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

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FORM 10-Q

(Mark One)

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

For the quarterly period ended March 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: 0-32259

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**invisalign**

**Align Technology, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

94-3267295  
(I.R.S. Employer  
Identification Number)

881 Martin Avenue  
Santa Clara, California 95050  
(Address of principal executive offices) (Zip Code)

(408) 470-1000  
(Registrant's telephone number, 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 by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares outstanding of the registrant's Common Stock, \$0.001 par value, as of April 30, 2003 was 57,849,270.

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[Table of Contents](#)

ALIGN TECHNOLOGY, INC.

INDEX

<a href="#">PART I—FINANCIAL INFORMATION</a>	3
ITEM 1. <a href="#">FINANCIAL STATEMENTS (UNAUDITED)</a>	3
<a href="#">CONDENSED CONSOLIDATED BALANCE SHEETS</a>	3
<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS</a>	4
<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS</a>	5
<a href="#">NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</a>	6
ITEM 2. <a href="#">MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</a>	12
ITEM 3. <a href="#">QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</a>	29
ITEM 4. <a href="#">CONTROLS AND PROCEDURES</a>	30
<a href="#">PART II—OTHER INFORMATION</a>	30
ITEM 1. <a href="#">LEGAL PROCEEDINGS</a>	30
ITEM 2. <a href="#">CHANGES IN SECURITIES AND USE OF PROCEEDS</a>	32
ITEM 3. <a href="#">DEFAULTS UPON SENIOR SECURITIES</a>	32
ITEM 4. <a href="#">SUBMISSION OF MATTER TO A VOTE OF SECURITY HOLDERS</a>	32
ITEM 5. <a href="#">OTHER INFORMATION</a>	32
ITEM 6. <a href="#">EXHIBITS AND REPORTS ON FORM 8-K</a>	32
<a href="#">SIGNATURES</a>	33
<a href="#">CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002</a>	34

## PART I—FINANCIAL INFORMATION

## ITEM 1 FINANCIAL STATEMENTS

ALIGN TECHNOLOGY, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(in thousands)  
(unaudited)

	March 31, 2003	December 31, 2002
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 33,997	\$ 35,552
Restricted cash	3,265	3,261
Marketable securities, short-term	—	2,693
Accounts receivable, net	17,078	16,766
Inventories, net	1,762	1,533
Deferred costs	1,031	1,139
Other current assets	6,650	4,888
Total current assets	63,783	65,832
Property and equipment, net	23,787	25,078
Other assets	2,093	1,946
Total assets	\$ 89,663	\$ 92,856
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 2,078	\$ 1,974
Other accrued liabilities	13,199	12,112
Deferred revenue	2,493	2,130
Current portion of equipment-based term loan	1,667	1,667
Current portion of capital lease obligations	470	516
Total current liabilities	19,907	18,399
Equipment-based term loan, net of current portion	2,917	3,333
Capital lease obligations, net of current portion	425	504
Total liabilities	23,249	22,236
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock: \$0.0001 par value; Authorized: 5,000 shares; Issued and outstanding: none	—	—
Common stock: : \$0.0001 par value; Authorized: 200,000 shares ; Issued: 57,871 and 57,740 shares at March 31, 2003 and December 31, 2002, respectively; Outstanding: 57,831 and 57,700 shares at March 31, 2003 and December 31, 2002, respectively	6	6
Additional paid-in capital	365,117	364,691
Deferred compensation	(14,938)	(19,005)
Notes receivable from stockholders	(792)	(892)
Accumulated other comprehensive income	—	17
Accumulated deficit	(282,979)	(274,197)
Total stockholders' equity	66,414	70,620
Total liabilities and stockholders' equity	\$ 89,663	\$ 92,856

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(in thousands, except per share data)**  
**(unaudited)**

	Three Months Ended March 31,	
	2003	2002
Revenues	\$24,735	\$ 17,141
Cost of revenues	11,810	12,505
Gross profit	12,925	4,636
Operating expenses:		
Sales and marketing	10,630	10,327
General and administrative	7,894	9,871
Research and development	2,985	3,346
Total operating expenses	21,509	23,544
Loss from operations	(8,584)	(18,908)
Interest and other income (expense), net	(198)	406
Net loss	\$ (8,782)	\$ (18,502)
Net loss per share, basic and diluted	\$ (0.15)	\$ (0.40)
Shares used in computing net loss per share, basic and diluted	57,189	46,152

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(unaudited)

	Three Months Ended March 31,	
	2003	2002
<b>Cash Flows from Operating Activities:</b>		
Net loss	\$ (8,782)	\$ (18,502)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,297	2,913
Amortization of deferred stock compensation	3,641	4,827
Compensation expense for accelerated vesting of stock options	370	118
Stock-based compensation expense	252	653
Loss on retirement, disposal and impairment of fixed assets	145	3
Allowance for doubtful accounts	(4)	(1)
Non-cash interest (income) expense on notes receivable from stockholders	(20)	6
Non-cash accretion on marketable securities	12	25
Changes in operating assets and liabilities:		
Accounts receivable	(308)	(2,916)
Inventories	(229)	95
Deferred costs	108	167
Other current assets	(1,745)	(731)
Accounts payable	(434)	(1,900)
Other accrued liabilities	1,087	333
Deferred revenue	363	227
Net cash used in operating activities	<u>(3,247)</u>	<u>(14,683)</u>
<b>Cash Flows from Investing Activities:</b>		
Purchase of property and equipment	(630)	(2,713)
Restricted cash	(4)	387
Maturities of marketable securities	2,669	2,100
Other assets	(147)	69
Net cash provided by (used in) investing activities	<u>1,888</u>	<u>(157)</u>
<b>Cash Flows from Financing Activities:</b>		
Proceeds from issuance of common stock	225	556
Proceeds from payment on stockholders' notes receivable	120	195
Repurchase of common stock	—	(175)
Payments on debt obligations	(541)	(117)
Net cash (used in) provided by financing activities	<u>(196)</u>	<u>459</u>
Net decrease in cash and cash equivalents	(1,555)	(14,381)
Cash and cash equivalents at beginning of period	35,552	50,550
Cash and cash equivalents at end of period	<u>\$33,997</u>	<u>\$ 36,169</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

ALIGN TECHNOLOGY, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

**1. Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements have been prepared by Align Technology, Inc. (the "Company" or "Align") in accordance with the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted in accordance with such rules and regulations. In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, necessary to present fairly the financial position of the Company as of March 31, 2003 and December 31, 2002, and its results of operations and cash flows for the 3 months ended March 31, 2003 and 2002. These unaudited condensed consolidated financial statements should be read in conjunction with the annual audited consolidated financial statements and notes as of and for the year ended December 31, 2002 included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 27, 2003.

The results of operations for the three months ended March 31, 2003 are not necessarily indicative of the results that may be expected for the year ending December 31, 2003 or any other interim period, and the Company makes no representations related thereto.

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

*Reclassifications*

In 2002, the Company made the decision to reclassify certain costs and expenses within the consolidated statements of operations. These reclassifications do not change net loss. The nature of the change centers around the classification of order administration expenses, bank processing fees and information technology costs among cost categories. The Company has historically expensed these costs in general and administrative expenses and other expense in the consolidated statements of operations. Current and future presentation of these expenses will be to allocate them to the functions utilizing the services.

*Certain risks and uncertainties*

The Company's operating results depend to a significant extent on the Company's ability to market and develop its products. The life cycles of the Company's products are difficult to estimate due in part to the effect of future product enhancements and competition. The inability of the Company to successfully develop and market its products as a result of competition or other factors would have a material adverse effect on the Company's business, financial condition and results of operations.

Financial instruments which potentially expose the Company to concentrations of credit risk consist primarily of cash equivalents and accounts receivable. The Company invests excess cash primarily in money market funds of major financial institutions, commercial paper and notes. The Company provides credit to customers in the normal course of business. Collateral is not required for accounts receivable, but ongoing

## [Table of Contents](#)

evaluations of customers' credit worthiness are performed. The Company maintains reserves for potential credit losses and such losses have been within management's expectations. No individual customer accounted for 10% or more of the Company's accounts receivable at March 31, 2003 or at December 31, 2002, or net revenues for the first quarter of 2003 or 2002.

The Food and Drug Administration ("FDA") regulates the design, manufacture, distribution, preclinical and clinical study, clearance and approval of medical devices. Products developed by the Company may require approvals or clearances from the FDA or other international regulatory agencies prior to commercialized sales. There can be no assurance that the Company's products will receive any of the required approvals or clearances. If the Company were to be denied approval or clearance or such approval were to be delayed, it may have a material adverse impact on the Company.

The Company has manufacturing operations located outside the United States of America. The Company currently relies on its manufacturing facilities in Costa Rica to create virtual treatment plans with the assistance of sophisticated software. In addition, the Company relies on a third party manufacturer in Mexico to fabricate Aligners and to ship the completed product to the Company's customers. The Company's reliance on international operations exposes it to related risks and uncertainties, including: difficulties in staffing and managing international operations, controlling quality of manufacture, political, social and economic instability, interruptions and limitations in telecommunication services, product and/or material transportation delays or disruption, trade restrictions and changes in tariffs, import and export license requirements and restrictions, fluctuations in currency exchange rates and potential adverse tax consequences. If any of these risks materialize, the Company's international manufacturing operations, as well as its operating results, may be harmed.

The Company receives certain of its components from sole suppliers. Additionally, the Company relies on a limited number of hardware manufacturers. The inability of any supplier or manufacturer to fulfill supply requirements of the Company could materially impact future operating results.

## 2. Balance Sheet Components

Inventories comprise (in thousands):

	March 31, 2003	December 31, 2002
Raw materials	\$ 865	\$ 931
Work in process	323	285
Finished goods	574	317
	<u>\$ 1,762</u>	<u>\$ 1,533</u>

Other current assets comprise (in thousands):

	March 31, 2003	December 31, 2002
Prepaid expenses	\$ 4,735	\$ 2,689
Other	1,915	2,199
	<u>\$ 6,650</u>	<u>\$ 4,888</u>

## [Table of Contents](#)

### 3. Net Loss Per Share

Basic and diluted net loss per share is computed by dividing the net loss for the period by the weighted average number of shares of common stock outstanding during the period less weighted average shares subject to repurchase. The calculation of diluted net loss per share excludes potential shares of common stock if their effect is anti-dilutive. Potential common stock consists of common stock subject to repurchase and incremental common shares issuable upon the exercise of stock options.

