Five Million Dollars (\$5,000,000) in any fiscal year of the Borrower;

(e) Investments consisting of loans or advances to officers and employees of the Borrower and its Subsidiaries, not exceeding Two Hundred Thousand Dollars (\$200,000) in aggregate principal amount in any individual case or One Million Dollars (\$1,000,000) in aggregate principal amount at any one time outstanding; and

(f) Investments consisting of repurchase of the common stock of the Borrower in accordance with stock repurchase programs approved by Borrower's Board of Directors from time to time and in compliance with all federal and state securities laws.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and disclosed to Bank in writing;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings;

(c) Liens (i) upon or in any equipment acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of



its acquisition, PROVIDED that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;

(d) Liens of carriers, warehousemen, mechanics, materialmen or similar Liens imposed by law incurred in the ordinary course of business in respect of obligations not overdue or being contested in good faith and by proper proceedings;

(e) Liens in connection with workers' compensation, unemployment, insurance and other types of social security, if incurred in the ordinary course of business;

(f) Liens resulting from security deposits made in the ordinary course of business;

(g) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, PROVIDED that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prime Rate" means the variable rate of interest, per annum, most recently announced by Bank, as its "prime rate," whether or not such announced rate is the lowest rate available from Bank.

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"Quick Assets" means, at any date as of which the amount thereof shall be determined, the consolidated cash, cash-equivalents, accounts receivable and investments, with maturities not to exceed 90 days, of Borrower determined in accordance with GAAP.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Financial Officer and the Controller of Borrower.

"Revolving Facility" means the facility under which Borrower may request Bank to issue cash advances, as specified in Section 2.1 hereof.

"Subordinated Debt" means any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Bank on terms acceptable to Bank, which acceptance will not be unreasonably withheld or delayed (and identified as Subordinated Debt by Borrower and Bank).

"Subsidiary" means any corporation, limited liability company, trust or partnership in which the Borrower, either directly or through an Affiliate, as of the time any determination is being made (i) owns any general partnership interest or (ii) owns more than 50% of the ordinary voting power to elect the Board of Directors, managers or trustees of the entity.

"Tangible Net Worth" means at any date as of which the amount thereof shall be determined, the consolidated total assets of Borrower and its Subsidiaries MINUS, without duplication, (i) the sum of any amounts attributable to (a) goodwill, (b) intangible items such as unamortized debt discount and expense, patents, trade and service marks and names, copyrights and research and development expenses except prepaid expenses, and (c) all reserves not already deducted from assets, AND (ii) Total Liabilities.

"Total Liabilities" means at any date as of which the amount thereof shall be determined, all obligations that should, in accordance with GAAP be classified as liabilities on the consolidated balance sheet of Borrower, including in any event all Indebtedness, but specifically excluding Subordinated Debt.

ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms "financial statements" shall include the notes and schedules thereto.

#### LOAN AND TERMS OF PAYMENT

ADVANCES. Subject to and upon the terms and conditions of this Agreement, Bank agrees to make Advances to Borrower in an aggregate amount not to exceed the Committed Line minus the face amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit). Subject to the terms and conditions of this Agreement, amounts borrowed pursuant to this Section 2.1 may be repaid and reborrowed at any time during the term of this Agreement.

Whenever Borrower desires an Advance, Borrower will notify Bank by facsimile transmission or telephone no later than 3:00 p.m. California time, on the Business Day that the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form in substantially the form of EXHIBIT A hereto or a LIBOR Rate Advance Form as attached to the LIBOR Supplement. Bank is authorized to make Advances under this Agreement or under the LIBOR Supplement, based upon instructions received from a Responsible Officer, or without instructions if in Bank's discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank shall be entitled to rely on any telephonic notice given by a person who Bank reasonably believes to be a Responsible Officer, and Borrower shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will credit the amount of Advances made under this Section 2.1 to Borrower's deposit account.

The Revolving Facility shall terminate on the Maturity Date, at which time all Advances under this Section 2.1 and other amounts due under this Agreement shall be immediately due and payable.

#### 2.1.1 LETTERS OF CREDIT.

(a) Subject to the terms and conditions of this Agreement, Bank agrees to issue or cause to be issued Letters of Credit for the account of Borrower in an aggregate face amount not to exceed (i) the Committed Line minus (ii) the then outstanding principal balance of the Advances and the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit); provided that the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) shall not in any case exceed Ten Million Dollars (\$10,000,000). Each such Letter of Credit shall have an expiry date no later than the Maturity Date. All such Letters of Credit shall be, in form and substance, acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank's form of application and letter of credit agreement.

(b) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement and such Letters of Credit, under all circumstances whatsoever. Borrower shall indemnify, defend and hold Bank harmless from any loss, cost, expense or liability, including, without limitation, reasonable attorneys' fees, arising out of or in connection with any Letters of Credit.

#### 2.1.2 LETTER OF CREDIT REIMBURSEMENT; RESERVE.

(a) Borrower may request that Bank issue a Letter of Credit payable in a currency other than United States Dollars. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an advance to Borrower of the equivalent of the amount thereof (plus cable charges) in United States currency at the then prevailing rate of exchange in San Francisco, California, for sales of that other currency for cable transfer to the country of which it is the currency.

(b) Upon the issuance of any Letter of Credit payable in a currency other than United States Dollars, Bank shall create a reserve under the Committed Line for Letters of Credit against fluctuations in currency exchange rates, in an amount equal to ten percent (10%) of the face amount of such Letter of Credit. The amount of such reserve may be amended by Bank from time to time to account for fluctuations in the exchange rate. The availability of funds under the Committed Line shall be reduced by the amount of such reserve for so long as such Letter of Credit remains outstanding.

#### 2.1.3 FOREIGN EXCHANGE CONTRACT; FOREIGN EXCHANGE

## SETTLEMENTS.

(a) Subject to the terms of this Agreement, Borrower may utilize up to Ten Million Dollars (\$10,000,000) for foreign exchange contracts (the "Exchange Contracts"), pursuant to which Bank shall sell to or purchase from Borrower foreign currency on a spot or future basis. All Exchange Contracts must provide for delivery of settlement on or before the Maturity Date. The limit available at any time shall be reduced by the following amounts (the "Foreign Exchange Reserve") on each day (the "Determination Date"): (on all outstanding Exchange Contracts on which delivery is to be effected or settlement allowed more than two business days from the Determination Date, 10% of the gross amount of the Exchange Contracts; plus (ii) on all outstanding Exchange Contracts on which delivery is to be effected or settlement allowed within two business days after the Determination Date, 100% of the gross amount of the Exchange Contracts. In lieu of the foreign Exchange Reserve for 100% of the gross amount of any Exchange Contract, Borrower may request that Bank treat such amount as an Advance under the Committed Line.

(b) Bank may, in its discretion, terminate the Exchange Contracts at any time (a) that an Event of Default occurs or (b) that there is no sufficient availability under the

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Committed Line and Borrower does not have available funds in its bank account to satisfy the Foreign Exchange Reserve. If Bank terminates the Exchange Contracts, and without limitation of any applicable indemnities, Borrower agrees to reimburse Bank for any and all fees, costs and expenses relating thereto or arising in connection therewith.

(c) Borrower shall not permit the total gross amount of all Exchange Contracts on which delivery is to be effected and settlement allowed in any two business day period to be more than Ten Million Dollars (\$10,000,000) nor shall Borrower permit the total gross amount of all Exchange Contracts to which Borrower is a party, outstanding at any one time, to exceed Ten Million Dollars (\$10,000,000).

(d) Borrower shall execute all standard form applications and agreements of Bank in connection with the Exchange Contracts and, without limiting any of the terms of such applications and agreements, Borrower will pay all standard fees and charges of Bank in connection with the Exchange Contracts.

LIBOR OPTION. Borrower shall be entitled to request Advances in accordance with the LIBOR Supplement, which shall govern all LIBOR Advances, as defined therein.

## INTEREST RATES, PAYMENTS, AND CALCULATIONS.

INTEREST RATE. Except as set forth in Section 2.3(b), any

Advances shall bear interest, on the average Daily Balance, at a rate equal to the Prime Rate or the rate specified in the LIBOR Supplement.

DEFAULT RATE. All Obligations shall bear interest, from and after the occurrence of an Event of Default, at a rate equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

PAYMENTS. Interest hereunder shall be due and payable on the twenty-seventh calendar day of each month during the term hereof. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments when due and payable against any of Borrower's deposit accounts, or as an Advance against the Committed Line in which case such Advance shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

COMPUTATION. In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased effective as of 12:01 a.m. on the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

CREDITING PAYMENTS. Prior to the occurrence of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 3:00 p.m. California time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such

payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

FEES. Borrower shall pay to Bank the following:

FACILITY FEE. A Facility Fee equal to Four Thousand Five

Hundred Dollars (\$4,500), which fee shall be due on the Closing Date and shall be fully earned and nonrefundable;

BANK EXPENSES. Upon the date hereof, all Bank Expenses incurred through the Closing Date, including reasonable attorneys' fees and expenses up to Two Thousand Dollars (\$2,000), incurred in connection with the preparation and negotiation of this Agreement, and after the date hereof, all Bank Expenses upon delivery to Borrower of an invoice therefor.

ADDITIONAL COSTS. In case any change in any law, regulation, treaty or official directive or the interpretation or application thereof by any court or any governmental authority charged with the administration thereof or the compliance with any guideline or request of any central bank or other governmental authority (whether or not having the force of law), in each case after the date of this Agreement:

subjects Bank to any tax with respect to payments of principal or interest or any other amounts payable hereunder by Borrower or otherwise with respect to the transactions contemplated hereby (except for taxes on the overall net income of Bank imposed by the United States of America or any political subdivision thereof);

imposes, modifies or deems applicable any deposit insurance, reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, Bank; or

imposes upon Bank any other condition with respect to its performance under this Agreement,

and the result of any of the foregoing is to increase the cost to Bank, reduce the income receivable by Bank or impose any expense upon Bank with respect to any loans, Bank shall notify Borrower thereof. Borrower agrees to pay to Bank the amount of such increase in cost, reduction in income or additional expense as the same relate to Obligations under this Agreement, as and when such cost, reduction or expense is incurred or determined, upon presentation by Bank of a statement of the amount and setting forth Bank's calculation thereof, all in reasonable detail, which statement shall be deemed true and correct absent manifest error.

TERM. This Agreement shall become effective on the Closing Date and, subject to Section 11.7, shall continue in full force and effect for a term ending on the Maturity Date. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Advances under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default.

#### CONDITIONS OF LOANS

CONDITIONS PRECEDENT TO INITIAL ADVANCE. The obligation of Bank to make the initial Advance is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, the following:

this Agreement;

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a certificate of the Secretary of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;

the LIBOR Supplement;

payment of the fees and Bank Expenses then due specified in Section 2.5 hereof; and

such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

CONDITIONS PRECEDENT TO ALL ADVANCES. The obligation of Bank to make each Advance, including the initial Advance, is further subject to the following conditions:

timely receipt by Bank of the Payment/Advance Form as provided in Section 2.1; and

the representations and warranties contained in Section 4 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Advance as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would result from such Advance. The making of each Advance shall be deemed to be a representation and warranty by Borrower on the date of such Advance as to the accuracy of the facts referred to in this Section 3.2(b).

#### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

DUE ORGANIZATION AND QUALIFICATION. Borrower and each Subsidiary is a corporation duly existing and in good standing under the laws of its state of incorporation and qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

DUE AUTHORIZATION; NO CONFLICT. The execution, delivery, and performance of the Loan Documents are within Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower's Articles of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement to which



Borrower is a party or by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound, which default could have a Material Adverse Effect.

NAME; LOCATION OF CHIEF EXECUTIVE OFFICE. Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof.

LITIGATION. There are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency in which an adverse decision could have a Material Adverse Effect. Borrower does not have knowledge of any such pending or threatened actions or proceedings.

NO MATERIAL ADVERSE CHANGE IN FINANCIAL STATEMENTS. All consolidated financial statements related to Borrower and any Subsidiary that have been delivered by Borrower to Bank fairly present in all material respects Borrower's consolidated financial condition as of the date thereof and

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Borrower's consolidated results of operations for the period then ended. There has not been a material adverse change in the consolidated financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank.

SOLVENCY. Borrower is solvent and able to pay its debts (including trade debts) as they mature.

REGULATORY COMPLIANCE. Borrower and each Subsidiary has met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations G, T and U of the Board of Governors of the Federal Reserve System). Borrower has complied with all the provisions of the Federal Fair Labor Standards Act. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, violation of which could have a Material Adverse Effect.

ENVIRONMENTAL CONDITION. None of Borrower's or any Subsidiary's properties or assets has ever been used by Borrower or any Subsidiary or, to Borrower's knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; to Borrower's



knowledge, none of Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by Borrower or any Subsidiary; and neither Borrower nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by Borrower or any Subsidiary resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

TAXES. Borrower and each Subsidiary have timely filed or caused to be timely filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein.

SUBSIDIARIES. Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

GOVERNMENT CONSENTS. Borrower and each Subsidiary have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of their respective businesses as currently conducted.

FULL DISCLOSURE. No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading.

#### AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, until payment in full of all outstanding Obligations, and for so long as Bank may have any commitment to make an Advance hereunder, Borrower shall do all of the following:

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GOOD STANDING. Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could have a Material Adverse Effect. Borrower shall maintain, and shall cause each of its Subsidiaries to maintain, to the extent consistent with prudent management of Borrower's business, in force all licenses, approvals and agreements, the loss of which could have a Material Adverse Effect.

GOVERNMENT COMPLIANCE. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could have a Material Adverse Effect.

FINANCIAL STATEMENTS, REPORTS, CERTIFICATES. Borrower shall deliver to Bank: (a) as soon as available, but in any event within fifty (50) days after the end of each fiscal quarter, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during such period, certified by a Responsible Officer; (b) as soon as available, but in any event within ninety-five (95) days after the end of Borrower's fiscal year, audited consolidated financial statements of Borrower prepared in accordance with GAAP, consistently applied, together with an unqualified opinion on such financial statements of Ernst & Young, L.L.P. or another independent certified public accounting firm reasonably acceptable to Bank; (c) within five (5) days upon becoming available, copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt and all reports on Form 10-K and 10-Q filed with the Securities and Exchange Commission; (d) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against Borrower or any Subsidiary that Borrower reasonably expects could result in damages or costs to Borrower or any Subsidiary of Five Hundred Thousand Dollars (\$500,000) or more; and (e) such budgets, sales projections, operating plans or other financial information as Bank may reasonably request from time to time.

Borrower shall deliver to Bank, within thirty (30) days of the last day of each fiscal quarter, a Compliance Certificate signed by a Responsible Officer in substantially the form of EXHIBIT B hereto.

TAXES. Borrower shall make, and shall cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and will cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

INSURANCE. Borrower, at its expense, shall keep its business insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's

business is conducted on the date hereof.

PRIMARY OPERATING ACCOUNT. Borrower shall maintain its primary operating account with Bank.

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QUICK RATIO. Borrower shall maintain, as of the last day of each fiscal quarter, a ratio of Quick Assets to Current Liabilities (excluding deferred revenues) of at least 1.75 to 1.0.

DEBT-NET WORTH RATIO. Borrower shall maintain, as of the last day of each fiscal quarter, a ratio of Total Liabilities (excluding deferred revenues) less Subordinated Debt to Tangible Net Worth plus Subordinated Debt of not more than 0.75 to 1.0.

TANGIBLE NET WORTH. Borrower shall maintain, as of the last day of each fiscal quarter, a Tangible Net Worth of not less than Thirty-two Million Dollars (\$32,000,000).

PROFITABILITY. Borrower shall not suffer a loss from operations in any fiscal quarter in excess of Five Hundred Thousand Dollars (\$500,000).

FURTHER ASSURANCES. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

#### NEGATIVE COVENANTS

Borrower covenants and agrees that, so long as any credit hereunder shall be available and until payment in full of the outstanding Obligations or for so long as Bank may have any commitment to make any Advances, Borrower will not do any of the following:

DISPOSITIONS. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: (i) Transfers of Inventory in the ordinary course of business; (ii) Transfers of exclusive or non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries; (iii) Transfers of worn-out or obsolete Equipment; (iv) Transfers (whether in any one transaction or series of related transactions) of assets with a book value at the time of such transaction of less than Two Hundred Thousand Dollars (\$200,000).

CHANGE IN BUSINESS. Engage in any business, or permit any of its Subsidiaries to engage in any business, other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto). Borrower will not, without thirty (30) days prior written notification to Bank, relocate its chief executive office.

Notwithstanding any provision of this Agreement to the contrary, Borrower may dissolve Phoenix Computer Products, Inc., Phoenix Computer Products Corporation and Speed 4400 Limited, which are three wholly owned Subsidiaries that are not conducting business as of the date hereof.

MERGERS OR ACQUISITIONS. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person where the aggregate consideration paid in any fiscal year of the mergers, consolidations and acquisitions exceeds Ten Million Dollars (\$10,000,000), other than Permitted Investments.

INDEBTEDNESS. Create, incur, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

ENCUMBRANCES. Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income, including the sale of any accounts receivable, or permit any of its Subsidiaries so to do, except for Permitted Liens.

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DISTRIBUTIONS. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, other than Permitted Investments.

INVESTMENTS. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments.

TRANSACTIONS WITH AFFILIATES. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a nonaffiliated Person.

SUBORDINATED DEBT. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

COMPLIANCE. Become an "investment company" controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Advance for such purpose.

Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could have a Material Adverse Effect, or permit any of its Subsidiaries to do any of the foregoing.

