

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2003-09-12** | Period of Report: **2003-07-31**  
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### FILER

#### **ASHWORTH INC**

CIK: **820774** | IRS No.: **841052000** | State of Incorporation: **DE** | Fiscal Year End: **1031**  
Type: **10-Q** | Act: **34** | File No.: **001-14547** | Film No.: **03894111**  
SIC: **2320** Men's & boys' furnishgs, work clothg, & allied garments

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CARLSBAD CA 92008

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CARLSBAD CA 92008  
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended July 31, 2003

OR

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

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

Commission file number: 0-18553

**Ashworth, Inc.**

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**84-1052000**

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

**2765 LOKER AVENUE WEST  
CARLSBAD, CA 92008**

(Address of Principal Executive Offices)

**(760) 438-6610**

(Telephone No. Including Area Code)

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Title	Outstanding at September 8, 2003
\$.001 par value Common Stock	13,069,547



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**PART I**  
**FINANCIAL INFORMATION**

ASHWORTH, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS

	July 31, 2003	October 31, 2002
	(UNAUDITED)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 4,029,000	\$ 2,336,000
Accounts receivable - trade, net	33,733,000	33,572,000
Accounts receivable - other	2,054,000	1,821,000
Inventories, net	42,321,000	41,188,000
Income tax refund receivable	33,000	246,000
Other current assets	4,448,000	3,284,000
Deferred income tax asset	1,991,000	1,748,000
	<hr/>	<hr/>
Total current assets	88,609,000	84,195,000
	<hr/>	<hr/>
Property, plant and equipment, at cost	40,625,000	39,167,000
Less accumulated depreciation and amortization	(23,046,000)	(21,278,000)
	<hr/>	<hr/>
Total property, plant and equipment, net	17,579,000	17,889,000
	<hr/>	<hr/>
Other assets	704,000	891,000
	<hr/>	<hr/>
Total assets	\$ 106,892,000	\$ 102,975,000
	<hr/>	<hr/>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Line of credit payable	\$ 6,000,000	\$ 11,125,000
Current portion of long-term debt	284,000	553,000
Accounts payable - trade	7,079,000	6,338,000
Accrued liabilities	3,867,000	3,014,000
	<hr/>	<hr/>
Total current liabilities	17,230,000	21,030,000
	<hr/>	<hr/>
Long-term debt, net of current portion	2,706,000	2,921,000
Deferred income tax liability	1,134,000	904,000
Other long-term liabilities	436,000	535,000

Stockholders' equity:

Common stock	13,000	13,000
Capital in excess of par value	37,867,000	37,185,000
Retained earnings	47,029,000	40,578,000
Accumulated other comprehensive income (loss)	477,000	(191,000 )
	<hr/>	<hr/>
Total stockholders' equity	85,386,000	77,585,000
	<hr/>	<hr/>
Total liabilities and stockholders' equity	\$ 106,892,000	\$ 102,975,000
	<hr/>	<hr/>

See accompanying notes to condensed consolidated financial statements.



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CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(UNAUDITED)

	Three months ended July 31,		Nine months ended July 31,	
	2003	2002	2003	2002
Net revenues	\$ 37,960,000	\$ 36,236,000	\$ 117,118,000	\$ 99,920,000
Cost of goods sold	22,284,000	21,385,000	69,515,000	59,444,000
Gross profit	15,676,000	14,851,000	47,603,000	40,476,000
Selling, general and administrative expenses	12,051,000	15,609,000	36,445,000	36,654,000
Income (loss) from operations	3,625,000	(758,000 )	11,158,000	3,822,000
Other income (expense):				
Interest income	9,000	7,000	24,000	39,000
Interest expense	(232,000 )	(258,000 )	(683,000 )	(655,000 )
Other income	37,000	54,000	253,000	59,000
Total other expense	(186,000 )	(197,000 )	(406,000 )	(557,000 )
Income (loss) before provision for income tax expense (benefit)	3,439,000	(955,000 )	10,752,000	3,265,000
Provision for income tax expense (benefit)	1,376,000	(382,000 )	4,301,000	1,306,000
Net income (loss)	\$ 2,063,000	\$ (573,000 )	\$ 6,451,000	\$ 1,959,000
Net income (loss) per share				
Basic:				
Weighted average shares outstanding	13,006,000	13,289,000	12,972,000	13,224,000
Net income (loss) per share	\$ 0.16	\$ (0.04 )	\$ 0.50	\$ 0.15
Diluted:				
Weighted average shares outstanding	13,211,000	13,289,000	13,124,000	13,597,000
Net income (loss) per share	\$ 0.16	\$ (0.04 )	\$ 0.49	\$ 0.14

See accompanying notes to condensed consolidated financial statements.

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CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(UNAUDITED)

	Nine months ended July 31,	
	2003	2002
Cash flows from operating activities:		
Net cash provided by (used in) operating activities	\$ 8,374,000	\$ (4,435,000 )
Cash flows from investing activities:		
Net cash used in investing activities- Purchases of property and equipment	(2,422,000 )	(1,854,000 )
Cash flows from financing activities:		
Principal payments on capital lease obligations	(129,000 )	(84,000 )
Borrowings on line of credit	37,102,000	32,445,000
Payments on line of credit	(42,227,000)	(28,045,000)
Principal payments on notes payable and long-term debt	(355,000 )	(464,000 )
Proceeds from issuance of common stock	682,000	980,000
Net cash provided by (used in) financing activities	(4,927,000 )	4,832,000
Effect of exchange rate changes on cash	668,000	801,000
Net increase (decrease) in cash and cash equivalents	1,693,000	(656,000 )
Cash and cash equivalents, beginning of period	2,336,000	1,055,000
Cash and cash equivalents, end of period	\$ 4,029,000	\$ 399,000

See accompanying notes to condensed consolidated financial statements.

ASHWORTH, INC. AND SUBSIDIARIES  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
JULY 31, 2003

**NOTE 1 – Basis of Presentation.**

In the opinion of management, the accompanying condensed consolidated balance sheets and related interim condensed consolidated statements of operations and cash flows include all adjustments (consisting only of normal recurring items) necessary for their fair presentation. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses and the disclosure of contingent assets and liabilities. Actual results could differ from those estimates. Interim results are not necessarily indicative of results to be expected for the full year.

Certain information in footnote disclosures normally included in financial statements has been condensed or omitted in accordance with the rules and regulations of the Securities and Exchange Commission (“SEC”). The information included in this Form 10-Q should be read in conjunction with Management’s Discussion and Analysis of Financial Condition and Results of Operations, and consolidated financial statements and notes thereto included in the annual report on Form 10-K for the year ended October 31, 2002, filed with the SEC on January 30, 2003.

Certain reclassifications have been made to the prior year’s condensed consolidated financial statements to conform to classifications used in the current year. These reclassifications had no impact on previously reported results from operations.

**Shipping and Handling Expenses**

The shipping expenses, which consist primarily of payments made to freight companies, are reported in selling, general and administrative expenses. Shipping expenses for the quarters ended July 31, 2003 and 2002 were \$525,000 and \$377,000 respectively. For the nine-month periods ended July 31, 2003 and 2002, shipping expenses were \$1,357,000 and \$1,378,000 respectively.

**NOTE 2 – Inventories.**

Inventories consisted of the following at July 31, 2003 and October 31, 2002:

	July 31, 2003	October 31, 2002
Raw materials	\$ 130,000	\$ 121,000
Work in process	-	356,000
Finished goods	42,191,000	40,711,000
Total inventories, net	\$ 42,321,000	\$ 41,188,000

**NOTE 3 – Net Income Per Share Information.**

Basic net income per share has been computed based upon the weighted average number of common shares outstanding during the period. Diluted net income per share has been computed



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based upon the weighted average number of common shares outstanding plus the dilutive effects of common shares potentially issuable from the exercise of common stock options. Common stock options are excluded from the computation of net income per share if their effect is anti-dilutive. The following table sets forth the computation of basic and diluted net income per share based upon the requirements of Statement of Financial Accounting Standards (“SFAS”) No. 128:

	Three months ended July 31,		Nine months ended July 31,	
	2003	2002	2003	2002
<b>Numerator:</b>				
Net income (loss) numerator for basic and diluted income (loss) per share - income (loss) available to common stockholders	\$ 2,063,000	\$ (573,000 )	\$ 6,451,000	\$ 1,959,000
<b>Denominator:</b>				
Denominator for basic income (loss) per share - weighted average shares	13,006,000	13,289,000	12,972,000	13,224,000
Effect of dilutive securities:				
stock options	205,000	-	152,000	373,000
Denominator for diluted income (loss) per share - adjusted weighted average shares and assumed conversions	13,211,000	13,289,000	13,124,000	13,597,000
<b>Basic net income (loss) per share</b>	\$ 0.16	\$ (0.04 )	\$ 0.50	\$ 0.15
<b>Diluted net income (loss) per share</b>	\$ 0.16	\$ (0.04 )	\$ 0.49	\$ 0.14

For the quarters ended July 31, 2003 and 2002, the diluted weighted average shares outstanding computation excludes 916,000 and 656,000 options whose impact would have an anti-dilutive effect, respectively. For the nine-month periods ended July 31, 2003 and 2002, the diluted weighted average shares outstanding computation excludes 1,095,000 and 655,000 options whose impact would have an anti-dilutive effect, respectively.

### **NOTE 4 - Stock Option Compensation.**

The Company has elected to follow Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (“APB 25”) and related interpretations in accounting for its employee stock options. Under APB 25, because the exercise price of the Company’s employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized. The interim information regarding pro forma net income and earnings per share is required by SFAS No. 123 and SFAS No. 148. For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options’ vesting period. The Company’s pro forma information is as follows:

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	Three months ended July 31,		Nine months ended July 31,	
	2003	2002	2003	2002
Net income (loss), as reported	\$ 2,063,000	\$ (573,000)	\$ 6,451,000	\$ 1,959,000
Deduct: Stock-based employee compensation expense determined under fair value based method for all awards, net of tax effect	(100,000 )	(155,000)	(437,000 )	(602,000 )
Pro forma net income (loss)	\$ 1,963,000	\$ (728,000)	\$ 6,014,000	\$ 1,357,000
Net income (loss) per share:				
Basic - as reported	\$ 0.16	\$ (0.04 )	\$ 0.50	\$ 0.15
Basic - pro forma	\$ 0.15	\$ (0.05 )	\$ 0.46	\$ 0.10
Diluted - as reported	\$ 0.16	\$ (0.04 )	\$ 0.49	\$ 0.14
Diluted - pro forma	\$ 0.15	\$ (0.05 )	\$ 0.46	\$ 0.10

These pro forma calculations only include the effects of grants made in 1996 through July 31, 2003. As such, the impacts may not be representative of the effects on reported net income in future years.

**NOTE 5 - Comprehensive Income.**

The Company includes the cumulative foreign currency translation adjustment as well as the net unrealized gains and loss on cash flow hedges as components of the comprehensive income in addition to net income for the period. The following table sets forth the computation of comprehensive income (loss) for the periods presented:

	Three months ended July 31,		Nine months ended July 31,	
	2003	2002	2003	2002
Net income (loss)	\$ 2,063,000	\$ (573,000)	\$ 6,451,000	\$ 1,959,000
Net unrealized losses on cash flow hedges, net of tax	(49,000 )	-	(49,000 )	-
Foreign currency translation income	151,000	743,000	717,000	801,000
Total comprehensive income	\$ 2,165,000	\$ 170,000	\$ 7,119,000	\$ 2,760,000

**NOTE 6 - Legal Proceedings.**

On January 22, 1999, Milberg Weiss Bershad Hynes & Lerach LLP filed a class action in the United States District Court for the Southern District of California ("U.S. District Court") on behalf of purchasers of the Company's common stock during the period between September 4, 1997 and July 15, 1998. The action was subsequently consolidated with two similar suits and plaintiffs filed their Amended and Consolidated Complaint on December 17, 1999. Upon the Company's motion, the U.S. District Court dismissed the Complaint with leave to amend on July 18, 2000. On September 18, 2000, plaintiffs served their Second Consolidated



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Amended Complaint (“Second Amended Complaint”). On November 6, 2000, the Company filed its motion to dismiss the Second Amended Complaint, which the U.S. District Court granted, in part, and denied, in part. The remaining portions of the Second Amended Complaint allege that, among other things, during the class period and in violation of the Securities Exchange Act of 1934, the Company’s financial statements, as reported, did not conform to generally accepted accounting principles with respect to revenues and inventory levels. It further alleges that certain Company executives made false or misleading statements or omissions concerning product demand and that two former executives engaged in insider trading. The plaintiffs seek unspecified damages. The parties are currently in the discovery process. Based on the current status of the litigation the Company has not booked any provision for settlement charges.

The Company is party to other claims and litigation proceedings arising in the normal course of business. Although the legal responsibility and financial impact with respect to such other claims and litigation cannot currently be ascertained, the Company does not believe that these other matters will result in payment by the Company of monetary damages, net of any applicable insurance proceeds, that, in the aggregate, would be material in relation to the consolidated financial position or results of operations of the Company.

### **NOTE 7 - Segment Information.**

The Company defines its operating segments as components of an enterprise for which separate financial information is available and regularly reviewed by the Company’s senior management. The Company has the following two reportable segments: domestic and international. The chief operating decision maker evaluates segment performance based primarily on revenues and income from operations. Interest income and expense is evaluated on a consolidated basis and is not allocated to the Company’s business segments. Segment information is summarized (for the dates or periods presented) below:

	Three months ended July 31,		Nine months ended July 31,	
	2003	2002	2003	2002
Net revenues:				
Domestic	\$ 31,674,000	\$ 31,184,000	\$ 98,651,000	\$ 86,210,000
International	6,286,000	5,052,000	18,467,000	13,710,000
Total	<u>\$ 37,960,000</u>	<u>\$ 36,236,000</u>	<u>\$ 117,118,000</u>	<u>\$ 99,920,000</u>
Income (loss) from operations:				
Domestic	\$ 2,877,000	\$ (848,000 )	\$ 8,344,000	\$ 3,269,000
International	748,000	90,000	2,814,000	553,000
Total	<u>\$ 3,625,000</u>	<u>\$ (758,000 )</u>	<u>\$ 11,158,000</u>	<u>\$ 3,822,000</u>
	July 31,		October 31,	
	2003		2002	
Total assets:				
Domestic	\$ 87,746,000	\$	86,198,000	
International	19,146,000		16,777,000	
Total	<u>\$ 106,892,000</u>	\$	<u>102,975,000</u>	





## Item 2. MANAGEMENT' S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### General

The Company operates in an industry that is highly competitive and must accurately anticipate fashion trends and consumer demand for its products. There are many factors that could cause actual results to differ materially from the projected results contained in certain forward-looking statements in this report. For additional information, see "Cautionary Statements and Risk Factors," below.

Because the Company' s business is seasonal, the current balance sheet balances at July 31, 2003 may more meaningfully be compared to the balances at July 31, 2002, rather than to the balances at October 31, 2002.

### Critical Accounting Policies

In response to the SEC' s Release Numbers 33-8040, "Cautionary Advice Regarding Disclosure About Critical Accounting Policies" and 33-8056, "Commission Statement About Management' s Discussion and Analysis of Financial Condition and Results of Operations," the Company has identified the following critical accounting policies that affect its more significant judgments and estimates used in the preparation of its consolidated financial statements.

*Revenue Recognition.* Based on its terms of F.O.B. shipping point, where risk of loss and title transfer to the buyer at the time of shipment, the Company recognizes revenue at the time products are shipped or, for Company stores, at the point of sale. The Company records sales in accordance with SEC Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*. Under these guidelines, revenue is recognized when all of the following exist: persuasive evidence of a sale arrangement exists, delivery of the product has occurred, the price is fixed or determinable and payment is reasonably assured. Provisions are made currently for estimated product returns and sales allowances.

*Sales Returns and Other Allowances.* Management must make estimates of potential future product returns related to current period product revenues. Management analyzes historical returns, current economic trends, changes in customer demand, and sell-through of our products when evaluating the adequacy of the sales returns and other allowances. Significant management judgments and estimates must be made and used in connection with establishing the sales returns and other allowances in any accounting period. Material differences may result in the amount and timing of our revenues for any period if management makes different judgments or utilizes different estimates. The reserves for sales returns and other allowances amounted to \$526,000 at July 31, 2003 compared to \$535,000 at October 31, 2002 and \$653,000 at July 31, 2002.

*Allowance for Doubtful Accounts.* Management must also make estimates of the uncollectability of accounts receivable. The Company maintains an allowance for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments, which results in bad debt expense. Management determines the adequacy of this allowance by analyzing current economic conditions, historical bad debts and continually evaluating individual customer receivables considering the customer' s financial condition. During the second quarter of fiscal 2003, the Company wrote off the \$2.5 million unpaid principal balance of an unsecured promissory note and approximately \$2.0 million of receivables due from a national retail customer which had filed for protection under U.S. bankruptcy laws, against the \$4.5 million previously reserved by the Company for these specific receivables. If the financial condition of other significant customers of ours were to deteriorate, resulting in the impairment of their ability to make payments, material additional allowances for doubtful accounts may be required. In October 2002,

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the Company acquired credit insurance to cover many of its major accounts. Our trade accounts receivable balance was \$33.7 million, net of allowances for doubtful accounts of \$1.1 million, at July 31, 2003, as compared to the balance of \$33.6 million, net of allowances for doubtful accounts of \$3.2 million, at October 31, 2002. At July 31, 2002, the trade accounts receivable balance was \$38.8 million, net of allowances for doubtful accounts of \$3.3 million.

*Inventory.* The Company writes down its inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of inventory and the estimated net realizable value based on assumptions about age of the inventory, future demand and market conditions. This process provides for a new basis for the inventory until it is sold. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required. Our inventory balance was \$42.3 million, net of inventory write-downs of \$1.0 million, at July 31, 2003, as compared to an inventory balance of \$41.2 million, net of inventory write-downs of \$1.0 million at October 31, 2002. At July 31, 2002, the inventory balance was \$38.9 million, net of inventory write-downs of \$1.5 million.

*Asset Purchase Credits.* In November 2000, the Company entered into an agreement with a third party whereby inventory was exchanged for future asset purchase credits (“APCs”), which may be utilized by the Company to purchase future goods and services over a four-year period. The original value of the inventory exchanged (at cost) was \$1.4 million resulting in \$1.4 million in future APCs. The Company has entered into contracts with several third party suppliers who have agreed to accept these APCs, in part, as payment for goods and services. From time to time the Company may enter into additional contracts with such third party suppliers to use the APCs. At July 31, 2003, the Company had \$0.6 million of the APCs remaining and management expects to fully utilize them over the remaining life of the contract.

## **Results of Operations**

### **Third quarter 2003 compared to third quarter 2002**

Consolidated net revenues for the third quarter of fiscal 2003 increased 4.8% to \$37,960,000 from \$36,236,000 for the same period in 2002. Net revenues for the domestic segment increased 1.6% to \$31,674,000 for the current quarter from \$31,184,000 in the third quarter of 2002, primarily due to increased revenues from the Company’s retail distribution channel resulting from an increase in the number of doors selling the Company’s product line as well as increased revenues from the corporate distribution channel. These increases were partially offset by the decline in revenues in the green grass and off-course specialty distribution channel primarily due to the generally weak industry wide trends. Net revenues for the international segment increased 24.4% to \$6,286,000 for the current quarter from \$5,052,000 for the same period of the prior fiscal year. The increase was primarily due to higher revenues in the Company’s U.K. subsidiary and Canadian divisions, of which \$469,000 was due to the weakening of the U.S. dollar against the British pound and Canadian dollar during the third quarter of fiscal 2003, partially offset by slight decreases in other international territories.

Consolidated gross margin for the third quarter of fiscal 2003 increased 30 basis points to 41.3% as compared to 41.0% for the same quarter a year earlier. This improvement was primarily due to improved sourcing. The Company continues to benefit from operational initiatives designed to improve its execution and profitability.

Consolidated selling, general and administrative (“SG&A”) expenses decreased 22.8% to \$12,051,000 for the third quarter of fiscal 2003 from \$15,609,000 for the same period in fiscal 2002. As a percent of net revenues SG&A expenses were 31.8% for the third quarter of fiscal 2003 as compared to 43.1% for the same period of the prior year. In the third quarter of fiscal 2002 the Company booked \$4,250,000 additional bad debt reserve for the national retail account that defaulted on its debt to the

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Company. Excluding the \$4,250,000 additional bad debt reserve, the SG&A expenses would have totaled \$11,359,000 or 31.4% of net revenue, in the third quarter of fiscal 2002 and the Company's SG&A expenses for the third quarter of fiscal 2003 would have increased 6.1%. The 6.1% increase is due to variable costs associated with higher revenues, higher insurance costs and planned investments to build awareness and enhance our infrastructure. The Company believes that excluding the effect of the increase in reserve for bad debts booked in the third quarter of fiscal 2002 for the single customer filing for protection under the U.S. bankruptcy laws provides additional information to investors to better understand the impact the transaction had on the Company's performance for the third quarter of 2003 as compared to the same quarter of fiscal 2002 and, therefore, the adjusted consolidated SG&A expenses measure is useful to investors.