The following is a reconciliation of the numerator (net loss) and the denominator (number of shares) used in the basic and diluted net loss per share calculations (in thousands, except per share data):

	Three Months Ended March 31,	
	2003	2002
Net loss	\$ (8,782)	\$ (18,502)
Basic and diluted:		
Weighted-average common shares outstanding	57,766	47,946
Less: Weighted-average shares subject to repurchase	(577)	(1,794)
Weighted-average shares used in basic and diluted net loss per share	57,189	46,152
Net loss per share, basic and diluted	\$ (0.15)	\$ (0.40)

The following table sets forth potential shares of common stock that are not included in the diluted net loss per share available to common stockholders because to do so would be anti-dilutive for the periods indicated (in thousands):

	Three Months Ended March 31,	
	2003	2002
Options to purchase common stock	7,351	5,731
Common stock subject to repurchase	513	1,560
	7,864	7,291

### 4. Stock-based compensation

The Company accounts for stock-based employee compensation using the intrinsic value method under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations and complies with the disclosure requirements of SFAS 148. The following table illustrates the effect on net loss and net loss per common share if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation:

	Three Months Ended March 31,	
	2003	2002
(in thousands, except per share amounts)		
Net loss, as reported	\$ (8,782)	\$ (18,502)
Add: Stock-based employee compensation expense included in reported net loss	3,898	4,954
Deduct: Total stock-based employee compensation determined under fair value based method for all awards	(5,874)	(7,680)
Pro forma net loss	\$ (10,758)	\$ (21,228)
Basic and diluted net loss per common share:		
As reported	\$ (0.15)	\$ (0.40)
Pro forma	\$ (0.19)	\$ (0.46)



## [Table of Contents](#)

Such pro forma disclosure may not be representative of future compensation cost because options vest over several years and additional grants are anticipated to be made each year.

The fair value of each grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions:

	Three Months Ended March 31,	
	2003	2002
Risk free interest rate	3.03	3.03
Expected life	5 years	5 years
Expected volatility	119.8%	119.8%

## 5. Commitments and Contingencies

### *Long-term Obligations*

As of March 31, 2003, future minimum long-term obligations are as follows (in thousands):

	2003	2004	2005	2006	2007	Thereafter
Operating leases	\$ 2,677	\$ 4,219	\$ 2,869	\$ 1,221	\$ 688	\$ 597
Capital lease obligations	434	348	187	—	—	—
Equipment-based term loan	1,250	1,667	1,666	—	—	—
<b>Total</b>	<b>\$ 4,361</b>	<b>\$ 6,234</b>	<b>\$ 4,722</b>	<b>\$ 1,221</b>	<b>\$ 688</b>	<b>\$ 597</b>

### *Product Warranty*

The following table reflects the change in the Company's warranty accrual during the quarter ended March 31, 2003 (in thousands):

Warranty accrual, December 31, 2002	\$ 514
Charged to cost and expenses	316
Actual warranty expenses	(301)
<b>Warranty accrual, March 31, 2003</b>	<b>\$ 529</b>

### *Legal Proceedings*

In January 2003, Ormco Corporation filed suit against us in the United States District Court for the Central District, Orange County Division, asserting infringement of U.S. Patent Nos. 5,447,432, 5,683,243 and 6,244,861. The complaint seeks unspecified monetary damages and injunctive relief. In February 2003, we answered the complaint and asserted counterclaims seeking a declaration by the Court of invalidity and non-infringement of the asserted patents. In addition, we counterclaimed for infringement of our U.S. Patent No. 6,398,548, seeking unspecified monetary damages and injunctive relief. Ormco filed a reply to our counterclaims on March 10, 2003 and asserted counterclaims against us seeking a declaration by the Court of invalidity and non-infringement of U.S. Patent No. 6,398,548. We responded to Ormco's counterclaims on

## Table of Contents

April 2, 2003. The Court issued an Order setting a Scheduling Conference on June 30, 2003, at which a case schedule is expected to be set.

Three years ago, Ormco filed suit against the Company asserting infringement of U.S. Patent Nos. 5,447,432 and 5,683,243. In June 2000, the parties entered into a Stipulation of Dismissal with Ormco. Ormco agreed for a period of at least two years not to pursue litigation with respect to these patents, except as set forth below. Further, Ormco agreed that it would not bring any patent action against the Company for at least a period of one year with respect to any as yet unissued patents. If Ormco were to bring such an action concerning as yet unissued patents after one year, the Stipulation of Dismissal would allow Ormco to include in such an action claims involving U.S. Patent Nos. 5,447,432 and 5,683,243. In August 2001, Ormco notified the Company of the issuance of U.S. Patent No. 6,244,861 and offered a license for this patent. The Company did not take a license to this patent. Five months after Ormco's notification, it filed the lawsuit that is currently pending.

The claims in U.S. Patent Nos. 5,447,432 and 5,683,243 relate to methods and systems for forming and manufacturing custom orthodontic appliances. The relevant claims are limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The claims in U.S. Patent No. 6,244,861 are more generic claims relating to the methods and systems for forming and manufacturing custom orthodontic appliances. Based on the disclosure in the patent, however, the relevant claims also appear to be limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The treatment plan simulation developed in the Company's facilities determines the final positioning of a patient's teeth but is not based on a derived or ideal dental archform of the patient.

The claims in the Company's U.S. Patent No. 6,398,548 relate to methods and systems for incrementally moving teeth using a series of appliances designed to be placed successively on the patient's teeth.

The Company strongly believes that Ormco's claims of infringement lack merit and that the Company's counterclaim of infringement will be successful. However, the outcome of a lawsuit is inherently unpredictable. Should the Company's technology be found to infringe any one of Ormco's asserted patents, the Company would have to seek a license from Ormco, which license might not be available on commercially reasonable terms or at all. In that event, the Company could be subject to damages or an injunction which could materially adversely affect its business.

On April 9, 2002, the Company exercised its right to terminate an Exclusive Marketing Agreement dated October 18, 2001 with Discus Dental Impressions, Inc. (the "Marketing Agreement") pursuant to the express terms of the Marketing Agreement and the Company issued a press release reporting this termination. On or about May 14, 2002, the Company received a demand for arbitration submitted by Discus Dental with the American Arbitration Association in San Jose, California. In its arbitration demand, Discus Dental seeks damages of approximately \$30 million, including commissions and bonus payments it claims it would have received under the Marketing Agreement as well as other expenses, attorneys' fees and injunctive relief to prevent the Company from selling Invisalign to dentists in the U.S. and Canada. Prior to terminating the Marketing Agreement, the Company conducted a thorough review of the Marketing Agreement and each party's performance thereunder. Based upon that review of the factual and legal issues, the Company denies all claims made by Discus Dental in its demand and contend that such claims are entirely without merit. In addition, on or about June 13, 2002 the Company submitted a counter-claim against Discus Dental in the

## [Table of Contents](#)

arbitration seeking damages of approximately \$40 million arising out of our claims for misrepresentation, breach of confidentiality provisions and unfair competition, among others. The three arbitrators have been selected, and the parties are exchanging and reviewing documents in response to document demands. The matter is currently set for arbitration on August 18, 2003.

In February 2001, the Company was named in a class action lawsuit filed on behalf of all licensed dentists (excluding orthodontists) in the U.S. The complaint alleged that the Company's policy of selling Invisalign exclusively to orthodontists violated the U.S. antitrust laws. Without admitting any wrongdoing, the company entered into a Stipulation and Agreement of Settlement with the plaintiffs to settle the lawsuit. The total legal and other settlement costs that the Company agreed to pay were approximately \$400,000 in legal fees. In November 2001, the Court approved the Stipulation and Agreement of Settlement. Pursuant to the settlement, the Company trained and certified approximately 5,000 general practitioner dentists in fiscal 2002, and have undertaken to certify 5,000 general practitioner dentists each year over the next three years.

The Company is subject to claims and assessments from time to time in the ordinary course of business. Management does not believe that any such matters, individually or in the aggregate, will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

### **6. Accumulated Other Comprehensive Income**

Accumulated other comprehensive income consists entirely of the change in unrealized gains or losses on available-for-sale securities at December 31, 2002. There were no available-for-sale securities or unrealized gains or losses at March 31, 2003.

### **7. Recent Accounting Pronouncements**

In November 2002, the Emerging Issues Task Force ("EITF") reached a consensus on EITF 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables", which addresses how to account for arrangements that may involve the delivery or performance of multiple products, services, and/or rights to use assets. The final consensus of EITF 00-21 will be applicable to agreements entered into in fiscal periods beginning after June 15, 2003, with early adoption permitted. Additionally, companies will be permitted to apply the consensus guidance to all existing arrangements as the cumulative effect of a change in accounting principle in accordance with APB Opinion No. 20, "Accounting Changes." Management is currently evaluating the effect that the adoption of EITF 00-21 will have on the Company's consolidated financial statements.

In January 2003, the FASB issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51." FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. FIN 46 is effective immediately for all new variable interest entities created or acquired after January 31, 2003. For variable interest entities created or acquired prior to February 1, 2003, the provisions of FIN 46 must be applied for the first interim or annual period beginning after June 15, 2003. The Company does not expect the adoption of FIN 46 to have a material impact on its consolidated financial statements.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

*The following contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates" and similar expressions identify such forward-looking statements. These forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those indicated in the forward-looking statements. Factors which could cause actual results to differ materially include those set forth in the following discussion, and, in particular, the risks discussed below under the subheading "Risk Factors" and in other documents we file with the Securities and Exchange Commission. Unless required by law, the Company undertakes no obligation to update publicly any forward-looking statements.*

**Overview**

Since our inception in April 1997, we have been engaged in the design, manufacture and marketing of Invisalign, a proprietary system for treating malocclusion, or the misalignment of teeth.

Invisalign has two components: ClinCheck™ and Aligners. ClinCheck™ is an Internet-based application that allows dental professionals to simulate treatment, in three dimensions, by modeling two-week stages of tooth movement. Aligners are thin, clear plastic, removable dental appliances that are manufactured in a series to correspond to each two-week stage of the ClinCheck™ simulation. Aligners are customized to perform the treatment prescribed for an individual patient by dental professionals using ClinCheck™.

Two of our key production steps are performed in operations located outside of the U.S. At our facility in Costa Rica, technicians use a sophisticated, internally developed computer-modeling program to prepare electronic treatment plans, which are transmitted electronically back to the U.S. These electronic files form the basis of our ClinCheck™ product and are used to manufacture Aligner molds. A third party manufacturer in Mexico fabricates Aligners and ships the completed products to our customers.