#### EVENTS OF DEFAULT

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

**PAYMENT DEFAULT.** If Borrower fails to pay the principal of, or any interest on, any Advances when due and payable; or fails to pay any portion of any other Obligations not constituting such principal or interest, including without limitation Bank Expenses, within thirty (30) days of receipt by Borrower of an invoice for such other Obligations;

**COVENANT DEFAULT.** If Borrower fails to perform any obligation under Sections 5.8, 5.9, 5.10 or 5.11 or violates any of the covenants contained in Article 6 of this Agreement, or fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant, or agreement contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and Bank and as to any default under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure such default within ten (10) days after Borrower receives notice thereof or any officer of Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default (provided that no Advances will be required to be made during such cure period);

**MATERIAL ADVERSE CHANGE.** If there occurs a Material Adverse Effect;

**ATTACHMENT.** If any material portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not

been removed, discharged or rescinded within ten (10) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of

Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Advances will be required to be made during such cure period);

INSOLVENCY. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within ten (10) days (provided that no Advances will be made prior to the dismissal of such Insolvency Proceeding);

OTHER AGREEMENTS. If there is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars (\$100,000) or that could have a Material Adverse Effect;

SUBORDINATED DEBT. If Borrower makes any payment on account of Subordinated Debt, except to the extent such payment is allowed under any subordination agreement entered into with Bank;

JUDGMENTS. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000) shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days (provided that no Advances will be made prior to the satisfaction or stay of such judgment); or

MISREPRESENTATIONS. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

#### BANK'S RIGHTS AND REMEDIES

RIGHTS AND REMEDIES. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 7.5 all Obligations shall become immediately due and payable without any action by Bank);

Cease advancing money or extending credit to or for the

benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank; and

Without notice to Borrower set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank.

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**BANK EXPENSES.** If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following: (a) make payment of the same or any part thereof; (b) set up such reserves under the Revolving Facility as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 5.6 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

**REMEDIES CUMULATIVE.** Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under applicable law. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

**DEMAND; PROTEST.** Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

#### NOTICES

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or



by telefacsimile to Borrower or to Bank, as the case may be, at its addresses set forth below:

If to Borrower: Phoenix Technologies Ltd.  
2770 De La Cruz Boulevard  
Santa Clara, CA 95050  
Attn: Robert J. Riopel  
FAX: (408) 452-6801

If to Bank: Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054  
Attn: Peter A. Kidder  
FAX: (408) 748-9478

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

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#### CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Each of Borrower and Bank hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California. BORROWER AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

#### GENERAL PROVISIONS

SUCCESSORS AND ASSIGNS. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; PROVIDED, HOWEVER, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder.

INDEMNIFICATION. Borrower shall defend, indemnify and hold



harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to this Agreement or the transactions contemplated hereby (including without limitation reasonable attorneys fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct. Bank shall give Borrower prompt notice of the commencement of any proceeding which may give rise to indemnity pursuant to this section. Borrower shall have the right to control the defense of any such proceeding and to select the legal counsel to defend any such proceeding; provided however, that if such legal counsel determines in good faith that a conflict of interest exists then Banks shall be entitled to engage additional legal counsel at Borrower's expense. Bank shall cooperate with Borrower in the defense of any claim or proceeding. The Borrower will not settle any claim or demand without the prior consent of the Bank, which will not be unreasonably withheld or delayed.

TIME OF ESSENCE. Time is of the essence for the performance of all obligations set forth in this Agreement.

SEVERABILITY OF PROVISIONS. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

AMENDMENTS IN WRITING, INTEGRATION. This Agreement cannot be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement, if any, are merged into this Agreement and the Loan Documents.

COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be

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deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

SURVIVAL. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 11.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

CONFIDENTIALITY. In handling any confidential information Bank shall exercise the same degree of care that it exercises with respect to its own

proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to the subsidiaries or affiliates of Bank in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Advances, provided that they have entered into a comparable confidentiality agreement in favor of Borrower and have delivered a copy to Borrower, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, provided that Bank gives Borrower prior notice of any disclosure in sufficient time such that Borrower may seek a protective order restricting or prohibiting disclosure, (iv) as may be required in connection with the examination, audit or similar investigation of Bank and (v) as Bank may determine in exercising its remedies under this Agreement. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Bank when disclosed to Bank, or becomes part of the public domain after disclosure to Bank through no fault of Bank; or (b) is disclosed to Bank by a third party, provided Bank does not have actual knowledge that such third party is prohibited from disclosing such information.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

PHOENIX TECHNOLOGIES LTD.

By:

-----

Title:

-----

SILICON VALLEY BANK

By:

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Title:

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EXHIBIT A

LOAN PAYMENT/ADVANCE TELEPHONE REQUEST FORM

DEADLINE FOR SAME DAY PROCESSING IS 3:00 P.M., CALIFORNIA TIME

TO: CENTRAL CLIENT SERVICE DIVISION

DATE: \_\_\_\_\_

FAX#: (408) 496-2426

TIME: \_\_\_\_\_

FROM: \_\_\_\_\_

CLIENT NAME (BORROWER)

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

AUTHORIZED SIGNER'S NAME

AUTHORIZED SIGNATURE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

FROM ACCOUNT # \_\_\_\_\_ TO ACCOUNT # \_\_\_\_\_

REQUESTED TRANSACTION TYPE

REQUEST DOLLAR AMOUNT

PRINCIPAL INCREASE (ADVANCE) \$ \_\_\_\_\_

PRINCIPAL PAYMENT (ONLY) \$ \_\_\_\_\_

INTEREST PAYMENT (ONLY) \$ \_\_\_\_\_

PRINCIPAL AND INTEREST (PAYMENT) \$ \_\_\_\_\_

OTHER INSTRUCTIONS: \_\_\_\_\_

All representations and warranties of Borrower stated in the Loan Agreement are true, correct and complete in all material respects as of the date of the telephone request for and Advance confirmed by this Loan Payment/Advance Form; provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date.

BANK USE ONLY

TELEPHONE REQUEST:

The following person is authorized to request the loan payment transfer/loan advance on the advance designated account and is known to me.

\_\_\_\_\_  
Authorized Requester

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Received By (Bank)

\_\_\_\_\_  
Phone #

EXHIBIT B  
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK

FROM: PHOENIX TECHNOLOGIES LTD.

The undersigned authorized officer of Phoenix Technologies Ltd. hereby certifies that in accordance with the terms and conditions of the Loan Agreement between Borrower and Bank (the "Agreement"), except as indicated in an attachment hereto, (i) Borrower is in complete compliance for the period ended \_\_\_\_\_ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

PLEASE INDICATE COMPLIANCE STATUS BY CIRCLING YES/NO UNDER "COMPLIES" COLUMN.

REPORTING COVENANT	REQUIRED		COMPLIES
Quarterly financial statements	Quarterly within 50 days	Yes	No
Annual (CPA Audited)	FYE within 95 days		Yes
FINANCIAL COVENANT	REQUIRED	ACTUAL	COMPLIES
Maintain on a Quarterly Basis:			
Minimum Quick Ratio*	1.75:1.0	_____:1.0	Yes
Minimum Tangible Net Worth	\$32,000,000	\$ _____	Yes
Maximum Debt/Tangible Net Worth*	0.75:1.0	_____:1.0	Yes



INDUSTRIAL LEASE  
(SINGLE TENANT; NET)

BETWEEN

THE IRVINE COMPANY

AND

PHOENIX TECHNOLOGIES LTD.

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(Single Tenant; Net)

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INDUSTRIAL LEASE  
(SINGLE TENANT; NET)

BETWEEN

THE IRVINE COMPANY

AND

PHOENIX TECHNOLOGIES LTD.

INDUSTRIAL LEASE  
(SINGLE TENANT; NET)

THIS LEASE is made as of the 1st day of October, 1996, by and between THE IRVINE COMPANY, a Michigan corporation, hereafter called "Landlord," and PHOENIX TECHNOLOGIES LTD., a Delaware corporation, hereinafter called

"Tenant."

ARTICLE I. BASIC LEASE PROVISIONS

Each reference in this Lease to the "Basic Lease Provisions" shall mean and refer to the following collective terms, the application of which shall be governed by the provisions in the remaining Articles of this Lease.

1. Premises: The Premises are more particularly described in Section 2.1.

Address of Building: 135 Technology Drive, Irvine, CA 92618

2. Project Description (if applicable): Corporate Business Center

3. Use of Premises: General

4. Estimated Commencement Date: March 1, 1997

5. Lease Term: Sixty (60) months, plus such additional days as may be required to cause this Lease to terminate on the final day of the calendar month.

6. Basic Rent: Fifty-Two Thousand Five Hundred Dollars (\$52,500.00) per month.

Basic Rent is subject to adjustment as follows:

Commencing on the first day of the thirteenth (13th) month of the Lease Term, the Basic Rent shall be Sixty-Nine Thousand Seven Hundred Twenty Dollars (\$69,720.00) per month.

Commencing on the first day of the thirty-first (31st) month of the Lease Term, the Basic Rent shall be Seventy-Six Thousand Thirty-Two Dollars (\$76,032.00) per month.

7. Guarantor(s): N/A

8. Floor Area of Premises: During the first twelve (12) months of the Term, approximately 50,000 rentable square feet; and during the remainder of the Term, approximately 63,120 rentable square feet (see Section 2.4)

9. Security Deposit: \$66,276.00

10. Broker(s): The Gibson Company

11. Additional Insureds: Insignia Commercial Group, Inc.

12. Address for Payments and Notices:

LANDLORD

Insignia Commercial Group, Inc.  
One Technology Drive, Suite F-207  
Irvine, CA 92618  
Fax No. (714) 753-1526

TENANT

Phoenix Technologies Ltd.  
135 Technology Drive  
Irvine, CA 92618  
Fax No. (714) 440-8300

with a copy of notices to:

IRVINE INDUSTRIAL COMPANY  
P.O. Box 6370  
Newport Beach, CA 92658-6370  
Attn: Vice President, Industrial  
Operations  
Fax No. (714) 720-2161

with a copy of notices to:

PHOENIX TECHNOLOGIES LTD.  
2770 De La Cruz Blvd.  
Santa Clara, California 95050  
Attn: Legal Department  
Fax No. (408) 452-1985

13. Tenant's Liability Insurance Requirement: \$1,000,000.00

14. Vehicle Parking Spaces: Two Hundred Fifty-Two (252)

15. Estimated Space Plan Approval Date: October 4, 1996

Exhibits:

A	Description of Premises	E	Rules and Regulations
B	Environmental Questionnaire	X	Work Letter
C	Landlord's Disclosures	Y	Project Site Plan
D	Insurance Requirements		

ARTICLE II. PREMISES

SECTION 2.1. LEASED PREMISES. Landlord leases to Tenant and Tenant leases from Landlord the premises shown in EXHIBIT A (the "Premises"), within the building identified in Item 1 of the Basic Lease Provisions (which together with the underlying real property, is called the "Building"), and containing approximately the floor area set forth in Item 8 of the Basic Lease Provisions. The Premises is a portion of the project shown in EXHIBIT Y (the "Project").

SECTION 2.2. ACCEPTANCE OF PREMISES. Tenant acknowledges that neither Landlord nor any representative of Landlord has made any representation or warranty with respect to the Premises or the Building or the suitability or fitness of either for any purpose, including without limitation any representations or warranties regarding zoning or other land use matters, and

that neither Landlord nor any representative of Landlord has made any representations or warranties regarding (i) what other tenants or uses may be permitted or intended in the Building and the Project, or (ii) any exclusivity of use by Tenant with respect to its permitted use of the Premises as set forth in Item 3 of the Basic Lease Provisions. Tenant further acknowledges that neither Landlord nor any representative of Landlord has agreed to undertake any alterations or additions or construct any improvements to the Premises except as expressly provided in this Lease. The taking of possession or use of the Premises by Tenant for any purpose other than construction shall conclusively establish that the Premises and the Building were in satisfactory condition and in conformity with the provisions of this Lease in all respects, except for those matters which Tenant shall have brought to Landlord's attention on a written punch list. The list shall be limited to any items required to be accomplished by Landlord under the Work Letter attached as EXHIBIT X, and shall be delivered to Landlord within thirty (30) days after the term ("Term") of this Lease commences as provided in Article III below. If no items are required of Landlord under the Work Letter, by taking possession of the Premises Tenant accepts the improvements in their existing condition, and waives any right or claim against Landlord arising out of the condition of the Premises. Nothing contained in this Section shall affect the commencement of the Term or the obligation of Tenant to pay rent. Landlord shall diligently complete all punch list items of which it is notified as provided above.

SECTION 2.3. BUILDING NAME AND ADDRESS. Tenant shall not utilize any name selected by Landlord from time to time for the Building and/or the Project as any part of Tenant's corporate or trade name. Landlord shall have the right to change the name, address, number or designation of the Building or Project without liability to Tenant.

SECTION 2.4. MUST TAKE SPACE. Tenant shall lease for a term starting on the first annual anniversary of the Commencement Date and continuing for the remainder of the Term, the balance of the Building comprising approximately 13,120 rentable square feet of space (the "Must Take Space"). Landlord shall complete the tenant improvements for the Must Take Space as set forth in the "Work Letter" attached hereto as Exhibit X. The Must Take Space shall be subject to all the terms of the Lease except that the Term shall commence twelve (12) months following the Commencement Date of this Lease. To the extent Tenant acquires possession or commences use in any way of any portion of the Must Take Space prior to the commencement date therefor, Tenant shall pay Basic Rent for such portion of the Must Take Space at the same per square foot monthly rate as for the Basic Rent for the Premises.

SECTION 2.5. LANDLORD'S RESPONSIBILITIES\ADA. It shall be Landlord's responsibility, at its sole cost and expense, that the exterior, roof, parking area, walkways, interior structure, all existing electrical and mechanical systems, plumbing facilities (including restrooms), fire and life safety equipment, air conditioning, ventilating and heating equipment which service the Premises shall be in good working order and repair as of the Commencement Date. It shall also be Landlord's responsibility, at its sole cost and expense, to bring the Building into compliance with the requirements

exist as of the Commencement Date of this Lease, including without limitation, the provisions of Title III of the Americans With Disabilities Act ("ADA"). All other ADA compliance issues regarding the construction of any alterations or other improvements in the Premises, the creation of a "public access" by Tenant's use of the Premises, and in connection with the operation of Tenant's business and employment practices in the Premises, shall be the responsibility of Tenant at its sole cost and expense.

### ARTICLE III. TERM

#### SECTION 3.1. GENERAL.

(a) The Term shall be for the period shown in Item 5 of the Basic Lease Provisions. Subject to the provisions of Section 3.2 below, the Term shall commence ("Commencement Date") on the earlier of (a) the date upon which all relevant governmental authorities have approved the Tenant Improvements in accordance with applicable building codes, as evidenced by written approval thereof in accordance with the building permits issued for the Tenant Improvements or issuance of a temporary or final certificate of occupancy for the Premises, or (b) the date Tenant acquires possession or commences the operation of its business in the Premises. Within ten (10) days after possession of the Premises is tendered to Tenant, the parties shall memorialize on a form provided by Landlord the actual Commencement Date and the expiration date ("Expiration Date") of this Lease. Tenant's failure to execute that form shall not affect the validity of Landlord's determination of those dates.

(b) Provided that Tenant is not in default under any provision of this Lease, either at the time of exercise of the extension right granted herein or at the time of the commencement of such extension, and provided further that Tenant is occupying the entire Premises and has not assigned or sublet any of its interest in this Lease, Tenant may extend the Term of this Lease for one (1) period of thirty-six (36) months. Tenant shall exercise its right to extend the Term by and only by delivering to Landlord, not more than twelve (12) months nor less than nine (9) months prior to the expiration date of the Term, Tenant's irrevocable written notice of its commitment to extend (the "Commitment Notice"). The Basic Rent payable under the Lease for the thirty-six (36) month extension period shall be at the fair market rental, including subsequent adjustments, for comparable space being leased by Landlord in the Project; provided that such rate shall in no event be less than Seventy-Two Thousand Five Hundred Eighty-Eight Dollars (\$72,588.00) per month. In the event that the parties are not able to agree on the fair market rental within one hundred twenty (120) days prior to the expiration date of the Term, then either party may elect, by written notice to the other

party, to cause said rental, including subsequent adjustments, to be determined by appraisal as follows.

Within ten (10) days following receipt of such appraisal election, the parties shall attempt to agree on an appraiser to determine the fair market rental. If the parties are unable to agree in that time, then each party shall designate an appraiser within ten (10) days thereafter. Should either party fail to so designate an appraiser within that time, then the appraiser designated by the other party shall determine the fair rental value. Should each of the parties timely designate an appraiser, then the two appraisers so designated shall appoint a third appraiser who shall, acting alone, determine the fair rental value of the Premises. Any appraiser designated hereunder shall have an M.A.I. certification with not less than five (5) years experience in the valuation of commercial industrial buildings in Orange County, California.

Within thirty (30) days following the selection of the appraiser, such appraiser shall determine the fair market rental value, including subsequent adjustments of the Premises. In determining such value, the appraiser shall first consider rental comparables for the Project, provided that if adequate comparables do not exist then the appraiser may consider transactions involving similarly improved space in the Irvine Spectrum area with appropriate adjustments for differences in location and quality of project. In no event shall the appraiser attribute

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factors for market tenant improvement allowances or brokerage commissions to reduce said fair market rental. The fees of the appraiser(s) shall be shared equally by both parties.

Within twenty (20) days after the determination of the fair market rental, Landlord shall prepare a reasonably appropriate amendment to this Lease for the extension period and Tenant shall execute and return same to Landlord within ten (10) days. Should the fair market rental not be established by the commencement of the extension period, then Tenant shall continue paying rent at the rate in effect during the last month of the initial Term, and a lump sum adjustment shall be made promptly upon the determination of such new rental.

If Tenant fails to timely comply with any of the provisions of this paragraph, Tenant's right to extend the Term shall be extinguished and the Lease shall automatically terminate as of the expiration date of the Term, without any extension and without any liability to Landlord. Except in connection with a "Permitted Assignment" (as defined in Section 9.4 of this Lease), any attempt to assign or transfer any right or interest created by this paragraph shall be void from its inception. Tenant shall have no other right to extend the Term beyond the single thirty-six (36) month extension created by this paragraph. Unless agreed to in a writing signed by Landlord

and Tenant, any extension of the Term, whether created by an amendment to this Lease or by a holdover of the Premises by Tenant, or otherwise, shall be deemed a part of, and not in addition to, any duly exercised extension period permitted by this paragraph.