Total other expense decreased to \$186,000 for the third quarter of fiscal 2003 from \$197,000 in the third quarter of fiscal 2002, primarily due to lower interest expense resulting from lower interest rates on lower average borrowings under the Company's line of credit.

The effective income tax rate for the third quarter of fiscal 2003 remained at 40.0% of pre-tax income.

### **Nine months ended July 31, 2003 compared to nine months ended July 31, 2002**

Consolidated net revenues for the first nine months of fiscal 2003 increased 17.2% to \$117,118,000 from \$99,920,000 for the same period in fiscal 2002. Net revenues for the domestic segment increased 14.4% to \$98,651,000 from \$86,210,000 in the first nine months of fiscal 2002 primarily due to the addition of the Callaway Golf apparel line which was introduced in April 2002. The Company experienced growth in all three of its primary domestic distribution channels. Net revenues from the Company's retail distribution channel increased 60.0%, net revenues from the Company's green grass and off-course specialty distribution channel increased 12.1% and net revenues from the Company's corporate distribution channel increased 10.9%. Net revenues for the international segment increased 34.7% to \$18,467,000 from \$13,710,000 for the same period of the prior fiscal year. The increase was primarily due to the higher revenues in the Company's U.K. subsidiary and Canadian divisions, of which \$1,397,000 was due to the weakening of the U.S. dollar against the British pound and Canadian dollar during the first nine months of fiscal 2003 as well as a slight increase in other international territories.

Consolidated gross margin for the first nine months of fiscal 2003 improved slightly to 40.7% as compared to 40.5% in the first nine months of fiscal 2002. The improvement was primarily due to improved sourcing partially offset by price compression.

Consolidated SG&A expenses decreased 0.6% to \$36,445,000 for the first nine months of fiscal 2003 from \$36,654,000 for the same period in fiscal 2002. As a percent of net revenues SG&A expenses were 31.1% for the third quarter of fiscal 2003 as compared to 36.7% for the same period of the prior year. In the third quarter of fiscal 2002 the Company booked \$4,250,000 additional bad debt reserve for the national retail account that defaulted on its debt to the Company. Excluding the \$4,250,000 additional bad debt reserve, the SG&A expenses would have totaled \$ 32,404,000 or 32.4% of net revenues in the first nine months of fiscal 2002, and the Company's SG&A expenses for the first nine months of fiscal 2003 would have increased 12.5%. The 12.5% increase is primarily due to variable costs associated with higher revenues. The Company believes that excluding the effect of the increase in reserve for bad debts booked in the third quarter of fiscal 2002 for the single customer filing for protection under the U.S. bankruptcy laws provides additional information to investors to better understand the impact the transaction had on the Company's performance for the first nine months of 2003 as compared to the same period of fiscal 2002 and, therefore, the adjusted consolidated SG&A expenses measure is useful to investors.

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Total other expense decreased to \$406,000 in the first nine months of fiscal 2003 from \$557,000 during the same period of fiscal 2002, due primarily to higher currency transaction gains in the first nine months of the current year as compared to the same period of the prior fiscal year by the Company's U.K. subsidiary and Canadian divisions.

The effective income tax rate in the first nine months of fiscal 2003 remained at 40.0% of pre-tax income.

### **Liquidity and Capital Resources**

The Company's primary sources of liquidity for the remainder of fiscal 2003 are expected to be its cash flows from operations, the working capital line of credit with its bank and other financial alternatives such as leasing. The Company requires cash for capital expenditures and other requirements associated with the expansion of its domestic and international production, distribution and sales, as well as for general working capital purposes. On April 24, 2003, the Company entered into a new business loan agreement with Bank of America, N.A., as the administrative agent, and two other lenders. The new credit facility expires on April 30, 2005 and is collateralized by substantially all of the assets of the Company. The loan agreement provides a revolving line of credit of \$45,000,000 with a seasonal increase in the line of credit to \$55,000,000 for each period commencing December 1 through June 15 during the term of the agreement.

Interest under this loan agreement is currently charged at the bank's reference (prime) rate. At July 31, 2003, the prime rate was 4.00%. The loan agreement also provides for optional interest rates based on London interbank offered rates ("LIBOR") for periods of at least 30 days in increments of \$500,000. The loan agreement contains various restrictive covenants requiring, among other matters, the maintenance of certain financial ratios. Management believes the Company was in compliance with all such covenants as of July 31, 2003. The line of credit may also be used to finance commercial letters of credit and standby letters of credit. Commercial letters of credit outstanding under this loan agreement totaled \$5,998,000 at July 31, 2003 as compared to \$11,227,000 at October 31, 2002 under the prior loan agreement. The Company had \$6,000,000 outstanding against the line of credit at July 31, 2003, compared to \$11,125,000 outstanding at October 31, 2002 under the prior loan agreement. The decrease in outstanding letters of credit and borrowings is primarily due to the seasonality of the Company's business as well as better working capital management. At July 31, 2003, \$33,002,000 was available for borrowings under this loan agreement.

Net trade receivables were \$33,733,000 at July 31, 2003, an increase of \$161,000 from the balance at October 31, 2002. Because the Company's business is seasonal, the net receivables balance may more meaningfully be compared to the balance of \$38,766,000 at July 31, 2002, rather than the year-end balance. The comparison of the third quarter fiscal 2003 balance to the third quarter fiscal 2002 balance shows a decrease of 13.0% in net trade receivables while net revenues increased 4.8% for the comparable quarter. This decrease is primarily due to tighter internal controls and more timely collections.

Net inventories increased 2.8% to \$42,321,000 at July 31, 2003 from \$41,188,000 at October 31, 2002. Compared to net inventories of \$38,857,000 at July 31, 2002, net inventories at July 31, 2003 have increased by 8.9%, primarily due to the addition of the Callaway Golf apparel line. The Company believes that its current inventory mix is appropriate to respond to market demand.

During the first nine months of fiscal 2003, the Company incurred capital expenditures of \$2,422,000 primarily for computer systems and equipment, leasehold improvements and distribution center equipment. The Company anticipates capital spending of approximately \$1,000,000 during the remainder of fiscal 2003, primarily on upgrades of computer systems and equipment and outlet stores

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renovations. Except for the equipment lease related to the equipment required for the operation of the Company' s new distribution center, as discussed hereafter, management currently intends to finance the purchase of the Company' s capital equipment from its own cash resources, but may use other leases or equipment financing agreements if deemed appropriate. In addition, the Company continues to evaluate projects that may require additional capital expenditures in connection with the planned expansion of its domestic and international production, distribution and sales.

The Company is party to an exclusive licensing agreement with Callaway Golf Company which requires certain minimum royalty payments beginning in January 2003. The Company believes that revenues from the Callaway Golf apparel product line will be sufficient to cover such minimum royalty payments.

Common stock and capital in excess of par value increased by \$682,000 in the nine months ended July 31, 2003 due to the issuance of shares from the exercise of options.

On October 25, 2002, the Company entered into an agreement to purchase land and a building, to be built to the Company' s specifications, in the Ocean Ranch Corporate Center in Oceanside, California. The building, to be constructed with approximately 238,000 square feet of useable space, will be used by the Company to warehouse, embroider, finish, package and distribute clothing products and related accessories. Subject to timely completion of construction, the purchase agreement obligates the Company to purchase the land and building in the first half of fiscal year 2004 for approximately \$15.0 million. The Company has also entered into a contingent lease agreement which obligates the Company to pay a monthly base rent plus standard common area maintenance ("CAM") charges for a term of 10 years. The lease would take effect only if the land and building purchase is not completed due to certain defaults by the Company, as specified in the purchase agreement. The base rent and CAM payments under the conditional lease would start on the date 30 days after substantial completion of the improvements. The base rent would be calculated according to a specified formula based on the purchase price under the purchase agreement, expected interest rates and other criteria. If the Company were to default on the purchase agreement, monthly rental under the lease agreement is currently estimated to commence at approximately \$132,000 and the monthly CAM charges are currently estimated to commence at approximately \$27,000. The Company is not obligated to make any deposits or progress payments under the purchase agreement unless the Company makes change requests which require a deposit that exceeds a certain dollar limit. The Company plans to, and management believes it will be able to, obtain a long-term loan separate from the line of credit agreement to finance the purchase of the land and the building.

On June 23, 2003 the Company entered into a Master Equipment Lease Agreement to lease the equipment required for the operation of the Company' s new distribution center in Oceanside, California. From time to time, commencing approximately June 26, 2003, the lessor will make progress payments to the equipment manufacturer during the period when the equipment is being purchased, assembled, installed and/or tested as required by the purchase agreement between the supplier and the Company. The Company is obligated to pay interim rent on any progress payments made by the lessor consisting of the interest charged at the prime rate plus one-half of one percentage point per annum based on a 360 day year, monthly from the date of the progress payment until the end of the interim term. The interim term starts as of the date of the first progress payment and ends on the rent commencement date which will be either when the lessor receives an executed certificate of acceptance for the equipment from the Company or the date when lessor disburses funds for the purchase of the equipment.

Based on current levels of operations, the Company expects that sufficient cash flow will be generated from operations so that, combined with other financing alternatives available, including cash on hand, borrowings under its bank credit facility and leasing alternatives, the Company will be able to meet all of its debt service, capital expenditure and working capital requirements for at least the next 12 months.

## Off-Balance Sheet Arrangements

At July 31, 2003 and October 31, 2002, the Company did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, the Company does not engage in trading activities involving non-exchange traded contracts which rely on estimation techniques to calculate fair value. As such, the Company is not exposed to any financing, liquidity, market or credit risk that could arise if the Company had engaged in such relationships.

## Derivatives

From time to time the Company enters into short-term foreign exchange contracts with its bank to hedge against the impact of currency fluctuations between the U.S. dollar and the British pound and the U.S. dollar and the Canadian dollar. The contracts provide that, on specified dates, the Company would sell the bank a specified number of British pounds or Canadian dollars in exchange for a specified number of U.S. dollars. Additionally, from time to time the Company's U.K. subsidiary enters into similar contracts with its bank to hedge against currency fluctuations between the British pound and the U.S. dollar and the British pound and other European currencies. Realized gains and losses on these contracts are recognized in the same period as the hedged transactions. These contracts have maturity dates that do not normally exceed 12 months. On July 15, 2003, the Company's U.K. subsidiary entered into four forward exchange contracts to sell British pounds and buy U.S. dollars, as well as five forward exchange contracts to sell Euros and buy British pounds. At July 31, 2003, the notional amount of these foreign exchange contracts designated as cash flow hedges was \$4,582,000 with an unrealized after tax loss of \$49,000.

## New Accounting Standards

On January 17, 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, *Consolidation of Variable Interest Entities* ("FIN No. 46"). FIN No. 46 addresses consolidation of entities that are not controllable through voting interests or in which the equity investors do not bear the residual economic risks and rewards. These entities have been commonly referred to as special purpose entities. FIN No. 46 provides guidance related to identifying variable interest entities and determining whether such entities should be consolidated. It also provides guidance related to the initial and subsequent measurement of assets, liabilities and non-controlling interests in newly consolidated variable interest entities and requires disclosures for both the primary beneficiary of a variable interest entity and other beneficiaries of the entity. For variable interests entities created, or interests in variable interest entities obtained, subsequent to January 31, 2003, the Company is required to apply the consolidation provisions of FIN No. 46 immediately. For variable interest entities created, or interests in variable interest entities obtained, on or before January 31, 2003, the consolidation provisions of FIN No. 46 are first required to be applied in the Company's financial statements as of July 31, 2003. To date, the Company has not created any variable interest entities nor obtained an interest in any variable interest entities for which the Company would be required to apply the consolidation provisions of FIN No. 46.

In April 2003, the FASB issued SFAS No. 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities*, which amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*. SFAS No. 149 is generally effective for derivative instruments, including derivative instruments embedded in certain contracts, entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003.

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The adoption of SFAS No. 149 did not have a material impact on the Company's financial position and results of operations.

In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*. SFAS No. 150 establishes standards for how to classify and measure certain financial instruments with characteristics of both liabilities and equity. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS No. 150 did not have a material impact on the Company's financial position and results of operations.

### **Cautionary Statements and Risk Factors**

This report contains certain forward-looking statements, including without limitation those regarding the Company's plans and expectations for revenue growth, product lines, strategic alliances, designs and seasonal collections, capital spending, marketing programs, foreign sourcing, cost controls, inventory levels and availability of working capital. These forward-looking statements may contain the words "believe," "anticipate," "expect," "estimate," "project," "will be," "will continue," "will likely result" or other similar words and phrases. Readers are cautioned not to place undue reliance on these forward-looking statements. The Company undertakes no obligation to update any such statements or publicly announce any updates or revisions to any of the forward-looking statements contained herein. Forward-looking statements and the Company's plans and expectations are subject to a number of risks and uncertainties that could cause actual results to differ materially from those anticipated, and the Company's business in general is subject to certain risks that could affect the value of the Company's common stock. These risks include, but are not limited to, the following:

Demand for the Company's products may decrease significantly if the economy weakens, the popularity of golf decreases or unusual weather conditions cause a reduction in rounds played.

Like other apparel manufacturers, the Company must correctly anticipate and help direct fashion trends within its industry. The Company's results of operations could suffer if the Company fails to develop fashions or styles that are well received in any season.

The Company is party to a multi-year licensing agreement to design, source and sell Callaway Golf apparel primarily in the United States, Europe, Canada and Australia. The Company must correctly anticipate the fashion trends and demand for these product lines. The Company's results of operations could suffer if it fails to develop fashions or styles for the Callaway Golf apparel product line that are well received in any season.

The market for golf apparel and sportswear is extremely competitive. The Company has several strong competitors that are better capitalized. Outside the core green grass market, the Company's market share is not as significant as that of its competition. Price competition or industry consolidation could weaken the Company's competitive position.

The outbreak of Severe Acute Respiratory Syndrome affected travel to countries where the Company's products are manufactured. Visiting manufacturers in the affected countries is part of the product development process for the Company and if travel to these countries is again restricted by a similar outbreak, the Company's product development process and reputation as a designer and manufacturer of innovative products may be adversely affected, our international production and shipments may be limited, and the Company could lose sales.

The Company relies on domestic and foreign contractors to manufacture various products. If



these contractors deliver goods late or fail to meet the Company's quality standards, the Company could lose sales.

An increase in terrorist activities, as well as the continued conflicts around the world, would likely adversely affect the level of demand for the Company's products as customers' and consumers' attention and interest are diverted from golf and fashion and become focused on these events and the economic, political, and public safety issues and concerns associated with them. Also, such events could adversely affect the Company's ability to manage its supply and delivery of product from domestic and foreign contractors. If such events caused a significant disruption in domestic or international shipments, the Company's ability to fulfill customer orders also would be materially adversely affected.

The Company has entered into agreements to purchase land and a building in Oceanside, California and to lease new office and distribution facilities in Basildon, England to replace and expand existing owned and leased office and distribution facilities. The Company's results of operations could be adversely affected if either of the distribution centers are not operational as anticipated or functionality problems are encountered. Any such delay or operation problems may cause the Company to incur additional expense, experience delays in customer shipments, require the Company to lease additional office or distribution space or extend the term of existing leases. In addition, whether or not the facilities are operational at the time anticipated, the Company's results of operations could be negatively impacted if future sales volume growth does not reach expected levels and the facility's additional distribution capacity is not fully utilized, or if the Company does not achieve projected cost savings from the new distribution facilities as soon as, or in the amounts, anticipated.

If economic conditions deteriorate, the ability of the Company's customers to pay current obligations may be adversely impacted and the Company may experience an increase in delinquent and uncollectable accounts.

Fluctuations in foreign currency exchange rates could affect the Company's ability to sell its products in foreign markets and the value in U.S. dollars of revenues received in foreign currencies. The Company's revenues from its international segment may also be adversely affected by taxation and laws or policies of the foreign countries in which the Company has operations, as well as laws and policies of the United States affecting foreign trade, investment and taxation.

The Company maintains high levels of inventory to support its Authentics (TM) program as well as the Callaway Golf apparel brand. Additional products, greater sales volume, and customer trends toward increased "at-once" ordering may require increased inventory. Disposal of excess prior season inventory is an ongoing part of the Company's business, and write-downs of inventories may materially impair the Company's financial performance in any period. Particular inventories may be subject to multiple write-downs if the Company's initial reserve estimates for inventory obsolescence or lack of throughput prove to be too low. These risks increase as inventory increases.

### **Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

#### **Interest Rate Risk**

The Company's debt consists of notes payable which had a total balance of \$2,990,000 at July 31, 2003. The debt bears interest at variable and fixed rates ranging from 5.9% to 8.3%, which

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approximates fair value based on current rates offered for debt with similar risks and maturities. The Company also had \$6,000,000 outstanding at July 31, 2003 on its revolving line of credit with interest charged at the bank's reference (prime) rate. The loan agreement also provides for optional interest rates based on LIBOR for periods of at least 30 days in increments of \$500,000. A hypothetical 10% increase in interest rates during the nine months ended July 31, 2003 would have resulted in a \$22,000 decrease in net income.

### **Foreign Currency Exchange Rate Risk**

The Company's ability to sell its products in foreign markets and the U.S. dollar value of the sales made in foreign currencies can be significantly influenced by foreign currency fluctuations. A decrease in the value of foreign currencies relative to the U.S. dollar could result in downward price pressure for the Company's products or losses from currency exchange rates. From time to time the Company enters into short-term foreign exchange contracts with its bank to hedge against the impact of currency fluctuations between the U.S. dollar and the British pound and the U.S. dollar and the Canadian dollar. The contracts provide that, on specified dates, the Company would sell the bank a specified number of British pounds or Canadian dollars in exchange for a specified number of U.S. dollars. Additionally, from time to time the Company's U.K. subsidiary enters into similar contracts with its bank to hedge against currency fluctuations between the British pound and the U.S. dollar and between the British pound and other European currencies. Realized gains and losses on these contracts are recognized in the same period as the hedged transaction. These contracts have maturity dates that do not normally exceed 12 months. The Company will continue to assess the benefits and risks of strategies to manage the risks presented by currency exchange rate fluctuations. There is no assurance that any strategy will be successful in avoiding losses due to exchange rate fluctuations, or that the failure to manage currency risks effectively would not have a material adverse effect on the Company's results of operations. On July 15, 2003, the Company's U.K. subsidiary entered into four forward exchange contracts to sell British pounds and buy U. S. dollars, as well as five forward exchange contracts to sell Euros and buy British pounds. At July 31, 2003, the notional amount of these foreign exchange contracts designated as cash flow hedges was \$4,582,000 with an unrealized after tax loss of \$49,000.

## **Item 4. CONTROLS AND PROCEDURES.**

### **Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this quarterly report on Form 10-Q, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures. That evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective in timely alerting them to information relating to the Company required to be included in our periodic SEC filings.

### **Changes in Internal Control over Financial Reporting**

We have made no significant change in our internal control over financial reporting during the period covered by this quarterly report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II

### OTHER INFORMATION

#### Item 1. LEGAL PROCEEDINGS

On January 22, 1999, Milberg Weiss Bershad Hynes & Lerach LLP filed a class action in the United States District Court for the Southern District of California (“U.S. District Court”) on behalf of purchasers of the Company’s common stock during the period between September 4, 1997 and July 15, 1998. The action was subsequently consolidated with two similar suits and plaintiffs filed their Amended and Consolidated Complaint on December 17, 1999. Upon the Company’s motion, the U.S. District Court dismissed the Complaint with leave to amend on July 18, 2000. On September 18, 2000, plaintiffs served their Second Consolidated Amended Complaint (“Second Amended Complaint”). On November 6, 2000, the Company filed its motion to dismiss the Second Amended Complaint, which the U.S. District Court granted, in part, and denied, in part. The remaining portions of the Second Amended Complaint allege that, among other things, during the class period and in violation of the Securities Exchange Act of 1934, the Company’s financial statements, as reported, did not conform to generally accepted accounting principles with respect to revenues and inventory levels. It further alleges that certain Company executives made false or misleading statements or omissions concerning product demand and that two former executives engaged in insider trading. The plaintiffs seek unspecified damages. The parties are currently in the discovery process. Based on the current status of the litigation the Company has not booked any provision for settlement charges.

The Company is party to other claims and litigation proceedings arising in the normal course of business. Although the legal responsibility and financial impact with respect to such other claims and litigation cannot currently be ascertained, the Company does not believe that these other matters will result in payment by the Company of monetary damages, net of any applicable insurance proceeds, that, in the aggregate, would be material in relation to the consolidated financial position or results of operations of the Company.