In July 2002, we announced a plan to streamline worldwide operations. The plan included closing our facilities in Pakistan and the United Arab Emirates, or U.A.E. We transitioned the operations performed at these facilities to the United States and Costa Rica. We discontinued operations at our Pakistan and U.A.E. facilities in October and December 2002, respectively. We concluded the remainder of indirect operational activities related to the Costa Rica transition in January 2003 and incurred approximately \$0.5 million related to residual facility closure activities. We will cease non-operational closing activities in Pakistan when the land is disposed of at that location and in the U.A.E. when the necessary statutory filings have been completed.

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed probable. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of Aligners, are deferred and recognized as related revenues are earned, i.e. upon shipment of the Aligners. We offer our dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and is deferred until the

## [Table of Contents](#)

earlier of shipment of the case refinement or case expiration. In cases where the dental professional does not purchase the case refinements in advance, case refinement revenues are recognized when the new Aligners are shipped.

Service revenues earned under agreements with third parties for training of dental professionals and staff for Invisalign are recorded as the services are performed. Charges to third parties are based on negotiated rates which are intended to approximate a mark-up on our anticipated costs.

We estimate and record a provision for amounts of estimated losses on sales, if any, in the period such sales occur.

We have incurred significant operating losses and negative operating cash flows since inception and have not yet achieved profitability. As of March 31, 2003, we had an accumulated deficit of approximately \$283.0 million.

We expect to expend significant capital to continue to build our national brand, expand our dental professional channel, automate our manufacturing processes and develop both product and process technology. In November 2002, we completed a private placement of common stock to a group of investors led by existing shareholders, raising \$18.1 million, net of issuance costs. In December 2002, we secured an accounts receivable-based revolving line of credit of up to \$10 million and an equipment-based term loan of \$5.0 million, which was accessed in December 2002. As of March 31, 2003, we had not utilized the accounts receivable-based revolving line of credit. Accessing the accounts receivable-based revolving line of credit is restricted based on qualifying accounts receivable and compliance with certain loan covenants. However, there can be no assurance that such financing will be adequate for us to avoid reducing operating expenses by, including but not limited to, reducing planned capital expenditures relating to enhancing our manufacturing process and reducing worldwide staff.

### **Results of Operations**

*Revenues.* Revenues for the quarter ended March 31, 2003 increased 44% to \$24.7 million compared to \$17.1 million for the quarter ended March 31, 2002. Revenues derived from the sale of Invisalign were \$23.4 million for the quarter ended March 31, 2003 compared to Invisalign revenues of \$14.7 million for the quarter ended March 31, 2002. The increase in Invisalign revenues was primarily the result of an increase in the domestic orthodontic channel of \$3.2 million, the domestic general practitioner channel of \$3.8 million and the international channel of \$1.7 million for the quarter ended March 31, 2003 over the quarter ended March 31, 2002. Growth in the domestic general practitioner channel resulted primarily from the expanded base of certified clinicians. Growth in the domestic orthodontic and international channels resulted primarily from increased utilization of Invisalign by the existing pool of certified clinicians. All channels benefited from Invisalign marketing promotion programs conducted during the fourth quarter of fiscal 2002 and into the first quarter ended March 31, 2003. The balance of our revenues represented sales of training and ancillary products of \$1.3 million for the quarter ended March 31, 2003 and \$2.4 million for the quarter ended March 31, 2002.

*Cost of revenues.* Cost of revenues for the quarter ended March 31, 2003 was \$11.8 million compared to \$12.5 million for the quarter ended March 31, 2002. Cost of revenues include the salaries for staff involved in production, the cost of materials and packaging, shipping costs, depreciation on the capital equipment used in the production process, under/over absorbed manufacturing capacity, training costs and the cost of

## [Table of Contents](#)

facilities. Also included in cost of revenues are stock-based compensation expenses of \$0.7 million and \$1.0 million in the first quarters of 2003 and 2002, respectively. Gross margin for the quarter ended March 31, 2003 was \$12.9 million or 52% of revenue, compared to a gross margin of \$4.6 million or 27% of revenue for the quarter ended March 31, 2002. The higher gross margin in the first quarter of 2003 as compared to the first quarter of 2002 reflects the benefits of cost reduction initiatives in our manufacturing process and improved fixed cost absorption related to increasing volumes. We believe that gross margins for the remainder of fiscal 2003 will approximate or slightly improve as compared to gross margins for the quarter ended March 31, 2003.

*Sales and marketing.* Sales and marketing expenses for the quarter ended March 31, 2003 were \$10.6 million compared to \$10.3 million for the quarter ended March 31, 2002. Sales and marketing expenses include sales force compensation, together with expenses for professional marketing programs, conducting workshops and market surveys, advertising and attending dental professional trade shows. Included in sales and marketing expenses are stock-based compensation expenses of \$0.6 million and \$0.8 million in the first quarters of 2003 and 2002, respectively. The increase in sales and marketing expenses for the first quarter of 2003 as compared to the first quarter of 2002 resulted primarily from an increase in spending of \$1.2 million related to incremental headcount in our North American sales force and \$1.2 million in incremental media and advertisement costs in the U.S., partially offset by a decrease in spending of \$2.1 million related to a reduction in our international sales and marketing force.

*General and administrative.* General and administrative expenses for the quarter ended March 31, 2003 were \$7.9 million compared to \$9.9 million for the quarter ended March 31, 2002. General and administrative expenses include salaries for administrative personnel, outside consulting services, legal expenses and general corporate expenses. Included in general and administrative expenses are stock-based compensation expenses of \$2.2 million for the first quarter of 2003, which decreased from \$2.9 million for the first quarter of 2002. The decrease in general and administrative expenses for the first quarter of 2003 over the first quarter of 2002 resulted primarily from decreases in salaries of \$0.9 million and \$0.8 million related to a reduction in the North American and international administrative work forces, respectively. The decrease in general and administrative expenses for the first quarter of 2003 over the first quarter of 2002 also resulted from a decrease in outside services internationally of \$0.3 million, partially offset by an increase of \$0.4 million in outside consultant costs in North America. Offsetting the decreases in general and administrative expenses quarter over quarter were \$0.5 million of restructuring charges for the first quarter of 2003, representing the remainder of our indirect operational activities related to the transition of operations from the U.A.E. and Pakistan to Costa Rica. We do not expect to incur restructuring charges during the quarter ending June 30, 2003.

*Research and development.* Research and development expenses for the quarter ended March 31, 2003 were \$3.0 million compared to \$3.3 million for the quarter ended March 31, 2002. Research and development expenses include the costs associated with software engineering, the cost of designing, developing and testing our products and the conducting of both clinical and post-marketing trials. We expense our research and development costs as they are incurred. Research and development expenses included \$0.7 million of stock-based compensation for the first quarter of 2003, which decreased from \$0.9 million of stock-based compensation expense for the first quarter of 2002.

*Interest and other income (expense), net.* Interest and other income (expense) was (\$0.2) million for the first quarter of 2003 compared to \$0.4 million for the first quarter of 2002. Interest income decreased in the first quarter of 2003 compared to the first quarter of 2002 by \$0.2 million primarily due to the decrease in our cash, cash equivalent and marketable securities balances. Interest expense increased \$0.1 million for the

## [Table of Contents](#)

first quarter of 2003 compared to the first quarter of 2002 primarily from the interest on the equipment-based term loan.

*Stock-based compensation.* In connection with the grant of stock options to employees and non-employees prior to 2001, we recorded deferred stock-based compensation as a component of stockholders' equity. Deferred stock-based compensation for options granted to employees is the difference between the fair value of our common stock on the date such options were granted and their exercise price. For stock options granted to non-employees, the fair value of the options, estimated using the Black-Scholes valuation model, is initially recorded on the date of grant. As the non-employee options become exercisable, we revalue the remaining unvested options, with the change in fair value from period to period represented as a change in the deferred compensation charge. This stock-based compensation is amortized as charges to operations over the vesting periods of the options. For the quarters ended March 31, 2003 and 2002, we recorded amortization of deferred compensation of \$3.6 million and \$4.8 million, respectively. Additionally, we recorded expenses of \$0.3 and \$0.7 million for the quarters ended March 31, 2003 and 2002, respectively, related to options granted to non-employees.

We have accelerated the vesting of options to several employees in connection with severance packages. This acceleration was accounted for as a charge to the consolidated statements of operations. We recorded charges of \$0.4 million and \$0.1 million for the quarters ended March 31, 2003 and 2002, respectively. Each respective charge is equal to the intrinsic value difference between the exercise price of the accelerated options and the fair value of the common stock on the date of acceleration.

### **Liquidity and Capital Resources**

Historically, we have funded our operations with the proceeds from the sale of our common and preferred stock, equipment leases and bridge loans. As of March 31, 2003, we had \$34.0 million of cash and cash equivalents, restricted cash of \$3.3 million and an accumulated deficit of \$283.0 million.

Net cash used in operating activities totaled \$3.2 million and \$14.7 million for the quarters ended March 31, 2003 and 2002, respectively. Net cash used by operating activities consisted primarily of operating losses and increases in other current assets for the first quarter of 2003 and increases in accounts receivable and payable balances for the first quarter of 2002.

Net cash provided by investing activities totaled \$1.9 million for the quarter ended March 31, 2003 and net cash used in investing activities totaled \$0.2 million for the quarter ended March 31, 2002. For the quarters ended March 31, 2003 and 2002, net cash provided by (used in) investing activities resulted primarily from the maturity of marketable securities, which was partially offset by purchases of property and equipment.

Net cash used in financing activities was \$0.2 million for the quarter ended March 31, 2003 and net cash provided by financing activities was \$0.5 million for the quarter ended March 31, 2002. For the quarter ended March 31, 2003, net cash used in financing activities consisted primarily of payments on capital leases and equipment-based term loan payments, partially offset by proceeds from the issuance of common stock. For the quarter ended March 31, 2002, net cash provided by financing activities consisted primarily of proceeds from the issuance of common stock, partially offset by payments on capital leases.