SECTION 3.2. DELAY IN POSSESSION. If Landlord, for any reason whatsoever, cannot deliver possession of the Premises to Tenant on or before the Estimated Commencement Date, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any resulting loss or damage. However, Tenant shall not be liable for any rent and the Commencement Date shall not occur until Landlord delivers possession of the Premises and the Premises are in fact available for Tenant's occupancy with any Tenant Improvements that have been approved as per Section 3.1(a) above, except that if Landlord's failure to so deliver possession on the Estimated Commencement Date is attributable to any action or inaction by Tenant (including without limitation any Tenant Delay described in the Work Letter, if any, attached to this Lease), then the Commencement Date shall not be advanced to the date on which possession of the Premises is tendered to Tenant, and Landlord shall be entitled to full performance by Tenant (including the payment of rent) from the date Landlord would have been able to deliver the Premises to Tenant but for Tenant's delay(s).

#### ARTICLE IV. RENT AND OPERATING EXPENSES

SECTION 4.1. BASIC RENT. From and after the Commencement Date, Tenant shall pay to Landlord without deduction or offset, Basic Rent for the Premises in the total amount shown (including subsequent adjustments, if any) in Item 6 of the Basic Lease Provisions. Any rental adjustment shown in Item 6 shall be deemed to occur on the specified monthly anniversary of the Commencement Date, whether or not that date occurs at the end of a calendar month. The rent shall be due and payable in advance commencing on the Commencement Date (as prorated for any partial month) and continuing thereafter on the first day of each successive calendar month of the Term. No demand, notice or invoice shall be required for the payment of Basic Rent. An installment of rent in the amount of one (1) full month's Basic Rent at the initial rate specified in Item 6 of the Basic Lease Provisions shall be delivered to Landlord concurrently with Tenant's execution of this Lease and shall be applied against the Basic Rent first due hereunder.

#### SECTION 4.2. OPERATING EXPENSES.

(a) Tenant shall pay to Landlord, as additional rent, "Building Costs" and "Property Taxes," as those terms are defined below, incurred by Landlord in the operation of the Building and Project. For

convenience of reference, Property Taxes and Building Costs shall be referred



to collectively as "Operating Expenses".

(b) Commencing prior to the start of the first full "Expense Recovery Period" (as defined below) of the Lease, and prior to the start of each full or partial Expense Recovery Period thereafter, Landlord shall give Tenant a written estimate of the amount of Operating Expenses for the Expense Recovery Period. Tenant shall pay the estimated amounts to Landlord in equal monthly installments, in advance, with Basic Rent. If Landlord has not furnished its written estimate for any Expense Recovery Period by the time set forth above, Tenant shall continue to pay cost reimbursements at the rates established for the prior Expense Recovery Period, if any; provided that when the new estimate is delivered to Tenant, Tenant shall, at the next monthly payment date, pay any accrued cost reimbursements based upon the new estimate. For purposes hereof, "Expense Recovery Period" shall mean every twelve month period during the Term (or portion thereof for the first and last lease years) commencing July 1 and ending June 30.

(c) Within one hundred twenty (120) days after the end of each Expense Recovery Period, Landlord shall furnish to Tenant a statement showing in reasonable detail the actual or prorated Operating Expenses incurred by Landlord during the period, and the parties shall within thirty (30) days thereafter make any payment or allowance necessary to adjust Tenant's estimated payments, if any, to Tenant's actual owed amounts as shown by the annual statement. Any delay or failure by Landlord in delivering any statement hereunder shall not constitute a waiver of Landlord's right to require Tenant to pay Operating Expenses pursuant hereto. Any amount due Tenant shall be credited against installments next coming due under this Section 4.2, and any deficiency shall be paid by Tenant together with the next installment. If Tenant has not made estimated payments during the Expense Recovery Period, any amount owing by Tenant pursuant to subsection (a) above shall be paid to Landlord in accordance with Article XVI. Should Tenant fail to object in writing to Landlord's determination of actual Operating Expenses within sixty (60) days following delivery of Landlord's expense statement, Landlord's determination of actual Operating Expenses for the applicable Expense Recovery Period shall be conclusive and binding on the parties and any future claims to the contrary shall be barred.

(d) Even though the Lease has terminated and the Tenant has vacated the Premises, when the final determination is made of Operating Expenses for the Expense Recovery Period in which the Lease terminates, Tenant shall upon notice pay the entire increase due over the estimated expenses paid. Conversely, any overpayment made in the event expenses decrease shall be rebated by Landlord to Tenant.

(e) If, at any time during any Expense Recovery Period, any one or more of the Operating Expenses are increased to a rate(s) or amount(s) in excess of the rate(s) or amount(s) used in calculating the estimated expenses for the year, then the estimate of Operating Expenses shall be increased for the month in which such rate(s) or amount(s) becomes effective and for all succeeding months by an amount equal to the increase. Landlord shall give Tenant written notice of the amount or estimated amount of the increase, the



month in which the increase will become effective, and the month for which the payments are due. Tenant shall pay the increase to Landlord as a part of Tenant's monthly payments of estimated expenses as provided in paragraph (b) above, commencing with the month in which effective.

(f) The term "Building Costs" shall include all expenses of operation and maintenance of the Building and of the Building's proportionate share of the Project, if applicable (determined as the rentable square footage of the Building divided by the rentable square footage of all space in the Project), to the extent such expenses are not billed to and paid directly by Tenant, and shall include the following charges by way of illustration but not limitation: water and sewer charges; insurance premiums or reasonable premium equivalents should Landlord elect to self-insure any risk that Landlord is authorized to insure hereunder; license, permit, and inspection fees; heat; light; power; air conditioning; supplies; materials; equipment; tools; the cost of any environmental, insurance, tax or other consultant utilized by Landlord in connection with the Building and/or Project; establishment

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of reasonable reserves for replacements and/or repair of Common Area improvements (if applicable), equipment and supplies; costs incurred in connection with compliance of any laws or changes in laws applicable to the Building or the Project (provided that to the extent that such compliance requires a capital investment, in accordance with generally accepted accounting principles consistently applied, Tenant shall only be responsible to the extent of the amortized amount thereof over the useful life of such capital investment calculated at a market cost of funds, all as determined by Landlord, for each such year of useful life during the Term); the cost of any capital investments (in accordance with generally accepted accounting principles consistently applied) other than tenant improvements for specific tenants, to the extent of the amortized amount thereof over the useful life of such capital investments calculated at a market cost of funds, all as determined by Landlord, for each such year of useful life during the Term; costs associated with the procurement and maintenance of an intrabuilding network cable service agreement for any intrabuilding network cable telecommunications lines within the Project, and any other installation, maintenance, repair and replacement costs associated with such lines; labor; reasonably allocated wages and salaries, fringe benefits, and payroll taxes for administrative and other personnel directly applicable to the Building and/or Project, including both Landlord's personnel and outside personnel; any expense incurred pursuant to Sections 6.1, 6.2, 6.4, 7.2, and 10.2; and a reasonable overhead/management fee for the professional operation of the Building and Project. Notwithstanding anything to the contrary contained herein, the amount of such overhead/management fee to be charged to Tenant shall be determined by multiplying the actual fee charged (which from time to time may be with respect to the entire Project, a portion of the Project only, the Building only, or the Project together with other properties owned by Landlord and/or its affiliates) by a fraction, the numerator of which is

the total rentable square footage of the Building and the denominator of which is the total square footage of space charged with such fee actually leased to tenants (including Tenant). It is understood that Building Costs shall include competitive charges for direct services provided by any subsidiary or division of Landlord.

(g) The term "Property Taxes" as used herein shall include the following: (i) all real estate taxes or personal property taxes, as such property taxes may be reassessed from time to time; and (ii) other taxes, charges and assessments which are levied with respect to this Lease or to the Building and/or the Project, and any improvements, fixtures and equipment and other property of Landlord located in the Building and/or the Project, except that general net income and franchise taxes imposed against Landlord shall be excluded; and (iii) all assessments and fees for public improvements, services, and facilities and impacts thereon, including without limitation arising out of any Community Facilities Districts, "Mello Roos" districts, similar assessment districts, and any traffic impact mitigation assessments or fees; (iv) any tax, surcharge or assessment which shall be levied in addition to or in lieu of real estate or personal property taxes, other than taxes covered by Article VIII; and (v) reasonable costs and expenses incurred in contesting the amount or validity of any Property Tax by appropriate proceedings.

SECTION 4.3. SECURITY DEPOSIT. Concurrently with Tenant's delivery of this Lease, Tenant shall deposit with Landlord the sum, if any, stated in Item 9 of the Basic Lease Provisions, to be held by Landlord as security for the full and faithful performance of Tenant's obligations under this Lease (the "Security Deposit"). Subject to the last sentence of this Section, the Security Deposit shall be understood and agreed to be the property of Landlord upon Landlord's receipt thereof, and may be utilized by Landlord in its discretion towards the payment of all prepaid expenses by Landlord for which Tenant would be required to reimburse Landlord under this Lease, including without limitation brokerage commissions and Tenant Improvement costs. Upon any default by Tenant, including specifically Tenant's failure to pay rent or to abide by its obligations under Sections 7.1 and 15.3 below, whether or not Landlord is informed of or has knowledge of the default, the Security Deposit shall be deemed to be automatically and immediately applied, without waiver of any rights Landlord may have under this Lease or at law or in equity as a result of the default, as a setoff for full or partial compensation for that default. If any portion of the Security Deposit is applied after a default by Tenant, Tenant shall within five (5) days after written demand by Landlord deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully performs its obligations under this Lease, the Security

Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest in this Lease) after the expiration of the Term, provided that Landlord may retain the Security Deposit to the extent and until such time as all amounts due from Tenant in accordance with this Lease have been determined and paid in full.

#### ARTICLE V. USES

SECTION 5.1. USE. Tenant shall use the Premises only for the purposes stated in Item 3 of the Basic Lease Provisions, all in accordance with applicable laws and restrictions and pursuant to approvals to be obtained by Tenant from all relevant and required governmental agencies and authorities. The parties agree that any contrary use shall be deemed to cause material and irreparable harm to Landlord and shall entitle Landlord to injunctive relief in addition to any other available remedy. Tenant, at its expense, shall procure, maintain and make available for Landlord's inspection throughout the Term, all governmental approvals, licenses and permits required for the proper and lawful conduct of Tenant's permitted use of the Premises. Tenant shall not do or permit anything to be done in or about the Premises which will in any way interfere with the rights of other occupants of the Building or the Project, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant permit any nuisance or commit any waste in the Premises or the Project. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any insurance policy(ies) covering the Building, the Project and/or their contents, and shall comply with all applicable insurance underwriters rules and the requirements of the Pacific Fire Rating Bureau or any other organization performing a similar function. Tenant shall comply at its expense with all present and future laws, ordinances, restrictions, regulations, orders, rules and requirements of all governmental authorities that pertain to Tenant or its use of the Premises, including without limitation all federal and state occupational health and safety requirements, whether or not Tenant's compliance will necessitate expenditures or interfere with its use and enjoyment of the Premises. Tenant shall comply at its expense with all present and future covenants, conditions, easements or restrictions now or hereafter affecting or encumbering the Building and/or Project, and any amendments or modifications thereto, including without limitation the payment by Tenant of any periodic or special dues or assessments charged against the Premises or Tenant which may be allocated to the Premises or Tenant in accordance with the provisions thereof. Tenant shall promptly upon demand reimburse Landlord for any additional insurance premium charged by reason of Tenant's failure to comply with the provisions of this Section, and shall indemnify Landlord from any liability and/or expense resulting from Tenant's noncompliance.

SECTION 5.2 SIGNS. Tenant shall be permitted one (1) exterior sign on the Building (the "Exterior Sign"). The size, design, graphics, material, style, color and other physical aspects of the Exterior Sign shall be subject to Landlord's written approval prior to installation (which approval may be withheld in Landlord's discretion), any covenants, conditions or restrictions encumbering the Premises, Landlord's approved "Signage Criteria" for the

Project, and any applicable municipal or other governmental permits and approvals. Tenant acknowledges having received and reviewed a copy of the current Signage Criteria for the Project. Tenant shall be responsible for the cost of the Exterior Sign, including the fabrication, installation, maintenance and removal thereof. If Tenant fails to maintain its Exterior Sign, or if Tenant fails to remove same upon termination of this Lease and repair any damage caused by such removal, Landlord may do so at Tenant's expense. Except for the foregoing, Tenant shall have no right to maintain identification signs in any location in, on or about the Premises, the Building or the Project and shall not place or erect signs, displays or other advertising materials that are visible from the exterior of the Building.

### SECTION 5.3 HAZARDOUS MATERIALS.

(a) For purposes of this Lease, the term "Hazardous Materials" includes (i) any "hazardous materials" as defined in Section 25501(k) of the California Health and Safety Code, (ii) any other substance or

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matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory, and (iii) any substance or matter which is in excess of permitted levels set forth in any federal, California or local law or regulation pertaining to any hazardous or toxic substance, material or waste.

(b) Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released or disposed of on, under, from or about the Premises (including without limitation the soil and groundwater thereunder) without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant shall have the right, without obtaining prior written consent of Landlord, to utilize within the Premises standard office products that may contain Hazardous Materials (such as photocopy toner, "White Out", and the like), PROVIDED HOWEVER, that (i) Tenant shall maintain such products in their original retail packaging, shall follow all instructions on such packaging with respect to the storage, use and disposal of such products, and shall otherwise comply with all applicable laws with respect to such products, and (ii) all of the other terms and provisions of this Section 5.3 shall apply with respect to Tenant's storage, use and disposal of all such products. Landlord may, in its sole discretion, place such conditions as Landlord deems appropriate with respect to any such Hazardous Materials, and may further require that Tenant demonstrate that any such Hazardous Materials are necessary or useful to Tenant's business and will be generated, stored, used and disposed of in a manner that complies with all applicable laws and regulations pertaining thereto and with good business practices. Tenant understands that Landlord may utilize an environmental consultant to assist in determining conditions of approval in connection with the storage, generation, release, disposal or use of Hazardous Materials by Tenant on or about the Premises, and/or to conduct periodic inspections of the storage, generation, use, release and/or disposal of such

Hazardous Materials by Tenant on and from the Premises, and Tenant agrees that any costs incurred by Landlord in connection therewith shall be reimbursed by Tenant to Landlord as additional rent hereunder upon demand.

(c) Prior to the execution of this Lease, Tenant shall complete, execute and deliver to Landlord an Environmental Questionnaire and Disclosure Statement (the "Environmental Questionnaire") in the form of EXHIBIT B attached hereto. The completed Environmental Questionnaire shall be deemed incorporated into this Lease for all purposes, and Landlord shall be entitled to rely fully on the information contained therein. On each anniversary of the Commencement Date until the expiration or sooner termination of this Lease, Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Materials which were stored, generated, used, released and/or disposed of on, under or about the Premises for the twelve-month period prior thereto, and which Tenant desires to store, generate, use, release and/or dispose of on, under or about the Premises for the succeeding twelve-month period. In addition, to the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental documents relating thereto: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents (even those which may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for Hazardous Materials; orders, reports, notices, listings and correspondence (even those which may be considered confidential) of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of Hazardous Materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage, release and/or disposal of Hazardous Materials.

(d) Landlord and its agents shall have the right, but not the obligation, to inspect, sample and/or monitor the Premises and/or the soil or groundwater thereunder at any time to determine whether Tenant is complying with the terms of this Section 5.3, and in connection therewith Tenant shall provide Landlord with full access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Section 5.3, or in the event of a release of any Hazardous Material on, under or about the Premises caused by Tenant, its agents, employees, contractors, licensees or invitees, Landlord and its agents shall have the right, but not the obligation, without limitation upon any of Landlord's other rights and remedies under this Lease, to immediately enter upon the Premises without notice and to discharge Tenant's obligations under this Section 5.3 at Tenant's

expense, including without limitation the taking of emergency or long-term remedial action. Landlord and its agents shall endeavor to minimize

interference with Tenant's business in connection therewith, but shall not be liable for any such interference. In addition, Landlord, at Tenant's expense, shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims arising out of the storage, generation, use, release and/or disposal by Tenant or its agents, employees, contractors, licensees or invitees of Hazardous Materials on, under, from or about the Premises.

(e) If the presence of any Hazardous Materials on, under, from or about the Premises or the Project caused by Tenant or its agents, employees, contractors, licensees or invitees results in (i) injury to any person, (ii) injury to or any contamination of the Premises or the Project, or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its expense, shall promptly take all actions necessary to return the Premises and the Project and any other affected real or personal property owned by Landlord to the condition existing prior to the introduction of such Hazardous Materials and to remedy or repair any such injury or contamination, including without limitation, any cleanup, remediation, removal, disposal, neutralization or other treatment of any such Hazardous Materials. Notwithstanding the foregoing, Tenant shall not, without Landlord's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises or the Project or any other affected real or personal property owned by Landlord or enter into any similar agreement, consent, decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises or the Project or any other affected real or personal property owned by Landlord (i) imposes an immediate threat to the health, safety or welfare of any individual or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action. To the fullest extent permitted by law, Tenant shall indemnify, hold harmless, protect and defend (with attorneys acceptable to Landlord) Landlord and any successors to all or any portion of Landlord's interest in the Premises and the Project and any other real or personal property owned by Landlord from and against any and all liabilities, losses, damages, diminution in value, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including without limitation attorneys' fees, court costs and other professional expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the use, generation, storage, treatment, release, on- or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises, the Building and the Project and any other real or personal property owned by Landlord caused by Tenant, its agents, employees, contractors, licensees or invitees, specifically including without limitation the cost of any required or necessary repair, restoration, cleanup or detoxification of the Premises, the Building and the Project and any other real or personal property owned by Landlord, and the preparation of any closure or other required plans, whether or not such action is required or necessary during the Term or after the expiration of this Lease. If Landlord at any time discovers that Tenant or its agents, employees, contractors, licensees or invitees may have caused the



release of a Hazardous Material on, under, from or about the Premises or the Project or any other real or personal property owned by Landlord, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises or the Project or any other real or personal property owned by Landlord to the condition existing prior to the introduction of such Hazardous Materials. Upon Landlord's approval of such cleanup plan, Tenant shall, at its expense, and without limitation of any rights and remedies of Landlord under this Lease or at law or in equity, immediately implement such plan and proceed to cleanup such Hazardous Materials in accordance with all applicable laws and as required by such plan and this Lease. The provisions of this subsection (e) shall expressly survive the expiration or sooner termination of this Lease.

(f) Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, certain facts relating to Hazardous Materials at the Project known by Landlord to exist as of the date of this Lease, as more particularly described in EXHIBIT C attached hereto. Tenant shall have no liability or responsibility with respect to the Hazardous Materials facts described in EXHIBIT C, nor with respect to any Hazardous Materials which Tenant proves were not caused or permitted by Tenant, its agents, employees, contractors, licensees or invitees.