**Item 2. CHANGES IN SECURITIES AND USE OF PROCEEDS - Not applicable.**

**Item 3. DEFAULTS UPON SENIOR SECURITIES – Not applicable.**

**Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS - Not applicable.**

**Item 5. OTHER INFORMATION – Not applicable.**

**Item 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits

3(a) Certificate of Incorporation as filed March 19, 1987 with the Secretary of State of Delaware, Amendment to Certificate of Incorporation as filed August 3, 1987 and Amendment to Certificate of Incorporation as filed April 26, 1991 (filed as Exhibit 3(a) to the Company' s Registration Statement dated February 21, 1992 (File No. 33-45078) and incorporated herein by reference) and Amendment to Certificate of Incorporation as filed April 6, 1995 (filed as Exhibit 3(a) to the Company' s Form 10-K for the fiscal year ended October 31, 1994 (File No. 0-18553) and incorporated herein by reference).

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- 3(b) Amended and Restated Bylaws of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K on February 23, 2000 (File No. 0-18553) and incorporated herein by reference).
- 4(a) Specimen certificate for Common Stock, par value \$.001 per share, of the Company (filed as Exhibit 4(a) to the Company's Registration Statement dated November 4, 1987 (File No. 33-16714-D) and incorporated herein by reference).
- 4(b)(1) Specimen certificate for Options granted under the Amended and Restated Nonqualified Stock Option Plan dated March 12, 1992 (filed as Exhibit 4(b) to the Company's Form 10-K for the fiscal year ended October 31, 1993 (File No. 0-18553) and incorporated herein by reference).
- 4(b)(2) Specimen certificate for Options granted under the Founders Stock Option Plan dated November 6, 1992 (filed as Exhibit 4(b)(2) to the Company's Form 10-K for the fiscal year ended October 31, 1993 (File No. 0-18553) and incorporated herein by reference).
- 4(c) Specimen certificate for Options granted under the Incentive Stock Option Plan dated June 15, 1993 (filed as Exhibit 4(c) to the Company's Form 10-K for the fiscal year ended October 31, 1993 (File No. 0-18553) and incorporated herein by reference).
- 4(d) Rights Agreement dated as of October 6, 1998 and amended on February 22, 2000 by and between Ashworth, Inc. and American Securities Transfer & Trust, Inc. (filed as Exhibit 4.1 to the Company's Form 8-K filed on March 14, 2000 (File No. 0-18553) and incorporated herein by reference).
- 10(a)\* Personal Services Agreement and Acknowledgement of Termination of Executive Employment effective December 31, 1998 by and between Ashworth, Inc. and Gerald W. Montiel (filed as Exhibit 10(b) to the Company's Form 10-K for the fiscal year ended October 31, 1998 (File No. 0-18553) and incorporated herein by reference).
- 10(b)\* Amendment to Personal Services Agreement effective January 1, 1999 by and between Ashworth, Inc. and Gerald W. Montiel (filed as Exhibit 10(c) to the Company's Form 10-K for the fiscal year ended October 31, 1998 (File No. 0-18553) and incorporated herein by reference).
- 10(c)\* First Amended and Restated Executive Employment Agreement effective February 22, 1999 by and between Ashworth, Inc. and Randall L. Herrel, Sr. (filed as Exhibit 10(a) to the Company's Form 10-Q for the quarter ended April 30, 1999 (File No. 0-18553) and incorporated herein by reference).
- 10(d)\* Employment Agreement effective December 15, 2000 by and between Ashworth, Inc. and Terence W. Tsang (filed as Exhibit 10(f) to the Company's Form 10-Q for the quarter ended January 31, 2001 (File No. 0-18553) and incorporated herein by reference).
- 10(e)\* Founders Stock Option Plan dated November 6, 1992 (filed as Exhibit 10(g) to the Company's Form 10-K for the fiscal year ended October 31, 1993 (File No. 0-18553) and incorporated herein by reference).
- 10(f)\* Amended and Restated Nonqualified Stock Option Plan dated November 1, 1996 (filed as Exhibit 10(i) to the Company's Form 10-K for the fiscal year ended October 31, 2000 (File No. 0-18553) and incorporated herein by reference).

10(g)\*

Amended and Restated Incentive Stock Option Plan dated November 1, 1996 (filed as Exhibit 10(j) to the Company' s Form 10-K for the fiscal year ended October 31, 2000 (File No. 0-18553) and incorporated herein by reference).

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- 10(h)\* Amended and Restated 2000 Equity Incentive Plan dated December 14, 1999 adopted by the stockholders on March 24, 2000 (filed as Exhibit 4.1 to the Company's Form S-8 filed on December 12, 2000 (File No. 333-51730) and incorporated herein by reference).
- 10(i)(1) Credit Agreement dated April 24, 2003, between Ashworth, Inc. as Borrower, Bank of America, N.A., as Administrative Agent and Lender, Union Bank of California, N.A. and Bank of the West as Lenders, expiring April 30, 2005 (filed as Exhibit 10(i)(1) to the Company's Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(i)(2) Guaranty Agreement dated April 24, 2003 between Ashworth Store I, Inc., Ashworth Store II, Inc. and Ashworth Store III, Inc. as Guarantors and Bank of America, N.A., as Administrative Agent on behalf of Ashworth, Inc. as the Borrower (filed as Exhibit 10(i)(2) to the Company's Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference)
- 10(i)(3) Security Agreement effective as of April 24, 2003 to the Credit Agreement dated April 24, 2000, between Ashworth, Inc. as Pledgor, Bank of America, N.A., as Administrative Agent and Lender, Union Bank of California, N.A. and Bank of the West as Lenders, expiring April 30, 2005 (filed as Exhibit 10(i)(3) to the Company's Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(i)(4) Security Agreement effective as of April 24, 2003 to the Credit Agreement dated April 24, 2000, between Ashworth Store I, Inc., Ashworth Store II, Inc. and Ashworth Store III, Inc. as Pledgor, Bank of America, N.A., as Administrative Agent and Lender, Union Bank of California, N.A. and Bank of the West as Lenders, expiring April 30, 2005 (filed as Exhibit 10(i)(4) to the Company's Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(i)(5) Deed of Hypothec of Universality of Moveable Property effective as of April 24, 2003 to the Credit Agreement dated April 24, 2000, between Ashworth, Inc. as Grantor, Bank of America, N.A., as Administrative Agent and Lender, Union Bank of California, N.A. and Bank of the West as Lenders, expiring April 30, 2005 (filed as Exhibit 10(i)(5) to the Company's Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(i)(6) Equitable Mortgage Over Securities effective as of April 24, 2003 to the Credit Agreement dated April 24, 2000, between Ashworth, Inc. as Mortgagor, Bank of America, N.A., as Security Trustee and Beneficiary, Union Bank of California, N.A. and Bank of the West as Beneficiaries, expiring April 30, 2005 (filed as Exhibit 10(i)(6) to the Company's Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(j)\* Change in Control Agreement dated November 1, 2000 by and between Ashworth, Inc. and Randall L. Herrel, Sr. (filed as Exhibit 10(m) to the Company's Form 10-K for the fiscal year ended October 31, 2000 (File No. 0-18553) and incorporated herein by reference).
- 10(k)\* Change in Control Agreement dated November 1, 2000 by and between Ashworth, Inc. and Terence W. Tsang (filed as Exhibit 10(n) to the Company's Form 10-K for the fiscal year ended October 31, 2000 (File No. 0-18553) and incorporated herein by reference).

- 10(l) Promotion Agreement effective November 1, 1999 by and between Ashworth, Inc. and Fred Couples (filed as Exhibit 10(o) to the Company' s Form 10-K for the fiscal year ended October 31, 2000 (File No. 0-18553) and incorporated herein by reference).
- 10(m)\* Offer and Acceptance of Executive Employment effective November 29, 1999 by and between Ashworth, Inc. and Anthony Wilkinson (filed as Exhibit 10(q) to the Company' s Form 10-Q for the quarter ended January 31, 2001 (File No. 0-18553) and incorporated herein by reference).



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- 10(n)\* Offer and Acceptance of Executive Employment effective May 29, 2001 by and between Ashworth, Inc. and Eddie Fadel (filed as Exhibit 10(o) to the Company' s Form 10-K for the fiscal year ended October 31, 2002 (File No. 0-18553) and incorporated herein by reference).
- 10(o)\* Contract Termination Agreement effective October 31, 2002 by and among Ashworth, Inc., James Nantz, III and Nantz Communications, Inc. (filed as Exhibit 10(p) to the Company' s Form 10-K for the fiscal year ended October 31, 2002 (File No. 0-18553) and incorporated herein by reference).
- 10(p) Real Estate Purchase and Sale Agreement and Joint Escrow Instructions effective October 25, 2002 by and between Innovative Development Enterprises, Inc. and Ashworth, Inc. (filed as Exhibit 10(q) to the Company' s Form 10-K for the fiscal year ended October 31, 2002 (File No. 0-18553) and incorporated herein by reference).
- 10(q)\* Promotion Agreement effective October 31, 2002 by and among Ashworth, Inc., James W. Nantz, III and Nantz Enterprises, Ltd. (filed as Exhibit 10(q) to the Company' s Form 10-Q for the quarter ended January 31, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(r) Purchase and Installation Agreement dated April 10, 2003 between Ashworth, Inc. and Gartner Storage & Sorter Systems of Pennsylvania (filed as Exhibit 10(r) to the Company' s Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(s) Agreement for Lease dated May 1, 2003 by and among Ashworth, Inc., Ashworth U.K. Limited and Juniper Developments Limited (filed as Exhibit 10(s) to the Company' s Form 10-Q for the quarter ended April 30, 2003 (File No. 0-18553) and incorporated herein by reference).
- 10(t) Lease dated September 1, 2003 by and among Ashworth, Inc., Ashworth U.K. Limited and Juniper Developments Limited.
- 10(u) Master Equipment Lease Agreement dated as of June 23, 2003 by and between Key Equipment Finance and Ashworth, Inc. including Amendment 01, the Assignment of Purchase Agreement and the Certificate of Authority.
- 31.1 Certification Pursuant to Rules 13a-14 and 15d-14, as Adopted Pursuant to Section 302 of The Sarbanes-Oxley Act of 2002 by Randall L. Herrel, Sr.
- 31.2 Certification Pursuant to Rules 13a-14 and 15d-14, as Adopted Pursuant to Section 302 of The Sarbanes-Oxley Act of 2002 by Terence W. Tsang.
- 32.1 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of The Sarbanes-Oxley Act of 2002 by Randall L. Herrel, Sr.
- 32.2 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of The Sarbanes-Oxley Act of 2002 by Terence W. Tsang.

\* Management contract or compensatory plan or arrangement required to be filed as an Exhibit pursuant to Item 15(c) of Form 10-K and applicable rules of the Securities and Exchange Commission.

(b) Reports on Form 8-K:

On June 5, 2003, the Company filed a report on Form 8-K dated June 5, 2003 furnishing the press release reporting the results of operations for the second quarter fiscal 2003 and first six months ended April 30, 2003.

**SIGNATURES**

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

ASHWORTH, INC

Date: September 12, 2003 \_\_\_\_\_

By: /s/ Terence W. Tsang \_\_\_\_\_

Terence W. Tsang  
Executive Vice President,  
Chief Operating Officer,  
Chief Financial Officer and  
Treasurer

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
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DATED September 1, 2003

JUNIPER DEVELOPMENTS LIMITED

- and -

ASHWORTH UK LIMITED

- and -

ASHWORTH INC

LEASE

relating to  
Unit 2 Juniper (Phase 2)  
Fenton Way Basildon Essex

Term: 20 years from 1 September 2003  
Initial Rent: L211,000 p.a. plus additional rent  
Rent Review Dates: 1 September 2008 and each fifth anniversary

DAVIES ARNOLD COOPER  
6-8 Bouverie Street  
London EC4Y 8DD  
Tel: 020 7936 2222  
Fax: 020 7936 2020  
e-mail: bnaftalin@dac.co.uk

Ref: 1115/143593.17/30.04.03/

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THIS LEASE is made the first day of September, 2003

BETWEEN:

- (1) JUNIPER DEVELOPMENTS LIMITED whose registered office is at 5 Strand, London, WC2N 5AF (Company number 4022595) and any person for the time being entitled to the reversion immediately expectant on the End of the Term (the LANDLORD);
- (2) ASHWORTH UK LIMITED whose registered office is at 21 St Thomas Street, Bristol BS1 6JS (Company number 286712) and any person in whom the Term is from time to time vested (the TENANT);
- (3) ASHWORTH INC a company registered in Delaware and having its principal place of business at 2765 Loker Avenue West, Carlsbad, California, 92008, USA (the GUARANTOR).

1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

Where in this deed the following words in bold type commence with capital letters they have the following meanings unless the context otherwise requires:

"ADDITIONAL RENT" means L21,000 per annum payable on and from 1 May 2003 until the 30 April 2013 which represents the cost to the Landlord of paying for the works described in the Specification;

"AUTHORITY" means any statutory, public, local or other competent authority or a court of competent jurisdiction;

"CLAUSE" means a clause of this deed;

"COMMON PARTS" means such entrances, passages, circulation areas, service roads, service yards, car parks, loading bays, forecourts, fire escape routes, landscaped areas and other areas from time to time provided for the common use of tenants, occupiers, visitors or any of them;

"CONDUIT" means any pipe, drain, culvert, sewer, flue, duct, gutter, wire, cable, optic fibre, conduit, channel and other medium for the passage or transmission of water, soil,

gas, air, smoke, electricity, light, information or other matter and all ancillary equipment or structures;

"END OF THE TERM" means the determination of the Term by expiry, forfeiture, notice, surrender or otherwise;

"ENVIRONMENT" means all or any one or more of air, water and land (in each case wherever located);

"ENVIRONMENTAL HARM" means harm or damage to the Environment, to human health or to the health of any other living organism, or to property;

"ENVIRONMENTAL LAW" means any and all Legal Obligations which have as purpose or effect the protection of Environment and/or the prevention of Environmental Harm;

"ENVIRONMENTAL PERMITS" means any and all consents, permits or authorisations required under Environmental Law in connection with the Tenant's use and occupation of the Premises;

"ESTATE" means the Landlord's estate at Fenton Way, Basildon, Essex, of which the Premises form part and which is for identification only shown edged green on the Plan or such reduced or extended area as the Landlord may from time to time reasonably designate as comprising the Estate;

"HAZARDOUS SUBSTANCES" means any and all substances or matter (whether in solid, liquid or gaseous form) which (whether alone or in combination with other substances or matter) are capable of causing Environmental Harm;

"INTEREST" means interest at the Interest Rate (both before and after any judgment) calculated on a daily basis from the date on which interest becomes chargeable on any payment pursuant to any provision of the Lease to the date upon which such payment is made, such interest to be compounded with rests at the usual quarter days;

"INTEREST RATE" means 3% p.a. above the base lending rate from time to time of Lloyds TSB Bank plc (or of such other bank as the Landlord may give notice from time to time);

"INVESTIGATION WORKS" means such works of intrusive investigation, drilling, testing, sampling, monitoring and analysis as are necessary in the reasonable opinion of the

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Landlord to assess the extent to which the Tenant is complying with its covenants contained in clauses 3.13.1 and 3.13.3;

"LEASE" means this lease as from time to time varied or supplemented whether by deed, licence or otherwise;

"LEGAL OBLIGATION" means any obligation relating to the Premises or their occupation or use imposed by any present or future statute or any statutory instrument, EC directive, code of practice, regulation, order, notice, direction or requirement of any Authority irrespective

of the person on whom such obligation is imposed;

"PARTY" means the Landlord or the Tenant or the Guarantor (if any);

"PERMITTED USER" means use as a light industrial/warehouse unit for the storage and distribution of golf products together with a showroom ancillary to such use, or such other use within classes B1(c), B2 or B8 of the schedule to the Town & Country Planning (Use Classes) Order 1987 (to which Clause 1.2.6 shall not apply) which is or are approved by the Landlord (such approval not to be unreasonably withheld);

"PERPETUITY PERIOD" means a period of 80 years from the date of the Lease or, if earlier, the date of expiration of the Term;

"PLAN" means a plan annexed to this deed;

"PLANNING ACTS" means the Town and Country Planning Act 1990 and all other statutes containing provisions relating to town and country planning when from time to time in force and all other statutes, statutory instruments, regulations and orders included by virtue of Clause 1.2.6;

"PLANT" means such plant, equipment and systems as may from time to time be provided for the amenity of the Estate including specifically: security and surveillance systems, fire alarm and prevention equipment, sprinklers, public address and other communication systems;

"PREMISES" means Unit 2 on the Estate shown for the purposes of identification only coloured pink on the Plan and all and any part of such property and any additions thereto including

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- (a) the whole of the structure, walls, foundations and roof bounding the Unit and not separating the Unit from any other Unit;
- (b) Conduits and Plant to the extent that they are within and exclusively serve the Unit (but no other Conduits or Plant);
- (c) fixtures and fittings at the Unit whenever fixed except those fixed by the Tenant which are generally regarded as tenant's or trade fixtures;
- (d) one half of any wall separating the Unit from an adjoining Unit;

but excluding:

- (a) the airspace above the building comprised in the Premises; and
- (b) the airspace three metres above any unbuilt upon parts of the Premises.

"REGULATIONS" means regulations relating to the management of the Estate which the Landlord may reasonably issue from time to time in the interests of good estate management, the current regulations for the Estate being set out in Schedule 5;



"RELEASE" means any transmission (however occasioned) into or through the Environment;

"REMEDIATION WORKS" means such works of whatever nature as are required to ensure insofar as is reasonably practicable and in accordance with modern practice as determined by an appropriately experienced and qualified firm of environmental consultants that the Tenant is complying with its covenants contained in clauses 3.13.1 and 3.13.3;

"RENT" means L211,000 per annum on and from the Rent Commencement Date or such other amount as is from time to time agreed or determined pursuant to Clause seven of the Lease or otherwise;

"RENT COMMENCEMENT DATE" means the 1st day of September 2003;

"RETAINED PROPERTY" means all parts of the Estate which are not from time to time Units including (without prejudice to the generality of the foregoing):

(a) the Common Parts;

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(b) office and other accommodation for staff managing the Estate;

(c) the gatehouse at the entrance of the Estate and security barriers;

(d) plant rooms;

(e) perimeter fencing;

(f) storage areas;

(g) Conduits and Plant within or serving the Estate except those within and exclusively serving a Unit; and

(h) common signage on the Estate;

"SCHEDULE" means a schedule to this deed;

"SERVICE CHARGE" means as defined in Clause five of this deed;

"SERVICES" means the services described in Clause five of this deed;

"SPECIFICATION" means the specification attached to the agreement for this lease dated 4 June 2003;

"TERM" means 20 years commencing on 1 September 2003 and expiring on 31 August 2023 and any continuation of it;

"UNIT" means an individual unit of accommodation on the Estate that is let or otherwise exclusively occupied or designed or intended for letting or exclusive occupation otherwise than in connection with the provision of Services;

"VAT" means Value Added Tax or other tax of a similar nature (and

unless otherwise expressly stated all references to Rent or other monies payable by the Tenant are exclusive of any VAT charged or chargeable thereon).

## 1.2 INTERPRETATION

The provisions of the Lease shall unless the context otherwise requires be construed as follows.

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- 1.2.1 Obligations and liabilities of a Party comprising more than one person are obligations and liabilities of such persons jointly and severally.
- 1.2.2 Words importing one gender include all other genders.
- 1.2.3 The singular includes the plural and vice versa.
- 1.2.4 A covenant by the Tenant not to do something shall be construed as including a covenant not to permit or knowingly to suffer it to be done by a third party.
- 1.2.5 A consent or approval to be given by the Landlord is not effective for the purposes of the Lease unless it is in writing and signed by or on behalf of the Landlord.
- 1.2.6 Reference to a statute includes any amendment, modification, extension, consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force.
- 1.2.7 Headings to Clauses, Schedules or parts of the Lease do not affect the interpretation or construction of the Lease.
- 1.2.8 Where Rent has to be apportioned it shall be apportioned on a yearly basis in accordance with the method recommended by the Law Society in the Law Society Conveyancing Handbook 1999.

## 2 DEMISE

The Landlord demises the Premises to the Tenant:

- 2.1 together with the rights set out in Schedule 1;
- 2.2 except and reserving to the Landlord and to all others authorised from time to time by the Landlord as set out in Schedule 2;
- 2.3 to hold the same to the Tenant for the Term;
- 2.4 subject to all rights, easements, quasi-easements, restrictions, covenants and liabilities affecting the Premises including, without prejudice to the generality of the foregoing, those described in Schedule 3;

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- 2.5 yielding and paying to the Landlord:
- 2.5.1 the Rent without any deduction by equal quarterly payments in advance on the usual quarter days in every year and proportionately for any period of less than a year, the first payment to be made on the Rent Commencement Date; and
- 2.5.2 the Additional Rent without any deduction by equal quarterly payments in advance on the usual quarter days in every year and proportionately for any period of less than a year, the first payment to be made on 1 May 2003.