We expect that our operating expenses will increase commensurate with an overall increase in the level of our business activity, including increased sales and the related costs of products sold, our consumer

## [Table of Contents](#)

advertising campaign and dental professional marketing efforts, continuing efforts to automate our manufacturing processes, increases in the size of our sales force and dental professional training staff, continued international sales and marketing efforts, and development and improvements to our product. In addition, we may use cash to fund acquisitions of complementary businesses or technologies. Our capital requirements depend on market acceptance of our products and our ability to market, sell and support our products on a worldwide basis. We believe that our current cash and cash equivalents will be sufficient to fund our operations for at least the next 12 months. If we are unable to generate adequate operating cash flows, we may need to seek additional sources of capital through equity or debt financing, collaborative or other arrangements with other companies, bank financing and other sources in order to realize our objectives and to continue our operations. There can be no assurance that we will be able to obtain additional debt or equity financing on terms acceptable to us, or at all. If adequate funds are not available, we could be required to delay establishing a national brand, building manufacturing infrastructure and developing our product and process technology, or to reduce our expenditures in general. Accordingly, the failure to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on our business, results of operations and financial condition.

### Long-term Obligations

As of March 31, 2003, future minimum long-term obligations are as follows (in thousands):

	2003	2004	2005	2006	2007	Thereafter
Operating leases	\$ 2,677	\$ 4,219	\$ 2,869	\$ 1,221	\$ 688	\$ 597
Capital lease obligations	434	348	187	—	—	—
Equipment-based term loan	1,250	1,667	1,666	—	—	—
<b>Total</b>	<b>\$ 4,361</b>	<b>\$ 6,234</b>	<b>\$ 4,722</b>	<b>\$ 1,221</b>	<b>\$ 688</b>	<b>\$ 597</b>

### Critical Accounting Policies

Management's discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of financial statements requires our management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenue and expenses and disclosures at the date of the financial statements. We evaluate our estimates on an on-going basis, including those related to revenue recognition, accounts receivable, legal contingencies and income taxes. We use authoritative pronouncements, historical experience and other assumptions as the basis for making estimates. Actual results could differ from those estimates.

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

#### *Revenue Recognition*

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed probable. As of July 2002, Clincheck™ fees are no longer received up-front, but are billed together



## [Table of Contents](#)

with the Aligner fees at the time the Aligners are shipped and are recognized at that time. We offer our dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and is deferred until either upon shipment of the case refinement or upon case expiration. In cases where the dental professional does not purchase the case refinement in advance, case refinement revenues are recognized when the new Aligners are shipped. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of Aligners, are deferred and recognized as related revenues are earned. Ancillary product sales and services consist primarily of training.

Service revenues earned under agreements with third parties for training of dental professionals and staff for Invisalign are recorded as the services are performed. Charges to third parties are based on negotiated rates which are intended to approximate a mark-up on our anticipated costs.

We estimate and record a provision for amounts of estimated losses on sales, if any, in the period such sales occur.

### *Warranty Expense*

We accrue for estimated warranty costs upon shipment of products. Actual warranty costs incurred have not materially differed from those accrued. Our warranty policy is effective for shipped products which are considered defective or fail to meet the product specifications. Provisions for discounts and rebates to customers are provided for in the same period that the related product sales are recorded based upon historical discounts and rebates.

### *Allowance for Doubtful Accounts*

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make payments. We periodically review these estimated allowances, including an analysis of the customers' payment history and information regarding the customers' creditworthiness known to us. If the financial condition of any of our customers were to deteriorate, resulting in their inability to make payments, an additional allowance may be required.

### *Accounting for long-lived assets*

We assess the impairment of long-lived assets periodically in accordance with the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." An impairment review is performed whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors considered important which could trigger an impairment review include, but are not limited to, significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, significant negative industry or economic trends, a significant decline in the stock price for a sustained period, and the market capitalization relative to net book value.

### *Legal contingencies*

We are currently involved in certain legal proceedings as discussed in Note 5 to our condensed consolidated financial statements. Because of uncertainties related to both the potential amount and range of loss from pending litigation, management is unable to make a reasonable estimate of the liability that could

## [Table of Contents](#)

result if there is an unfavorable outcome in these legal proceedings. As additional information becomes available, we will assess the potential liability related to this pending litigation and revise our estimates accordingly. Revisions of our estimates of such potential liability could materially impact our results of operations and financial condition.

### *Deferred Tax Valuation Allowance*

We have established a full valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. Deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using the enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

### **Recent Accounting Pronouncements**

In November 2002, the Emerging Issues Task Force (“EITF”) reached consensus on EITF 00-21, “Accounting for Revenue Arrangements with Multiple Deliverables”, which addresses how to account for arrangements that may involve the delivery or performance of multiple products, services, and/or rights to use assets. The final consensus of EITF 00-21 will be applicable to agreements entered into in fiscal periods beginning after June 15, 2003, with early adoption permitted. Additionally, companies will be permitted to apply the consensus guidance to all existing arrangements as the cumulative effect of a change in accounting principle in accordance with APB Opinion No. 20, “Accounting Changes.” Management is currently evaluating the effect that the adoption of EITF 00-21 will have on the Company’s consolidated financial statements.

In January 2003, the FASB issued FASB Interpretation No. 46 (“FIN 46”), “Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51.” FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. FIN 46 is effective immediately for all new variable interest entities created or acquired after January 31, 2003. For variable interest entities created or acquired prior to February 1, 2003, the provisions of FIN 46 must be applied for the first interim or annual period beginning after June 15, 2003. The Company does not expect the adoption of FIN 46 to have a material impact on its consolidated financial statements.

## RISK FACTORS

*The statements contained below and elsewhere in this report on Form 10-Q that are not purely historical are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, including, without limitation, statements regarding our expectations, hopes, beliefs, anticipations, commitments, intentions and strategies regarding the future. Actual results could differ from those projected in any forward-looking statements for the reasons, among others, detailed below. The fact that some of the risk factors may be the same or similar to our past filings means only that the risks are present in multiple periods. We believe that many of the risks detailed here are part of doing business in the industry in which we compete and will likely be present in all periods reported. The fact that certain risks are characteristic to the industry does not lessen the significance of the risk. The forward-looking statements are made as of the date of this Quarterly Report on Form 10-Q, and we assume no obligation to update the forward-looking statements or to update the reasons why actual results could differ from those projected in the forward-looking statements.*

**Since we have a history of losses and negative operating cash flows, we expect our operating losses to continue throughout all or a portion of fiscal 2003 and we may not achieve or maintain profitability in the future.**

We have incurred significant operating losses, negative operating cash flows and have not yet achieved profitability. From inception through July 2000, we spent significant funds on organizational and start-up activities, recruiting key managers and employees, developing Invisalign and developing our manufacturing and customer support resources. We also spent significant funds on clinical trials and training programs to train dental professionals in the use of Invisalign.

We continue to incur significant operating expenses to:

- develop new software and increase the automation of our manufacturing processes;
- execute our consumer advertising campaign and dental professional marketing efforts;
- increase the size of our sales force and dental professional training staff;
- execute clinical research and education plans;
- develop technological improvements to our products;
- continue our international sales and marketing efforts; and
- undertake quality assurance and improvement initiatives.

As a result, we will need to increase our revenue significantly, while controlling our expenses, to achieve profitability. It is possible that we will not achieve profitability in the near future, if at all, and even if we do achieve profitability, we may not sustain or increase profitability in the future.

**We may be unable to raise additional capital if it should be necessary, which could harm our ability to compete.**

## [Table of Contents](#)

We have incurred significant operating losses and negative operating cash flows since inception and have not yet achieved profitability. As of March 31, 2003, we had an accumulated deficit of approximately \$283.0 million.

We expect to expend significant capital to continue to build our national brand, expand our dental professional channels, automate our manufacturing processes and develop both product and process technology. In November 2002, we completed a private placement of common stock to a group of investors led by existing shareholders, raising \$18.1 million, net of issuance costs. In December 2002, we secured an accounts receivable-based revolving line of credit of up to \$10.0 million and a equipment-based term loan of \$5.0 million, which was accessed in December 2002. As of March 31, 2003, we had not utilized the accounts receivable-based revolving line of credit. Accessing the accounts receivable based-revolving line of credit is restricted based on qualifying accounts receivable and compliance with customary loan covenants. There can be no assurance that such financing will be adequate for us to avoid reducing operating expenses by, including but not limited to, reducing planned capital expenditures relating to enhancing our manufacturing process and reducing worldwide staff.

### **We have a limited operating history and expect our future financial results to fluctuate significantly, which may cause our stock price to decline.**

We were incorporated in April 1997 and began sales of Invisalign in July 1999. Thus, we have a limited operating history, which makes an evaluation of our future prospects and your investment in our stock difficult. In addition, we expect our future quarterly and annual operating results to fluctuate as we increase our commercial sales. These fluctuations could cause our stock price to decline. Some of the factors that could cause our operating results to fluctuate include:

- changes in the timing of product orders;
- unanticipated delays in production caused by insufficient capacity, any disruptions in the manufacturing process or the introduction of new production processes;
- inaccurate forecasting of revenue, production and other operating costs; and
- the development and marketing of directly competitive products by potential competitors.

To respond to these and other factors, we may need to make business decisions that could adversely affect our operating results. Most of our expenses, such as employee compensation and lease payment obligations, are relatively fixed in the short term. Moreover, our expense levels are based, in part, on our expectations regarding future revenue levels. As a result, if our revenue for a particular period falls below our expectations, we may be unable to adjust spending quickly enough to offset any unexpected shortfall in revenue growth or any decrease in revenue levels.

Due to these and other factors, we believe that quarter-to-quarter comparisons of our operating results may not be meaningful. You should not rely on our results for any one quarter as an indication of our future performance.

**We have limited product offerings, and if demand for Invisalign declines or fails to develop as we expect, our revenue will decline.**

We expect that revenue from the sale of Invisalign will continue to account for a substantial portion of our total revenue. Continued and widespread market acceptance of Invisalign is critical to our future success. Invisalign may not achieve market acceptance at the rate at which we expect, or at all, which could reduce our revenue and results of operations.

**If dental professionals do not adopt Invisalign in sufficient numbers or as rapidly as we anticipate, our operating results will be harmed.**

Our success depends upon increasing acceptance of Invisalign by dental professionals. Invisalign requires dental professionals and their staff to undergo special training and learn to interact with patients in new ways. In addition, because Invisalign has only been in clinical testing since July 1997 and commercially available only since July 1999, dental professionals may be reluctant to adopt it until more historical clinical results are available. Also, increasing adoption by dental professionals will depend on factors such as the capability, safety, efficacy, ease of use, price, quality and reliability of our products and our provision of effective sales support, training and service. In the future, unanticipated poor clinical performance of Invisalign could result in significant adverse publicity and, consequently, reduced acceptance by dental professionals. If Invisalign does not achieve growing acceptance in the orthodontic and dental communities, our operating results will be harmed.