Notwithstanding the preceding two sentences, Tenant agrees to notify its agents, employees, contractors, licensees, and invitees of any exposure or potential exposure to Hazardous Materials at the Premises that Landlord brings to Tenant's attention.

#### ARTICLE VI. COMMON AREAS; SERVICES

SECTION 6.1. UTILITIES AND SERVICES. Tenant shall be responsible for and shall pay promptly, directly to the appropriate supplier, all charges for water, gas, electricity, sewer, heat, light, power, telephone, refuse pickup, janitorial service, interior landscape maintenance and all other utilities, materials and services furnished directly to Tenant or the Premises or used by Tenant in, on or about the Premises during the Term, together with any taxes thereon. Landlord shall not be liable for damages or otherwise for any failure or interruption of any utility or other service furnished to the Premises, and no such failure or interruption shall be deemed an eviction or entitle Tenant to terminate this Lease or withhold or abate any rent due hereunder. Landlord shall at all reasonable times have free access to all electrical and mechanical installations of Landlord.

SECTION 6.2. OPERATION AND MAINTENANCE OF COMMON AREAS. During the Term, Landlord shall operate all Common Areas within the Project. The term "Common Areas" shall mean all areas which are not held for exclusive use by persons entitled to occupy space, and all other appurtenant areas and improvements provided by Landlord for the common use of Landlord and tenants

and their respective employees and invitees, including without limitation parking areas and structures, driveways, sidewalks, landscaped and planted areas, hallways and interior stairwells not located within the premises of any tenant, common electrical rooms and roof access entries, common entrances and lobbies, elevators, and restrooms not located within the premises of any tenant.

SECTION 6.3. USE OF COMMON AREAS. The occupancy by Tenant of the Premises shall include the use of the Common Areas in common with Landlord and with all others for whose convenience and use the Common Areas may be provided by Landlord, subject, however, to compliance with all rules and regulations as are prescribed from time to time by Landlord. Landlord shall operate and maintain the Common Areas in the manner Landlord may determine to be appropriate. All costs incurred by Landlord for the maintenance and operation of the Common Areas shall be included in Building Costs unless any particular cost incurred can be charged to a specific tenant of the Project. Landlord shall at all times during the Term have exclusive control of the Common Areas, and may restrain any use or occupancy, except as authorized by Landlord's rules and regulations. Tenant shall keep the Common Areas clear of any obstruction or unauthorized use related to Tenant's operations. Nothing in this Lease shall be deemed to impose liability upon Landlord for any damage to or loss of the property of, or for any injury to, Tenant, its invitees or employees. Landlord may temporarily close any portion of the Common Areas for repairs, remodeling and/or alterations, to prevent a public dedication or the accrual of prescriptive rights, or for any other reason deemed sufficient by Landlord, without liability to Landlord.

SECTION 6.4. PARKING. Tenant shall be entitled to the number of vehicle parking spaces set forth in Item 14 of the Basic Lease Provisions, which spaces shall be unreserved and unassigned, on those portions of the Common Areas designated by Landlord for parking. Tenant shall not use more parking spaces than such number. All parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles or pickup trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described above, then Landlord shall have the right, without notice, in addition to such other rights and remedies that Landlord may have, to remove or tow away the vehicle involved and charge the costs to Tenant. Parking within the Common Areas shall be limited to striped parking stalls, and no parking shall be permitted in any driveways, access ways or in any area which would prohibit or impede the free flow of traffic within the Common Areas. There shall be no overnight parking of any vehicles of any kind unless otherwise authorized by Landlord, and vehicles which have been abandoned or parked in violation of the terms hereof may be towed away at the owner's expense. Nothing contained in this Lease shall be deemed to



create liability upon Landlord for any damage to motor vehicles of visitors or employees, for any loss of property from within those motor vehicles, or for any injury to Tenant, its visitors or employees, unless ultimately determined to be caused by the sole active negligence or willful misconduct of Landlord, its agents, servants and employees. Landlord shall have the right to establish, and from time to time amend, and to enforce against all users all reasonable rules and regulations (including the designation of areas for employee parking) that Landlord may deem necessary and advisable for the proper and efficient operation and maintenance of parking within the Common Areas. Landlord shall have the right to construct, maintain and operate lighting facilities within the parking areas; to change the area, level, location and arrangement of the parking areas and improvements therein; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to enforce parking charges (by operation of meters or otherwise); and to do and perform such other acts in and to the parking areas and improvements therein as, in the use of good business judgment, Landlord shall determine to be advisable. Any person using the parking area shall observe all directional signs and arrows and any posted speed limits. In no event shall Tenant interfere with the use and enjoyment of the parking area by other tenants of the Project or their employees or invitees. Parking areas shall be used only for parking vehicles. Washing, waxing, cleaning or servicing of vehicles, or the storage of vehicles for 24-hour periods, is prohibited unless otherwise authorized by Landlord. Tenant shall be liable for any damage to the parking areas caused by Tenant or Tenant's employees, suppliers, shippers, customers or invitees, including without limitation damage from excess oil leakage. Tenant shall have no right to install any fixtures, equipment or personal property in the parking areas.

SECTION 6.5. CHANGES AND ADDITIONS BY LANDLORD. Landlord reserves the right to make alterations or additions to the Project, or to the attendant fixtures, equipment and Common Areas. Landlord may at any time relocate or remove any of the various buildings (other than the Building), parking areas, and other Common Areas, and may add buildings and areas to the Project from time to time. No change shall entitle Tenant to any abatement of rent or other claim against Landlord, provided that the change does not deprive Tenant of reasonable access to or use of the Premises.

#### ARTICLE VII. MAINTAINING THE PREMISES

SECTION 7.1. TENANT'S MAINTENANCE AND REPAIR. Tenant at its sole expense shall comply with all applicable laws and governmental regulations governing the Premises and make all repairs necessary to keep the Premises in the condition as existed on the Commencement Date (or on any later date that the improvements may have been installed), excepting ordinary wear and tear, including without limitation the electrical and mechanical systems, any air conditioning, ventilating or heating equipment which serves the Premises, all walls, glass, windows, doors, door closures, hardware, fixtures, electrical, plumbing, fire extinguisher equipment and other equipment. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if

the same could have been prevented by good maintenance practices by Tenant. As part of its maintenance obligations hereunder, Tenant shall, at Landlord's request, provide Landlord with copies of all maintenance schedules, reports and notices prepared by, for or on behalf of Tenant. Tenant shall obtain preventive maintenance contracts from a licensed heating and air conditioning contractor to provide for regular inspection and maintenance of the heating, ventilating and air conditioning systems servicing the Premises, all subject to Landlord's approval. All repairs shall be at least equal in quality to the original work, shall be made only by a licensed contractor approved in writing in advance by Landlord and shall be made only at the time or times approved by Landlord. Any contractor utilized by Tenant shall be subject to Landlord's standard requirements for contractors, as modified from time to time. Tenant shall have the benefit of any manufacturer's or contractor's warranties in favor of Landlord in connection with any repair or maintenance obligation required of Tenant pursuant to this Section 7.1. Landlord shall have the right at all times to inspect Tenant's maintenance of all equipment (including without limitation air conditioning, ventilating and heating equipment), and may impose reasonable restrictions and requirements with respect to repairs, as provided in Section 7.3, and the provisions of Section 7.4 shall apply to all repairs. Alternatively, Landlord may elect to make any repair or maintenance required hereunder on behalf of Tenant and at Tenant's expense, and Tenant shall promptly reimburse Landlord for all costs incurred upon submission of an invoice.

SECTION 7.2. LANDLORD'S MAINTENANCE AND REPAIR. Subject to Section 7.1 and Article XI, Landlord shall provide service, maintenance and repair with respect to the roof, foundations, and footings of the Building, all landscaping, walkways, parking areas, Common Areas, exterior patio furniture, exterior lighting, and the exterior surfaces of the exterior walls of the Building, except that Tenant at its expense shall make all repairs which Landlord deems reasonably necessary as a result of the act or negligence of Tenant, its agents, employees, invitees, subtenants or contractors. Landlord shall have the right to employ or designate any reputable person or firm, including any employee or agent of Landlord or any of Landlord's affiliates or divisions, to perform any service, repair or maintenance function. Landlord need not make any other improvements or repairs except as specifically required under this Lease, and nothing contained in this Section shall limit Landlord's right to reimbursement from Tenant for maintenance, repair costs and replacement costs as provided elsewhere in this Lease. Tenant understands that it shall not make repairs at Landlord's expense or by rental offset. Tenant further understands that Landlord shall not be required to make any repairs to the roof, foundations or footings unless and until Tenant has notified Landlord in writing of the need for such repair and Landlord shall have a reasonable period of time thereafter to commence and complete said repair, if warranted. All costs of any maintenance and repairs on the part of Landlord provided hereunder shall be considered part of Building Costs, provided that to the extent that any such maintenance or

repairs require a capital investment (in accordance with generally accepted accounting principles consistently applied), Tenant shall only be responsible to the extent of the amortized amount thereof over the useful life of such capital investment calculated at a market rate of funds, all as determined by Landlord, for each such year of useful life during the Term.

SECTION 7.3. ALTERATIONS. Tenant shall make no alterations, additions or improvements to the Premises without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Notwithstanding the foregoing, Landlord shall not unreasonably withhold its consent to any alterations, additions or improvements to the Premises which cost less than One Dollar (\$1.00) per square foot of the improved portions of the Premises (excluding warehouse square footage) and do not (i) affect the exterior of the Building or outside areas (or be visible from adjoining sites), or (ii) affect or penetrate any of the structural portions of the Building, including but not limited to the roof, or (iii) require any change to the basic floor plan of the Premises, any change to any structural or mechanical systems of the Premises, or any governmental permit as a prerequisite to the construction thereof, or (iv) interfere in any manner with the proper functioning of or Landlord's access to any mechanical, electrical, plumbing or HVAC systems, facilities or equipment located in or serving the Building, or (v) diminish the value of the Premises. Landlord may impose, as a condition to its consent, any requirements that Landlord in its discretion may deem reasonable or desirable, including but not limited to a requirement that all work be covered by a lien and completion bond satisfactory to Landlord and requirements as to the manner, time, and contractor for performance of the work. Tenant shall obtain all required permits for the work and shall perform the

work in compliance with all applicable laws, regulations and ordinances, all covenants, conditions and restrictions affecting the Project, and the Rules and Regulations (hereafter defined). If any governmental entity requires, as a condition to any proposed alterations, additions or improvements to the Premises by Tenant, that improvements be made to the Common Areas, and if Landlord consents to such improvements to the Common Areas, then Tenant shall, at Tenant's sole expense, make such required improvements to the Common Areas in such manner, utilizing such materials, and with such contractors (including, if required by Landlord, Landlord's contractors) as Landlord may require in its sole discretion. Under no circumstances shall Tenant make any improvement which incorporates any Hazardous Materials, including without limitation asbestos-containing construction materials into the Premises. Any request for Landlord's consent shall be made in writing and shall contain architectural plans describing the work in detail reasonably satisfactory to Landlord. Unless Landlord otherwise agrees in writing, all alterations, additions or improvements affixed to the Premises (excluding moveable trade fixtures and furniture) shall become the property of Landlord and shall be surrendered with the Premises at the end of the

Term, except that Landlord may, by notice to Tenant, require Tenant to remove by the Expiration Date, or sooner termination date of this Lease, all or any alterations, decorations, fixtures, additions, improvements and the like installed either by Tenant or by Landlord at Tenant's request and to repair any damage to the Premises arising from that removal. Except as otherwise provided in this Lease or in any Exhibit to this Lease, should Landlord make any alteration or improvement to the Premises for Tenant, Landlord shall be entitled to prompt reimbursement from Tenant for all costs incurred.

SECTION 7.4. MECHANIC'S LIENS. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. Upon request by Landlord, Tenant shall promptly cause any such lien to be released by posting a bond in accordance with California Civil Code Section 3143 or any successor statute. In the event that Tenant shall not, within thirty (30) days following the imposition of any lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other available remedies, the right to cause the lien to be released by any means it deems proper, including payment of or defense against the claim giving rise to the lien. All expenses so incurred by Landlord, including Landlord's attorneys' fees, and any consequential or other damages incurred by Landlord arising out of such lien, shall be reimbursed by Tenant promptly following Landlord's demand, together with interest from the date of payment by Landlord at the maximum rate permitted by law until paid. Tenant shall give Landlord no less than twenty (20) days' prior notice in writing before commencing construction of any kind on the Premises so that Landlord may post and maintain notices of nonresponsibility on the Premises.

SECTION 7.5. ENTRY AND INSPECTION. Landlord shall at all reasonable times, upon at least 24 hours' prior written or oral notice (except in emergencies, when no notice shall be required) have the right to enter the Premises to inspect them, to supply services in accordance with this Lease, to protect the interests of Landlord in the Premises, and to submit the Premises to prospective or actual purchasers or encumbrance holders (or, during the last one hundred and eighty (180) days of the Term or when an uncured Tenant default exists, to prospective tenants), all without being deemed to have caused an eviction of Tenant and without abatement of rent except as provided elsewhere in this Lease. Landlord shall have the right, if desired, to retain a key which unlocks all of the doors in the Premises, excluding Tenant's vaults and safes, and Landlord shall have the right to use any and all means which Landlord may deem proper to open the doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord shall not under any circumstances be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises.

#### ARTICLE VIII. TAXES AND ASSESSMENTS ON TENANT'S PROPERTY

Tenant shall be liable for and shall pay, at least ten (10) days before delinquency, all taxes and assessments levied against all personal property of Tenant located in the Premises, against all improvements to the Premises

made by Landlord or Tenant which are above Landlord's Project standard in quality and/or quantity for comparable

space within the Project ("Above Standard Improvements"), and against any alterations, additions or like improvements made to the Premises by or on behalf of Tenant. When possible Tenant shall cause its personal property, Above Standard Improvements and alterations to be assessed and billed separately from the real property of which the Premises form a part. If any taxes on Tenant's personal property, Above Standard Improvements and/or alterations are levied against Landlord or Landlord's property and if Landlord pays the same, or if the assessed value of Landlord's property is increased by the inclusion of a value placed upon the personal property, Above Standard Improvements and/or alterations of Tenant and if Landlord pays the taxes based upon the increased assessment, Tenant shall pay to Landlord the taxes so levied against Landlord or the proportion of the taxes resulting from the increase in the assessment. In calculating what portion of any tax bill which is assessed against Landlord separately, or Landlord and Tenant jointly, is attributable to Tenant's Above Standard Improvements, alterations and personal property, Landlord's reasonable determination shall be conclusive.

#### ARTICLE IX. ASSIGNMENT AND SUBLETTING

##### SECTION 9.1. RIGHTS OF PARTIES.

(a) Notwithstanding any provision of this Lease to the contrary, Tenant will not, either voluntarily or by operation of law, assign, sublet, encumber, or otherwise transfer all or any part of Tenant's interest in this lease, or permit the Premises to be occupied by anyone other than Tenant, without Landlord's prior written consent, which consent shall not unreasonably be withheld in accordance with the provisions of Section 9.1.(b). No assignment (whether voluntary, involuntary or by operation of law) and no subletting shall be valid or effective without Landlord's prior written consent and, at Landlord's election, any such assignment or subletting or attempted assignment or subletting shall constitute a material default of this Lease. Landlord shall not be deemed to have given its consent to any assignment or subletting by any other course of action, including its acceptance of any name for listing in the Building directory. To the extent not prohibited by provisions of the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), including Section 365(f)(1), Tenant on behalf of itself and its creditors, administrators and assigns waives the applicability of Section 365(e) of the Bankruptcy Code unless the proposed assignee of the Trustee for the estate of the bankrupt meets Landlord's standard for consent as set forth in Section 9.1(b) of this Lease. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations to be delivered in connection with the assignment shall be delivered to Landlord,

shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed to have assumed all of the obligations arising under this Lease on and after the date of the assignment, and shall upon demand execute and deliver to Landlord an instrument confirming that assumption.

(b) If Tenant desires to transfer an interest in this Lease, it shall first notify Landlord of its desire and shall submit in writing to Landlord: (i) the name and address of the proposed transferee; (ii) the nature of any proposed subtenant's or assignee's business to be carried on in the Premises; (iii) the terms and provisions of any proposed sublease or assignment, including a copy of the proposed assignment or sublease form; (iv) evidence of insurance of the proposed assignee or subtenant complying with the requirements of EXHIBIT D hereto; (v) a completed Environmental Questionnaire from the proposed assignee or subtenant; and (vi) any other information requested by Landlord and reasonably related to the transfer. Except as provided in Subsection (e) of this Section,

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Landlord shall not unreasonably withhold its consent, provided: (1) the use of the Premises will be consistent with the provisions of this Lease and with Landlord's commitment to other tenants of the Project; (2) the proposed assignee or subtenant has not been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Materials contaminating a property arising out of the proposed assignee's or subtenant's actions or use of the property in question and is not subject to any enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material; (3) at Landlord's election, insurance requirements shall be brought into conformity with Landlord's then current leasing practice; (4) any proposed subtenant or assignee demonstrates that it is financially responsible by submission to Landlord of all reasonable information as Landlord may request concerning the proposed subtenant or assignee, including, but not limited to, a balance sheet of the proposed subtenant or assignee as of a date within ninety (90) days of the request for Landlord's consent and statements of income or profit and loss of the proposed subtenant or assignee for the two-year period preceding the request for Landlord's consent, and/or a certification signed by the proposed subtenant or assignee that it has not been evicted or been in arrears in rent at any other leased premises for the 3-year period preceding the request for Landlord's consent; and (5) the proposed assignee or subtenant is not an existing tenant of the Project or a prospect with whom Landlord is negotiating to become a tenant at the Project. If Tenant has any exterior sign rights under this Lease, such rights are personal to Tenant and may not be assigned or transferred to any assignee of this Lease or subtenant of the Premises without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.