### 3 TENANT'S COVENANTS

#### 3.1 INTRODUCTION

The Tenant covenants with the Landlord as set out in Clause 3 of the Lease.

#### 3.2 RENT

The Tenant shall pay the Rent and the Additional Rent as provided in Clause two of the Lease without deduction or set-off and if so required by banker's standing order.

#### 3.3 OUTGOINGS

3.3.1 The Tenant shall pay, and indemnify the Landlord against, all rates, taxes, assessments, impositions, duties, charges and outgoings now or at any time during the Term payable by the owner or occupier of, or otherwise due in respect of, the Premises (except any tax assessed on the Landlord or any superior landlord in respect of its ownership of, rental income from or any dealing with its reversionary interest).

3.3.2 The Tenant shall pay and indemnify the Landlord against rates on unoccupied property payable in respect of the Premises for any period after the End of the Term (up to a maximum period of three months) which would not have been payable had the Premises been continuously occupied at all times prior to the End of the Term.

3.3.3 The provisions of Schedule 4 apply in relation to VAT and the Tenant covenants as therein provided.

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3.3.4 The Tenant shall pay, and indemnify the Landlord against, all charges for water, electricity, gas and other services (including meter rents) at the Premises.

#### 3.4 REPAIR AND DECORATION

The Tenant shall (subject to the provisions relating to insurance set out in Clause four of the Lease):

3.4.1 keep the Premises at all times in good and substantial repair

and condition;

- 3.4.2 keep all Plant comprised within the Premises in good working order;
- 3.4.3 clean the Premises regularly and maintain them at all times in a clean and tidy condition;
- 3.4.4 clean all windows regularly and as often as shall be reasonably necessary;
- 3.4.5 decorate and keep the Premises decorated to a high standard (in any event not less frequently than once in any period of three years for the exterior and once in any period of five years for the interior and also to the Landlord's reasonable specification in the last six months of the Term if not decorated in the last three years);
- 3.4.6 within two months (or sooner in emergency) of receipt of notice from the Landlord of any breach of this Clause carry out the repair, cleaning or decoration required to remedy the breach, and if the Tenant fails diligently to comply with such notice and the Landlord enters the Premises to carry out such work the Tenant shall upon demand pay to the Landlord as a debt all costs which the Landlord so incurs.

### 3.5 ALTERATIONS

- 3.5.1 Not to alter cut harm or remove any of the principal or load bearing walls floors or other structures of or enclosing the building on the Premises nor to make any other alterations improvements or additions of a structural nature nor to make any alterations improvements or additions to the exterior of the Premises.

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- 3.5.2 Not to make any alterations or additions of a non-structural nature to the building on the Premises without having first obtained the prior written consent of the Landlord such consent not to be unreasonably withheld except that the tenant may install alter and remove demountable partitioning.

### 3.6 SIGNS

The Tenant shall not:

- 3.6.1 fix anything to the exterior of the Premises nor to the exterior or interior of any doors or windows, unless permitted by this Clause;
- 3.6.2 display any flashing or moving sign which is visible from outside the Premises;
- 3.6.3 display any notice, sign, poster or advertisement on the exterior of the Premises except to indicate the name and business of the Tenant in a manner first approved by the Landlord (such approval not to be unreasonably withheld)

PROVIDED ALWAYS that the Tenant shall be free to place a sign of reasonable dimensions displaying the name of the Tenant on the northern and western elevation of the building forming part of the Premises and on any Estate signboard first approved by the Landlord (such approval not to be unreasonably withheld).

### 3.7 USER

3.7.1 The Tenant shall not use the Premises otherwise than for the Permitted User.

3.7.2 The Tenant shall not use the Premises in a manner which may be, or become, or cause a nuisance, annoyance, disturbance, inconvenience, injury or damage to the Landlord or any other person.

3.7.3 The Tenant shall not store or stack anything on the external areas of the Premises.

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3.7.4 The Tenant shall not reside or sleep on the Premises, nor use them for any sale by auction or for any dangerous, noisy or offensive purpose or for any illegal or immoral activity.

3.7.5 The Tenant shall indemnify the Landlord against all VAT in respect of the Premises which the Landlord has to repay to HM Customs & Excise including any under the capital goods scheme and against all VAT which is irrecoverable by the Landlord (together in each case with interest, penalties and costs) due to the disapplication of any election to waive exemption to tax made by the Landlord arising in any way from the use of the Premises for an exempt purpose.

3.7.6 The Tenant shall not overload the structure of the Premises.

3.7.7 The Tenant shall not store or bring upon the Premises any materials or liquid of a specially combustible, inflammable or offensive nature.

3.7.8 The Tenant shall not make use of Conduits beyond their capacity, nor in a manner which may block or damage them, and in particular will not stop up or obstruct or permit oil, grease or other deleterious matter or substance to enter any drain or sewer.

3.7.9 The Tenant shall not cause or permit any Environmental Harm.

3.7.10 The Tenant shall not obstruct the Common Parts.

3.7.11 The Tenant shall not enter into any wayleaves, concessions or arrangements with telecommunications undertakers except in relation to the supply of telecommunication services exclusively for the Permitted User.

3.7.12 The Tenant shall comply with the Regulations.

3.8.1 Unless otherwise permitted under this Clause the Tenant shall not:

- (a) hold the Premises expressly or impliedly on trust for another person;
- (b) part with possession of the Premises;

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- (c) share possession of the Premises with another person;
- (d) allow anyone other than the Tenant, any lawful subtenant, or their respective officers and employees to occupy the Premises.

3.8.2 ASSIGNMENT

- (a) The Tenant shall not assign a part (as distinct from the whole) of the Premises.
- (b) The Tenant shall not assign the whole of the Premises without the prior consent of the Landlord (which will not be unreasonably withheld).
- (c) It is agreed that, for the purposes of Section 19(1A) of the Landlord and Tenant Act 1927, the Landlord may withhold its consent to an assignment of the whole if any of the following circumstances exists:
  - (i) there is a substantial breach of a covenant in the Lease by the Tenant; or
  - (ii) the proposed assignee is a member of the same group of companies (as defined by Section 42 of the Landlord and Tenant Act 1954) as the Tenant;
  - (iii) in the reasonable opinion of the Landlord the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants in the Lease.
- (d) It is agreed that for the purposes of Section 19(1A) of the Landlord and Tenant Act 1927, the Landlord may grant consent subject to all or any of the conditions set out below:
  - (i) the proposed assignee has, if reasonably required by the Landlord, procured a covenant by deed with the Landlord, from two individuals who are or a company which is reasonably acceptable to the Landlord as surety for the assignee;

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- (ii) the proposed assignee has, if reasonably required by the Landlord, deposited with the Landlord such sum by way of Rent as the Landlord reasonably requires as security for the performance by the assignee of its obligations under the Lease;
  - (iii) the Tenant has, if reasonably required by the Landlord; first entered into an authorised guarantee agreement as defined in Section 16 of the Landlord and Tenant (Covenants) Act 1995;
  - (iv) the Tenant has, if reasonably required by the Landlord, first procured that any surety for it under the Lease has entered into any such authorised guarantee agreement required under Clause 3.8.2(d) (iii) in such terms as the Landlord may reasonably require for the purpose of guaranteeing the performance by the Tenant of its obligations under the authorised guarantee agreement.
- (e) It is agreed that the Landlord acting reasonably may withhold consent to an assignment of the whole of the Premises on a ground which is not referred to in Clause 3.8.2(c) and that it may acting reasonably grant consent subject to a condition which is not specified in Clause 3.8.2(d) subject in each case to such withholding of consent or imposition of a condition being reasonable.

### 3.8.3 CHARGES

- (a) The Tenant shall not charge a part (as distinct from the whole) of the Premises.
- (b) The Tenant may without consent charge the whole of the Premises to a bank or similar financial institution for the purpose only of borrowing money on the security of the Lease but, otherwise, the Tenant shall not charge the whole of the Premises except with the

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prior consent of the Landlord (which shall not be unreasonably withheld).

### 3.8.4 UNDERLETTINGS

- (a) The Tenant shall not underlet the whole or a part of the Premises:
  - (i) unless the proposed undertenant has first covenanted by deed with the Landlord, in such form as the Landlord may reasonably

require, that with effect from the date of the underlease and during the term thereof or until such time as the underlease is lawfully assigned the undertenant will observe and perform all the provisions of the underlease to be observed and performed by the undertenant; nor

- (ii) (where the proposed undertenant is a corporate body and the Landlord reasonably so requires) without first procuring a covenant by deed with the Landlord from two individuals who are, or a company which is acceptable to the Landlord as surety for the undertenant; nor
- (iii) except by way of a PERMITTED UNDERLEASE; nor
- (iv) without the prior written consent of the Landlord (which will not be unreasonably withheld).

3.8.5 A PERMITTED UNDERLEASE is an underlease which:

- (a) is granted without any fine or premium;
- (b) reserves a rent not less than the greater of the rent which the Tenant ought reasonably to obtain in the open market upon the grant of such underlease and the Rent then payable;
- (c) incorporates provisions requiring the undertenant to obtain the Landlord's consent (which shall not be unreasonably withheld) to any proposed assignment of the premises comprised in the underlease, and requiring the proposed assignee to covenant by deed with the Landlord in such form as the Landlord may

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reasonably require that with effect from the date of the assignment of the premises comprised in the underlease and until such premises are further lawfully assigned the proposed assignee will observe and perform all the provisions of the underlease to be observed and performed by the undertenant;

- (d) incorporates provisions for the review of rent at the same times and on the same basis as in the Lease;
- (e) is (so far as is consistent with an underlease) in a form substantially the same as the Lease except that further subletting shall be prohibited; and
- (f) is excluded from the operation of sections 24-28 of the Landlord and Tenant Act 1954.

3.8.6 The Tenant shall enforce and shall not waive or vary the



provisions of an underlease and shall operate at the relevant dates of review the rent review provisions contained in an underlease but shall not agree the rent upon such a review without the prior approval of the Landlord.

### 3.8.7 ASSOCIATED COMPANIES

The Tenant may share occupation of the Premises with a company which is a member of the same group (as defined by Section 42 of the Landlord and Tenant Act 1954):

- (a) for so long as both the Tenant and that company remain members of the same group; and
- (b) provided that no tenancy is created; and
- (c) provided that within 21 days of such sharing the Landlord receives notice of the company sharing occupation and the address of its registered office.

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### 3.8.8 NOTIFICATION

- (a) The Tenant shall upon request from time to time provide within one month all information which the Landlord may request under section 40 (1) (a) and (b) of the Landlord and Tenant Act 1954.
- (b) The Tenant shall within 28 days of any assignment, charge or underlease of or of any other devolution of the Lease or of any interest deriving from the Lease give notice thereof to the Landlord's solicitor, produce for registration the original or a certified copy of the document effecting or evidencing such devolution and pay such reasonable registration fee as the Landlord's solicitor may require being not less than (pound) 40 (plus VAT).

## 3.9 LEGAL OBLIGATIONS

- 3.9.1 The Tenant shall observe and comply with all Legal Obligations.
- 3.9.2 If the Tenant receives from an Authority formal notice of a Legal Obligation it shall forthwith produce a copy to the Landlord and if such Legal Obligation is in the Landlord's opinion contrary to the interests of the Landlord the Tenant shall make such objection or representation against it as the Landlord may require.
- 3.9.3 Where a Legal Obligation requires the carrying out of works the Tenant shall so far as such Legal Obligation permits also comply with the provisions of the Lease in relation to such works.
- 3.9.4 Without prejudice to the generality of this Clause the Tenant shall in particular observe and comply with all Legal

Obligations of any appropriate Authority relating to health, safety, means of escape in case of fire, and the protection and preservation of life and property, carrying out such works of modification and improvement to the Premises as may from time to time be required by such Legal Obligations.

- 3.9.5 The Tenant shall carry out any works to the Premises not only in accordance with all Legal Obligations but also with good quality materials

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and in a good and workmanlike manner to the reasonable satisfaction of the Landlord.

- 3.9.6 The Tenant shall knowingly not do, or omit to do, in relation to the Premises or their use or occupation anything by reason of which the Landlord may incur any liability whether for costs, a penalty, damages, compensation or otherwise.

- 3.9.7 The Tenant shall not cause or permit a nuisance on or in relation to the Premises, and if a nuisance occurs shall forthwith take all necessary action to abate it.

- 3.9.8 The Tenant shall not obstruct any means of emergency escape nor use them except for their proper purposes.

- 3.9.9 The Tenant shall perform and observe all covenants and other provisions contained or referred to in any documents listed in Schedule 3 insofar as they relate to or affect the Premises or their use or occupation.

- 3.9.10 If the Tenant does not comply with a Legal Obligation, or does not abate a nuisance, the Landlord may do what it considers necessary to comply with the Legal Obligation or abate the nuisance and the Tenant shall upon demand pay to the Landlord all costs which the Landlord acting reasonably so incurs.

- 3.9.11 The Tenant shall maintain a health and safety manual for the Premises and shall supply the Landlord with an updated copy of the manual when reasonably requested.

### 3.10 PLANNING

- 3.10.1 The provisions of this Clause supplement the general obligations imposed by Clause 3.9.

- 3.10.2 The Tenant shall not commit a breach of planning control (as defined in section 171A(1) of the Town and Country Planning Act 1990) in relation to the Premises.

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- 3.10.3 The Tenant shall observe and comply with the Planning Acts in relation to the Premises.

- 3.10.4 The Tenant shall make no application for planning permission

in relation to the Premises without the Landlord's prior consent, such consent not being unreasonably withheld.

3.10.5 The Tenant shall supply to the Landlord promptly and without further request copies of all applications, notices, decisions and other formal communications under the Planning Acts which relate in any way to the Premises, and where such communications relate only to the Premises or to an application made by the Tenant then the Tenant shall at its own expense take such action to protect the Landlord's interests as the Landlord may require.

3.10.6 The Tenant shall not implement a planning permission until the Landlord has given its consent (such consent not to be unreasonably withheld where planning permission is granted pursuant to an application approved by the Landlord) and if such planning permission is implemented, the Tenant shall:

- (a) comply with all conditions imposed by the planning permission and any related planning agreement; and
- (b) carry out all works before the End of the Term.

### 3.11 DEFECTIVE PREMISES

The Tenant shall promptly give notice to the Landlord of any defect in the Premises in respect of which the Landlord may have a liability or duty of care under the Lease, the Defective Premises Act 1972 or any other Legal Obligation.

### 3.12 ENCROACHMENTS

3.12.1 The Tenant shall not stop up, darken or obstruct any window or light at the Premises.

3.12.2 The Tenant shall not permit and shall take all reasonable measures to prevent any new window, light, opening, doorway, pathway, Conduit or

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other encroachment or easement being made or acquired in, against, out of, or upon the Premises.

### 3.13 ENVIRONMENT

3.13.1 The Tenant shall comply with all Environmental Law in its use and occupation of the Premises and shall ensure that all Environmental Permits are obtained, maintained in full force and effect and complied with at all times.

3.13.2 On request from the Landlord, the Tenant shall provide to the Landlord full copies of all Environmental Permits and of all correspondence with Authorities regarding the Tenant's compliance with Environmental Law at the Premises.

3.13.3 The Tenant shall not cause or permit to be caused any Release of Hazardous Substances at, on, over or under the Premises

otherwise than in accordance with the terms of an Environmental Permit.

- 3.13.4 The Tenant shall notify the Landlord in writing as soon as reasonably practicable on becoming aware of any breach of its obligations under Clauses 3.13.1 to 3.13.3 above and shall then proceed with all due speed and diligence to take all such steps as are necessary fully to remedy the consequences of such breach (including the carrying out of Remediation Works, if necessary) and to prevent any recurrence of it to the Landlord's reasonable satisfaction.
- 3.13.5 The Tenant shall permit the Landlord whenever reasonably required (and in any event in the last six months of the Term and on every occasion on which an application to assign or underlet is made pursuant to Clause 3.8.2(b) or Clause 3.8.5) to enter the Premises to conduct Investigation Works. The Tenant shall provide such information as is reasonably requested in connection with the same, and as soon as reasonably practicable following receipt of a written report from the Landlord or its consultants identifying any breach of the terms of Clauses 3.13.1 or 3.13.3 the Tenant shall proceed to carry out all necessary Remediation Works to the reasonable satisfaction of the Landlord. The cost of Investigation

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Works shall be borne by the Landlord unless the Investigation Works reveal that the Tenant is in breach of any of its obligations under this Clause 3.13 in which case the cost of the Investigation Works and the cost of carrying out Remediation Works shall be borne by the Tenant.

### 3.14 LANDLORD'S RIGHTS

- 3.14.1 The Tenant shall permit the Landlord, any superior landlord and persons authorised by any of them to exercise any right excepted and reserved by Schedule 2 and in addition the right to enter the Premises at all reasonable times after not less than seven days' notice (except in emergency) with tools and equipment (if appropriate):
- (a) to inspect the Premises to ascertain whether the Tenant is complying with the Lease or to view their state and condition or to make surveys or to show the Premises to prospective tenants or purchasers or for any other reasonable purpose.
  - (b) to execute works following the Tenant's failure to comply with a notice served under Clause 3.4.6 (without prejudice to any other remedy available to the Landlord);
  - (c) to abate a nuisance if the Tenant does not do so;
  - (d) to comply with a Legal Obligation if the Tenant does not do so;

- (e) to remove any goods stored or stacked on the external parts of the Premises;
- (f) to remove any obstruction of the Common Parts;
- (g) to take schedules or inventories;
- (h) to inspect or execute works of repair, maintenance, decoration, construction, alteration, improvement or otherwise to the Estate or any other property or in connection with the provision of Services

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the person entering causing as little damage and disturbance as is reasonably practicable and making good as soon as practicable any physical damage to the Premises so caused.

3.14.2 The Tenant shall permit the Landlord, any superior landlord, and persons authorised by any of them to carry out any works of repair, construction, development, improvement, alteration or otherwise to, or use in any way the Estate (apart from the Premises) or any other property and to erect scaffolding notwithstanding temporary interference with the access of light or air to the Premises or with any other right or easement, but so far as practicable access to the Premises and supplies of water, gas and electricity and drainage (where applicable) will be maintained.

3.14.3 The Tenant shall permit the affixation to suitable parts of the Premises of reletting notices during the six months preceding the End of the Term and of notices relating to the disposal or acquisition of any reversionary interest at any time.

3.14.4 Any entry by the Landlord under this Clause shall not constitute forfeiture or repudiation of the Lease.

### 3.15 COSTS

The Tenant shall pay as a debt due to the Landlord and indemnify the Landlord against all liability, proper costs, fees, charges, disbursements and expenses connected with incidental to, consequent upon:

3.15.1 an application for the Landlord's consent (whether or not the consent is given or the application is withdrawn);

3.15.2 a schedule of dilapidations during the Term or after the End of the Term;

3.15.3 notice pursuant to a provision of the Lease or under sections 146 or 147 of the Law of Property Act 1925 and proceedings under those sections even if forfeiture is avoided otherwise than by relief granted by the court;

3.15.4 the recovery of arrears of Rent or other sums payable under the Lease;

3.15.5 the breach of any covenant or obligation of the Tenant under the Lease;

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3.15.6 abating a nuisance which the Tenant fails to abate; and

3.15.7 complying with a Legal Obligation if the Tenant does not do so.

### 3.16 INTEREST

Without prejudice to any other right or remedy of the Landlord, the Tenant shall pay to the Landlord Interest on any Rent and VAT (if applicable) which is not paid to the Landlord on the date it is due (whether payment is formally demanded or not) and Interest on any other sum which is not paid to the Landlord by the later of the date it is due and the date fourteen days after a demand for payment is made.

### 3.17 INDEMNITY

The Tenant is responsible for, and shall indemnify and keep the Landlord indemnified against, all claims, demands, actions, or proceedings made or brought and all losses, damages, costs, expenses and liabilities incurred, suffered or arising directly or indirectly in respect of or otherwise connected with:

3.17.1 the use and occupation of the Premises;

3.17.2 the state of repair and condition of the Premises (except to the extent (if any) caused by any act or default of the Landlord);

3.17.3 any act, default, omission or negligence of the Tenant or of any other person at the Premises with the express or implied authority of the Tenant or of anyone deriving title through the Tenant; and

3.17.4 any breach of any covenant or other provision of the Lease to be observed or performed by the Tenant.

### 3.18 YIELDING UP

At the End of the Term the Tenant shall:

3.18.1 remove all signs and tenant's fixtures and fittings and furniture and effects making good any damage to the Premises so caused;

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3.18.2 remove any alterations or additions to the Premises if and to the extent reasonably requested by the Landlord making good any damage to the Premises so caused;

3.18.3 replace with carpets of equal or better quality and appearance

any fitted carpets provided by the Landlord at the commencement of the Term; and

3.18.4 yield up the Premises in a state and condition consistent with due compliance by the Tenant with its covenants and obligations under the Lease.