**If consumers do not adopt Invisalign in sufficient numbers or as rapidly as we anticipate, our operating results will be harmed.**

Invisalign represents a significant change from traditional orthodontic treatment, and patients may be reluctant to accept it or may not find it preferable to conventional treatment. In addition, patients may not comply with recommended treatment guidelines for Invisalign, which could compromise the effectiveness of their treatment. We have generally received positive feedback from both dental professionals and patients regarding Invisalign as both an alternative to braces and as a clinical method for treatment of malocclusion, but a number of dental professionals believe that Invisalign is appropriate for only a limited percentage of their patients. Our success will depend upon the acceptance of Invisalign by the substantially larger number of dental professionals and potential patients to which we are now actively marketing. We have had a limited number of complaints from patients and prospective patients generally related to shipping delays and minor manufacturing irregularities. Market acceptance will depend in part upon the recommendations of dental professionals, as well as other factors including effectiveness, safety, reliability, improved treatment aesthetics and greater comfort and hygiene compared to conventional orthodontic products. Furthermore, consumers may not respond to our direct marketing campaigns or we may be unsuccessful in reaching our target audience. Adoption by consumers may also be impacted by general macroeconomic conditions, including the economic downturn and increased unemployment levels in the United States of America, levels of consumer confidence and consumer spending, all of which fluctuate and could be affected by unstable global economic, political or other conditions. If orthodontists and dentists experience a reduction in consumer demand for orthodontic services or consumers prove unwilling to adopt Invisalign as rapidly as we anticipate or in the volume that we anticipate, our operating results will be harmed.

**We are dependent on our international manufacturing operations, which exposes us to foreign operational, political and other risks that may harm our business.**

## [Table of Contents](#)

Currently, two of our key production steps are performed in operations located outside of the U.S. At our facility in Costa Rica, technicians use a sophisticated, internally developed computer-modeling program to prepare electronic treatment plans, which are transmitted electronically back to the U.S. These electronic files form the basis of our ClinCheck™ product and are used to manufacture Aligner molds. A third party manufacturer in Mexico fabricates Aligners and ships the completed products to our customers. Our costs associated with these operations are denominated in Costa Rican colons, Mexican pesos and U.S. dollars.

In July 2002, we announced a plan to streamline worldwide operations. The plan included closing our facilities in Pakistan and the United Arab Emirates, or U.A.E. We transitioned the operations performed at these facilities to the United States and Costa Rica. We discontinued operations at our Pakistan and U.A.E. facilities in October and December 2002, respectively. We concluded the remainder of indirect operational activities related to the Costa Rica transition in January 2003 and incurred approximately \$0.5 million related to residual facility closure activities. We will cease non-operational closing activities in Pakistan when the land is disposed of at that location and in the U.A.E. when the necessary statutory filings have been completed.

Our reliance on international operations exposes us to risks and uncertainties that may affect our business or results of operation, including:

- political, social and economic instability;
- acts of terrorism and acts of war, particularly in light of the terrorist attacks of September 11, 2001;
- difficulties in staffing and managing international operations;
- controlling quality of manufacture;
- interruptions and limitations in telecommunication services;
- product or material transportation delays or disruption;
- burdens of complying with a wide variety of local country and regional laws;
- trade restrictions and changes in tariffs;
- import and export license requirements and restrictions;
- fluctuations in currency exchange rates; and
- potential adverse tax consequences.

If any of these risks materialize in the future, our operating results may be harmed.

**Our success depends in part on our proprietary technology and if we are unable to successfully enforce our intellectual property rights, our competitive position may be harmed.**

## [Table of Contents](#)

Our success will depend in part on our ability to maintain existing intellectual property and to obtain and maintain further intellectual property protection for our products, both in the U.S. and in other countries. Our inability to do so could harm our competitive position. We believe our intellectual property position represents a substantial business advantage. As of March 31, 2003, we had 29 issued U.S. patents, 20 issued foreign patents, 69 pending U.S. patent applications, and numerous pending foreign patent applications.

We intend to rely on our portfolio of issued and pending patent applications in the U.S. and in other countries to protect a large part of our intellectual property and our competitive position. However, our currently pending or future patent filings may not issue as patents. Additionally, any patents issued to us may be challenged, invalidated, held unenforceable, circumvented, or may not be sufficiently broad to prevent third parties from producing competing products similar in design to our products. In addition, any protection afforded by foreign patents may be more limited than that provided under U.S. patents and intellectual property laws. We also rely on protection of our copyrights, trade secrets, know-how and proprietary information. We generally enter into confidentiality agreements with our employees, consultants and our collaborative partners upon commencement of a relationship with us. However, these agreements may not provide meaningful protection against the unauthorized use or disclosure of our trade secrets or other confidential information, and adequate remedies may not exist if unauthorized use or disclosure were to occur. Our inability to maintain the proprietary nature of our technology through patents, copyrights or trade secrets would impair our competitive advantages and could have a material adverse effect on our operating results, financial condition and future growth prospects. In particular, a failure of our proprietary rights might allow competitors to copy our technology, which could adversely affect pricing and market share.

**If we infringe the patents or proprietary rights of other parties or are subject to a patent infringement claim, our ability to grow our business will be severely limited.**

Extensive litigation over patents and other intellectual property rights is common in the medical device industry. We have been sued for infringement of another party's patent in the past and, while that action has been dismissed, we may be the subject of patent or other litigation in the future. In January 2003, Ormco Corporation filed suit against us in the United States District Court for the Central District, Orange County Division, asserting infringement of U.S. Patent Nos. 5,447,432, 5,683,243 and 6,244,861. The complaint seeks unspecified monetary damages and injunctive relief. In February 2003, we answered the complaint and asserted counterclaims seeking a declaration by the Court of invalidity and non-infringement of the asserted patents. In addition, we counterclaimed for infringement of our U.S. Patent No. 6,398,548, seeking unspecified monetary damages and injunctive relief. Ormco filed a reply to our counterclaims on March 10, 2003 and asserted counterclaims against us seeking a declaration by the Court of invalidity and non-infringement of U.S. Patent No. 6,398,548. We responded to Ormco's counterclaims on April 2, 2003. The Court issued an Order setting a Scheduling Conference on June 30, 2003, at which a case schedule is expected to be set.

Three years ago, Ormco filed suit against us asserting infringement of U.S. Patent Nos. 5,447,432 and 5,683,243. In June 2000, the parties entered into a Stipulation of Dismissal with Ormco. Ormco agreed for a period of at least two years not to pursue litigation with respect to these patents, except as set forth below. Further, Ormco agreed that it would not bring any patent action against us for at least a period of one year with respect to any as yet unissued patents. If Ormco were to bring such an action concerning as yet unissued patents after one year, the Stipulation of Dismissal would allow Ormco to include in such an action claims

## [Table of Contents](#)

involving U.S. Patent Nos. 5,447,432 and 5,683,243. In August 2001, Ormco notified us of the issuance of U.S. Patent No. 6,244,861 and offered a license for this patent. We did not take a license to this patent. Five months after Ormco's notification, it filed the lawsuit that is currently pending.

The claims in U.S. Patent Nos. 5,447,432 and 5,683,243 relate to methods and systems for forming and manufacturing custom orthodontic appliances. The relevant claims are limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The claims in U.S. Patent No. 6,244,861 are more generic claims relating to the methods and systems for forming and manufacturing custom orthodontic appliances. Based on the disclosure in the patent, however, the relevant claims also appear to be limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The treatment plan simulation developed in our facilities determines the final positioning of a patient's teeth but is not based on a derived or ideal dental archform of the patient.

The claims in our U.S. Patent No. 6,398,548 relate to methods and systems for incrementally moving teeth using a series of appliances designed to be placed successively on the patient's teeth.

We strongly believe that Ormco's claims of infringement lack merit and that our counterclaim of infringement will be successful. However, the outcome of a lawsuit is inherently unpredictable. Should our technology be found to infringe any one of Ormco's asserted patents, we would have to seek a license from Ormco, which license might not be available on commercially reasonable terms or at all. In that event, we could be subject to damages or an injunction which could materially adversely affect its business.

From time to time, we have received and may in the future receive letters from third parties drawing our attention to their patent rights. While we do not believe that we infringe upon any valid and enforceable rights which have been brought to our attention, there may be other more pertinent rights of which we are presently unaware. The defense and prosecution of intellectual property suits, interference proceedings and related legal and administrative proceedings could result in substantial expense to us and significant diversion of effort by our technical and management personnel. An adverse determination in a patent suit by Ormco or in any other litigation or interference proceeding to which we may become a party could subject us to significant liabilities. An adverse determination of this nature could also put our patents at risk of being invalidated or interpreted narrowly or require us to seek licenses from third parties. Licenses may not be available on commercially reasonable terms or at all, in which event, our business would be materially adversely affected.

**We currently rely on third parties to provide key inputs to our manufacturing process, and if our access to these inputs is diminished, our business may be harmed.**

We currently outsource key portions of our manufacturing process. We rely on a third party manufacturer in Mexico to fabricate Aligners and to ship the completed product to customers. As a result, if this third party manufacturer fails to deliver its components or if we lose its services, we may be unable to deliver our products in a timely manner and our business may be harmed. Finding a substitute manufacturer may be expensive, time-consuming or impossible.

In addition, we are highly dependent on manufacturers of specialized scanning equipment, rapid prototyping machines, resin and other advanced materials. We maintain single supply relationships for many of these machines and materials technologies. Our growth may exceed the capacity of one or more of these



## [Table of Contents](#)

manufacturers to produce the needed equipment and materials in sufficient quantities to support our growth. In the event of delivery delays or shortages of these items, our business and growth prospects may be harmed.

### **We have experienced rapid growth, and our failure to manage this growth could harm our business.**

We have expanded rapidly since we commenced commercial sales in 1999. Our headcount increased from approximately 50 employees as of September 30, 1999 to approximately 702 employees as of March 31, 2003. This expansion will continue to place significant demands on our management and other resources and will require us to continue to develop and improve our operational, financial and other internal controls, both in the U.S. and internationally. In particular, rapid growth increases the challenges involved in a number of areas, including recruiting and retaining sufficient skilled personnel, providing adequate training and supervision to maintain our high quality standards, and preserving our culture and values. Also, recent reductions in our workforce, although designed to not affect service levels and demand generation, may adversely affect these areas of our business. Our inability to effectively manage this level of growth could harm our business.