If Landlord consents to the proposed transfer, Tenant may within ninety (90) days after the date of the consent effect the transfer upon the terms described in the information furnished to Landlord; provided that any material change in the terms shall be subject to Landlord's consent as set forth in this Section. Landlord shall approve or disapprove any requested transfer within thirty (30) days following receipt of Tenant's written request, the information set forth above, and the fee set forth below. Any notice of disapproval by Landlord shall be accompanied by the basis or bases for such disapproval, in reasonable detail.

(c) Notwithstanding the provisions of Subsection (b) above, in lieu of consenting to a proposed assignment or subletting, Landlord may elect to (i) sublease the Premises (or the portion proposed to be subleased), or take an assignment of Tenant's interest in this Lease, upon the same terms as offered to the proposed subtenant or assignee (excluding terms relating to the purchase of personal property, the use of Tenant's name or the continuation of Tenant's business), or (ii) terminate this Lease as to the portion of the Premises proposed to be subleased or assigned with a proportionate abatement in the rent payable under this Lease, effective on the date that the proposed sublease or assignment would have become effective. Landlord may thereafter, at its option, assign or re-let any space so recaptured to any third party, including without limitation the proposed transferee of Tenant. Notwithstanding the foregoing, it is understood that the elections set forth in this Section 9.1(c) shall not be applicable to any sublease either where: (i) the subleased area is less than fifty percent (50%) of the floor area of the Building; or (ii) the term of the sublease is in excess of eighty percent (80%) of the then-remaining months of the Term of the Lease.

(d) Tenant agrees that fifty percent (50%) of any amounts paid by the assignee or subtenant, however described, in excess of (i) the Basic Rent payable by Tenant hereunder, or in the case of a sublease of a portion of the Premises, in excess of the Basic Rent reasonably allocable to such portion, plus (ii) Tenant's direct out-of-pocket costs which Tenant certifies to Landlord have been paid to provide occupancy related services to such assignee or subtenant of a nature commonly provided by landlords of similar space plus (iii) any real estate brokerage commission(s) payable by Tenant in connection with such assignment or subletting, shall be the property of Landlord and such amounts shall be payable directly to Landlord by the assignee or subtenant or, at Landlord's option, by Tenant. At Landlord's request, a written agreement shall be entered into by and among Tenant, Landlord and the proposed assignee or subtenant confirming the requirements of this subsection.

(e) Tenant shall pay to Landlord a fee of Five Hundred Dollars (\$500.00) if and when any transfer hereunder is requested by Tenant. Such fee is hereby acknowledged as a reasonable amount to reimburse

Landlord for its costs of review and evaluation of a proposed assignee/sublessee, and Landlord shall not be obligated to commence such review and evaluation unless and until such fee is paid.

SECTION 9.2. EFFECT OF TRANSFER. No subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its obligation to pay rent and to perform all its other obligations under this Lease. Moreover, Tenant shall indemnify and hold Landlord harmless, as provided in Section 10.3, for any act or omission by an assignee or subtenant. Each assignee, other than Landlord, shall be deemed to assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of all rent, and for the due performance of all of Tenant's obligations, under this Lease. No transfer shall be binding on Landlord unless any document memorializing the transfer is delivered to Landlord and both the assignee/subtenant and Tenant deliver to Landlord an executed consent to transfer instrument prepared by Landlord and consistent with the requirements of this Article. The acceptance by Landlord of any payment due under this Lease from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any transfer. Consent by Landlord to one or more transfers shall not operate as a waiver or estoppel to the future enforcement by Landlord of its rights under this Lease.

SECTION 9.3. SUBLEASE REQUIREMENTS. The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in each sublease:

(a) Each and every provision contained in this Lease (other than with respect to the payment of rent hereunder) is incorporated by reference into and made a part of such sublease, with "Landlord" hereunder meaning the sublandlord therein and "Tenant" hereunder meaning the subtenant therein.

(b) Tenant hereby irrevocably assigns to Landlord all of Tenant's interest in all rentals and income arising from any sublease of the Premises, and Landlord may collect such rent and income and apply same toward Tenant's obligations under this Lease; provided, however, that until a default occurs in the performance of Tenant's obligations under this Lease, Tenant shall have the right to receive and collect the sublease rentals. Landlord shall not, by reason of this assignment or the collection of sublease rentals, be deemed liable to the subtenant for the performance of any of Tenant's obligations under the sublease. Tenant hereby irrevocably authorizes and directs any subtenant, upon receipt of a written notice from Landlord stating that an uncured default exists in the performance of Tenant's obligations under this Lease, to pay to Landlord all sums then and thereafter due under the sublease. Tenant agrees that the subtenant may rely on that notice without any duty of further inquiry and notwithstanding any notice or claim by Tenant to the contrary. Tenant shall have no right or claim against the subtenant or Landlord for any rentals so paid to Landlord.

(c) In the event of the termination of this Lease, Landlord may, at its sole option, take over Tenant's entire interest in any sublease and, upon



notice from Landlord, the subtenant shall attorn to Landlord. In no event, however, shall Landlord be liable for any previous act or omission by Tenant under the sublease or for the return of any advance rental payments or deposits under the sublease that have not been actually delivered to Landlord, nor shall Landlord be bound by any sublease modification executed without Landlord's consent or for any advance rental payment by the subtenant in excess of one month's rent. The general provisions of this Lease, including without limitation those pertaining to insurance and indemnification, shall be deemed incorporated by reference into the sublease despite the termination of this Lease.

SECTION 9.4. CERTAIN TRANSFERS. The sale of all or substantially all of Tenant's assets (other than bulk sales in the ordinary course of business) or, if Tenant is a corporation, an unincorporated association, or a partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association, or partnership in the aggregate of twenty-five percent (25%) (except for publicly traded shares of stock constituting a transfer of twenty-five percent (25%) or more in the aggregate, so long as no change in the controlling interest of Tenant occurs as a result thereof) shall be deemed an assignment within the meaning and provisions of this Article. Notwithstanding the foregoing, Landlord's consent shall not be required for the assignment of this Lease as a result

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of a merger by Tenant with or into another entity (a "Permitted Assignment"), so long as (i) the net worth of the successor entity after such merger is at least equal to the greater of the net worth of Tenant as of the execution of this Lease by Landlord or the net worth of Tenant immediately prior to the date of such merger, evidence of which, satisfactory to Landlord, shall be presented to Landlord prior to such merger, (ii) Tenant shall provide to Landlord, prior to such merger, written notice of such merger and such assignment documentation and other information as Landlord may reasonably request in connection therewith, and (iii) all of the other terms and requirements of this Article shall apply with respect to such assignment.

#### ARTICLE X. INSURANCE AND INDEMNITY

SECTION 10.1. TENANT'S INSURANCE. Tenant, at its sole cost and expense, shall provide and maintain in effect the insurance described in EXHIBIT D. Evidence of that insurance must be delivered to Landlord prior to the Commencement Date.

SECTION 10.2. LANDLORD'S INSURANCE. Landlord may, at its election, provide any or all of the following types of insurance, with or without deductible and in amounts and coverages as may be determined by Landlord in its discretion: "all risk" property insurance, subject to standard exclusions, covering the Building or Project, and such other risks as Landlord or its mortgagees may from time to time deem appropriate, including leasehold improvements made by Landlord, and commercial general liability

coverage. Landlord shall not be required to carry insurance of any kind on Tenant's property, including leasehold improvements, trade fixtures, furnishings, equipment, plate glass, signs and all other items of personal property, and shall not be obligated to repair or replace that property should damage occur. All proceeds of insurance maintained by Landlord upon the Building and Project shall be the property of Landlord, whether or not Landlord is obligated to or elects to make any repairs. At Landlord's option, Landlord may self-insure all or any portion of the risks for which Landlord elects to provide insurance hereunder.

SECTION 10.3. TENANT'S INDEMNITY. To the fullest extent permitted by law, Tenant shall defend, indemnify, protect, save and hold harmless Landlord, its agents, and any and all affiliates of Landlord, including, without limitation, any corporations or other entities controlling, controlled by or under common control with Landlord, from and against any and all claims, liabilities, costs or expenses arising either before or after the Commencement Date from Tenant's use or occupancy of the Premises, the Building or the Common Areas, or from the conduct of its business, or from any activity, work, or thing done, permitted or suffered by Tenant or its agents, employees, invitees or licensees in or about the Premises, the Building or the Common Areas, or from any default in the performance of any obligation on Tenant's part to be performed under this Lease, or from any act or negligence of Tenant or its agents, employees, visitors, patrons, guests, invitees or licensees. Landlord may, at its option, require Tenant to assume Landlord's defense in any action covered by this Section through counsel satisfactory to Landlord. Except in the event of a conflict of interest between Landlord and Tenant, Landlord agrees that Tenant shall not be responsible for the cost and expense of a separate counsel for Landlord in connection with the foregoing indemnity obligation. Further, in connection with any matter covered by the foregoing indemnity obligations, Tenant shall have the right and authority to settle any such matter, subject to Landlord's reasonable approval. Landlord shall cooperate with Tenant, but at no additional cost or expense to Landlord, in connection with the foregoing defense obligations. The provisions of this Section shall expressly survive the expiration or sooner termination of this Lease.

SECTION 10.4. LANDLORD'S NONLIABILITY. Landlord shall not be liable to Tenant, its employees, agents and invitees, and Tenant hereby waives all claims against Landlord for loss of or damage to any property, or any injury to any person, or loss or interruption of business or income, or any other loss, cost, damage, injury or liability whatsoever (including without limitation any consequential damages and lost profit or opportunity costs) resulting from, but not limited to, Acts of God, acts of civil disobedience or insurrection, acts or omissions of

other tenants within the Project or their agents, employees, contractors, guests or invitees, fire, explosion, falling plaster, steam, gas,

electricity, water or rain which may leak or flow from or into any part of the Building or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Building, whether the damage or injury results from conditions arising in the Premises or in other portions of the Project. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Building. Except as provided in Sections 11.1 and 12.1 below, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business (including without limitation consequential damages and lost profit or opportunity costs) arising from the making of any repairs, alterations or improvements to any portion of the Building, including repairs to the Premises, nor shall any related activity by Landlord constitute an actual or constructive eviction; provided, however, that in making repairs, alterations or improvements, Landlord shall interfere as little as reasonably practicable with the conduct of Tenant's business in the Premises. Neither Landlord nor its agents shall be liable for interference with light or other similar intangible interests. Tenant shall immediately notify Landlord in case of fire or accident in the Premises, the Building or the Project and of defects in any improvements or equipment.

SECTION 10.5. WAIVER OF SUBROGATION. Landlord and Tenant each hereby waives all rights of recovery against the other and the other's agents on account of loss and damage occasioned to the property of such waiving party to the extent only that such loss or damage is required to be insured against under any "all risk" property insurance policies required by this Article X; provided however, that (i) the foregoing waiver shall not apply to the extent of Tenant's obligations to pay deductibles under any such policies and this Lease, and (ii) if any loss is due to the act, omission or negligence or willful misconduct of Tenant or its agents, employees, contractors, guests or invitees, Tenant's liability insurance shall be primary and shall cover all losses and damages prior to any other insurance hereunder. By this waiver it is the intent of the parties that neither Landlord nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage insured against under any "all-risk" property insurance policies required by this Article, even though such loss or damage might be occasioned by the negligence of such party, its agents, employees, contractors, guests or invitees. The provisions of this Section shall not limit the indemnification provisions elsewhere contained in this Lease.

#### ARTICLE XI. DAMAGE OR DESTRUCTION

##### SECTION 11.1. RESTORATION.

(a) If the Building is damaged, Landlord shall repair that damage as soon as reasonably possible, at its expense, unless: (i) Landlord reasonably determines that the cost of repair is not covered by Landlord's fire and extended coverage insurance plus such additional amounts Tenant elects, at its option, to contribute, excluding however the deductible (for which Tenant shall be responsible for Tenant's proportionate share); (ii) Landlord

reasonably determines that the Premises cannot, with reasonable diligence, be fully repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors, including without limitation Hazardous Materials, earthquake faults, and other similar dangers) within two hundred seventy (270) days after the date of the damage; (iii) Tenant has defaulted in one or more of its material obligations under this Lease and such default is continuing at the time of such damage; or (iv) the damage occurs during the final twelve (12) months of the Term. Should Landlord elect not to repair the damage for one of the preceding reasons, Landlord shall so notify Tenant in writing within sixty (60) days after the damage occurs and this Lease shall terminate as of the date of that notice.

(b) Unless Landlord elects to terminate this Lease in accordance with subsection (a) above, this Lease shall continue in effect for the remainder of the Term; provided that so long as Tenant is not in default under this Lease, if the damage is so extensive that Landlord reasonably determines that the Premises cannot, with

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reasonable diligence, be repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors, earthquake faults, and other similar dangers) so as to allow Tenant's substantial use and enjoyment of the Premises within two hundred seventy (270) days after the date of damage, then Tenant may elect to terminate this Lease by written notice to Landlord within the sixty (60) day period stated in subsection (a).

(c) Commencing on the date of any damage to the Building, and ending on the sooner of the date the damage is repaired or the date this Lease is terminated, the rental to be paid under this Lease shall be abated in the same proportion that the floor area of the Building that is rendered unusable by the damage from time to time bears to the total floor area of the Building, but only to the extent that any business interruption insurance proceeds are received by Landlord therefor from Tenant's insurance described in EXHIBIT D.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this Section, and subject to the provisions of Section 10.5 above, the cost of any repairs shall be borne by Tenant, and Tenant shall not be entitled to rental abatement or termination rights, if the damage is due to the fault or neglect of Tenant or its employees, subtenants, invitees or representatives. In addition, the provisions of this Section shall not be deemed to require Landlord to repair any improvements or fixtures that Tenant is obligated to repair or insure pursuant to any other provision of this Lease.

(e) Tenant shall fully cooperate with Landlord in removing Tenant's personal property and any debris from the Premises to facilitate all inspections of the Premises and the making of any repairs. Notwithstanding anything to the contrary contained in this Lease, if Landlord in good faith believes there is a

risk of injury to persons or damage to property from entry into the Building or Premises following any damage or destruction thereto, Landlord may restrict entry into the Building or the Premises by Tenant, its employees, agents and contractors in a non-discriminatory manner, without being deemed to have violated Tenant's rights of quiet enjoyment to, or made an unlawful detainer of, or evicted Tenant from, the Premises. Upon request, Landlord shall consult with Tenant to determine if there are safe methods of entry into the Building or the Premises solely in order to allow Tenant to retrieve files, data in computers, and necessary inventory, subject however to all indemnities and waivers of liability from Tenant to Landlord contained in this Lease and any additional indemnities and waivers of liability which Landlord may require.

SECTION 11.2. LEASE GOVERNS. Tenant agrees that the provisions of this Lease, including without limitation Section 11.1, shall govern any damage or destruction and shall accordingly supersede any contrary statute or rule of law.

## ARTICLE XII. EMINENT DOMAIN

SECTION 12.1. TOTAL OR PARTIAL TAKING. If all or a material portion of the Premises is taken by any lawful authority by exercise of the right of eminent domain, or sold to prevent a taking, either Tenant or Landlord may terminate this Lease effective as of the date possession is required to be surrendered to the authority. In the event title to a portion of the Premises is taken or sold in lieu of taking, and if Landlord elects to restore the Premises in such a way as to alter the Premises materially, either party may terminate this Lease, by written notice to the other party, effective on the date of vesting of title. In the event neither party has elected to terminate this Lease as provided above, then Landlord shall promptly, after receipt of a sufficient condemnation award, proceed to restore the Premises to substantially their condition prior to the taking, and a proportionate allowance shall be made to Tenant for the rent corresponding to the time during which, and to the part of the Premises of which, Tenant is deprived on account of the taking and restoration. In the event of a taking, Landlord shall be entitled to the entire amount of the condemnation award without deduction for any estate or interest of Tenant; provided that nothing in this Section shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the taking authority for, the taking of personal property and fixtures belonging to Tenant or for relocation or business interruption expenses recoverable from the taking authority.

SECTION 12.2. TEMPORARY TAKING. No temporary taking of the Premises shall terminate this Lease or give Tenant any right to abatement of rent, and any award specifically attributable to a temporary taking of the Premises shall belong entirely to Tenant. A temporary taking shall be deemed to be a

taking of the use or occupancy of the Premises for a period of not to exceed one hundred eighty (180) days.

SECTION 12.3. TAKING OF PARKING AREA. In the event there shall be a taking of the parking area such that Landlord can no longer provide sufficient parking to comply with this Lease, Landlord may substitute reasonably equivalent parking in a location reasonably close to the Building; provided that if Landlord fails to make that substitution within one hundred eighty (180) days following the taking and if the taking materially impairs Tenant's use and enjoyment of the Premises, Tenant may, at its option, terminate this Lease by written notice to Landlord. If this Lease is not so terminated by Tenant, there shall be no abatement of rent and this Lease shall continue in effect.

#### ARTICLE XIII. SUBORDINATION; ESTOPPEL CERTIFICATE; FINANCIALS

SECTION 13.1. SUBORDINATION. At the option of Landlord, this Lease shall be either superior or subordinate to all ground or underlying leases, mortgages and deeds of trust, if any, which may hereafter affect the Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, that so long as Tenant is not in default under this Lease, this Lease shall not be terminated or Tenant's quiet enjoyment of the Premises disturbed in the event of termination of any such ground or underlying lease, or the foreclosure of any such mortgage or deed of trust, to which Tenant has subordinated this Lease pursuant to this Section. In the event of a termination or foreclosure, Tenant shall become a tenant of and attorn to the successor-in-interest to Landlord upon the same terms and conditions as are contained in this Lease, and shall execute any instrument reasonably required by Landlord's successor for that purpose. Tenant shall also, upon written request of Landlord, execute and deliver all instruments as may be required from time to time to subordinate the rights of Tenant under this Lease to any ground or underlying lease or to the lien of any mortgage or deed of trust (provided that such instruments include the nondisturbance and attornment provisions set forth above), or, if requested by Landlord, to subordinate, in whole or in part, any ground or underlying lease or the lien of any mortgage or deed of trust to this Lease.

#### SECTION 13.2. ESTOPPEL CERTIFICATE.

(a) Tenant shall, at any time upon not less than ten (10) days prior written notice from Landlord, execute, acknowledge and deliver to Landlord, in any form that Landlord may reasonably require, a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of the modification and certifying that this Lease, as modified, is in full force and effect) and the dates to which the rental, additional rent and other charges have been paid in advance, if any, and (ii) acknowledging that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord, or specifying each default if any are claimed, and (iii) setting forth all further information that Landlord may reasonably require. Tenant's statement may be relied upon by any prospective purchaser or encumbrancer of the Premises.