#### 4 INSURANCE

##### 4.1 DEFINITIONS

Where in this part the following words in bold type commence with capital letters they have the following meanings unless the context otherwise requires:

"INSURANCE" means insurance effected at competitive rates in the open market in such insurance office of repute or with such underwriters and through such agency as the Landlord may decide and subject to such excesses, exclusions, limitations and conditions as the insurer may require and covering:

4.1.1 the Premises (but specifically excluding tenant's and trade fixtures and fittings) against the Insured Risks for a sum sufficient to cover the cost of reinstatement assuming total loss including all applicable VAT and ancillary costs (such as site clearance and professional fees) and appropriate allowance for inflation;

4.1.2 Loss of Rent;

4.1.3 such matters in relation to the Estate not otherwise specifically mentioned in this part or effected under Clause five of the Lease as the Landlord may from time to time consider prudent;

"INSURED RISKS" means risks of loss or damage by fire, storm, tempest, flood, lightning, explosion, aircraft, articles dropped from aircraft, riot, civil commotion, malicious damage, impact, bursting and overflowing of water tanks, apparatus and pipes (but excluding such risks as the Landlord in its reasonable discretion considers

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cannot be insured against in the UK market at a reasonable rate) and risks of loss or damage by such other perils against which the Landlord may insure;

"LOSS OF RENT" means the loss of all Rent for a period of three years.

##### 4.2 LANDLORD'S INSURANCE COVENANTS

The Landlord covenants with the Tenant that the Landlord will:

4.2.1 effect and maintain Insurance (but only so far as it is not vitiated by any act, neglect or default of the Tenant, anyone deriving title through the Tenant or anyone at the Premises with the express or implied authority of either of them);

- 4.2.2 upon reasonable request from time to time produce to the Tenant full details of the policies of Insurance and evidence that they are in force;
- 4.2.3 notify the Tenant of any material change in the provisions of any policy of insurance from time to time;
- 4.2.4 in the event of any loss or damage against which it has covenanted to effect Insurance, apply all monies received from the insurer (other than for Loss of Rent) and from the Tenant pursuant to Clause 4.4 in making good such loss or damage, carrying out any necessary works of reinstatement as soon as reasonably practicable and will to the extent that such monies are insufficient as a result of the Landlord's act, neglect or default make up such insufficiency out of its own resources.

#### 4.3 ABATEMENT OF RENT

- 4.3.1 If by reason of destruction or damage by an Insured Risk the Premises or the main access thereto are wholly or partially unfit for occupation and use or inaccessible and Insurance has not been vitiated or any payment refused by reason of some act, neglect or default of the Tenant, someone deriving title through the Tenant, or some person with the express or implied authority of either of them then the Rent and Service Charge or a fair proportion thereof according to the nature and extent of the damage sustained, shall cease to be payable until the Premises are again fit for

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occupation and use and accessible to the extent only that such Loss of Rent is recoverable under Insurance against Loss of Rent.

- 4.3.2 If the Premises are so damaged or destroyed by any of the Insured Risks as to become unfit for occupation or use and they remain so unfit three years after the damage or destruction (the "Three Year Period") then either party may end this Lease by serving on the other not less than three months written notice given within one month after the expiration of the Three Year period.
- 4.3.3 Termination under the preceding clause shall not affect the rights that either party may have against the other and any monies received under the insurance policy belong to the Landlord.
- 4.3.4 A dispute as to the amount or duration of such cesser of Rent and Service Charge shall be referred to arbitration under the Arbitration Act 1996 the arbitrator to be appointed (failing agreement between the Parties) by the President of the Royal Institution of Chartered Surveyors upon the application of either Landlord or Tenant.

#### 4.4 TENANT'S INSURANCE COVENANTS

The Tenant covenants with the Landlord that the Tenant will:



- 4.4.1 pay to the Landlord upon demand all premiums and other expenses (including valuation fees) incurred by the Landlord in effecting and maintaining Insurance;
- 4.4.2 comply with the insurers' requirements and recommendations in relation to the Premises and will not do, or omit to do, anything which may make any policy of Insurance void or voidable in whole or in part or increase the premium for any policy but if as a result of a breach of this covenant a premium is increased then the Tenant will forthwith upon demand pay to the Landlord the whole of such increase;
- 4.4.3 provide and maintain such fire fighting equipment on the Premises as the insurer or an Authority may require;

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- 4.4.4 forthwith notify the Landlord of any loss, damage or destruction of or relating to the Premises and of any other event which comes to the attention of the Tenant and which may affect or give rise to a claim under a policy of Insurance;
- 4.4.5 forthwith upon demand pay to the Landlord an amount equal to all monies which the Landlord is unable to recover under a policy of Insurance by reason of:
  - (a) an act, default or omission of the Tenant; or
  - (b) a condition of the policy; or
  - (c) the imposition by the insurer or the reasonable acceptance by the Landlord of an obligation to bear part of an insured loss (commonly called an excess);
- 4.4.6 not effect any insurance equivalent to the Insurance, but if in breach of this covenant it does so, it shall pay to the Landlord all monies received under such insurance;
- 4.4.7 effect third party and public liability insurance at the Premises for such sum as may prudently be required in order to meet potential claims from time to time;
- 4.4.8 when the Premises are not in use (unoccupied) ensure that:
  - (a) the Premises are secure against intrusion;
  - (b) the Premises are inspected both internally and externally at least once a week;
  - (c) all electrical services (except those serving fire or security alarms or similar apparatus), water and gas supplies are turned off and all plumbing/heating installations are drained;
  - (d) all rubbish and combustible materials are removed from inside or near the Premises.

## 5 SERVICE CHARGE

## 5.1 THE SERVICES

In Clause 5 of the Lease the SERVICES are services in respect of the management and maintenance of the Estate including (but not limited to):

- 5.1.1 the inspection, testing, repair, servicing and maintenance of the Retained Property (including replacement of parts where appropriate);
- 5.1.2 cleaning and lighting the Retained Property and refuse disposal;
- 5.1.3 decorating and furnishing the Retained Property and providing and maintaining decorative features (such as landscaped areas, flowers and seasonal directions) including replacing any landscaped areas in accordance with the principles of good estate management;
- 5.1.4 operating and maintaining the Plant;
- 5.1.5 providing such further and improved Plant as an Authority may require, or for the greater amenity of those using the Estate, or for the more efficient management of the Estate;
- 5.1.6 carrying out such works and taking such other action as may be appropriate in order to comply with the lawful requirements or recommendations of an insurer or an Authority;
- 5.1.7 providing, maintaining and keeping in repair all signboards from time to time at the Estate;
- 5.1.8 pedestrian and vehicular traffic control, security (including a CCTV system and the provision of security staff) and the preparation and enforcement of Regulations; and
- 5.1.9 insurance of Plant and equipment and of the furnishings and contents of the Retained Property and such other insurance relating to the management of the Estate (including third party and public liability at the Estate) as the Landlord may consider prudent.

- 5.1.10 providing such other services or facilities for the greater amenity of those using the Estate or for the more efficient management of the Estate.

## 5.2 SERVICE COSTS

In this part of the Lease SERVICE COSTS means the aggregate of the costs and expenses incurred by the Landlord in the provision of the

Services including (but not limited to):

- 5.2.1 all rates, taxes, charges, assessments and outgoings payable in respect of all or any part of the Retained Property or in respect of the Estate as a whole (as distinct from any one or more Units);
- 5.2.2 the cost of water, electricity, gas, oil or other supplies for the provision of the Services or otherwise consumed in the Retained Property;
- 5.2.3 the cost of employing or arranging for the employment of staff to provide the Services, such cost to include all reasonable incidental expenditure such as (without prejudice to the generality of the foregoing) that relating to: insurance, pension and welfare contributions; the provision of clothing; the provision of tools and equipment; the provision of accommodation;
- 5.2.4 the cost of providing, maintaining and renewing such equipment, materials and supplies as are from time to time required in order to provide the Services;
- 5.2.5 the cost of all maintenance and other contracts entered into in relation to the provision of the Services;
- 5.2.6 all contributions to the roads, pipes, walls, structures or other things common to or used in common by the Estate and other property;
- 5.2.7 the cost to the Landlord of complying with, or contesting the requirements or proposals of, any Authority insofar as they relate to the Estate (as distinct from any particular Unit or Units);
- 5.2.8 the cost of carrying out health and safety audits, fire safety audits and environmental audits in accordance with good estate management;

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- 5.2.9 the fees of managing agents retained by the Landlord in relation to the management of the Estate, the provision of the Services and the collection of Service Charge and Estimated Service Charge (as defined in Clause 5.3) due from tenants and occupiers of the Estate (or where any such task is carried out by the Landlord a reasonable charge for the Landlord in relation thereto);
- 5.2.10 the cost of preparing and auditing Service Charge accounts (whether carried out by the Landlord or by the Landlord's agents or accountants);
- 5.2.11 the cost of obtaining such professional advice as may from time to time be appropriate in relation to the management of the Estate and the provision of Services;
- 5.2.12 VAT (or other tax) where chargeable on any of the Service

Costs to the extent that it cannot be recovered by the Landlord;

5.2.13 all other costs, charges, expenses and outgoings incurred in or incidental to the provision of the Services; and

5.2.14 such provision for anticipated future expenditure in relation to the Services as may be appropriate in relation to the good management of the Estate and provision of Services and in accordance with the current Code of Commercial Practice.

### 5.3 PROVISION OF SERVICES

5.3.1 The Landlord will:

- (a) keep the Retained Property in good and substantial repair and condition and, where appropriate, keep the Plant in the Retained Property in good working order and the Common Parts adequately cleaned and lit;
- (b) provide an appropriate standard for the good management of the Estate and in a prudent manner the Services and such other services as are desirable in the interests of good estate management;

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- (c) comply with all regulations of any Authority in respect of the Retained Property.

PROVIDED ALWAYS the Landlord shall consult with and have regard to the wishes of the Tenant before providing any such other Services.

5.3.2 The Landlord will have no liability to the Tenant:

- (a) for failure to provide a Service during any period when the Tenant is in arrears with payment of Rent, insurance contribution, Service Charge or any other monies due from the Tenant to the Landlord under the Lease;
- (b) for the interruption of a Service for reasons of inspection, maintenance, repair or other works (in which event the Landlord will restore the Service as soon as reasonably practicable);
- (c) for failure to provide a Service due to damage, breakdown, inclement weather shortage of fuel or water, or any other cause beyond the Landlord's reasonable control (although the Landlord will then take all reasonable steps to restore such Service or provide an alternative Service as soon as reasonably practicable)
- (d) for withdrawal of a Service if the Landlord reasonably considers it is no longer appropriate; or

(e) in respect of any act, omission or negligence of any employee of the Landlord or other person providing or purporting to provide any Service.

5.3.3 The Tenant shall not be required to pay as part of the Service Charge:

(a) the initial capital cost of the construction or any building on the premises or the Retained Property; or

(b) the initial capital cost of the fixtures equipment plant and machinery within any building on the Premises or the Retained Property; or

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(c) the initial capital cost of providing the services to any building on the Premises or the Retained Property including the heating and air conditioning; or

(d) the cost of remedying any damage caused by an Insured Risk.

#### 5.4 THE SERVICE CHARGE

5.4.1 Where in this clause the following words in bold type commence with capital letters they have the following meanings unless the context otherwise requires:

"ACCOUNT DATE" means 31 March in each year or such other date in each year as the Landlord may stipulate;

"ACCOUNT PERIOD" means the period from and excluding one Account Date up to and including the next Account Date;

"ACCOUNT STATEMENT" means a statement certified by a duly qualified chartered surveyor or chartered accountant (and in the absence of manifest error to be accepted by the Tenant as conclusive) showing: the Total Charge for the relevant Account Period; the Due Proportion; the Service Charge; details of all Estimated Service Charge received in respect of the relevant Account Period and any balance of Service Charge due from the Tenant or refund due to the Tenant;

"DUE PROPORTION" means a fair proportion as conclusively determined from time to time by the Landlord acting reasonably;

"ESTIMATED SERVICE CHARGE" means payment on account of the Service Charge;

"SERVICE CHARGE" means the Due Proportion of the Total Charge;

"TOTAL CHARGE" means the total of all Service Costs during an Account Period net of any receipts from insurers, the Tenant or other occupiers of the Estate or third parties (otherwise than by way of a service charge) which are properly applicable towards payment of such Service Costs.

- 5.4.2 The Tenant hereby covenants to pay to the Landlord by way of equal instalments in advance on each quarter day during the Term and proportionately for less than an Account Period an Estimated Service Charge of such sum as the Landlord may reasonably demand having regard to actual and anticipated Service Costs.
- 5.4.3 As soon as practicable after an Account Date the Landlord shall submit to the Tenant an Account Statement for the Account Period ending on that Account Date and
- (a) if the Account Statement shows that a balance of Service Charge is due from the Tenant, the Tenant shall pay such balance to the Landlord within fourteen days of receipt of the Account Statement;
  - (b) if the Account Statement shows that a refund is due to the Tenant, such refund shall during the Term be set off against future Service Charge Payments and following the determination of the Term be set off against any other monies due from the Tenant to the Landlord and the balance (if any) paid to the Tenant.
- 5.4.4 The provisions of this clause will survive the End of the Term.
- 5.4.5 The Service Charge payable by the Tenant shall not be increased by any part of the Estate being unlet at any time.

## 6 LANDLORD'S COVENANTS

### 6.1 QUIET ENJOYMENT

The Landlord covenants with the Tenant that it will permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for the Landlord.

## 7 RENT REVIEW

### 7.1 DEFINITIONS AND INTERPRETATION

7.1.1 Where in Clause 7 of the Lease the following words in bold type commence with capital letters they have the following meanings unless the context otherwise requires:

"OPEN MARKET RENT" is as defined in Clause 7.3;

"RELEVANT REVIEW DATE" means the Review Date by reference to which Rent is being reviewed;

"REVIEW DATE" means any one of the Review Dates;

"REVIEW DATES" means 1 September 2008, 1 September 2013 and 1 September 2018.

7.1.2 Time is not of the essence.

## 7.2 REVIEW OF RENT

With effect from each Review Date the Rent shall be the amount payable (but for any abatement of Rent) immediately prior to that Review Date or if Greater the Open Market Rent as agreed or determined under Clause 7 of the Lease;

## 7.3 OPEN MARKET RENT

"OPEN MARKET RENT" means the market rent which would reasonably be expected to become payable in respect of the Premises after the expiry of a rent free period of such length for fitting out the Premises as would be negotiated in the open market between a willing landlord and a willing tenant:

7.3.1 upon a letting of the Premises:

- (a) as a whole;
  - (b) by a willing landlord to a willing tenant;
  - (c) with vacant possession;
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- (d) on the open market;
  - (e) without a fine or premium;
  - (f) for a term of 10 years commencing on the Relevant Review Date;
  - (g) including provisions for review of rent at five yearly intervals; and
  - (h) otherwise on the same terms as the Lease (except as to the amount of the Rent, except as to the reservation of the Additional Rent and except for Clause 3.7.4 which shall be deemed to be omitted).

7.3.2 assuming that:

- (a) the covenants and provisions of the Lease on the part of the Landlord and the Tenant have been fully performed and observed;
- (b) no work has been carried out to the Premises (unless by the Landlord or a superior landlord) which has diminished their rental value;
- (c) if the Premises have been destroyed or damaged they have been fully restored;

- (d) any licence required by law for using the Premises for the Permitted User or any other use of the Premises has been obtained and is available for the benefit of any willing tenant;

7.3.3 but disregarding:

- (a) any effect on rent of the fact that the Tenant, any undertenant or any of their respective predecessors in title have been in occupation of the Premises;
- (b) any goodwill attached to the Premises by reason of the carrying on of the business of the Tenant, any undertenant or any of their predecessors in title;
- (c) any adverse effect upon rent of any temporary works, operations or other activities on any adjoining or neighbouring property;

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- (d) any effect on rent attributable to any improvement to the Premises or any part of the Premises carried out by the Tenant or a permitted undertenant with the Landlord's consent where required but without cost to the Landlord and not pursuant to an obligation to the Landlord;
- (e) on the Review Date of 1 September 2008 only (but not at any subsequent Review Date) any effect on rent attributable to the works described in the Specification.

7.4 PROCEDURE

- 7.4.1 The Landlord may serve upon the Tenant notice during the period of nine months before, or at any time after, a Review Date requiring the Rent to be increased with effect from that Review Date or stating that the Rent is not to be increased.
- 7.4.2 If the Landlord serves notice requiring the Rent to be increased (REVIEW NOTICE) the Landlord and the Tenant shall endeavour to agree the Open Market Rent as at the Relevant Review Date.
- 7.4.3 If the Landlord and the Tenant do not agree the Open Market Rent within three months after service of a Review Notice or by the date three months before the Relevant Review Date (whichever is the later), either may by notice to the other require the Open Market Rent to be determined by a Chartered Surveyor having at least ten years' experience in assessing the rental value of premises similar to the Premises and acting as a single arbitrator.
- 7.4.4 If the Landlord and the Tenant do not agree on the joint appointment of an arbitrator the arbitrator shall be nominated on the joint application of the Landlord and the Tenant (or if



either of them neglects to concur in such application then on the sole application of the other) by the President or other chief officer or acting chief officer for the time being of the Royal Institution of Chartered Surveyors.

7.4.5 The arbitrator shall act as an arbitrator in accordance with the Arbitration Act 1996.

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7.4.6 The arbitrator shall within three months of his appointment, or within such extended period as the Landlord may agree, give to the Landlord and the Tenant written notice of the amount of the Open Market Rent as determined by him, but if he does not, or if for any reason it becomes apparent that he will not be able to, complete his duties in accordance with his appointment, the Landlord and the Tenant may agree upon or either of them may apply for the appointment of another arbitrator (which procedure may be repeated as often as necessary) pursuant to the provisions of this Clause.

## 7.5 DELAYED REVIEW

Where the Rent payable with effect from a Review Date is not ascertained prior to that Review Date the Tenant shall:

7.5.1 with effect from the Relevant Review Date pay an INTERIM RENT at the rate at which Rent was payable (ignoring any abatement) immediately prior to that Review Date; and

7.5.2 if the Rent when ascertained exceeds the Interim Rent then within fourteen days of the Rent being ascertained (the PAYMENT DATE) pay to the Landlord an amount equal to the aggregate of the sums by which each quarterly instalment of Rent would have exceeded each instalment of Interim Rent had the Rent been ascertained by the Relevant Review Date, together with Interest on each of those sums from the date it would have been due to the Payment Date at a rate 3% below the Interest Rate.

## 7.6 MEMORANDA

Where Rent is increased with effect from a Review Date the Landlord and Tenant shall (at their own cost) sign memoranda thereof in such form as the Landlord may reasonably require for annexation to both the original and counterpart of the Lease.

## 8 MISCELLANEOUS PROVISIONS

### 8.1 RECOVERY OF MONEY

In addition to any other remedy available to the Landlord, all moneys due from the Tenant to the Landlord under the Lease may be recovered as if such moneys were reserved as rent.

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## 8.2 USER

The Landlord does not warrant that the Premises may lawfully be used for any purpose authorised under the Lease.

## 8.3 EASEMENTS

8.3.1 The Tenant is not entitled to, and the Premises do not enjoy, any right of light or air which might restrict or interfere with the free use of any other property for building or any other purpose.

8.3.2 The operation of Section 62 of the Law of Property Act 1925 is excluded from the Lease and the only rights granted with the Premises are those expressly granted in the Lease.

8.3.3 To the extent that the rule against perpetuities applies to any right granted or reserved hereunder or other matter, such right may be exercised at any time and such matters shall take effect within the Perpetuity Period, but not beyond it.

## 8.4 EXERCISE OF RIGHTS OF ENTRY

A person exercising any right of entry granted or reserved under the Lease in order to carry out works must:

8.4.1 give reasonable prior notice to the relevant Party (except in emergency);

8.4.2 exercise the right in a manner which causes as little damage and inconvenience as is practicable in the circumstances; and

8.4.3 make good any physical damage caused as soon as is reasonably practicable.

## 8.5 LIABILITY

8.5.1 The Landlord is not responsible to the Tenant or to anyone at the Premises with the Tenant's express or implied authority for any accident, injury, damage or loss.

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8.5.2 The Landlord is not responsible for any accident, injury, damage or loss resulting or alleged to result from the negligence, act or omission of any tenant or employee, officer or agent of the Landlord.

## 8.6 COMPENSATION

Any statutory right of the Tenant to claim compensation from the Landlord whether on vacating the Premises or otherwise is excluded to the extent that the law allows.

## 8.7 NOTICES

8.7.1 Any notice by one party (the SENDER) to another (the

RECIPIENT) must be in writing.

8.7.2 A notice is duly served if given by any means from time to time authorised by law including:

- (a) if delivered to the recipient;
- (b) if sent by first class registered or recorded delivery post addressed to the recipient;
- (c) if sent by fax to the recipient

in each case at an authorised address.