### **If we lose our key personnel or are unable to attract and retain key personnel, we may be unable to pursue business opportunities or develop our products.**

We are highly dependent on the key employees in our clinical engineering and management teams. The loss of the services of those individuals may significantly delay or prevent the achievement of our product development and other business objectives and could harm our business. Our future success will also depend on our ability to identify, recruit, train and retain additional qualified personnel. In addition, few orthodontists are accustomed to working in a manufacturing environment since they are generally trained to work in private practices, universities and other research institutions. Thus, we may be unable to attract and retain personnel with the advanced qualifications necessary for the further development of our business. Furthermore, we may not be successful in retaining our key personnel or their services. If we are unable to attract and retain key personnel, our business could be materially harmed.

### **We experience competition from manufacturers of traditional braces and expect aggressive competition in the future.**

Currently, our Invisalign product competes directly against a product called Red, White and Blue, which is manufactured and distributed by Ormco, a subsidiary of Sybron Dental Specialties. In addition, manufacturers of traditional braces, such as 3M Company, Sybron Dental Specialties and Dentsply International, Inc. have substantially greater financial resources and manufacturing and marketing experience than we do and may, in the future, attempt to develop an orthodontic system similar to ours. Large consumer product companies may also enter the orthodontic supply market. Furthermore, we may face competition in the future from new companies that may introduce new technologies. We may be unable to compete with these competitors and one or more of these competitors may render our technology obsolete or economically unattractive. If we are unable to compete effectively with existing products or respond effectively to any products developed by our competitors, our business could be harmed.

### **Complying with the Food and Drug Administration (FDA) and other regulations is an expensive and time-consuming process, and any failure to comply could result in substantial penalties.**

## [Table of Contents](#)

Our products are medical devices and are subject to extensive regulation in the U.S. and internationally. FDA regulations are wide ranging and govern, among other things:

- product design, development, manufacture and testing;
- product labeling;
- product storage;
- pre-market clearance or approval;
- advertising and promotion; and
- product sales and distribution.

Noncompliance with applicable regulatory requirements can result in enforcement action which may include recalling products, ceasing product marketing, and paying significant fines and penalties. One or more of these enforcement actions could limit product sales, delay product shipment and adversely affect our profitability.

We must comply with facility registration and product listing requirements of the FDA and adhere to applicable Quality System regulations. The FDA enforces its Quality System regulations through periodic unannounced inspections, which we have yet to undergo. If we or any third party manufacturer of our products do not conform to applicable Quality System regulations, we may be required to find alternative manufacturers, which could be a long and costly process.

Before we can sell a new medical device in the U.S., we must obtain FDA clearance or approval, which can be a lengthy and time-consuming process. Even though the devices we market have obtained the necessary clearances from the FDA through the pre-market notification provisions of Section 510(k) of the federal Food, Drug, and Cosmetic Act, we may be unable to maintain the necessary clearances in the future. Furthermore, we may be unable to obtain the necessary clearances for new devices that we market in the future. Our inability to maintain or obtain regulatory clearances or approvals could materially harm our business.

**If the security of our customer and patient information is compromised, patient care could suffer, we could be liable for related damages, and our reputation could be impaired.**

We retain confidential customer and patient information in our processing centers. Therefore, it is critical that our facilities and infrastructure remain secure and that our facilities and infrastructure are perceived by the marketplace and our customers to be secure. Despite the implementation of security measures, our infrastructure may be vulnerable to physical break-ins, computer viruses, programming errors, attacks by third parties or similar disruptive problems. If we fail to meet our clients' expectations, we could be liable for damages and our reputation could be impaired. In addition, patient care could suffer and we could be liable if our systems fail to deliver correct information in a timely manner. Our insurance may not protect us from this risk.

**If compliance with government regulations of healthcare becomes costly and difficult for our customers or for us, we may not be able to grow our business.**

Participants in the healthcare industry are subject to extensive and frequently changing regulations under numerous laws administered by governmental entities at the federal, state and local levels, some of which are, and others of which may be, applicable to our business. Furthermore, our healthcare service provider, payor and plan customers are also subject to a wide variety of laws and regulations that could affect the nature and scope of their relationships with us.

The healthcare market itself is highly regulated and subject to changing political, economic and regulatory influences. Regulations implemented pursuant to HIPAA may require us to make unplanned enhancements of software applications or services, result in delays or cancellations of orders, or result in the revocation of endorsement of our products and services by healthcare participants. The affect of HIPAA on our business is difficult to predict, and there can be no assurance that we will adequately address the business risks created by HIPAA and its implementation or that we will be able to take advantage of any resulting business opportunities.

**Extensive and changing government regulation of the healthcare industry may be expensive to comply with and exposes us to the risk of substantial government penalties.**

In addition to medical device laws and regulations, numerous state and federal healthcare-related laws regulate our business, covering areas such as:

- storage, transmission and disclosure of medical information and healthcare records;
- prohibitions against the offer, payment or receipt of remuneration to induce referrals to entities providing healthcare services or goods; and
- the marketing and advertising of our products.

Complying with these laws and regulations could be expensive and time-consuming, and could increase our operating costs or reduce or eliminate certain of our sales and marketing activities or our revenues.

**We face risks related to our international sales, including the need to obtain necessary foreign regulatory clearance or approvals.**

Sales of our products outside the U.S. are subject to foreign regulatory requirements that vary widely from country to country. The time required to obtain clearances or approvals required by other countries may be longer than that required for FDA clearance or approval, and requirements for such approvals may differ from FDA requirements. We may be unable to obtain regulatory approvals in one or more of the other countries in which we do business or in which we may do business in the future. We may also incur significant costs in attempting to obtain and maintain foreign regulatory approvals. If we experience delays in receipt of approvals to market our products outside of the U.S., or if we fail to receive these approvals, we may be unable to market our products or enhancements in international markets in a timely manner, if at all. We currently sell our product in Europe, the United Kingdom, Mexico, Brazil, Australia and Hong Kong, and may expand into other countries from time to time. We do not know whether orthodontists, dentists and

consumers outside our domestic market will adopt Invisalign in sufficient numbers or as rapidly as we anticipate.

**Our business exposes us to potential product liability claims, and we may incur substantial expenses if we are subject to product liability claims or litigation.**

Medical devices involve an inherent risk of product liability claims and associated adverse publicity. We may be held liable if any product we develop or any product that uses or incorporates any of our technologies causes injury or is otherwise found unsuitable. Although we intend to continue to maintain product liability insurance, adequate insurance may not be available on acceptable terms, if at all, and may not provide adequate coverage against potential liabilities. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. These costs would have the effect of increasing our expenses and diverting management's attention away from the operation of our business, and could harm our business.

**In fiscal 2002, the market price for our common stock declined significantly and was highly volatile. Although the market price for our common stock increased during the first quarter of fiscal 2003, the market price of our common stock could be subject to wide price fluctuations in response to various factors, many of which are beyond our control.**

In fiscal 2002, the market price of our common stock declined and was highly volatile. Although the market price for our common stock increased during the first quarter of fiscal 2003, the market price of our common stock could be subject to wide price fluctuations in response to various factors, many of which are beyond our control, including:

- quarterly variations in our results of operations and liquidity;
- changes in recommendations by the investment community or in their estimates of our revenues or operating results;
- speculation in the press or investment community concerning our business and results of operations;
- strategic actions by our competitors, such as product announcements or acquisitions; and
- announcements of technological innovations or new products by us, our customers or competitors; and general market conditions.

In addition, the stock market in general, and the market for technology and medical device companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated to or disproportionate to the operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market price of a company's securities, class action litigation has often been brought against the issuing company. If a securities class action suit is filed against us in the future, we would incur substantial legal fees, and our management's attention and resources would be diverted from operating our business in order to respond to the litigation.

**Concentrations of ownership and agreements among our existing executive officers, directors and principal stockholders may prevent other stockholders from influencing significant corporate transactions.**

The interests of our management could conflict with those of our other stockholders. As of March 31, 2003, our executive officers, directors and principal stockholders beneficially owned an aggregate of approximately 60.5% of our outstanding common stock. These stockholders, if acting together, would be able to influence significantly all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This could have the effect of delaying or preventing a change of control of us, which in turn could reduce the market price of our stock.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risks inherent in our operations, primarily related to interest rate risk and currency risk. These risks arise from transactions and operations entered into in the normal course of business. We do not use derivatives to alter the interest characteristics of our marketable securities or our debt instruments. We have no holdings of derivative or commodity instruments.

*Interest Rate Risk.* We are subject to interest rate risks on cash and cash equivalents, available-for-sale marketable securities, existing long-term debts and any future financing requirements. Interest rate risks related to marketable securities are managed by managing maturities in our marketable securities portfolio. The long-term debt at March 31, 2003 consists of outstanding principle balances on lease obligations and a equipment-based term loan of \$0.9 million and \$4.9 million, respectively.

The fair value of our investment portfolio or related income would not be significantly impacted by changes in interest rates since the marketable securities maturities do not exceed fiscal year 2003 and the interest rates are primarily fixed. Our capital lease obligations of \$0.9 million at March 31, 2003 carry fixed interest rates of 6.53% and 11.15% per annum with principle payments due in 60 and 48 monthly installments, respectively, beginning in 2000.

*Interest Rate Risk.* Our primary interest rate risk exposures relate to:

- The available-for-sale securities will fall in value if market interest rates increase;
- Our ability to pay long-term debts at maturity; and
- The impact of interest rate movements on our ability to obtain adequate financing to fund future operations.

We have the ability to hold at least a portion of the fixed income investments until maturity. As a result, we do not expect the operating results or cash flows to be affected to any significant degree by a sudden change in market interest rates on our short- and long-term marketable securities portfolio.

We manage interest rate risk on our outstanding long-term debts through the use of fixed rate debt. Management evaluates our financial position on an ongoing basis.

## [Table of Contents](#)

*Currency Rate Risk.* Our primary currency rate risk exposures relate to our decentralized or outsourced operations, whereby, based on fiscal 2002 results, approximately \$18.2 million of our annual expenses are related to operations outside the United States, denominated in currencies other than the U.S. dollar.