(b) Notwithstanding any other rights and remedies of Landlord, Tenant's failure to deliver any estoppel statement within the provided time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) there are no uncured defaults in Landlord's performance, and (iii) not more than one month's rental has been paid in advance.

### SECTION 13.3 FINANCIALS.

(a) On request of Landlord, Tenant shall provide to Landlord from time to time (but no more

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than four times in any calendar year), at no expense to Landlord, copies of all financial statements filed by Tenant with the U.S. Securities and Exchange Commission (the "SEC") on Form 10-Q or Form 10-K during such calendar year, or if Tenant is not obligated to file financial statements with the SEC, copies of fiscal quarterly and annual balance sheets and income statements prepared by or for Tenant, which financial statements shall be either audited by independent auditors or certified by Tenant's chief executive officer. All such financial statements that may be delivered by Tenant to Landlord (the "Statements") will accurately and fully reflect in all material respects Tenant's consolidated financial condition as of the date thereof and Tenant's consolidated results of operations for the period then ended.

(b) Tenant acknowledges that Landlord is relying on the Statements in its determination to enter into this Lease, and Tenant represents to Landlord, which representation shall be deemed made on the date of this Lease and again on the Commencement Date, that no material change in the financial condition of Tenant, as reflected in the Statements, has occurred since the date Tenant delivered the Statements to Landlord.

### ARTICLE XIV. DEFAULTS AND REMEDIES

SECTION 14.1. TENANT'S DEFAULTS. In addition to any other event of default set forth in this Lease, the occurrence of any one or more of the following events shall constitute a default by Tenant:

(a) The failure by Tenant to make any payment of rent or additional rent required to be made by Tenant, as and when due, where the failure continues for a period of seven (7) days after written notice from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 and 1161(a) as amended. For purposes of these default and remedies provisions, the term "additional rent" shall be deemed to include all amounts of any type whatsoever other than Basic Rent to be paid by Tenant

pursuant to the terms of this Lease.

(b) Assignment, sublease, encumbrance or other transfer of the Lease by Tenant, either voluntarily or by operation of law, whether by judgment, execution, transfer by intestacy or testacy, or other means, without the prior written consent of Landlord.

(c) The discovery by Landlord that any financial statement provided by Tenant, or by any affiliate, successor or guarantor of Tenant, was materially false.

(d) The failure of Tenant to timely and fully provide any subordination agreement, estoppel certificate or financial statements in accordance with the requirements of Article XIII.

(e) The failure or inability by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in any other subsection of this Section, where the failure continues for a period of thirty (30) days after written notice from Landlord to Tenant or such shorter period as is specified in any other provision of this Lease; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 and 1161(a) as amended. However, if the nature of the failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences the cure within thirty (30) days, and thereafter diligently pursues the cure to completion.

(f) (i) The making by Tenant of any general assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a Chapter 7 debtor under the Bankruptcy Code or to have debts discharged or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) the

appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, if possession is not restored to Tenant within thirty (30) days; (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where the seizure is not discharged within thirty (30) days; or (v) Tenant's convening of a meeting of its creditors for the purpose of effecting a moratorium upon or composition of its debts. Landlord shall not be deemed to have knowledge of any event described in this subsection unless notification in writing is received by Landlord, nor shall there be any presumption attributable to Landlord of Tenant's insolvency. In the event that any provision of this subsection is contrary to applicable law, the



provision shall be of no force or effect.

SECTION 14.2. LANDLORD'S REMEDIES.

(a) In the event of any default by Tenant, or in the event of the abandonment of the Premises by Tenant, then in addition to any other remedies available to Landlord, Landlord may exercise the following remedies:

(i) Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. Such termination shall not affect any accrued obligations of Tenant under this Lease. Upon termination, Landlord shall have the right to reenter the Premises and remove all persons and property. Landlord shall also be entitled to recover from Tenant:

(1) The worth at the time of award of the unpaid rent and additional rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent and additional rent which would have been earned after termination until the time of award exceeds the amount of such loss that Tenant proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent and additional rent for the balance of the Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided;

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, refurbishment of the Premises, marketing costs, commissions and other expenses of reletting, including necessary repair, the unamortized portion of any tenant improvements and brokerage commissions funded by Landlord in connection with this Lease, reasonable attorneys' fees, and any other reasonable costs; and

(5) At Landlord's election, all other amounts in addition to or in lieu of the foregoing as may be permitted by law. The term "rent" as used in this Lease shall be deemed to mean the Basic Rent and all other sums required to be paid by Tenant to Landlord pursuant to the terms of this Lease. Any sum, other than Basic Rent, shall be computed on the basis of the average monthly amount accruing during the twenty-four (24) month period immediately prior to default, except that if it becomes necessary to compute such rental before the twenty-four (24) month period has occurred, then the computation shall be on the basis of the average monthly amount during the shorter period. As used in subparagraphs (1) and (2) above, the "worth at the time of award" shall be computed by allowing interest at the rate of ten percent (10%) per annum. As used in subparagraph (3) above, the "worth at

the time of award" shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(ii) Landlord may elect not to terminate Tenant's right to possession of the Premises, in which event Landlord may continue to enforce all of its rights and remedies under this Lease, including the right to collect all rent as it becomes due. Efforts by the Landlord to maintain, preserve or relet the Premises, or the appointment of a receiver to protect the Landlord's interests under this Lease, shall not constitute a termination of the Tenant's right to possession of the Premises. In the event that Landlord elects to avail itself of the remedy provided by this subsection (ii), Landlord shall not unreasonably withhold its consent to an assignment or subletting of the Premises subject to the reasonable standards for Landlord's consent as are contained in this Lease.

(b) Landlord shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed which accrues after the date of any default by Tenant unless and until the default is cured by Tenant, it being understood and agreed that the performance by Landlord of its obligations under this Lease are expressly conditioned upon Tenant's full and timely performance of its obligations under this Lease. The various rights and remedies reserved to Landlord in this Lease or otherwise shall be cumulative and, except as otherwise provided by California law, Landlord may pursue any or all of its rights and remedies at the same time.

(c) No delay or omission of Landlord to exercise any right or remedy shall be construed as a waiver of the right or remedy or of any default by Tenant. The acceptance by Landlord of rent shall not be a (i) waiver of any preceding breach or default by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rent accepted, regardless of Landlord's knowledge of the preceding breach or default at the time of acceptance of rent, or (ii) a waiver of Landlord's right to exercise any remedy available to Landlord by virtue of the breach or default. The acceptance of any payment from a debtor in possession, a trustee, a receiver or any other person acting on behalf of Tenant or Tenant's estate shall not waive or cure a default under Section 14.1. No payment by Tenant or receipt by Landlord of a lesser amount than the rent required by this Lease shall be deemed to be other than a partial payment on account of the earliest due stipulated rent, nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction and Landlord shall accept the check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy available to it. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept

the keys to the Premises prior to the termination of this Lease, and the delivery of the keys to any employee shall not operate as a termination of the Lease or a surrender of the Premises.

#### SECTION 14.3. LATE PAYMENTS.

(a) Any rent due under this Lease that is not received by Landlord within five (5) days of the date when due shall bear interest at the maximum rate permitted by law from the date due until fully paid. The payment of interest shall not cure any default by Tenant under this Lease. In addition, Tenant acknowledges that the late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Those costs may include, but are not limited to, administrative, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any rent due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after the date due, then Tenant shall pay to Landlord, in addition to the interest provided above, a late charge in a sum equal to the greater of five percent (5%) of the amount overdue or Two Hundred Fifty Dollars (\$250.00) for each delinquent payment. Acceptance of a late charge by Landlord shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor shall it prevent Landlord from exercising any of its other rights and remedies.

(b) Following each second consecutive installment of rent that is not paid within five (5) days following notice of nonpayment from Landlord, Landlord shall have the option (i) to require that beginning with the first payment of rent next due, rent shall no longer be paid in monthly installments but shall be payable quarterly three (3) months in advance and/or (ii) to require that Tenant increase the amount, if any, of the Security

Deposit by one hundred percent (100%). Should Tenant deliver to Landlord, at any time during the Term, two (2) or more insufficient checks, the Landlord may require that all monies then and thereafter due from Tenant be paid to Landlord by cashier's check.

SECTION 14.4. RIGHT OF LANDLORD TO PERFORM. All covenants and agreements to be performed by Tenant under this Lease shall be performed at Tenant's sole cost and expense and without any abatement of rent or right of set-off. If Tenant fails to pay any sum of money, other than rent, or fails to perform any other act on its part to be performed under this Lease, and the failure continues beyond any applicable grace period set forth in Section 14.1, then in addition to any other available remedies, Landlord may, at its election make the payment or perform the other act on Tenant's part. Landlord's election to make the payment or perform the act on Tenant's part

shall not give rise to any responsibility of Landlord to continue making the same or similar payments or performing the same or similar acts. Tenant shall, promptly upon demand by Landlord, reimburse Landlord for all sums paid by Landlord and all necessary incidental costs, together with interest at the maximum rate permitted by law from the date of the payment by Landlord. Landlord shall have the same rights and remedies if Tenant fails to pay those amounts as Landlord would have in the event of a default by Tenant in the payment of rent.

SECTION 14.5. DEFAULT BY LANDLORD. Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform the obligation within thirty (30) days after written notice by Tenant to Landlord specifying in reasonable detail the nature and extent of the failure; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion.

SECTION 14.6. EXPENSES AND LEGAL FEES. All sums reasonably incurred by Landlord in connection with any event of default by Tenant under this Lease or holding over of possession by Tenant after the expiration or earlier termination of this Lease, including without limitation all reasonable costs, expenses and actual accountants, appraisers, attorneys and other professional fees, and any collection agency or other collection charges, shall be due and payable by Tenant to Landlord on demand, and shall bear interest at the rate of ten percent (10%) per annum. Should either Landlord or Tenant bring any action in connection with this Lease, the prevailing party shall be entitled to recover as a part of the action its reasonable attorneys' fees, and all other costs. The prevailing party for the purpose of this paragraph shall be determined by the trier of the facts.

SECTION 14.7. WAIVER OF JURY TRIAL. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

SECTION 14.8. SATISFACTION OF JUDGMENT. The obligations of Landlord do not constitute the personal obligations of the individual partners, trustees, directors, officers or shareholders of Landlord or its constituent partners. Should Tenant recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Project and out of the rent or other income from such property receivable by Landlord or out of consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title or

interest in the Project, and no action for any deficiency may be sought or obtained by Tenant.

SECTION 14.9. LIMITATION OF ACTIONS AGAINST LANDLORD. Any claim, demand or right of any kind by Tenant which is based upon or arises in connection with this Lease shall be barred unless Tenant commences an action thereon within six (6) months after the date that the act, omission, event or default upon which the claim, demand or right arises, has occurred.

ARTICLE XV. END OF TERM

SECTION 15.1. HOLDING OVER. This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration shall not constitute a renewal or extension of this Lease, or give Tenant any rights under this Lease, except when in writing signed by both parties. If Tenant holds over for any period after the expiration (or earlier termination) of the Term without the prior written consent of Landlord, such possession shall constitute a tenancy at sufferance only; such holding over with the prior written consent of Landlord shall constitute a month-to-month tenancy commencing on the first (1st) day following the termination of this Lease. In either of such events, possession shall be subject to all of the terms of this Lease, except that the monthly Basic Rent shall be the greater of (a) two hundred percent (200%) of the Basic Rent for the month immediately preceding the date of termination or (b) the then currently scheduled Basic Rent for comparable space in the Building. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claims made by any succeeding tenant relating to such failure to surrender. Acceptance by Landlord of rent after the termination shall not constitute a consent to a holdover or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and do not affect Landlord's right of re-entry or any other rights of Landlord under this Lease or at law.

SECTION 15.2. MERGER ON TERMINATION. The voluntary or other surrender of this Lease by Tenant, or a mutual termination of this Lease, shall terminate any or all existing subleases unless Landlord, at its option, elects in writing to treat the surrender or termination as an assignment to it of any or all subleases affecting the Premises.

SECTION 15.3. SURRENDER OF PREMISES; REMOVAL OF PROPERTY. Upon the Expiration Date or upon any earlier termination of this Lease, Tenant shall quit and surrender possession of the Premises to Landlord in as good order, condition and repair as when received or as hereafter may be improved by Landlord or Tenant, reasonable wear and tear and repairs which are Landlord's obligation excepted, and shall, without expense to Landlord, remove or cause

to be removed from the Premises all personal property and debris, except for any items that Landlord may by written authorization allow to remain. Tenant shall repair all damage to the Premises resulting from the removal, which repair shall include the patching and filling of holes and repair of structural damage, provided that Landlord may instead elect to repair any structural damage at Tenant's expense. If Tenant shall fail to comply with the provisions of this Section, Landlord may effect the removal and/or make any repairs, and the cost to Landlord shall be additional rent payable by Tenant upon demand. If Tenant fails to remove Tenant's personal property from the Premises upon the expiration of the Term, Landlord may remove, store, dispose of and/or retain such personal property, at Landlord's option, in accordance with then applicable laws, all at the expense of Tenant. If requested by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an instrument in writing releasing and quitclaiming to Landlord all right, title and interest of Tenant in the Premises.

#### ARTICLE XVI. PAYMENTS AND NOTICES

All sums payable by Tenant to Landlord shall be paid, without deduction or offset, in lawful money of the United States to Landlord at its address set forth in Item 12 of the Basic Lease Provisions, or at any other place as

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Landlord may designate in writing. Unless this Lease expressly provides otherwise, as for example in the payment of rent pursuant to Section 4.1, all payments shall be due and payable within five (5) days after demand. All payments requiring proration shall be prorated on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any notice, election, demand, consent, approval or other communication to be given or other document to be delivered by either party to the other may be delivered in person or by courier or overnight delivery service to the other party, or may be deposited in the United States mail, as either first class mail or duly registered or certified, postage prepaid, return receipt requested, and addressed to the other party at the address set forth in Item 12 of the Basic Lease Provisions, or if to Tenant, at that address or, from and after the Commencement Date, at the Premises (whether or not Tenant has departed from, abandoned or vacated the Premises), or may be delivered by telegram, telex or telecopy, provided that receipt thereof is telephonically confirmed. Either party may, by written notice to the other, served in the manner provided in this Article, designate a different address. If any notice or other document is sent by mail, it shall be deemed served or delivered twenty-four (24) hours after mailing. If more than one person or entity is named as Tenant under this Lease, service of any notice upon any one of them shall be deemed as service upon all of them.

#### ARTICLE XVII. RULES AND REGULATIONS

Tenant agrees to observe faithfully and comply strictly with the Rules



and Regulations, attached as EXHIBIT E, and any reasonable and nondiscriminatory amendments, modifications and/or additions as may be adopted and published by written notice to tenants by Landlord for the safety, care, security, good order, or cleanliness of the Premises, and Project and Common Areas (if applicable). Landlord shall not be liable to Tenant for any violation of the Rules and Regulations or the breach of any covenant or condition in any lease by any other tenant or such tenant's agents, employees, contractors, guests or invitees. One or more waivers by Landlord of any breach of the Rules and Regulations by Tenant or by any other tenant(s) shall not be a waiver of any subsequent breach of that rule or any other. Tenant's failure to keep and observe the Rules and Regulations shall constitute a default under this Lease. In the case of any conflict between the Rules and Regulations and this Lease, this Lease shall be controlling.

#### ARTICLE XVIII. BROKER'S COMMISSION

The parties recognize as the broker(s) who negotiated this Lease the firm(s), if any, whose name(s) is (are) stated in Item 10 of the Basic Lease Provisions, and agree that Landlord shall be responsible for the payment of brokerage commissions to those broker(s) unless otherwise provided in this Lease. Tenant warrants that it has had no dealings with any other real estate broker or agent in connection with the negotiation of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from any cost, expense or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any other real estate broker or agent employed or claiming to represent or to have been employed by Tenant in connection with the negotiation of this Lease. The foregoing agreement shall survive the termination of this Lease. If Tenant fails to take possession of the Premises or if this Lease otherwise terminates prior to the Expiration Date as the result of failure of performance by Tenant, Landlord shall be entitled to recover from Tenant the unamortized portion of any brokerage commission funded by Landlord in addition to any other damages to which Landlord may be entitled.

#### ARTICLE XIX. TRANSFER OF LANDLORD'S INTEREST

In the event of any transfer of Landlord's interest in the Premises, the transferor shall be automatically

relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the transfer, provided that any funds held by the transferor in which Tenant has an interest shall be turned over, subject to that interest, to the transferee and Tenant is notified of the transfer as required by law. No holder of a mortgage and/or deed of trust to which this Lease is or may be subordinate, and no landlord under a so-called sale-leaseback, shall be responsible in connection with the Security Deposit,

unless the mortgagee or holder of the deed of trust or the landlord actually receives the Security Deposit. It is intended that the covenants and obligations contained in this Lease on the part of Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership.

## ARTICLE XX. INTERPRETATION

SECTION 20.1. GENDER AND NUMBER. Whenever the context of this Lease requires, the words "Landlord" and "Tenant" shall include the plural as well as the singular, and words used in neuter, masculine or feminine genders shall include the others.

SECTION 20.2. HEADINGS. The captions and headings of the articles and sections of this Lease are for convenience only, are not a part of this Lease and shall have no effect upon its construction or interpretation.

SECTION 20.3. JOINT AND SEVERAL LIABILITY. If more than one person or entity is named as Tenant, the obligations imposed upon each shall be joint and several and the act of or notice from, or notice or refund to, or the signature of, any one or more of them shall be binding on all of them with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, termination or modification of this Lease.

SECTION 20.4. SUCCESSORS. Subject to Articles IX and XIX, all rights and liabilities given to or imposed upon Landlord and Tenant shall extend to and bind their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Section is intended, or shall be construed, to grant to any person other than Landlord and Tenant and their successors and assigns any rights or remedies under this Lease.

SECTION 20.5. TIME OF ESSENCE. Time is of the essence with respect to the performance of every provision of this Lease.