8.7.3 Any notice so served shall be deemed to have been received as follows:-

- (a) if delivered - on the day of delivery if delivered at least two hours before the close of business hours on a business day and in any other case on the next business day;
- (b) if sent by post (otherwise than at a time when the sender is or ought reasonably to be aware of a disruption of the relevant postal service) - two business days after posting, exclusive of the day of posting;
- (c) if sent by fax (unless the sender knows or ought reasonably to know that the transmission has failed or is incomplete) - at the time of transmission, if received at least two hours before the close of

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business hours on a business day, and in any other case on the next business day.

8.7.4 For the purposes of this clause:

- (a) an AUTHORISED ADDRESS means any of the following:
  - (i) in the case of a company incorporated in England, Scotland or Wales its registered office;
  - (ii) in the case of an individual his address as stated in this deed or other address last known to the sender;
  - (iii) in the case of a partnership its principal place of business as stated in this deed or other principal place of business last known to the sender;
- (b) a BUSINESS DAY means any day except Saturday Sunday or a bank or public holiday;

- (c) BUSINESS HOURS means the hours of 9.30 a.m. to 5.30 p.m. on a business day.

9 FORFEITURE

9.1 RIGHT OF RE-ENTRY

The Landlord may forfeit the Lease by proceedings or by re-entering the Premises (or part of them) if:

- 9.1.1 any Rent or Additional Rent remains unpaid 21 days after it is due (whether formally demanded or not); or
- 9.1.2 any covenant or stipulation in the Lease which is to be performed or observed by the Tenant is not performed or observed; or
- 9.1.3 the Tenant permits any execution or distress to be levied on any goods in the Premises; or

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- 9.1.4 the Tenant (or any one party included within the definition of the Tenant) or any guarantor for the Tenant becomes Insolvent (as defined in the next Clause).

9.2 INSOLVENCY

"INSOLVENT" means for the purposes of Clause 9 of the Lease:

9.2.1 for a company:

- (a) the appointment of a receiver, administrative receiver, liquidator or administrator;
- (b) any proceedings in court (including the presentation of a petition) for the appointment of a administrator or liquidator;
- (c) the making of a voluntary arrangement;
- (d) any other analogous event from time to time in England and Wales or any other applicable jurisdiction;

but excluding a voluntary liquidation for the purpose of amalgamation;

9.2.2 for an individual:

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) any proceedings in court (including the presentation of a petition) for a bankruptcy order;
- (c) the making of an individual voluntary arrangement or deed of arrangement;

- (d) any other analogous event from time to time in England and Wales or any other applicable jurisdiction;

9.2.3 for a partnership:

- (a) the appointment of a receiver, liquidator or administrator

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- (b) any proceedings in court (including the presentation of a petition) for the appointment of an administrator or liquidator

- (c) the making of a voluntary arrangement;

- (d) any other analogous event from time to time in England and Wales or any other applicable jurisdiction.

10 GUARANTEE

#### GUARANTOR'S OBLIGATIONS

10.1 The Guarantor covenants with the Landlord for a period of five years from the date of this Lease or (if earlier) until such time as the Tenant is able to demonstrate to the Landlord a net annual profit on the part of the Tenant before tax for each of the three immediately preceding years in excess of three times the Rent and equity shareholders' funds for each of the three preceding years in excess of ten times the Rent as a primary obligation that during the Term (or until earlier release by operation of law or otherwise) the Tenant shall punctually pay the Rent and observe and perform the covenants and other provisions of the Lease, and in case of default the Guarantor will pay the Rent and observe and perform the covenants and provisions in respect of which the Tenant is in default and make good to the Landlord on demand, and indemnify the Landlord against, all losses, damages, costs and expenses thereby arising or incurred by the Landlord.

10.2 The liability of the Guarantor shall not be affected in any way by:

10.2.1 any neglect or forbearance of the Landlord in enforcing payment of Rent or observance or performance of the covenants and provisions of the Lease;

10.2.2 any time or indulgence given to the Tenant by the Landlord;

10.2.3 any refusal by the Landlord to accept Rent from the Tenant following a breach of covenant by the Tenant;

10.2.4 any agreement with the Tenant, any licence or consent granted to the Tenant, or any variation in the terms of the Lease;

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- 10.2.5 the death of the Tenant (if an individual) or the dissolution of the Tenant (if a company), or the Tenant otherwise ceasing to exist;
- 10.2.6 a surrender of part of the Premises, except that the Guarantor will have no liability in relation to the surrendered part in respect of any period following the date of surrender;
- 10.2.7 the release of any person, apart from the express release in writing of the Guarantor;

10.3 If the Tenant is a company and is dissolved, or if the liquidator or the trustee in bankruptcy of the Tenant or the Crown disclaims the Lease, the Guarantor shall upon written notice from the Landlord given within twelve months after the date of dissolution or disclaimer accept a new lease of the Premises:

- 10.3.1 for a term commencing on the date of dissolution or disclaimer and continuing for the residue then remaining unexpired of the Term at the Rent then payable under the Lease;
- 10.3.2 subject to and with the benefit of the Lease if still subsisting;
- 10.3.3 subject to the same covenants and provisions as in the Lease (without however requiring any other person to act as guarantor);

such new lease to take effect from the date of dissolution or disclaimer and to be granted at the cost of the Guarantor who shall execute and deliver to the Landlord a counterpart of it.

#### TENANT'S BREAK CLAUSE

10.4 In this clause "DETERMINATION DATE" means 1 September 2013.

10.5 If the Tenant wishes to determine the Lease on the Determination Date it must:

- 10.5.1 serve notice on the Landlord not earlier than twelve months and not later than six months before the Determination Date of its intention to determine the Lease;
- 10.5.2 pay the Rent and other money due under the Lease up to the Determination Date; and

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10.5.3 yield up the Premises on the Determination Date with vacant possession and otherwise in accordance with Clause 3.18.

10.6 Subject to compliance with the previous sub-clause the Lease shall determine on the Determination Date but without prejudice to the rights of any Party against another in respect of any antecedent breach of covenant or the Tenant's obligations under the following sub-clause.

10.7 If the Lease is determined under this clause the Tenant shall on the

relevant Determination Date hand over to the Landlord the original Lease and all other title deeds and documents relating to the Lease and shall execute any document that the Landlord may reasonably require in order to cancel any entry or title relating to the Lease at HM Land Registry.

11 CERTIFICATION

11.1 It is hereby certified that the Lease is made pursuant to an agreement for lease dated 4 June 2003.

11.2 This is a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless the Contracts (Rights of Third Parties) Act 1999 is expressly stated to apply, no person other than the Landlord or the Tenant or the Guarantor may enforce any term of the Lease under that Act.

13 JURISDICTION

13.1 The Lease shall be governed by and construed in accordance with English law.

13.2 Each Party submits to the exclusive jurisdiction of the English courts in respect of all matters arising out of the Lease but the Landlord shall have the right to bring proceedings in the courts of any other jurisdiction for the purpose of enforcing a judgment.

14 DELIVERY

This deed remains undelivered until the date hereof.

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SCHEDULE 1

RIGHTS

The Tenant and those deriving title through or otherwise authorised by the Tenant shall have the following rights in common with others during the Term (subject always to compliance with the Regulations):

1. at all times the right of access to and egress from the Premises with or without vehicles over the roads and on foot over the footpaths on the Estate and the right otherwise to use the Common Parts for the purposes for which they are intended;
2. a right to connect into and use (subject to the regulations of any appropriate Authority) Conduits for the supply of services and drainage and such other Conduits as may from time to time be available for connection to individual Units;
3. a right to connect into and use such Plant as may from time to time be available for connection to individual Units;
4. a right to place signs in accordance with Clause 3.6 of this Lease;

5. full rights of support and protection for the Premises;
6. all rights permitted to the Tenant under Clause three of the Lease.

Provided that the Landlord may temporarily stop up or block the roads and footpaths on the Estate or the Common Parts in connection with the provision of services.

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#### SCHEDULE 2

##### EXCEPTIONS AND RESERVATIONS

The following rights are excepted and reserved to the Landlord and to all others authorised from time to time by the Landlord:

1. all rights of support and protection afforded by the Premises;
2. right to free and uninterrupted passage and running of water, drainage, gas, electricity, communication and other services by any Conduit in or passing through the Premises and the right to enter the Premises in order to inspect, clean, maintain, repair, renew, remove, divert, or make connections with any Conduit or to install any new Conduit;
3. all rights which the Tenant covenants to permit under Clause three of the Lease.

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#### SCHEDULE 3

##### INCUMBRANCES

The rights, exceptions, reservations and covenants contained or referred to in the Landlord's freehold title number EX243648.

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#### SCHEDULE 4

##### VAT

###### 1 OUTPUT TAX

Where the Lease requires the Tenant to pay repay reimburse or provide any amount or other consideration in respect of a VAT supply to the Tenant by the Landlord such amount or other consideration will be deemed to be exclusive of any VAT chargeable on that VAT supply (whether by virtue of a VAT election made or to be made or otherwise) and the Tenant covenants to pay to the Landlord a sum equal to that VAT.

###### 2 INPUT TAX



Where the Lease requires the Tenant to pay repay reimburse or provide any amount or other consideration in respect of a VAT supply to the Landlord the Tenant covenants to pay to the Landlord upon production of a valid VAT invoice a sum equal to the whole or a fair proportion of the VAT charge to the Landlord on that VAT supply as appropriate (any such proportion in the absence of manifest error to be conclusively determined by the Landlord's surveyor acting properly) less a like proportion of any part of that VAT for which the Landlord is entitled to credit under Section 24, 25 and 26 of the Value Added Tax 1994 (or any statutory re-enactment or modification thereof) or which the Landlord is otherwise able to recover.

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#### SCHEDULE 5

#### REGULATIONS

- 1        Parking is only permitted within designated areas and not on the estate roads or pedestrian areas. The Landlord may employ a wheel clamping or security company to enforce this regulation and a fee may be charged for the removal of the wheel clamp or for the release of the vehicle.
- 2        Heavy goods vehicles in excess of 20 metric tonnes must not enter the public car parking areas.
- 3        All drivers must observe the traffic regulations and speed restrictions on the estate roads as notified from time to time by the Landlord.
- 4        Loading, unloading, delivery and despatch of goods is to be carried out only in the areas designated and by means of the entrances designated for such purposes.
- 5        No obstruction must be caused on the Common Parts. Any obstruction may be removed by the Landlord and disposed of without notice.
- 6        No goods are to be stored or machinery installed on the external areas of the Premises.
- 7        Refuse must be stored in skips or containers which have lids and must be locked when not in use. The area around the skip must be kept clean and tidy and waste must be removed on a regular basis and refuse skips or containers must not be overfilled.
- 8        Where the Tenant is permitted waste skips and pallets, these must be placed at least six metres away from any building so as to reduce the risk of fire damage.
- 9        Fire doors and exit escape routes must be kept clear of all obstructions.
- 10       Tenants' signage is to be erected only on areas designated for that purpose and with the Landlord's consent as provided in this lease. Any unauthorised signs in the Common Parts will be removed and disposed of without further notice.
- 11       No sound amplification equipment may be used in a manner that is audible outside the Premises.

12 No refuse or materials may be burnt on any part of the Estate.

13 The repair and maintenance of motor vehicles (other than by an emergency service) is not permitted on any part of the Estate.

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14 Tenants must inform the Landlord in advance if any contractor engaged by them requires temporary consent to place goods or equipment in the Common Parts in connection with repair or maintenance of the Premises only.

15 All users will respect the landscaping and keep to the designated paths and roads.

The Landlord reserves the right to remove all unauthorised signage, goods and rubbish stored in breach of these regulations and to charge the Tenant the cost of removal and/or storage.

These regulations are not intended to be definitive or exhaustive and may be altered or added to from time to time as the Landlord may reasonably direct.

First edition: July 2002.

EXECUTED as a DEED by )  
JUNIPER DEVELOPMENTS )  
LIMITED acting by: )

/s/Roland D.S. Nevett  
Director

/s/Christine A. Shaw  
Assistant Secretary

THE COMMON SEAL of )  
ASHWORTH UK LIMITED )  
was hereunto affixed in the presence of: )

/s/Terence Tsang  
Director

/s/Jordan Company Secretaries Limited  
Secretary

EXECUTED as a DEED by )  
ASHWORTH UK LIMITED )  
acting by: )

/s/Terence Tsang  
Director

/s/Halina Balys  
Director

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(KEY GRAPHIC)

MASTER EQUIPMENT LEASE AGREEMENT

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THIS MASTER EQUIPMENT LEASE AGREEMENT dated as of June 23, 2003 ("Master Lease") is made by and between KEY EQUIPMENT FINANCE, A DIVISION OF KEY CORPORATE CAPITAL INC., having an address at 66 South Pearl Street, Albany, NY 12207 ("Lessor"), and ASHWORTH, INC. with its chief executive offices located at 2765 Loker Avenue West, Carlsbad, CA 92008 ("Lessee").

1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, Equipment, subject to and upon the terms set forth herein and in any Equipment Schedule executed in connection herewith (each, a "Schedule"). Each Schedule shall constitute a separate and enforceable lease incorporating all the terms of this Master Lease (each Schedule, together with this Master Lease as it relates to such Schedule, is referred to herein as a "Lease"). If any term of a Schedule conflicts or is inconsistent with any term of this Master Lease, the terms of such Schedule shall govern.

2. DEFINITIONS. Unless the context otherwise requires, as used in the Lease, the following terms shall have the respective meanings indicated below and shall be equally applicable to both the singular and the plural forms thereof:

"Drawdown Request" shall mean Exhibit A.

"Equipment" means each item of property designated on a Schedule that will be leased by Lessee pursuant to the Lease, together with all replacement parts, additions and accessories incorporated therein or affixed thereto. Where Lessor finances under the Lease payment of fees for Software Licenses and Services, references to leasing, purchases, ownership and administration of "Equipment" under the Lease shall be deemed to include such Financed Fees.

"Equipment Group" shall consist of all items of Equipment listed on a particular Equipment Schedule.

"Fair Market Rental Value" or "Fair Market Sale Value" means the value of Equipment for lease or sale, in place and in continued use, which would be obtained in an arm's length transaction between an informed and willing retail lessor or seller (under no compulsion to lease or sell) and an informed and willing retail lessee or buyer (under no compulsion to lease or purchase), assuming that Equipment is in the condition specified by Sections 10 and 11 hereof, as determined by the parties; provided that, if the parties cannot agree on the Fair Market Rental Value or Fair Market Sale Value, such value shall be determined as follows: (a) each party shall appoint an appraiser and the two appraisers so appointed shall together pick a third appraiser whom shall be paid for by Lessee, (b) such three appraisers shall appraise the specified items of

Equipment using their best efforts to determine such value as soon as possible, and (c) if such three appraisers cannot agree on the fair market sale or rental value, then the average of the individual appraisals given by such three appraisers shall constitute the fair market sale or rental value.

"Guarantor" means any guarantor of Lessee's obligations hereunder.

"Financed Fees" means the Software license, usage, or other fees and the charges for Services, if any, specified on a Schedule.

"Guarantor" means any guarantor of Lessee's obligations hereunder.

"Interim Rent" shall have the meaning given in Section 5.

"Interim Term Commencement Date" shall mean the date on which Lessor makes the first Progress Payment.

"Interim Term " shall have the meaning given in Section 6.

"Item of Equipment" shall mean each item of the Equipment.

"Initial Lessor" means Key Equipment Finance, a Division of Key Corporate Capital Inc.

"Initial Term Expiration Date" shall have the meaning specified in the applicable Schedule.

"Lease Documents" means this Master Lease, a Schedule and all other documents relating to or provided in connection with a Lease, prepared by Lessor, and now or hereafter executed in connection herewith or therewith, as the same may be modified, amended, extended or replaced.

"License Agreement" means the software license agreement(s) between Lessee and Licensor relating to Software.

"Licensor" means the Supplier(s) of Software, solely in its (their) capacity as licensor of such Software.

"Outside Closing Date" shall mean February 28, 2004.

"Progress Payments" shall have the meaning given in Section 3.2.

"Purchase Agreement" means any purchase agreement or other contract between a Supplier and Lessee for the acquisition of Equipment to be leased or financed under a Lease.

"Rent" means the periodic payments due for the leasing of Equipment as set forth on the related Schedule and, where the context hereof requires, all such additional amounts as may, from time to time, be payable under a Lease. The term "Rent" shall include interim rent, if any, as described in Section 5 hereof.

"Rent Commencement Date" means, with respect to Equipment, the date on which (a) Lessor receives an executed Certificate of Acceptance (as defined in Section 4 hereof) for Equipment from Lessee or (b) Lessor disburses funds for the purchase of Equipment, as determined by Lessor in its sole discretion.

"Rent Payment Date" shall have the meaning specified in the applicable Schedule.

"Services" means all training, installation, transportation, handling, maintenance, custom programming, integration, technical consulting and support services relating to Equipment and specified on a Schedule.

"Software" means the software and all related documentation, corrections, updates and revisions used in connection with Equipment financed under a Schedule.

"Stipulated Loss Value" shall have the meaning specified in the applicable Schedule.

"Supplier" means the manufacturer or the vendor of the Equipment.

"Term" means the Interim Term, Initial Term or any Renewal Term, each as defined in Section 6 hereof, and any Extended Lease Term or Interim Term, as defined in the applicable Schedule.

3. ORDERING EQUIPMENT. Lessee hereby assigns to Lessor all of Lessee's rights, but none of its obligations, under any Purchase Agreement related to a Lease. Lessor may (a) accept such assignment from Lessee of Lessee's rights, but none of Lessee's obligations, under any such Purchase Agreement and/or (b) issue a purchase order for the Equipment to the Supplier. Lessee shall arrange for delivery of Equipment. If Equipment is subject to an existing Purchase Agreement between Lessee and the Supplier, and Equipment has been delivered to Lessee as of the date of the Schedule applicable thereto, Lessee warrants that it has advised Lessor of the delivery date(s) of such Equipment. Lessee hereby authorizes Lessor to add to each Schedule the serial numbers and other identification data of Equipment associated therewith as such data is received by Lessor.

3.1 ASSIGNMENT OF PURCHASE AGREEMENT. (a) With respect to certain Equipment Groups for which Lessee has requested Lessor to make certain Progress Payments (as defined below). Lessee has entered into Purchase Agreements with Suppliers, pursuant to which Lessee has acquired rights to purchase certain Equipment from such Suppliers. (B) Lessor shall accept an assignment from lessee of Lessee's rights, but none of Lessee's obligations, under any such Purchase Agreement as specified in this section 3.1.

3.2 PROGRESS PAYMENTS. With respect to the Equipment Groups, and as an accommodation during the period of time in which the Equipment within such Equipment Group is being purchased, assembled, installed and/or tested, Lessee has requested Lessor to make certain payments (each, a "Progress Payment," collectively, the "Progress Payments") to the Suppliers, as required by the terms of the Purchase Agreements, in each case subsequent to the effectiveness

and enforceability of the Master Lease with respect to such Equipment, but prior to the Rent Commencement Date with respect to the Equipment. Lessor is willing to make such Progress Payments, subject to and upon the terms and conditions set forth herein.

Subject to the terms and conditions set forth herein and in Lease Documents, Lessor hereby agrees to make the Progress Payments upon Lessee's request at the times and in the amounts set forth in the Purchase Agreement or the purchase orders with the Suppliers. Progress Payments shall be made to the address set forth in each Drawdown Request (as defined below).

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Notwithstanding anything to the contrary contained in the Lease Documents, Lessor shall have no obligation to make any Progress Payment hereunder unless:

(a) no Event of Default (as defined in Section 18) shall have occurred and be continuing.

(b) Lessor shall have received the following documents duly executed and delivered to the parties thereto;

(1) this Master Lease;

(2) UCC Financing Statements, as reasonably requested by Lessor;

(3) a Drawdown Request;

(4) an original invoice, acceptable to Lessor, from the vendor to whom payment is requested, countersigned by Lessee, which countersignature shall be conclusively deemed to be Lessee's certification and agreement that the Progress Payment involved is then due and owing and properly payable, and that all conditions precedent to the payment of such invoice have been performed and completed to the satisfaction of Lessee;

(5) a certificate evidencing the insurance that is required hereunder;

(6) with respect to payments to Lessee to reimburse it for payments previously made to third party vendors, (i) either copies of checks (front and back) or, if funds were wired, a copy of a wire confirmation receipt, (ii) copies of invoices marked "paid in full", and (iii) for confirmation purposes, the name and telephone number of such vendor; and

(7) any other instruments or documents as may be reasonably requested by Lessor.

(c) Lessor shall have received from Lessee a drawdown fee of \$50.00 per drawdown;

3.3 MASTER LEASE IN FULL FORCE AND EFFECT AS TO PROGRESS PAYMENTS. Lessee

hereby acknowledges that, with respect to the Progress Payments hereunder (and the Equipment Group to which such Progress Payments relate) this Master Lease shall be deemed to be in full force and effect against Lessee with respect to such Equipment with the same force and effect as if an Equipment Schedule was executed with respect to each item of such Equipment and Lessee had acknowledged its unqualified acceptance of each item of such Equipment, on the date of the Progress Payment relating thereto.