We do not hedge any balance sheet exposures and intercompany balances against future movements in foreign exchange rates. The exposure related to currency rate movements would not likely have a material impact on future net income or cash flows.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### *(a) Evaluation of disclosure controls and procedures.*

Within the 90 days prior to the filing of this Quarterly Report on Form 10-Q (the "Evaluation Date"), we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Exchange Act). Based upon that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that material information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms. It should be noted, however, that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

#### *(b) Changes in internal controls.*

Subsequent to the Evaluation Date, there have been no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their last evaluation.

## **PART II—OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

In January 2003, Ormco Corporation filed suit against us in the United States District Court for the Central District, Orange County Division, asserting infringement of U.S. Patent Nos. 5,447,432, 5,683,243 and 6,244,861. The complaint seeks unspecified monetary damages and injunctive relief. In February 2003, we answered the complaint and asserted counterclaims seeking a declaration by the Court of invalidity and non-infringement of the asserted patents. In addition, we counterclaimed for infringement of our U.S. Patent No. 6,398,548, seeking unspecified monetary damages and injunctive relief. Ormco filed a reply to our counterclaims on March 10, 2003 and asserted counterclaims against us seeking a declaration by the Court of invalidity and non-infringement of U.S. Patent No. 6, 398, 548. We responded to Ormco's counterclaims on

## Table of Contents

April 2, 2003. The Court issued an Order setting a Scheduling Conference on June 30, 2003, at which a case schedule is expected to be set.

Three years ago, Ormco filed suit against us asserting infringement of U.S. Patent Nos. 5,447,432 and 5,683,243. In June 2000, the parties entered into a Stipulation of Dismissal with Ormco. Ormco agreed for a period of at least two years not to pursue litigation with respect to these patents, except as set forth below. Further, Ormco agreed that it would not bring any patent action against us for at least a period of one year with respect to any as yet unissued patents. If Ormco were to bring such an action concerning as yet unissued patents after one year, the Stipulation of Dismissal would allow Ormco to include in such an action claims involving U.S. Patent Nos. 5,447,432 and 5,683,243. In August 2001, Ormco notified Align of the issuance of U.S. Patent No. 6,244,861 and offered a license for this patent. We did not take a license to this patent. Five months after Ormco's notification, it filed the lawsuit that is currently pending.

The claims in U.S. Patent Nos. 5,447,432 and 5,683,243 relate to methods and systems for forming and manufacturing custom orthodontic appliances. The relevant claims are limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The claims in U.S. Patent No. 6,244,861 are more generic claims relating to the methods and systems for forming and manufacturing custom orthodontic appliances. Based on the disclosure in the patent, however, the relevant claims also appear to be limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The treatment plan simulation developed in our facilities determines the final positioning of a patient's teeth but is not based on a derived or ideal dental archform of the patient.

The claims in our U.S. Patent No. 6,398,548 relate to methods and systems for incrementally moving teeth using a series of appliances designed to be placed successively on the patient's teeth.

We strongly believe that Ormco's claims of infringement lack merit and that our counterclaim of infringement will be successful. However, the outcome of a lawsuit is inherently unpredictable. Should our technology be found to infringe any one of Ormco's asserted patents, Align would have to seek a license from Ormco, which license might not be available on commercially reasonable terms or at all. In that event, we could be subject to damages or an injunction which could materially adversely affect its business.

On April 9, 2002, we exercised our right to terminate an Exclusive Marketing Agreement dated October 18, 2001 with Discus Dental Impressions, Inc. (the "Marketing Agreement") pursuant to the express terms of the Marketing Agreement and we issued a press release reporting this termination. On or about May 14, 2002, we received a demand for arbitration submitted by Discus Dental with the American Arbitration Association in San Jose, California. In its arbitration demand, Discus Dental seeks damages of approximately \$30 million, including commissions and bonus payments it claims it would have received under the Marketing Agreement as well as other expenses, attorneys' fees and injunctive relief to prevent us from selling Invisalign to dentists in the U.S. and Canada. Prior to terminating the Marketing Agreement, we conducted a thorough review of the Marketing Agreement and each party's performance thereunder. Based upon that review of the factual and legal issues, we deny all claims made by Discus Dental in its demand and contend that such claims are entirely without merit. In addition, on or about June 13, 2002 we submitted a counterclaim against Discus Dental in the arbitration seeking damages of approximately \$40 million arising out of our claims for misrepresentation, breach of confidentiality provisions and unfair competition, among others. The three arbitrators have been selected, and the parties are exchanging and reviewing documents in response to document demands. The matter is currently set for arbitration on August 18, 2003.

## [Table of Contents](#)

In February 2001, we were named in a class action lawsuit filed on behalf of all licensed dentists (excluding orthodontists) in the U.S. The complaint alleged that our policy of selling Invisalign exclusively to orthodontists violated the U.S. antitrust laws. Without admitting any wrongdoing, we entered into a Stipulation and Agreement of Settlement with the plaintiffs to settle the lawsuit. The total legal and other settlement costs that we agreed to pay were approximately \$400,000 in legal fees. In November 2001, the Court approved the Stipulation and Agreement of Settlement. Pursuant to the settlement, we trained and certified approximately 5,000 general practitioner dentists in fiscal 2002, and have undertaken to certify 5,000 general practitioner dentists each year over the next three years.

From time to time, we have received, and may again receive, letters from third parties drawing our attention to their patent rights. While we do not believe that we infringe any such rights that have been brought to our attention, there may be other more pertinent proprietary rights of which we are presently unaware.

### **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**

None.

### **ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

#### **(a) Exhibits:**

Exhibit 10.36 Lease Agreement dated February 26, 2003 between KPMG FIDES (COSTA RICA) S.A., PARQUE GLOBAL S.A. and Align Technology, Inc.

Exhibit 99.1 Certifications Pursuant To 18 U.S.C. Section 1350, As Adopted Pursuant To Section 906 Of The Sarbanes-Oxley Act Of 2002

#### **(b) Reports on Form 8-K:**

None.



**SIGNATURES**

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

ALIGN TECHNOLOGY, INC.

By: /s/ THOMAS M. PRESCOTT

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Thomas M. Prescott  
*President and Chief Executive Officer*

By: /s/ ELDON M. BULLINGTON

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Eldon M. Bullington  
*Vice President of Finance and Chief Financial Officer*

Date: May 13, 2003

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Thomas M. Prescott, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Align Technology, Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

/s/ THOMAS M. PRESCOTT

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Thomas M. Prescott  
President and Chief Executive Officer

## Table of Contents

I, Eldon M. Bullington, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Align Technology, Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

/s/ ELDON M. BULLINGTON

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Eldon M. Bullington  
Vice President of Finance and Chief Financial Officer

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.36	Lease Agreement dated February 26, 2003 between KPMG FIDES (COSTA RICA) S.A., PARQUE GLOBAL S.A. and Align Technology, Inc.
99.1	Certifications Pursuant To 18 U.S.C. Section 1350, As Adopted Pursuant To Section 906 Of The Sarbanes-Oxley Act Of 2002

**LEASE AGREEMENT**

This Lease Agreement (the "Agreement") is entered into on the twenty-six day of the month of February of the year 2003, by and between:

KPMG FIDES (COSTA RICA) S.A., corporate identification number 3-101-171985, as Trustee (the "Lessor" or the "Trustee") of the Global Park Guaranty Trust, executed on March 23, 2001, by Parque Global S.A. as grantor of the Trust Agreement, and Scotiabank de Costa Rica S.A. (the "Main Beneficiary") (the "Trust Agreement"), represented herein by ALFONSO AMEN CHEN, personal identity card number 2-356-311, legal authority duly recorded in the Mercantile Section of the National Registry under books 896, 940, 1290, pages 251, 44, 175, and entries 319, 64 and 204.

PARQUE GLOBAL S.A., legal identity card number 3-101-230578, (the "Developer" or the "Grantor"), registered in the Mercantile Section of the Public Registry under book 1126, page 271, entry 317, represented herein by CARLOS WONG ZÚÑIGA, personal identity card number 1-664-989, legal representation duly recorded in the Mercantile Section of the Public Registry under book 1230, page 98, entry 90.

for the one part and for the other,

Align Technology de Costa Rica, Sociedad de Responsabilidad Limitada, (the Owner of the Improvements, hereinafter "The Lessee"), a corporation duly registered and incorporated in accordance with the law of Costa Rica, 3-102-306047 herein represented by Leonard Marvin Hedge, of legal age, U.S. citizen, bearer of passport number 094859951, married, entrepreneur, domiciled in 3412 Virgil Circle, Pleasanton, California, United States of America, and Emory Merrill Wright, of legal age, U.S. citizen, bearer of passport number 054714863, married, entrepreneur, domiciled in 1240 Sanders Court, Santa Cruz, California, United States of America, both acting respectively as Third General Manager and First Sub general Manager, acting as representatives with full powers of attorney in accordance with book 1457, page 214, entry 231 of the Mercantile Section of the Public Registry.

The Lessor, the Developer and the Lessee are referred to collectively herein as the "Parties".

**RECITALS**

1.- Whereas the Lessee desires to lease a new building (the "Real Estate"), to be commonly known as the Align Building (the "Align Building"), located in Global Industrial Park and Free Trade Zone, part of the "Condominio Global" (the "Condominium"), condominium identity number 3-109-328791, a condominium registered in the Costa Rican Public Registry, Province of Heredia, Property Number M-001679, Lot Number Ten, registered in the Public Registry Property of Heredia, Property Number H-4033941

with a total registered area of eight thousand six hundred and forty one square meters and thirty six centimeters (8,641.36 m2), of which five thousand nine hundred and forty (5,940 m2) square meters constitutes the leased real estate (the "Real Estate").

2.- Whereas the Real Estate forms part of a bigger property which has been transferred to KPMG Fides (Costa Rica) S.A. in trust, through the GLOBAL GUARANTY TRUST ("Trust Agreement"), executed on March 23, 2001, by Parque Global S.A. as Grantor of the Trust Agreement, and Scotiabank de Costa Rica S.A. as main Beneficiary of the Trust Agreement;

3.- Whereas the Grantor and the main beneficiary of the Trust Agreement have instructed KPMG Fides as a Trustee to enter into this lease agreement, and all parties acknowledge that KPMG Fides will act in accordance with the instructions received by the main beneficiary and the Developer, and expressly agree that KPMG Fides enters into the present Agreement acting solely as trustee of the Trust. Consequently, KPMG Fides' obligations and duties in relation with this Agreement are limited to its execution;

Now therefore in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties have agreed to execute this lease agreement:

### **Section One: Leased Real Estate**

#### **1.00 Acceptance by the Developer of the Covenants Stated in the Agreement and Hold Harmless Indemnity.-**

The Developer, acting as Grantor of the Trust Agreement, as developer of the Park and party to this Agreement, acknowledges and accepts of all the covenants and obligations contained herein, and guarantees to the Lessor and Lessee that it will comply with and fulfill of all of its obligations under this Agreement.