SECTION 20.6. CONTROLLING LAW. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

SECTION 20.7. SEVERABILITY. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either party or the deletion of which is consented to by the party adversely affected, shall be held invalid or unenforceable to any extent, the remainder of this Lease shall not be affected and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 20.8. WAIVER AND CUMULATIVE REMEDIES. One or more waivers by Landlord or Tenant of any breach of any term, covenant or condition contained in this Lease shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. Consent to any act by one of the parties shall not be deemed to render unnecessary the obtaining of that party's consent to any subsequent act. No breach by Tenant of this Lease



shall be deemed to have been waived by Landlord unless the waiver is in a writing signed by Landlord. The rights and remedies of Landlord under this Lease shall be cumulative and in addition to any and all other rights and remedies which Landlord may have.

SECTION 20.9. INABILITY TO PERFORM. In the event that either party shall be delayed or hindered

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in or prevented from the performance of any work or in performing any act required under this Lease by reason of any cause beyond the reasonable control of that party, then the performance of the work or the doing of the act shall be excused for the period of the delay and the time for performance shall be extended for a period equivalent to the period of the delay. The provisions of this Section shall not operate to excuse Tenant from the prompt payment of rent or from the timely performance of any other obligation under this Lease within Tenant's reasonable control.

SECTION 20.10. ENTIRE AGREEMENT. This Lease and its exhibits and other attachments cover in full each and every agreement of every kind between the parties concerning the Premises, the Building, and the Project, and all preliminary negotiations, oral agreements, understandings and/or practices, except those contained in this Lease, are superseded and of no further effect. Tenant waives its rights to rely on any representations or promises made by Landlord or others which are not contained in this Lease. No verbal agreement or implied covenant shall be held to modify the provisions of this Lease, any statute, law, or custom to the contrary notwithstanding.

SECTION 20.11. QUIET ENJOYMENT. Upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, and subject to the other provisions of this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person claiming by or through Landlord.

SECTION 20.12. SURVIVAL. All covenants of Landlord or Tenant which reasonably would be intended to survive the expiration or sooner termination of this Lease, including without limitation any warranty or indemnity hereunder, shall so survive and continue to be binding upon and inure to the benefit of the respective parties and their successors and assigns.

#### ARTICLE XXI. EXECUTION AND RECORDING

SECTION 21.1. COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

SECTION 21.2. CORPORATE AND PARTNERSHIP AUTHORITY. If Tenant is a

corporation or partnership, each individual executing this Lease on behalf of the corporation or partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation or partnership, and that this Lease is binding upon the corporation or partnership in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of its board of directors' resolution or partnership agreement or certificate authorizing or evidencing the execution of this Lease.

SECTION 21.3. EXECUTION OF LEASE; NO OPTION OR OFFER. The submission of this Lease to Tenant shall be for examination purposes only, and shall not constitute an offer to or option for Tenant to lease the Premises. Execution of this Lease by Tenant and its return to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until Landlord has in fact executed and delivered this Lease to Tenant, it being intended that this Lease shall only become effective upon execution by Landlord and delivery of a fully executed counterpart to Tenant.

SECTION 21.4. RECORDING. Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.

SECTION 21.5. AMENDMENTS. No amendment or termination of this Lease shall be effective unless in writing signed by authorized signatories of Tenant and Landlord, or by their respective successors in interest. No

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actions, policies, oral or informal arrangements, business dealings or other course of conduct by or between the parties shall be deemed to modify this Lease in any respect.

SECTION 21.6. EXECUTED COPY. Any fully executed photocopy or similar reproduction of this Lease shall be deemed an original for all purposes.

SECTION 21.7. ATTACHMENTS. All exhibits, amendments, riders and addenda attached to this Lease are hereby incorporated into and made a part of this Lease.

## ARTICLE XXII. MISCELLANEOUS

SECTION 22.1. NONDISCLOSURE OF LEASE TERMS. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its partners, officers, directors, employees and attorneys, shall not intentionally and voluntarily disclose the terms and conditions of this Lease

to any other tenant or apparent prospective tenant of the Project, either directly or indirectly, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease. Notwithstanding the foregoing, Tenant may disclose this Lease as required by law or judicial order, which disclosure may include filing a copy of the Lease as an exhibit to Tenant's filings under federal securities laws.

SECTION 22.2. GUARANTY. As a condition to the execution of this Lease by Landlord, the obligations, covenants and performance of the Tenant as herein provided shall be guaranteed in writing by the Guarantor(s) listed in Item 7 of the Basic Lease Provisions, if any, on a form of guaranty provided by Landlord.

SECTION 22.3. CHANGES REQUESTED BY LENDER. If, in connection with obtaining financing for the Project, the lender shall request reasonable modifications in this Lease as a condition to the financing, Tenant will not unreasonably withhold or delay its consent, provided that the modifications do not materially increase the obligations of Tenant or materially and adversely affect the leasehold interest created by this Lease.

SECTION 22.4. MORTGAGEE PROTECTION. No act or failure to act on the part of Landlord which would otherwise entitle Tenant to be relieved of its obligations hereunder or to terminate this Lease shall result in such a release or termination unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises whose address has been furnished to Tenant and (b) such beneficiary is afforded a reasonable opportunity to cure the default by Landlord (which in no event shall be less than sixty (60) days), including, if necessary to effect the cure, time to obtain possession of the Premises by power of sale or judicial foreclosure provided that such foreclosure remedy is diligently pursued. Tenant agrees that each beneficiary of a deed of trust or mortgage covering the Premises is an express third party beneficiary hereof, Tenant shall have no right or claim for the collection of any deposit from such beneficiary or from any purchaser at a foreclosure sale unless such beneficiary or purchaser shall have actually received and not refunded the deposit, and Tenant shall comply with any written directions by any beneficiary to pay rent due hereunder directly to such beneficiary without determining whether an event of default exists under such beneficiary's deed of trust.

SECTION 22.5. COVENANTS AND CONDITIONS. All of the provisions of this Lease shall be construed to be conditions as well as covenants as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

SECTION 22.6. SECURITY MEASURES. Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project. Tenant assumes all responsibility for the protection of Tenant, its agents, invitees and property from acts of

third parties. Nothing herein contained shall prevent Landlord, at its sole option, from providing security protection for the Project or any part thereof, in which event the cost thereof shall be included within the definition of Building Costs.

LANDLORD:

TENANT:

THE IRVINE COMPANY,  
a Michigan corporation

PHOENIX TECHNOLOGIES LTD.,  
a Delaware corporation

By: /s/Clarence W. Barker

By: /s/Robert J. Riopel

-----  
Clarence W. Barker,  
President, Irvine Industrial  
Company, a division of The  
Irvine Company

-----  
Name: Robert J. Riopel  
Title: VP, Finance

By: /s/Richard G. Sim

By: /s/Scott C. Neely

-----  
Richard G. Sim  
Executive Vice President  
The Irvine Co.

-----  
Name: Scott C. Neely  
Title: VP, General Counsel  
and Secretary

EXHIBIT A

DESCRIPTION OF THE PREMISES

[Drawing of Premises]

EXHIBIT B

IRVINE INDUSTRIAL COMPANY  
HAZARDOUS MATERIALS SURVEY FORM

The purpose of this form is to obtain information regarding the use of hazardous substances on Irvine Industrial Company property. Prospective

tenants and contractors should answer the questions in light of their proposed operations on the premises. Existing tenants and contractors should answer the questions as they relate to ongoing operations on the premises and should update any information previously submitted.

If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. When completed, the form should be sent to the following address:

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(insert address of Property Management Company)

Your cooperation in this matter is appreciated. If you have any questions, please do not hesitate to call [insert name of Property Manager] at [insert phone number] for assistance.

1. GENERAL INFORMATION

Name of Responding Company: \_\_\_\_\_

Check all that apply: Tenant ( ) Contractor ( ) Prospective ( )  
Existing ( )

Mailing Address: \_\_\_\_\_

Contact Person & Title: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ - \_\_\_\_\_

Address of Leased Premises: \_\_\_\_\_

Length of Lease or Contract Term: \_\_\_\_\_

Describe the proposed operations to take place on the property, including principal products manufactured or services to be conducted. Existing tenants and contractors should describe any proposed changes to ongoing operations.

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2. STORAGE OF HAZARDOUS MATERIALS

2.1 Will any hazardous materials be used or stored on-site?

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Wastes	Yes ( )	No ( )
Chemical Products	Yes ( )	No ( )
Biological Hazards/ Infectious Wastes	Yes ( )	No ( )
Radioactive Materials	Yes ( )	No ( )

2.2 List any hazardous materials to be used or stored, the quantities that will be on-site at any given time, and the location and method of storage (e.g., bottles in storage closet on the premises).

LOCATION AND METHOD

Waste/Products	of Storage	Quantity
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.3 Is any underground storage of hazardous substances proposed or currently conducted on the premises? Yes ( ) No ( )

If yes, describe the materials to be stored, and the size and construction of the tank. Attach copies of any permits obtained for the underground storage of such substances. \_\_\_\_\_

3. SPILLS

3.1 During the past year, have any spills occurred on the premises? Yes ( ) No ( )

If so, please describe the spill and attach the results of any testing conducted to determine the extent of such spills.

3.2 Were any agencies notified in connection with such spills? Yes ( ) No ( )

If so, attach copies of any spill reports or other correspondence with regulatory agencies.

3.3 Were any clean-up actions undertaken in connection with the spills?

Yes ( ) No ( )

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work.

4. WASTE MANAGEMENT

4.1 List the waste, if any, generated or to be generated at the premises, whether it is as hazardous waste, biological or radioactive hazard, its hazard class and the quantity generated on a monthly basis.

Waste	Hazard Class	Quantity/Month
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4.2 Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. \_\_\_\_\_  
\_\_\_\_\_

4.3 Is any treatment or processing of hazardous, infectious or radioactive wastes currently conducted or proposed to be conducted at the premises? Yes ( ) No ( )  
  
If yes, please describe any existing or proposed treatment methods.  
\_\_\_\_\_

4.4 Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

5. WASTEWATER TREATMENT/DISCHARGE

5.1 Do you discharge industrial wastewater to:  
\_\_\_ storm drain?                      \_\_\_ sewer?  
\_\_\_ surface water?                    \_\_\_ no industrial discharge

5.2 Is your industrial wastewater treated before discharge?  
Yes ( ) No ( )  
  
If yes, describe the type of treatment conducted.



5.3 Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

6. AIR DISCHARGES

6.1 Do you have any air filtration systems or stacks that discharge into the air? Yes ( ) No ( )

6.2 Do you operate any equipment that require air emissions permits? Yes ( ) No ( )

6.3 Attach copies of any air discharge permits pertaining to these operations.

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Does your company handle an aggregate of at least 500 pounds, 55 gallons or 200 cubic feet of hazardous material at any given time? If so, state law requires that you prepare a hazardous materials management plan. Yes ( ) No ( )

7.2 Has your company prepared a hazardous materials management plan ('business plan') pursuant to state and Orange County Fire Department requirements? Yes ( ) No ( )  
If so, attach a copy of the business plan.

7.3 Are any of the chemicals used in your operations regulated under Proposition 65? Yes ( ) No ( )  
If so, describe the actions taken, or proposed actions to be taken, to comply with Proposition 65 requirements.

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7.4 Is your company subject to OSHA Hazard Communication Standard Requirements? Yes ( ) No ( )  
If so, describe the procedures followed to comply with these requirements.

8. ENFORCEMENT ACTIONS, COMPLAINTS

8.1 Has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees? Yes ( ) No ( )  
If so, describe the actions and any continuing compliance obligations imposed as a result of these actions.

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes ( ) No ( )

8.3 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns? Yes ( ) No ( )

8.4 Has an environmental audit ever been conducted at your company's current facility?

Yes ( ) No ( )

If so, discuss the results of the audit.

8.5 Have there been any problems or complaints from neighbors at your company's current facility? Yes ( ) No ( )

\_\_\_\_\_  
\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## EXHIBIT C

### LANDLORD'S DISCLOSURES

The capitalized terms used and not otherwise defined in this Exhibit shall have the same definitions as set forth in the Lease. The provisions of this Exhibit shall supersede any inconsistent or conflicting provisions of the Lease.

1. Landlord has been informed that the El Toro Marine Corps Air Station (MCAS) has been listed as a Federal Superfund site as a result of chemical releases occurring over many years of occupancy. Various chemicals including jet fuel, motor oil and solvents have been discharged in several areas throughout the MCAS site. A regional study conducted by the Orange County Water District has estimated that groundwaters beneath more than 2,900 acres have been impacted by Trichloroethylene (TCE), an industrial solvent. There is

a potential that this substance may have migrated into the ground water underlying the Premises. The U.S. Environmental Protection Agency, the Santa Ana Region Quality Control Board, and the Orange County Health Care Agency are overseeing the investigation/cleanup of this contamination. To the Landlord's current actual knowledge, the ground water in this area is used for irrigation purposes only, and there is no practical impediment to the use or occupancy of the Premises due to the El Toro discharges.

#### EXHIBIT D

#### TENANT'S INSURANCE

The following standards for Tenant's insurance shall be in effect at the Premises. Landlord reserves the right to adopt reasonable nondiscriminatory modifications and additions to those standards. Tenant agrees to obtain and present evidence to Landlord that it has fully complied with the insurance requirements.

1. Tenant shall, at its sole cost and expense, commencing on the date Tenant is given access to the Premises for any purpose and during the entire Term, procure, pay for and keep in full force and effect: (i) commercial general liability insurance with respect to the Premises and the operations of or on behalf of Tenant in, on or about the Premises, including but not limited to personal injury, owned and nonowned automobile, blanket contractual, independent contractors, broad form property damage (with an exception to any pollution exclusion with respect to damage arising out of heat, smoke or fumes from a hostile fire), fire and water legal liability, products liability (if a product is sold from the Premises), liquor law liability (if alcoholic beverages are sold, served or consumed within the Premises), and severability of interest, which policy(ies) shall be written on an "occurrence" basis and for not less than the amount set forth in Item 13 of the Basic Lease Provisions, with a combined single limit (with a \$50,000 minimum limit on fire legal liability) per occurrence for bodily injury, death, and property damage liability, or the current limit of liability carried by Tenant, whichever is greater, and subject to such increases in amounts as Landlord may determine from time to time; (ii) workers' compensation insurance coverage as required by law, together with employers' liability insurance; (iii) with respect to improvements, alterations, and the like required or permitted to be made by Tenant under this Lease, builder's all-risk insurance, in an amount equal to the replacement cost of the work; (iv) insurance against fire, vandalism, malicious mischief and such other additional perils as may be included in a standard "all risk" form in general use in Orange County, California, insuring Tenant's leasehold improvements, trade fixtures, furnishings, equipment and items of personal property of Tenant located in the Premises, in an amount equal to not less than ninety percent (90%) of their actual replacement cost (with replacement cost endorsement); and (v) business interruption insurance in amounts satisfactory to cover one (1) year of loss. In no event shall the limits of any policy be considered as limiting the

liability of Tenant under this Lease.

2. In the event Landlord consents to Tenant's use, generation or storage of Hazardous Materials on, under or about the Premises pursuant to Section 5.3 of this Lease (other than standard office products that may contain Hazardous Materials, such as photocopy toner, "white out", and the like), Landlord shall have the continuing right to require Tenant, at Tenant's sole cost and expense (provided the same is available for purchase upon commercially reasonable terms), to purchase insurance specified and approved by Landlord, with coverage not less than Five Million Dollars (\$5,000,000.00), insuring (i) any Hazardous Materials shall be removed from the Premises, (ii) the Premises shall be restored to a clean, healthy, safe and sanitary condition, and (iii) any liability of Tenant, Landlord and Landlord's officers, directors, shareholders, agents, employees and representatives, arising from such Hazardous Materials.

3. All policies of insurance required to be carried by Tenant pursuant to this EXHIBIT D containing a deductible exceeding Ten Thousand Dollars (\$10,000.00) per occurrence must be approved in writing by Landlord prior to the issuance of such policy. Tenant shall be solely responsible for the payment of all deductibles.

4. All policies of insurance required to be carried by Tenant pursuant to this EXHIBIT D shall be written by responsible insurance companies authorized to do business in the State of California and with a Best's rating of not less than "A" subject to final acceptance and approval by Landlord. Any insurance required of Tenant may be furnished by Tenant under any blanket policy carried by it or under a separate policy, so long as (i) the Premises are specifically covered (by rider, endorsement or otherwise), and (ii) the policy otherwise complies with the provisions of this EXHIBIT D. A true and exact copy of each paid up policy evidencing the insurance (appropriately authenticated by the insurer) or a certificate of insurance, certifying that the policy has been issued,

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provides the coverage required by this EXHIBIT D and contains the required provisions, shall be delivered to Landlord prior to the date Tenant is given the right of possession of the Premises. Proper evidence of the renewal of any insurance coverage shall also be delivered to Landlord not less than thirty (30) days prior to the expiration of the coverage. Landlord may at any time, and from time to time, inspect and/or copy any and all insurance policies required by this Lease.

5. Each policy evidencing insurance required to be carried by Tenant pursuant to this EXHIBIT D shall contain the following provisions and/or clauses satisfactory to Landlord: (i) a provision that the policy and the coverage provided shall be primary and that any coverage carried by Landlord shall be noncontributory with respect to any policies carried by Tenant

except as to workers' compensation insurance; (ii) a provision including Landlord, the Additional Insureds identified in Item 11 of the Basic Lease Provisions, and any other parties in interest designated by Landlord as an additional insured, except as to workers' compensation insurance; (iii) a waiver by the insurer of any right to subrogation against Landlord, its agents, employees, contractors and representatives which arises or might arise by reason of any payment under the policy or by reason of any act or omission of Landlord, its agents, employees, contractors or representatives; and (iv) a provision that the insurer will not cancel or change the coverage provided by the policy without using its reasonable efforts to give Landlord thirty (30) days prior written notice.

6. In the event that Tenant fails to procure, maintain and/or pay for, at the times and for the durations specified in this EXHIBIT D, any insurance required by this EXHIBIT D, or fails to carry insurance required by any governmental authority, Landlord may at its election procure that insurance and pay the premiums, in which event Tenant shall repay Landlord all sums paid by Landlord, together with interest at the maximum rate permitted by law and any related costs or expenses incurred by Landlord, within ten (10) days following Landlord's written demand to Tenant.