4. DELIVERY AND ACCEPTANCE. Upon delivery to and acceptance by Lessee of any Equipment, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in form acceptable to Lessor ("Certificate of Acceptance"). EXCEPT AS OTHERWISE PROVIDED HEREIN, LESSOR SHALL HAVE NO OBLIGATION TO ADVANCE ANY FUNDS HEREUNDER UNLESS AND UNTIL LESSOR RECEIVES A CERTIFICATE OF ACCEPTANCE FOR SUCH EQUIPMENT EXECUTED BY LESSEE.

5. RENT; DELINQUENT PAYMENTS. (a) The rental amount payable by the Lessee to the Lessor during the Interim Term for the Equipment (the "Interim Term") shall be equal to the total of each progress payment on such Equipment by Lessor from the date of such advance multiplied by a floating rate per annum (the "Interest Rate") equal to the Prime Rate (as hereinafter defined) in effect from time to time plus fifty hundredths percent (.50%). The Interim Rent shall be immediately and correspondingly adjusted with each change in the Prime Rate, be calculated on the basis of a 360-day year consisting of twelve 30-day months, and accrue until the date of receipt of payment. The Interim Rent shall be made to KEF at P.O. Box 1865, Albany, New York 12201-1865, or at such other place as KEF may designate from time to time in writing. As used herein, "Prime Rate" means the prime rate announced from time to time in The Wall Street Journal, published on the business day on, or immediately prior to the 28th day of the month immediately preceding such calendar month. If the Prime Rate is no longer available, KEF will choose a new index that is based upon comparable information and will give Borrower notice of such new "Prime Rate." Interim Rent at the rates aforesaid shall be due and payable monthly in advance on the Rent Commencement Date and on the same day each month thereafter.

(b) Lessee shall pay Rent commencing on the Rent Commencement Date, and, unless otherwise set forth on the applicable Schedule, on the same day of each payment period thereafter for the balance of the Term. Rent shall be due whether or not Lessee has received any notice that it is due, and all Rent shall be paid to Lessor at its address set forth on the Schedule, or as otherwise directed by Lessor in writing.

(c) If Lessee fails to pay any Rent or other sums under the Lease on or before the date when the same becomes due, Lessee shall pay to Lessor (in addition to and not in lieu of other rights of Lessor) a late charge equal to the lesser of five percent of such delinquent amount or the maximum permitted by law. Such late charge shall be payable by Lessee upon demand by Lessor and shall be deemed Rent hereunder. Lessee acknowledges and agrees that the late charge (i) does not constitute interest, (ii) is an estimate of the costs Lessor will incur as a result of the late payment and (iii) is reasonable in amount.

6. TERM; SURVIVAL. such The term of each Lease shall be comprised of an

Interim Term and an Initial Term, followed by any Renewal or Extended Terms. With respect to each Item of Equipment and/or Progress Payments covered thereby, the Interim Term shall commence upon the earlier of the first Progress payment or the date such Item of Equipment is delivered to Lessee and shall terminate on the Rent Commencement Date, as specified in the next sentence, after Lessee has delivered to Lessor the Certificate of Acceptance, in accordance with Sections 4 and 6 hereof (the "Interim Term"). The initial term ("Initial Term") of this Lease with respect to an Equipment Schedule shall commence on the Rent Commencement Date and shall terminate at the end of the period specified in the Equipment Schedule. The Rent Commencement Date shall fall on the first day of the month the immediately following the date on which the last acceptance of Equipment subject to such Equipment Schedule has occurred. With respect to Equipment Schedule, any renewal term of this Lease (individually, a "Renewal Term"), as contemplated hereby, shall commence immediately upon the expiration of the Initial Term or any prior Renewal Term, as the case may be, and unless earlier terminated as provided herein, shall expire on the date on which the final payment of Rent is due and paid hereunder. All indemnification obligations of Lessee hereunder shall survive the expiration, cancellation or other termination of the Term thereof. With respect to an Item of Equipment, a renewal term of this Lease (individually, a Renewal Term"), as contemplated hereby, shall commence immediately upon the expiration of the Initial Term or any prior Renewal Term, as the case may be, and unless earlier terminated as provided herein, shall expire on the date on which the final payment of Rent is due and paid hereunder. All obligations of Lessee hereunder shall survive the expiration, cancellation or other termination of the Term hereof.

6.1 INTERIM TERM CLOSING DATE. (a) For each Equipment Schedule, the Interim Term shall terminate and the Initial Term shall commence on the Rent Commencement Date. On or before the Rent commence Date, the following documents shall be duly executed and delivered by the parties thereto and shall each be in full force and effect;

- (1) an Equipment Schedule, together with all addenda thereto;
- (2) a Certificate of Acceptance, delivered by Lessee to Lessor on the Rent Commencement Date, with respect to the Equipment specified in the applicable equipment schedule;
- (3) all other documents reasonably contemplated hereby; and
- (4) all other documents as may be reasonably requested by Lessor.

(b) Subject to the terms and conditions hereof, on the Rent Commencement Date, Lessee shall pay Interim Rent to Lessor.

(c) On the Rent Commencement Date, the Rent (other than the Interim Rent which is paid as required above) due and owing by Lessee under the Lease shall commence and be payable as set forth in the Equipment Schedule.

6.2 TITLE. On the Rent Commencement Date, after giving effect to the transactions contemplated hereby, Lessor shall have good and marketable title to



the Equipment, free and clear of all Liens.

6.3 FAILURE TO CLOSE. If the Interim Term has not been completed by the Outside Closing Date, then and in such case, on the Outside Closing Date:

(a) Lessee promptly shall purchase from Lessor all of the Equipment at a purchase price (to be paid by cash, certified check or wire transfer of funds) in an amount equal to the aggregate amount of all costs, disbursements and expenses incurred or committed to be incurred by Lessor with respect thereto; and

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(b) In addition to such purchase price, Lessee shall pay to lessor all amounts due Lessor under Section 5 (a) of this Master Equipment Lease Agreement, accrued up to and including the date the Equipment is purchased by Lessee. Upon receipt of the foregoing purchase price by Lessor from Lessee in consideration thereof, Lessor shall convey, by quitclaim instrument of transfer, without recourse of any nature or kind whatsoever, Lessor's entire right, title and interest in and to such Equipment.

7. LOCATION; INSPECTION; LABELS. Equipment shall be delivered to the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent. Lessor shall have the right to enter upon the premises where the Equipment is located and inspect the Equipment at any reasonable time. At Lessor's request, Lessee shall (a) affix permanent labels in a prominent place on Equipment stating Lessor's interest in the Equipment, (b) keep such labels in good repair and condition and (c) provide Lessor with an inventory listing of all labeled Equipment within thirty days of such request.

8. NON-CANCELABLE LEASE. THE LEASE IS A NET LEASE. LESSEE'S OBLIGATION TO PAY RENT AND PERFORM ITS OBLIGATIONS HEREUNDER ARE ABSOLUTE, IRREVOCABLE AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY RIGHT OF SET OFF, COUNTERCLAIM, DEDUCTION, DEFENSE OR OTHER RIGHT LESSEE MAY HAVE AGAINST THE SUPPLIER, LESSOR OR ANY OTHER PARTY; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL PRECLUDE LESSEE FROM ASSERTING ANY SUCH CLAIMS IN A SEPARATE CAUSE OF ACTION. LESSEE UNDERSTANDS AND AGREES THAT NEITHER THE SUPPLIER NOR ANY SALES REPRESENTATIVE OR OTHER AGENT OF THE SUPPLIER IS AN AGENT OF LESSOR OR IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THE LEASE, AND NO SUCH WAIVER OR ALTERATION SHALL VARY THE TERMS OF THE LEASE. LESSOR IS NEITHER A SUPPLIER NOR A LICENSOR, AND LESSOR IS NOT RESPONSIBLE FOR REPAIRS, SERVICE OR DEFECTS IN EQUIPMENT. LESSEE AGREES NOT TO ASSERT AGAINST LESSOR ANY CLAIMS OR DEFENSES LESSEE MAY HAVE WITH RESPECT TO EQUIPMENT, AND UNDERSTANDS THAT IT MAY ASSERT SUCH CLAIMS AGAINST SUPPLIER OR LICENSOR.

9. USE; ALTERATIONS. (a) Lessee shall use Equipment lawfully and only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall comply with all applicable laws. Lessee shall immediately notify Lessor, in writing, upon becoming aware of any existing or threatened investigation, claim or action by any governmental authority that

could adversely affect Equipment, Lessor or the Lease. Lessee, at its own expense, shall make such alterations, additions or modifications (each, a "Required Alteration") to Equipment as may be required from time to time to meet the requirements of applicable law or a governmental body. All such Required Alterations shall immediately, and without further act, be deemed to constitute "Equipment" and be fully subject to the Lease as if originally leased hereunder. Except as otherwise permitted herein, Lessee shall not make any alterations to Equipment without Lessor's prior written consent.

(b) Lessee, at its own expense, may from time to time add or install upgrades or attachments (each an "Upgrade") to Equipment during the Term; provided, that such Upgrades (i) are readily removable without causing material damage to Equipment, (ii) do not materially adversely affect the Fair Market Sale Value, the Fair Market Rental Value, residual value, productive capacity, utility or remaining useful life of Equipment and (iii) do not cause Equipment to become "limited use property" within the meaning of Revenue Procedure 2001-28, 2001-19 I.R.B. 1156 (or such other successor tax provision), as of the date of installation of such Upgrade. Any such Upgrades shall remain the property of Lessee. Upon the expiration or earlier cancellation of the Lease, Lessee may, at its option, remove any such Upgrades and, upon such removal, shall restore Equipment to the condition required hereunder.

(c) If any Equipment covered under any Lease becomes attached or affixed to, or used in connection with, Equipment covered under another Lease hereunder (a "Related Lease"), Lessee agrees that, if Lessee elects to exercise a purchase or renewal option under any such Lease, or if Lessee elects to return Equipment under any such Lease, then Lessor, in its sole discretion, may require that all Equipment leased under all Related Leases be similarly disposed of.

10. REPAIRS AND MAINTENANCE. Lessee, at Lessee's cost and expense, shall (a) keep Equipment in good repair, good operating condition, appearance and working order in compliance with the manufacturer's recommendations and Lessee's standard practices (but in no event less than industry practices), (b) take all actions necessary to ensure that the Equipment will be eligible, at the expiration of the Initial Term and any Renewal Term, for a standard, full service maintenance contract with the manufacturer, (c) properly service all components of Equipment following the manufacturer's written operating and servicing procedures, (d) enter into and keep in full force and effect during the Term a maintenance agreement covering the Equipment with the manufacturer, or a manufacturer-approved maintenance organization, to maintain, service and repair such Equipment, as otherwise required herein (but an alternate source of maintenance may be used by Lessee with Lessor's prior written consent), (e) upon Lessor's request furnish Lessor with an executed copy of any such maintenance agreement, and (f) replace any part of the Equipment that becomes unfit or unavailable for use from any cause (whether or not such replacement is covered by a maintenance agreement) with a replacement part that, in Lessor's sole opinion, is of the same manufacture, value, remaining useful life and utility as the replaced part immediately preceding the replacement, assuming that such replaced part was in the condition required by this Lease. Replacement parts shall be free and clear of all liens, constitute Equipment and be fully subject to this Lease as if originally leased hereunder.

11. RETURN OF EQUIPMENT. Except as otherwise provided in a Schedule, upon the expiration or earlier termination or cancellation of each Lease, Lessee, at its sole expense, shall de-install, assemble, pack properly and in accordance with the manufacturer's instructions (under the supervision of persons acceptable to Lessor), including labeling of all components and hardware, and return to Lessor all, but not less than all, Equipment by delivering the Equipment to and unloading it at such location or with such carrier as Lessor shall specify. Lessee agrees that (a) Equipment, when returned, shall be in the condition required by the Lease, and (b) upon Lessor's request, Lessee will obtain from the manufacturer (or other maintenance service provider previously approved by Lessor or manufacturer) a certificate stating that such Equipment qualifies for full maintenance service at the standard rates and terms then in effect. If, in the opinion of Lessor, any Equipment fails to meet the standards set forth above, Lessee agrees to pay, on demand, all costs and expenses incurred in connection with the repairing and restoring of such Equipment so as to meet such standards. If Lessee fails to return any Equipment as required hereunder, then all of Lessee's obligations under the Lease (including, without limitation, Lessee's obligation to pay Rent for the Equipment at the rental then applicable under the Lease) shall continue in full force and effect until such Equipment shall have been returned in the condition required under the Lease.

12. SUBLEASE AND ASSIGNMENT. (a) LESSEE SHALL NOT, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, (I) SELL, ASSIGN, TRANSFER, PLEDGE, HYPOTHECATE OR OTHERWISE DISPOSE OF THE LEASE, EQUIPMENT OR ANY INTEREST THEREIN, (II) RENT, SUBLET OR LEND EQUIPMENT TO ANYONE OTHER THAN LESSEE OR LESSEE'S AFFILIATES OR (III) PERMIT EQUIPMENT TO BE USED BY ANYONE OTHER THAN THEIR RESPECTIVE QUALIFIED EMPLOYEES.

(b) Lessor, at any time with or without notice to Lessee, may sell, transfer, assign and/or grant a security interest in all or any part of Lessor's interest in each Lease or any Equipment (each, a "Lessor Transfer"). Any purchaser, transferee, assignee or secured party of Lessor (each a "Lessor Assignee") shall have and may exercise all of Lessor's rights hereunder with respect to the items to which any such Lessor Transfer relates, and Lessee shall not assert against any Lessor Assignee any claim that Lessee may have against Lessor provided, Lessee may assert any such claim in a separate action against Lessor. Upon written notice of a Lessor Transfer, Lessee shall promptly acknowledge in writing its obligations under the applicable Lease, shall comply with the written directions or demands of any Lessor Assignee and shall make all payments due under the applicable Schedule as directed in writing by the Lessor Assignee. Following such Lessor Transfer, the term "Lessor" shall be deemed to include or refer to each Lessor Assignee. Lessee will provide reasonable assistance to Lessor to complete any transaction contemplated by this subsection (b).

(c) Subject to the restriction on assignment contained in subsection (a), the Lease Documents shall inure to the benefit of, and are binding upon, the successors and assigns of the parties thereto including, without limitation, each person who becomes bound thereto as a "new debtor" as set forth in the Uniform Commercial Code ("UCC").

13. RISK OF LOSS; DAMAGE TO EQUIPMENT. (a) Lessee shall bear the entire risk of loss (including without limitation, theft, destruction, disappearance of or damage to Equipment from any cause whatsoever), whether or not insured against, during the Term of each Lease and until Equipment is returned to Lessor in accordance with Section 11 hereof. No such loss shall relieve Lessee of the obligation to pay Rent or of any other obligation under the related Lease.

(b) If any Equipment is lost, stolen or damaged beyond repair, or confiscated, seized or the use and/or title thereof requisitioned to someone other than Lessee (any such event being a "Total Loss"), Lessee shall immediately notify Lessor of such event. On the next Rent Payment Date following the occurrence of the Total Loss, at Lessor's option, Lessee shall either (i) replace Equipment with equipment that, in Lessor's sole opinion, is of the same manufacture, value, remaining useful life and utility as the replaced Equipment immediately preceding the replacement, assuming such replaced Equipment was in the condition required by the Lease or (ii) pay to Lessor the sum of (A) all Rent due and owing under the Lease with respect to such Equipment (at the time of such payment)

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plus (B) the Stipulated Loss Value for the Equipment as of that Rent Payment Date. If Lessor elects to allow replacement of Equipment as set forth in subsection (i) above, Lessee shall cause the Supplier of such replacement equipment to deliver to Lessor a bill of sale for such equipment free and clear of all liens and encumbrances, and such replacement equipment shall become Equipment subject to the applicable Lease. Upon Lessor's receipt of the bill of sale or the amounts specified in subsection (ii) above, Lessee shall be entitled to Lessor's interest in the replaced Equipment, in its then condition and location, "as is" and "where is," without any warranties, express or implied.

14. INSURANCE. (a) Lessee shall, at all times during the Term of each Lease and at Lessee's own cost and expense, maintain (i) insurance against all risks of physical loss or damage to Equipment for the greater of the full replacement value or the Stipulated Loss Value thereof, and (ii) commercial general liability insurance (including blanket contractual liability coverage and products liability coverage) for personal and bodily injury and property damage per occurrence as stated in each Schedule.

(b) All insurance policies required hereunder shall include terms, and be with insurance carriers, reasonably satisfactory to Lessor. Without limiting the generality of the foregoing, each policy shall include the following terms: (i) all physical damage insurance shall name Lessor and its assigns as loss payee, (ii) all liability insurance shall name Lessor and its assigns as additional insureds, (iii) the policy shall not be canceled or altered without at least thirty days advance notice to Lessor and its assigns and (iv) coverage shall not be invalidated against Lessor or its assigns because of any violation of any condition or warranty contained in any policy or application therefor by Lessee or by reason of any action or inaction of Lessee. On each anniversary of

the Rent Commencement Date during the term hereof, Lessee shall deliver to Lessor certificates or other proof of insurance satisfactory to Lessor evidencing the coverage required by this section.

15. TAXES. Lessee shall pay when due and shall indemnify and hold harmless Lessor (on an after-tax basis) from and against any and all taxes, fees, withholdings, levies, imposts, duties, assessments and charges of every kind and nature whatsoever (including any related penalties and interest) imposed upon or against Lessor, any Lessor Assignee, Lessee or any Equipment by any governmental authority in connection with, arising out of or otherwise related to Equipment, the Lease Documents or the Rent and receipts or earnings arising therefrom and excepting only all Federal, state and local taxes on or measured by Lessor's net income. Whenever each Lease expires, terminates or is canceled as to any Equipment, Lessee, upon written request by Lessor, shall advance to Lessor the amount estimated by Lessor to be the taxes on said Equipment that are not yet payable, but for which Lessee is responsible. At Lessee's request, Lessor shall provide Lessee with Lessor's method of computation of any such estimated taxes.

16. LESSOR'S RIGHT TO PERFORM FOR LESSEE. If Lessee fails to perform any of its obligations contained herein, Lessor may (but shall not be obligated to) itself perform such obligations, and the amount of the reasonable costs and expenses of Lessor incurred in connection with such performance, together with interest on such amount at the lesser of eighteen percent per annum or the maximum permitted by law, shall be payable by Lessee to Lessor upon demand. No such performance by Lessor shall be deemed a waiver of any rights or remedies of Lessor or be deemed to cure the default of Lessee hereunder.

17. PERSONAL PROPERTY; LIENS. Lessee represents and warrants that the Equipment is, and shall at all times remain, fully removable personal property notwithstanding any affixation or attachment to real property or improvements. Except as relates to the security interest in favor of Bank of America, N.A., as administrative agent arising pursuant to that certain Security Agreement dated April 24, 2003 between Bank of America, N.A., as administrative agent and Ashworth, Inc. Lessee shall at all times keep Equipment free and clear from all liens and encumbrances of any kind or nature other than those created by, through or under Lessor. If, in violation of the foregoing covenant, any prohibited lien or encumbrance shall attach to Equipment, Lessee shall (a) give Lessor immediate written notice thereof and (b) promptly, at Lessee's sole cost and expense, take such action as may be necessary to discharge such lien.

18. DEFAULT; REMEDIES. (a) As used herein, the term "Default" means any of the following events: (i) Lessee fails to pay any Rent or other amount due under a Lease within ten days after the same shall have become due; (ii) Lessee or any Guarantor becomes insolvent or makes an assignment for the benefit of its creditors; (iii) a receiver, trustee, conservator or liquidator of Lessee or any Guarantor of all or a substantial part of Lessee's or such Guarantor's assets is appointed with or without the application or consent of Lessee or such Guarantor, respectively; (iv) a petition is filed by or against Lessee or any Guarantor under any bankruptcy, insolvency or similar law; (v) Lessee or any Guarantor violates or fails to perform any provision of either this Lease or any other loan, lease or credit agreement or any acquisition or purchase agreement

with Lessor or any other party; (vi) any warranty or representation made by Lessee herein proves to have been false or misleading when made; (vii) there is a material adverse change in Lessee's or any Guarantor's financial condition since the related Rent Commencement Date; (viii) Lessee or any Guarantor merges or consolidates with any other corporation or entity, or sells, leases or disposes of all or substantially all of its assets without the prior written consent of Lessor; (ix) Lessee or any Guarantor, if an individual, dies or, if not an individual, is dissolved; or (x) any filing by Lessee of a termination statement for any financing statement filed by Lessor while any obligations are owed by Lessee under a Lease. A Default with respect to any Lease shall, at Lessor's option, constitute a Default for all Leases and any other agreements between Lessor and Lessee.

(b) Upon the occurrence of a Default, Lessor may do one or more of the following as Lessor in its sole discretion shall elect: (i) proceed by appropriate court action to enforce performance by Lessee of the related Lease or to recover damages, including incidental and consequential damages, for the breach thereof; (ii) cause Lessee, at its expense, promptly to assemble Equipment and return the same to Lessor at such place as Lessor may designate in writing; (iii) by notice in writing to Lessee, cancel or terminate the related Lease, without prejudice to any other remedies hereunder; (iv) enter upon the premises of Lessee or other premises where any Equipment may be located and, without notice to Lessee and with or without legal process, take possession of and remove all or any such Equipment without liability to Lessee by reason of such entry or taking possession, and without such action constituting a cancellation or termination of the Lease unless Lessor notifies Lessee in writing to such effect; (v) by written notice to Lessee specifying a payment date (the "Remedy Date"), demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the Remedy Date, as liquidated damages for loss of a bargain and not as a penalty, a sum equal to (A) any unpaid Rent due prior to the Remedy Date (together with interest on such amount at the lesser of eighteen percent per annum or the maximum permitted by law from the Remedy Date to the date of actual payment), plus (B) the Stipulated Loss Value; (vi) sell Equipment at public or private sale or hold, keep idle or lease to others any Equipment; and (vii) exercise any other right or remedy available to Lessor under applicable law. In addition, Lessee shall be liable for all reasonable costs, expenses, and legal fees incurred in enforcing Lessor's rights under the Lease, before or in connection with litigation or arbitration and for any deficiency in the disposition of the Equipment. Lessor's recovery hereunder shall in no event exceed the maximum recovery permitted by law.

(c) If a Default occurs, Lessee hereby agrees that ten days' prior notice to Lessee of any public sale or of the time after which a private sale may be negotiated shall be conclusively deemed reasonable notice. None of Lessor's rights or remedies hereunder are intended to be exclusive, but each shall be cumulative and in addition to any other right or remedy referred to hereunder or otherwise available to Lessor at law or in equity, and no express or implied waiver by Lessor of any Default shall constitute a waiver of any other Default or a waiver of any of Lessor's rights.

(d) With respect to any exercise by Lessor of its right to recover

and/or dispose of any Equipment or any other collateral securing Lessee's obligations under any Lease, Lessee acknowledges and agrees that Lessor may dispose of Equipment on an "AS-IS, WHERE-IS" basis, in compliance with applicable law and with such preparation (if any) as Lessor determines to be commercially reasonable. Lessee shall remain liable for any deficiency in the disposition of the Equipment, and any purchase by Lessor of the Equipment may be through a credit to some or all of Lessee's obligations under any Lease.

19. NOTICES. All notices and other communications hereunder shall be in writing and shall be transmitted by hand, overnight courier or certified mail (return receipt requested), US postage prepaid. Such notices and other communications shall be addressed to the respective party at the address set forth above or at such other address as any party may, from time to time, designate by notice duly given in accordance with this section. Such notices and other communications shall be effective upon the earlier of receipt or three days after mailing if mailed in accordance with the terms of this section.

20. INDEMNITY. Lessee shall indemnify and hold harmless Lessor and each Lessor Assignee, on an after tax basis, from and against any and all liabilities, causes of action, claims, suits, penalties, damages, losses, costs or expenses (including attorneys' fees), obligations, liabilities, demands and judgments (collectively, a "Liability") arising out of or in any way related to: (a) Lessee's failure to perform any covenant under the Lease Documents, (b) the untruth of any representation or warranty made by Lessee under the Lease Documents, (c) the order, manufacture, purchase, ownership, selection, acceptance, rejection, possession, rental, sublease, operation, use, maintenance, control, loss, damage, destruction, removal, storage, surrender, sale, condition, delivery, return or other disposition of or any other matter relating to any Equipment or (d) injury to persons, property or the environment including any Liability based on strict liability in tort, negligence, breach of warranties or Lessee's failure to comply fully with applicable law or regulatory requirements; provided, that the foregoing indemnity shall not extend to any Liability to the extent resulting solely from the gross negligence or willful misconduct of Lessor.

21. FEES AND EXPENSES. Lessee shall pay all reasonable costs and expenses of Lessor, including, without limitation, attorneys' and other professional fees, returned check or non-sufficient funds charges, the fees of any collection agencies and appraisers and all other costs and expenses related to any sale or

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re-lease of Equipment (including storage costs) incurred by Lessor in enforcing any of the terms, conditions or provisions hereof or in protecting Lessor's rights hereunder.

22. FINANCIAL AND OTHER DATA. During the Term hereof, Lessee shall furnish Lessor (a) as soon as available, and in any event within one hundred twenty days after the last day of each fiscal year, financial statements of Lessee and each Guarantor and (b) from time to time as Lessor may reasonably request, other

financial reports, information or data (including federal and state income tax returns) and quarterly or interim financial statements of Lessee and each Guarantor. All such information shall be audited (or if audited information is not available, compiled or reviewed) by an independent certified public accountant.

23. REPRESENTATIONS AND WARRANTIES OF LESSEE. Lessee represents and warrants that (a) the address stated above is the chief place of business and chief executive office of Lessee, Lessee's full and accurate legal name is as stated above and the information describing Lessee set forth under Lessee's signature below is accurate in all respects; (b) Lessee is either (i) an individual and the sole proprietor of its business which is located at the address set forth above and doing business only under the names disclosed herein, or (ii) a limited liability company or corporation duly organized and validly existing in good standing under the laws of the state of its organization or incorporation, or (iii) a general or limited partnership organized under the laws of the state of its principal place of business set forth in the Lease or the Lease Documents and the individual general partner executing this Master Lease has the full authority to represent, sign for and bind Lessee in all respects; (c) the execution, delivery and performance of this Master Lease and all related instruments and documents (i) have been duly authorized by all necessary action on the part of Lessee, (ii) do not require the approval of any stockholder, partner, manager, trustee, or holder of any obligations of Lessee except such as have been duly obtained, and (iii) do not and will not contravene any law, governmental rule, regulation or order now binding on Lessee, or contravene the operating agreement, charter or by-laws of Lessee, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under, any indenture, mortgage, contract or other agreement to which Lessee is a party or by which it or its property is bound; (d) the Lease Documents when entered into will constitute legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their terms; (e) there are no actions or proceedings to which Lessee is a party, and there are no other threatened actions or proceedings of which Lessee has knowledge, before any governmental authority which, either individually or in the aggregate, would adversely affect the financial condition of Lessee or the ability of Lessee to perform its obligations hereunder; (f) Lessee is not in default under any obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent under any lease agreement which, either individually or in the aggregate, would adversely affect the financial condition of Lessee or the ability of Lessee to perform its obligations hereunder and (g) the financial statements of Lessee (copies of which have been furnished to Lessor) have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present Lessee's financial condition and the results of its operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no material adverse change in such conditions or operations.

24. LESSEE'S WAIVERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES (A) ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC AND (B) ANY RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE TO RECOVER INCIDENTAL OR CONSEQUENTIAL DAMAGES FROM LESSOR FOR ANY BREACH OF



WARRANTY OR FOR ANY OTHER REASON OR TO SET OFF OR DEDUCT ALL OR ANY PART OF ANY CLAIMED DAMAGES RESULTING FROM LESSOR'S DEFAULT, IF ANY, UNDER THE RELATED LEASE.

25. UCC FILINGS. LESSEE HEREBY AUTHORIZES LESSOR TO AUTHENTICATE AND/OR FILE ALL UCC FINANCING STATEMENTS AND AMENDMENTS THAT IN LESSOR'S SOLE DISCRETION ARE DEEMED NECESSARY OR PROPER TO SECURE OR PROTECT LESSOR'S INTEREST IN EQUIPMENT IN ALL APPLICABLE JURISDICTIONS. Lessee hereby ratifies, to the extent permitted by law, all that Lessor shall lawfully and in good faith do or cause to be done by reason of and in compliance with this section. Lessee shall provide written notice to Lessor at least thirty days prior to any contemplated change in Lessee's name, jurisdiction of organization or chief executive office address.

26. MISCELLANEOUS; GOVERNING LAW. Time is of the essence with respect to each Lease. Any failure of Lessor to require strict performance by Lessee or any waiver by Lessor of any provision of a Lease shall not be construed as a consent or waiver of any provision of such Lease. The Lease will be binding upon Lessor only if executed by a duly authorized officer or representative of Lessor at Lessor's address set forth above. An authorized signer of Lessee shall execute the Lease Documents on Lessee's behalf. Any provision of a Lease that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof. Captions are intended for convenience or reference only, and shall not be construed to define, limit or describe the scope or intent of any provisions hereof. Lessee will promptly execute or otherwise authenticate and deliver to Lessor such further documents, instruments, assurances and other records and take such further action as Lessor may reasonably request in order to carry out the intent and purpose of this agreement and each Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder and thereunder. EACH LEASE IS BEING DELIVERED IN, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAWS. LESSOR AND LESSEE HEREBY EACH WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO EQUIPMENT OR EACH LEASE. THIS WAIVER IS MADE KNOWINGLY, WILLINGLY AND VOLUNTARILY BY LESSOR AND LESSEE WHO EACH ACKNOWLEDGE THAT NO REPRESENTATIONS HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO EACH LEASE AND THE LEASE DOCUMENTS.

27. QUIET ENJOYMENT. So long as no Default has occurred and is continuing, Lessee shall peaceably hold and quietly enjoy Equipment without interruption by Lessor or any person or entity claiming through Lessor.

28. ENTIRE AGREEMENT. Each Lease, together with all other Lease Documents, constitutes the entire understanding or agreement between Lessor and Lessee with respect to the leasing of Equipment covered thereby, and there is no understanding or agreement, oral or written, which is not set forth herein or therein. No Lease may be amended except by a writing signed by Lessor and Lessee. Delivery of an executed Lease Document by facsimile or any other

reliable means shall be deemed as effective for all purposes as delivery of a manually executed copy. Lessee shall provide to Lessor the manually executed original of any Lease Document delivered by facsimile within five days.

29. MORE THAN ONE LESSEE. If more than one person or entity executes the Lease Documents as "Lessee," the obligations of "Lessee" shall be deemed joint and several and all references to "Lessee" shall apply both individually and jointly.

30. DISCLAIMER OF WARRANTIES. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, TITLE TO, DESIGN, OPERATION, CONDITION, OR QUALITY OF THE MATERIAL OR WORKMANSHIP IN, EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), LACK OF INFRINGEMENT ON ANY PATENT, TRADEMARK OR COPYRIGHT, AND LESSOR HEREBY DISCLAIMS ALL SUCH WARRANTIES; IT BEING UNDERSTOOD THAT THE EQUIPMENT IS LEASED TO LESSEE "AS IS, WHERE IS." LESSEE HAS MADE THE SELECTION OF THE EQUIPMENT FROM THE SUPPLIER BASED ON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON ANY STATEMENTS OR REPRESENTATIONS MADE BY LESSOR. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES. LESSOR HEREBY ASSIGNS TO LESSEE FOR THE TERM OF EACH LEASE WITHOUT RECOURSE AND FOR SO LONG AS LESSEE IS NOT IN DEFAULT UNDER ANY LEASE, ANY WARRANTY PROVIDED BY THE SUPPLIER.

31. EXECUTION IN COUNTERPARTS. The Master Lease and all other Lease Documents may be executed in several counterparts and by different parties hereto or thereto on separate counterparts, each of which when so executed or otherwise authenticated and delivered shall be an original, but all such counterparts shall together consist of one and the same instrument; except, to the extent that any Lease Documents constitute chattel paper under the UCC, no security interest therein may be created other than through the transfer or possession of the original counterpart, which shall be identified by Lessor.

32. SOFTWARE. To the extent that any Schedule relates to Software:

(a) Lessee acknowledges that (i) all Software is furnished to Lessee under one or more separate License Agreements governing Lessee's rights thereto, (ii) the Lease does not convey any explicit or implicit license for the use of Software or other intellectual property relating to Equipment, and (iii) Lessor does not hold title to any Software and Lessee is or shall be the licensee of such Software directly from the Licensor.

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(b) Lessee shall not amend, modify or otherwise alter, any term or condition of any License Agreement, including, without limitation, any such term or condition related to (i) payment of any amounts due thereunder, (ii) any liabilities or obligations of Lessee as licensee, (iii) the payment of late fees on past due amounts, or (iv) the payment of applicable taxes; provided, however, that this provision shall not apply to those terms or conditions relating solely to amounts owing to Licensor which have not been financed under the Lease.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Master Lease as of the day and year first above written.

LESSOR:

LESSEE:

KEY EQUIPMENT FINANCE, A DIVISION OF  
KEY CORPORATE CAPITAL INC.

ASHWORTH, INC.

By: /s/ Michael A. Wood

X /s/ Peter Case

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NAME: Michael A. Wood

Name: Peter Case

TITLE: Regional Business Unit Manager

Title: VP of Finance

Organization Type: Corporation

Jurisdiction of: Delaware

AMENDMENT 01  
TO MASTER EQUIPMENT LEASE AGREEMENT

-----  
THIS AMENDMENT dated as of June 23, 2003 amends that certain Master Equipment Lease Agreement dated as of June 23, 2003 between KEY EQUIPMENT FINANCE, A DIVISION OF KEY CORPORATE CAPITAL INC., as Lessor, and ASHWORTH, INC., as Lessee (the "Master Lease"). Unless otherwise specified herein, all capitalized terms shall have the meanings ascribed to them in the Master Lease.

Lessor and Lessee hereby agree that the Master Lease will be amended, with respect to each Equipment Schedule executed in connection therewith, to add the following section:

1. For so long as the Security Agreement dated as of April 24, 2003 between BANK OF AMERICA, N.A. AS ADMINISTRATIVE AGENT ("Bank") and Lessee (as the same has been or may be amended, the "Loan Agreement", shall be in effect, Lessee agrees that, within thirty (30) days of its submission to the Bank, it shall provide Lessor with a copy of its quarterly compliance certificate issued in connection with the Loan Agreement. To the extent such Loan Agreement is terminated, cancelled or expires, but is replaced by a different loan agreement or credit facility, Lessee shall provide copies of such compliance certificates required to be delivered under such successor loan agreement or credit facility, if any.

2. In the event that an Event of Default has occurred under the Loan Agreement, Lessee hereby covenants and agrees that it shall provide notice to Lessor of such Default within twenty (20) days of either its occurrence or after the applicable cure periods, if any.

EXCEPT AS MODIFIED HEREBY, ALL OF THE TERMS, COVENANTS AND CONDITIONS OF THE MASTER LEASE SHALL REMAIN IN FULL FORCE AND EFFECT AND ARE IN ALL RESPECTS

HEREBY RATIFIED AND AFFIRMED.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date first above written.

LESSOR:

KEY EQUIPMENT FINANCE,  
A DIVISION OF KEY CORPORATE CAPITAL INC.

By: /s/ Michael A. Wood  
-----

Name: Michael A. Wood  
Title: Regional Business Unit Manager

LESSEE:

ASHWORTH, INC.

X /s/ Peter Case  
-----

Name: Peter Case  
Title: VP of Finance

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C#: 136825  
L#: 136826

(KEY GRAPHIC)

ASSIGNMENT OF PURCHASE AGREEMENT  
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ASHWORTH, INC. ("Assignor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, conveys, transfers, pledges and assigns unto KEY EQUIPMENT FINANCE, A DIVISION OF KEY CORPORATE CAPITAL INC., ("Assignee"), all of Assignor's right, title and interest in and to the Purchase Agreement (the "Purchase Agreement") dated as of April 10, 2003 between Assignor and GARTNER STORAGE & SORTER SYSTEMS (the "Supplier"), pursuant to which Assignor has agreed to purchase goods and other property (the "Equipment") from the Supplier (including, but not limited to, the right to become direct purchaser of the Equipment thereunder), together with all Assignor's right, title and interest in and to the Equipment, for the purpose of securing the payment and performance of the Secured Obligations (as defined in the Progress Payment Loan and Security Agreement dated as of June 23, 2003 between Assignee, as lessor, and Assignor, as lessee).

Assignor covenants and agrees that it shall not modify, amend, terminate or release the Purchase Agreement without the prior written consent of Assignee.

Assignor and Assignee mutually agree that the acceptance by Assignee of this Assignment of Purchase Agreement, with all of the rights, powers, privileges and authority so created, shall not be deemed or construed to obligate Assignee to assume any obligation or responsibility of Assignor under the Purchase Agreement, nor shall Assignee be liable for the nonperformance of any such obligation or responsibility.

THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF NEW YORK AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

IN WITNESS WHEREOF, Assignor has caused this Assignment of Purchase Agreement to be executed as of June 23, 2003.

ASSIGNOR:

ASHWORTH, INC.

X /s/ Peter Case

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Name: Peter Case

Title: VP of Finance

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C#: 136825

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(KEY GRAPHIC)

CERTIFICATE OF AUTHORITY

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I, Halina Balyz do hereby certify as follows:  
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1. I am the duly elected, qualified and serving Corporate Secretary of ASHWORTH, INC., a Delaware corporation (the "Company") and I [ ] am [ X ] am not the Company's sole elected corporate officer and the sole owner of the Company.
2. The execution, delivery and performance of all documents relating to the financing of certain items of personal property described in a Master Equipment Lease Agreement, any Security Agreement or Guaranty and various equipment schedules, promissory notes and other documents (including master security agreements, progress payment documents, assignment and assumption agreements and bills of sale) from time to time entered into with respect thereto between Key Equipment Finance, a Division of Key Corporate Capital Inc. ("KEF") and Company (collectively, the "Transaction Documents") have been duly authorized by the Company and have been or will be duly and validly executed and delivered on behalf of Company if executed by the persons whose names, titles and signatures appear below (the "Authorized Signatories"); the Authorized Signatories have been duly elected, qualified and are acting officers and/or authorized signatories of the Company holding the offices indicated and that the signatures appearing opposite their names are the genuine signatures of such Authorized Signatories.
3. The Company's execution, delivery and performance of the Transaction Documents (i) have been duly authorized by all necessary action on the part of the Company, (ii) do not conflict with or result in the breach of

any provisions of, as applicable, the Certificate of Incorporation, Articles of Incorporation or By-laws; Operating Agreement; Partnership Agreement or Trust Agreement of the Company, or of any agreement or other instrument to which the Company is a party or by which it is bound, or, to its knowledge, any applicable law, judgment, order, writ, injunction decree, rule or regulation of any court, administrative agency or other governmental authority or constitute a default under any thereof and (iii) do not require the consent, approval or other authorization of or by any court, administrative agency or other authority or person.

4. KEF and its successors and assigns are authorized to rely on this Certificate of Authority until 45 days after the receipt by KEF of written notice from an Authorized Officer of Company expressly advising KEF that this Certificate of Authority may no longer be relied upon. Any such notice shall be mailed or hand delivered to Key Equipment Finance, 66 South Pearl Street, Albany, NY 12207.

<TABLE>

<CAPTION>

<S>	NAME OF SIGNATORY	SIGNATURE	TITLE OF SIGNATORY
		<C>	<C>
	Peter Case	/s/ Peter Case	VP of Finance
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this corporation this 23 day of June, 2003.

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By: /s/ Halina Balys

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[SEAL]

Name: Halina Balys

Title: Corporate Secretary

I, Randall L. Herrel, Sr., Chairman, President and Chief Executive Officer of Ashworth, Inc., certify that:

1. I have reviewed this report on Form 10-Q of Ashworth, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the

design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 12, 2003

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/s/ Randall L. Herrel, Sr.

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Randall L. Herrel, Sr.

Chairman, President and Chief Executive Officer



I, Terence W. Tsang, Executive Vice President, Chief Operating Officer and Chief Financial Officer of Ashworth, Inc., certify that:

1. I have reviewed this report on Form 10-Q of Ashworth, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the

design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 12, 2003

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/s/ Terence W. Tsang

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Terence W. Tsang

Executive Vice President, Chief Operating Officer,  
Chief Financial Officer and Treasurer

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Randall L. Herrel, Sr., in my capacity as Chairman, President and Chief Executive Officer of Ashworth, Inc. (the "Registrant"), do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. the Quarterly Report of the Registrant, on Form 10-Q for the quarter ended July 31, 2003 to which this certification is attached as an exhibit (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: September 12, 2003  
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/s/ Randall L. Herrel, Sr.  
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Randall L. Herrel, Sr.,  
Chairman, President and Chief Executive Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Terence W. Tsang, in my capacity as Executive Vice-President, Chief Operating Officer, Chief Financial Officer and Treasurer of Ashworth, Inc. (the "Registrant"), do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. the Quarterly Report of the Registrant, on Form 10-Q for the quarter ended July 31, 2003 to which this certification is attached as an exhibit (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: September 12, 2003  
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/s/ Terence W. Tsang  
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Terence W. Tsang  
Executive Vice-President, Chief Operating Officer,  
Chief Financial Officer and Treasurer