## EXHIBIT E

### RULES AND REGULATIONS

This Exhibit sets forth the rules and regulations governing Tenant's use of the Premises leased to Tenant pursuant to the terms, covenants and conditions of the Lease to which this Exhibit is attached and therein made part thereof. In the event of any conflict or inconsistency between this Exhibit and the Lease, the Lease shall control.

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.

2. The walls, walkways, sidewalks, entrance passages, courts and vestibules shall not be obstructed or used for any purpose other than ingress and egress of pedestrian travel to and from the Premises, and shall not be used for loitering or gathering, or to display, store or place any merchandise, equipment or devices, or for any other purpose. The walkways, entrance passageways, courts, vestibules and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein

contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. No tenant or employee or invitee of any tenant shall be permitted upon the roof of the Building.

3. No awnings or other projection shall be attached to the outside walls of the Building. No security bars or gates, curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises without the prior written consent of Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the express written consent of Landlord.

4. Tenant shall not mark, nail, paint, drill into, or in any way deface any part of the Premises or the Building. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord in writing. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by Tenant.

5. The toilet rooms, urinals, wash bowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, caused it.

6. Landlord shall direct electricians as to the manner and location of any future telephone wiring. No boring or cutting for wires will be allowed without the prior consent of Landlord. The locations of the telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

7. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. No exterior storage shall be allowed at any time without the prior written approval of Landlord. The Premises shall not be used for cooking or washing clothes without the prior written consent of Landlord, or for lodging or sleeping or for any immoral or illegal purposes.

8. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or

disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, noise, or otherwise. Tenant shall not use, keep or permit to be used, or kept, any foul or obnoxious gas or

substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of this or neighboring buildings or premises by reason of any odors, fumes or gases.

9. No animals shall be permitted at any time within the Premises.

10. Tenant shall not use the name of the Building or the Project in connection with or in promoting or advertising the business of Tenant, except as Tenant's address, without the written consent of Landlord. Landlord shall have the right to prohibit any advertising by any Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability for its intended uses, and upon written notice from Landlord any Tenant shall refrain from or discontinue such advertising.

11. Canvassing, soliciting, peddling, parading, picketing, demonstrating or otherwise engaging in any conduct that unreasonably impairs the value or use of the Premises or the Project are prohibited and each Tenant shall cooperate to prevent the same.

12. No equipment of any type shall be placed on the Premises which in Landlord's opinion exceeds the load limits of the floor or otherwise threatens the soundness of the structure or improvements of the Building.

13. No air conditioning unit or other similar apparatus shall be installed or used by any Tenant without the prior written consent of Landlord.

14. No aerial antenna shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the prior written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal by Landlord at any time without prior notice at the expense of the Tenant, and Tenant shall upon Landlord's demand pay a removal fee to Landlord of not less than \$200.00.

15. The entire Premises, including vestibules, entrances, doors, fixtures, windows and plate glass, shall at all times be maintained in a safe, neat and clean condition by Tenant. All trash, refuse and waste materials shall be regularly removed from the Premises by Tenant and placed in the containers at the locations designated by Landlord for refuse collection. All cardboard boxes must be "broken down" prior to being placed in the trash container. All styrofoam chips must be bagged or otherwise contained prior to placement in the trash container, so as not to constitute a nuisance. Pallets may not be disposed of in the trash container or enclosures. The burning of trash, refuse or waste materials is prohibited.

16. Tenant shall use at Tenant's cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

17. All keys for the Premises shall be provided to Tenant by Landlord and Tenant shall return to Landlord any of such keys so provided upon the termination of the Lease. Tenant shall not change locks or install other



locks on doors of the Premises, without the prior written consent of Landlord. In the event of loss of any keys furnished by Landlord for Tenant, Tenant shall pay to Landlord the costs thereof.

18. No person shall enter or remain within the Project while intoxicated or under the influence of liquor or drugs. Landlord shall have the right to exclude or expel from the Project any person who, in the absolute discretion of Landlord, is under the influence of liquor or drugs.

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Landlord reserves the right to amend or supplement the foregoing Rules and Regulations and to adopt and promulgate additional rules and regulations applicable to the Premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Tenant.

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## EXHIBIT X

### INDUSTRIAL WORK LETTER

#### DOLLAR ALLOWANCE

The Tenant Improvement work (herein "Tenant Improvements") shall consist of any work, including work in place as of the date hereof, required to complete the initial Premises and the "Must Take Space" (collectively, hereinafter referred to as the "Premises") pursuant to the Tenant's approved plans and specifications. All of the Tenant Improvement work shall be performed by a contractor selected by Landlord and in accordance with the procedures and requirements set forth below.

#### I. ARCHITECTURAL AND CONSTRUCTION PROCEDURES.

- A. Tenant and Landlord have approved, or shall approve within the time period set forth below, both (i) a detailed space plan for the Premises, prepared by Landlord's architect, which includes interior partitions, ceilings, interior finishes, interior doors, suite entrance, floor coverings, window coverings, lighting, electrical and telephone outlets, plumbing connections, heavy floor loads and other special requirements ("Preliminary Plan"), and (ii) an estimate, prepared by Landlord's contractor, of the cost for which Landlord will complete or cause to be completed the Tenant Improvements ("Preliminary Cost Estimate"). Tenant shall approve or disapprove each of the Preliminary Plan and the Preliminary Cost Estimate by signing copies of the appropriate instrument and delivering same to

Landlord within ten (10) days of its receipt by Tenant. If Tenant disapproves any matter, Tenant shall specify in detail the reasons for disapproval and Landlord shall attempt to modify the Preliminary Plan and the Preliminary Cost Estimate to incorporate Tenant's suggested revisions in a mutually satisfactory manner. Notwithstanding the foregoing, however, Tenant shall approve in all respects a Preliminary Plan and Preliminary Cost Estimate not later than the date set forth in Item 15 of the Basic Lease Provisions ("Plan Approval Date"), it being understood that Tenant's failure to do so shall constitute a "Tenant Delay" for purposes of this Lease.

B. On or before the Plan Approval Date, Tenant shall provide in writing to Landlord or Landlord's architect all specifications and information requested by Landlord for the preparation of final construction documents and costing, including without limitation Tenant's final selection of wall and floor finishes, complete specifications and locations (including load and HVAC requirements) of Tenant's equipment, and details of all "Non-Standard Improvements" (as defined below) to be installed in the Premises (collectively, "Programming Information"). Tenant's failure to provide the Programming Information by the Plan Approval Date shall constitute a Tenant Delay for purposes of this Lease. Tenant understands that final construction documents for the Tenant Improvements shall be predicated on the Programming Information, and accordingly that such information must be accurate and complete.

C. Except as otherwise specified by Tenant in the Preliminary Plan or authorized by Landlord, the Tenant Improvements shall incorporate Landlord's building standard materials and specifications ("Standards"). No deviations from the Standards may be required by Tenant with respect to doors and frames, finish hardware, entry graphics, the ceiling system, light fixtures and switches, mechanical systems, life and safety systems, and/or window coverings; provided that Landlord may, in its sole discretion, authorize in writing one or more of such deviations, in which event Tenant shall be solely responsible for the cost of replacing same with the applicable Standard item(s) upon the expiration or termination of this Lease. All other non-standard items ("Non-Standard Improvements") shall be subject to the reasonable prior approval of Landlord. Landlord shall in no event be required to approve any Non-Standard Improvement if

Landlord determines that such improvement (i) is of a lesser quality than the corresponding Standard, (ii) fails to conform to applicable governmental requirements, (iii) requires building services beyond the level normally provided to other tenants, (iv) would delay construction of the Tenant Improvements beyond the Estimated Commencement Date and Tenant declines to accept such delay in writing

as a Tenant Delay, or (v) would have an adverse aesthetic impact from the exterior of the Premises.

- D. Upon Tenant's approval of the Preliminary Plan and Preliminary Cost Estimate and delivery of the complete Programming Information, Landlord's architect and engineers shall prepare and deliver to Tenant working drawings and specifications ("Working Drawings and Specifications"), and Landlord's contractor shall prepare a final construction cost estimate ("Final Cost Estimate") for the Tenant Improvements in conformity with the Working Drawings and Specifications. Tenant shall have ten (10) days from the receipt thereof to approve or disapprove the Working Drawings and Specifications and the Final Cost Estimate. Tenant shall not unreasonably withhold or delay its approval, and any disapproval or requested modification shall be limited to items not contained in the approved Preliminary Plan or Preliminary Cost Estimate. In no event shall Tenant disapprove the Final Cost Estimate if it does not exceed the approved Preliminary Cost Estimate. Should Tenant disapprove the Working Drawings and Specifications and the Final Cost Estimate, such disapproval shall be accompanied by a detailed list of revisions. Any revision requested by Tenant and accepted by Landlord shall be incorporated into a revised set of Working Drawings and Specifications and Final Cost Estimate, and Tenant shall approve same in writing within ten (10) days of receipt without further revision. Tenant's failure to comply in a timely manner with any of the requirements of this paragraph shall constitute a Tenant Delay. Without limiting the rights of Landlord for Tenant Delays as set forth herein, in the event Tenant has not approved both the Working Drawings and Specifications and the Final Cost Estimate within sixty (60) days following the date of this Lease, then Landlord may, at its option, elect to terminate this Lease by written notice to Tenant. In the event Landlord elects to effect such a termination, Tenant shall, within ten (10) days following demand by Landlord, pay to Landlord any costs incurred by Landlord in connection with the preparation or review of plans, construction estimates, price quotations, drawings or specifications under this Work Letter and for all costs incurred in the preparation and execution of this Lease, including any leasing commissions.
- E. In the event that Tenant requests in writing a revision in the approved Working Drawings and Specifications ("Change"), Landlord shall advise Tenant by written change order as soon as is practical of any increase in the Completion Cost and/or any Tenant Delay such Change would cause. Tenant shall approve or disapprove such change order in writing within ten (10) days following its receipt from Landlord. Landlord shall have the right to decline Tenant's request for a Change for any of the reasons set forth in Article II.C above for Landlord's disapproval of a Non-Standard Improvement. It is understood that Landlord shall have no obligation to interrupt or modify the Tenant Improvement work pending Tenant's approval of a change order.

F. Notwithstanding any provision in the Lease to the contrary, if Tenant fails to comply with any of the time periods specified in this Work Letter, fails otherwise to approve or reasonably disapprove any submittal within ten (10) days, fails to approve in writing both the Preliminary Plan and Preliminary Cost Estimate for the Tenant Improvements by the Plan Approval Date, fails to provide all of the Programming Information requested by Landlord by the Plan Approval Date, fails to approve in writing the Working Drawings and Specifications and the Final Cost Estimate within the time provided herein, requests any Changes, furnishes inaccurate or erroneous specifications or other information, or otherwise delays in any manner the completion of the Tenant Improvements (including without limitation by specifying materials that are not readily available) or the issuance of an occupancy certificate (any of the foregoing being referred to in this Lease as a "Tenant Delay"), then Tenant shall bear any resulting additional construction cost or other expenses, and the Commencement Date of this Lease shall be deemed to have occurred for all

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purposes, including Tenant's obligation to pay rent, as of the date Landlord reasonably determines that it would have been able to deliver the Premises to Tenant but for the collective Tenant Delays. In no event, however, shall such date be earlier than the Estimated Commencement Date set forth in the Basic Lease Provisions. Should Landlord determine that the Commencement Date should be advanced in accordance with the foregoing, it shall so notify Tenant in writing. Landlord's determination shall be conclusive unless Tenant notifies Landlord in writing, within ten (10) days thereafter, of Tenant's election to contest same by arbitration with the Judicial Arbitration and Mediation Service in Orange County, California. Pending the outcome of such arbitration proceedings, Tenant shall make timely payment of all rent due under this Lease based upon the Commencement Date set forth in the aforesaid notice from Landlord.

G. Landlord shall permit Tenant and its agents to enter the Premises prior to the Commencement Date of the Lease in order that Tenant may perform any work to be performed by Tenant hereunder through its own contractors, subject to Landlord's prior written approval, and in a manner and upon terms and conditions and at times satisfactory to Landlord's representative. The foregoing license to enter the Premises prior to the Commencement Date is, however, conditioned upon Tenant's contractors and their subcontractors and employees working in harmony and not interfering with the work being performed by Landlord. If at any time that entry shall cause disharmony or interfere with the work being performed by Landlord, this license may be withdrawn by Landlord upon twenty-four (24) hours written notice to Tenant. That

license is further conditioned upon the compliance by Tenant's contractors with all requirements imposed by Landlord on third party contractors, including without limitation the maintenance by Tenant and its contractors and subcontractors of workers' compensation and public liability and property damage insurance in amounts and with companies and on forms satisfactory to Landlord, with certificates of such insurance being furnished to Landlord prior to proceeding with any such entry. The entry shall be deemed to be under all of the provisions of the Lease except as to the covenants to pay rent. Such entry by Tenant shall not trigger the occurrence of the "Commencement Date" as provided in Section 3.1(a) of the Lease. Landlord shall not be liable in any way for any injury, loss or damage which may occur to any such work being performed by Tenant, the same being solely at Tenant's risk. In no event shall the failure of Tenant's contractors to complete any work in the Premises extend the Commencement Date of this Lease beyond the date that Landlord has completed its Tenant Improvement work and tendered the Premises to Tenant.

- H. Tenant hereby designates Sloan Wood, Telephone No. (408) 452-6880, as its representative, agent and attorney-in-fact for the purpose of receiving notices, approving submittals and issuing requests for Changes, and Landlord shall be entitled to rely upon authorizations and directives of such person(s) as if given directly by Tenant. Tenant may amend the designation of its construction representative(s) at any time upon delivery of written notice to Landlord.

## II. COST OF TENANT IMPROVEMENTS

- A. Landlord shall complete, or cause to be completed, the Tenant Improvements, at the construction cost shown in the approved Final Cost Estimate (subject to the provisions of this Work Letter), in accordance with final Working Drawings and Specifications approved by both Landlord and Tenant. Landlord shall pay towards the final construction costs ("Completion Cost") as incurred a maximum of One Million One Hundred Sixty-Five Thousand Eight Dollars (\$1,165,080.00) and Tenant shall be fully responsible for the remainder ("Tenant's Contribution").
- B. The Completion Cost shall include all direct costs of Landlord in completing the Tenant Improvements, including but not limited to the following: (i) payments made to architects, engineers, contractors, subcontractors and other third party consultants in the performance of the work, (ii) salaries and fringe

benefits of persons, if any, in the direct employ of Landlord performing any part of the construction work, (iii) permit fees and

other sums paid to governmental agencies, (iv) costs of all materials incorporated into the work or used in connection with the work, including Tenant's proportionate share of the cost of certain exterior patio furniture, and (v) keying and signage costs. The Completion Cost shall also include an administrative/ supervision fee to be paid to Landlord's management agent for the Building in the amount of five percent (5%) of all such direct costs.

C. Prior to start of construction of the Tenant Improvements, Tenant shall pay to Landlord in full the amount of the Tenant's Contribution set forth in the approved Final Cost Estimate. If the actual Completion Cost of the Tenant Improvements is greater than the Final Cost Estimate because of modifications or extras not reflected on the approved working drawings, or because of delays caused by Tenant, then Tenant shall be responsible for all such additional costs, including any additional architectural fee. The balance of any sums not otherwise paid by Tenant shall be due and payable on or before the Commencement Date of this Lease. If Tenant defaults in the payment of any sums due under this Work Letter, Landlord shall (in addition to all other remedies) have the same rights as in the case of Tenant's failure to pay rent under the Lease.

## PHOENIX TECHNOLOGIES LTD.

COMPUTATION OF EARNINGS PER SHARE  
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	Year ended September 30,		
	1996	1995	1994
	-----	-----	-----
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Income from continuing operations	\$ 9,047,000	\$ 8,815,000	\$ 19,230,000
Gain (loss) from discontinued operations	3,752,000	--	(12,436,000)
	-----	-----	-----
Net income	\$12,799,000	\$ 8,815,000	\$ 6,794,000
	-----	-----	-----
Weighted average number of common shares outstanding	15,991,000	14,273,000	13,736,000
Weighted average number of common equivalent shares	1,465,000	1,490,000	831,000
	-----	-----	-----
Weighted average number of common and common equivalent shares outstanding	17,456,000	15,763,000	14,567,000
	-----	-----	-----
Primary earnings per share:			
Continuing operations	\$ 0.52	\$ 0.56	\$ 1.32
Discontinued operations	0.21	( -- )	(0.85)
	-----	-----	-----
Net Income	\$ 0.73	\$ 0.56	\$ 0.47
	-----	-----	-----

&lt;/TABLE&gt;



SUBSIDIARIES OF  
PHOENIX TECHNOLOGIES LTD.

SUBSIDIARY  
-----

STATE OF INCORPORATION  
-----

WHOLLY OWNED

Phoenix Technologies (Taiwan) Ltd.	Delaware
Phoenix Technologies Kabushiki Kaisha	Japan
Phoenix Technologies SARL	France

MINORITY OWNED

Phoenix Publishing Systems, Inc.	Delaware
Xionics Document Technologies, Inc.	Delaware

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements of Phoenix Technologies Ltd. (Form S-8 File Numbers 33-58027, 33-67858, 33-24416, 33-26966, 33-30939, 33-30940, 33-44211, 33-81984, 333-03065, 333-03067, and 333-11033; Form S-3 File Number 333-16309) of our report dated October 29, 1996, with respect to the consolidated financial statements and schedule of Phoenix Technologies Ltd. Included in the Annual Report (Form 10-K) for the year ended September 30, 1996.

ERNST & YOUNG LLP

Palo Alto, California  
December 27, 1996

## CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the registration statement of Phoenix Technologies Ltd. on Form S-8 (File Numbers 33-58027, 33-67858, 33-24416, 33-26966, 33-30939, 33-30940, 33-44211, 33-81984, 333-03065, 33-03067, and 333-11033) and S-3 (File Number 333-16309) of our report dated October 27, 1995, on our audits of the consolidated financial statements and financial statement schedule of Phoenix Technologies Ltd. as of September 30, 1995, and for the years ended September 30, 1995 and 1994, which report is included in this Annual Report on Form 10-K.

/s/ Coopers & Lybrand  
Coopers & Lybrand, L.L.P.

San Jose, California  
December 27, 1996

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