Consequently, the Developer agrees to hold the Lessor and its assets harmless from any loss, damage, liability penalty, tax liability, claim, lawsuit, expense or disbursement, including but not limited to legal fees or expenses resulting or arising directly or indirectly from the Developer's failure to comply with any of the provisions contained in this Agreement.

### **Section Two: Real Estate Terms and Conditions**

#### **2.00 Lease.-**

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor the Real Estate.

#### **2.01 Permitted Use.-**

The Real Estate shall be used exclusively for the operation of a call center, data processing, administrative offices and associated uses, by the Lessee and/or any of the Lessee's subsidiaries or affiliates, provided they comply with any

obligations and conditions required by PROCOMER and the applicable regulations for service companies operating under the free zone regime. The Lessee shall notify the Developer and the Lessor, the fact that it has accommodated any such related companies within the Real Estate.

The Lessee may not use the Real Estate for any activities different to those permitted hereunder without the prior written consent of the Lessor and the Developer. The Developer shall deliver the Real Estate to the Lessee with the conditions and characteristics described in the documents that jointly conform **Exhibit One** of this Agreement (the "Conditions of Delivery"). The Lessee has examined these documents and understands and accepts them without objections.

## **2.02 Effective Date of the Agreement.-**

The term of the Lease Agreement initiates upon delivery of the Real Estate ("Effective Date"). In addition, upon the execution of this Agreement ("Date of Execution"), Developer will start the construction of the Real Estate. The Developer will start construction upon the Date of Execution, pending approval of the construction permits required by the respective municipality.

## **2.03 Additional Facilities.-**

In addition to any other facility specifically included in this Agreement, while leasing the Real Estate the Lessee shall have the right to the use the following: (a) Parking.- The Lessee shall be entitled to use a total of one hundred and twenty five (125) parking spaces for standard-sized vehicles, outlined by road demarcations according to the country's standards. The parking spaces assigned for Lessee's use will be located as follows: (i) forty three (43) parking spaces surrounding the building premises; and, (ii) eighty two (82) parking spaces in a satellite parking lot located on Condominium lot number 8, or a similar parking lot located within a distance roughly equal to the one that exists between the Align Building and the parking lot at Condominium lot number 8. In case additional parking spaces are required, these may be requested from the Developer and will be assigned at the Developer's convenience and subject to availability at a rate of \$40 per parking space. (b) Common areas.- The Lessee can make use of the Park's common areas according to the regulations and specifications included in the Park's Internal Condominium By-laws and its subsequent amendments, which have been enclosed as an integral part of this Agreement in its current form as **Exhibit Two**; (c) The Developer acknowledges and promises that the parking spaces will be duly allocated and assigned by number to the Lessee, according to a numbering system. The Developer will provide its best efforts to allocate these parking spaces within the premises of the Real Estate. As a second alternative, the Developer shall provide the mentioned parking spaces in a location to be agreed upon with Lessee. (d) Sewage Treatment Plant.- The Lessee shall make use of the sewage treatment

plant located in the Park, according to the usage regulation attached hereto as **Exhibit Three**.

#### **2.04 Special Equipment and Systems.-**

The Lessee may request, at its own expense, the installation of special systems and equipment in the Real Estate that are required for the Lessee's activities permitted under this Agreement.

### **Section Three: Rent and Lease Term**

#### **3.00. Rent.-**

The Real Estate will be developed and delivered for Lessee's use in two phases: i) a four thousand square meter (4,000 m<sup>2</sup>) finished space; and ii) the remaining area of one thousand nine hundred and forty square meters (1,940 m<sup>2</sup>) will be delivered as a cold-shell space. Pursuant to such phased construction rent will be set as follows: (a) Finished space.- The applicable rent for the finished space will be ten Dollars and twenty five cents (US\$10.25) per square meter. During the first twelve (12) months following the Effective Date, Lessee shall thus, pay a monthly rent of forty one thousand Dollars, (US\$ 41,000.00) for the finished space. (b) Cold-shell space.- The applicable rent for the cold-shell space will be four Dollars and seventy five cents (\$4.75) per square meter. During the first twelve (12) months following the Effective Date, Lessee shall thus, pay a monthly rent of nine thousand five hundred Dollars, (US\$ 9,500.00) for the cold-shell space. Collectively, finished and cold shell space applicable rent payments will be referred to as the "Rent". Rent will be payable each month in advance starting on the Effective Date and on the first day of each month thereafter. Starting on the first day of the thirteenth (13<sup>th</sup>) month and until the end of the lease term, the Rent paid by the Lessee shall be increased by four percent (4%) annually, using as a basis for such increase the Rent paid in the last month of every twelve (12) month period.

In addition to the foregoing Rent adjustments, as of the nineteenth month (19<sup>th</sup>) after the Effective Date, and until the termination of this lease, rent for the cold-shell space will be increased to the then in effect finished space applicable rent, so that Rent for the total area of the Real Estate will be based on the finished space per square meter rate.

Payments may be made in cash, check or electronic transfer to the Developer's account, but the payment method used as well as changes in the method from month to month must be previously approved in writing by the Developer. When payment is made via electronic transfer, the Lessee shall provide written evidence to the Developer of the date on which the transfer was executed and such payment shall be deemed made on the date on which the transfer is



credited by the Developer's bank. All applicable transfer fees or bank charges must be paid by the Lessee. For purposes of this Agreement, the Developer's address shall be the address where payments should be made.

In case of default by the Lessee of the obligation contained herein, it will have a cure period to remedy the situation as described in section 6.01.

**3.01 Term of the Lease.-**

The lease shall commence on the Effective Date, and shall have a term of five (5) years (the "Initial Term"). The Initial Term shall be automatically extended thereafter for equal periods (each of which shall be an "Extension") unless one of the Parties refuses to extend the Initial Term, or any subsequent Extension in accordance with this clause. In such event the Party that refuses to extend the term is required to provide the other Parties with written notice of their intention at least six (6) months prior to the expiration date of the Initial Term or Extension then in effect.

**3.02 Legal Effect of the Agreement.-**

The Agreement's legal effects regarding the use and enjoyment rights of the Lessee, as well as its obligations as Park tenant, shall commence on the Effective Date. The Lessee is entitled to initiate the construction of the improvements as of the Date of Execution.

**3.03 Delays Attributable to the Developer.-**

The Developer shall deliver the Real Estate on September 1<sup>st</sup>, 2003 ("Date of Delivery"). If a delay in the Date of Delivery occurs for causes attributable to the Developer, its contractors, agents or employees, the Developer shall pay the Lessee damages in an amount equivalent to a one-day of Rent per calendar day of delay (the "Indemnification Amount"), which shall be calculated by dividing the Rent in effect for the twelve months following the Effective Date in accordance with section 3.00 of this Agreement by thirty.

The Lessee acknowledges that in accordance with article seven hundred and five of the Civil Code of Costa Rica, the Indemnification Amount shall constitute the sole compensation and remedy for damages or losses suffered by the Lessee due to delays. Therefore, the Lessee expressly waives and relinquishes any right it may have, either under this Agreement or under the laws of the Republic of Costa Rica, to collect losses, damages, penalties, expenses, disbursements or amounts, including but not limited to legal fees or expenses, different from the Indemnification Amount, resulting or arising directly or indirectly from the Developer's failure to reach the Effective Date.

The Indemnification Amount shall be payable by the Developer to the Lessee in twelve installments and by means of deducting a twelfth of the amount in each

of the first twelve monthly Rent payments. The Lessee further agrees that it shall not file or pursue any claim, lawsuit or action against the Developer or attempt to collect any losses, damages, penalties, expenses, disbursements or amounts, including but not limited to legal fees or expenses, if due to force majeure, acts of God or another causes not attributable to the Developer, the Developer's fails to reach the Effective Date.

#### **3.04 Security Deposit.-**

The Lessee shall provide to Developer a security deposit equivalent to three months Rent (the "Deposit"), an amount equal to one hundred and fifty thousand six hundred and forty five Dollars (US\$ 150,645.00). The existing Lessee's security deposit for the facilities it currently occupies in Global Park in the amount of sixty four thousand four hundred and forty Dollars (US\$ 64,440.00) will be applicable as part of the security deposit. Thus, upon closing, the total security Deposit payment upon execution of this Agreement shall therefore be eighty six thousand two hundred and five dollars (US\$ 86,205.00).

Pursuant to the Rent adjustment described in Section 3.00 regarding the cold-shell space starting on the nineteenth month after the Date of Execution, the Lessee shall provide Developer the funds necessary to adjust the security deposit to three months of the then applicable Rent.

The Deposit shall serve as a guarantee to cover the payment of outstanding services, repairs and any other obligation derived from this Agreement, to the Developer's satisfaction. The Developer shall have the right, but not the obligation, to use the Deposit to settle outstanding Rent payments. If all or part of the Deposit were used by the Developer for any of the aforementioned items, the Lessee shall an obligation to reinstate the used amount within the five (5) calendar days following notice of its use by the Developer, unless such use is made upon termination of the lease, in which case the outstanding balance, if any, shall be returned by the Developer to the Lessee in the sixty (60) days following the date on which this Agreement is terminated. The Deposit shall not bear any interest for the benefit of the Lessee.

### **Section Four: Lessee's Rights and Obligations**

#### **4.00 Restrictions of the Real Estate.-**

The Lessee: (a) shall not use the Real Estate for activities different from those within the permitted use of the Real Estate without the prior written authorization of the Developer; (b) shall not carry out, within the Real Estate, any type of activity that produces noises, smells or disturbing activities to other occupants of Global Park or other neighbors of the area where the Real Estate is located; (c) accepts that the activities performed in the Real Estate shall not produce emanations that can adversely affect the environment or people's health; (d) shall not use the Real Estate for the storage of flammable or dangerous substances, materials or chemicals unless such substances, materials

or chemicals are used in their manufacturing operations. Should this happen the Lessee must communicate such circumstance, including a list describing such items, in writing to the Developer. The substances, materials or chemicals should be properly stored, used and handled in accordance with the applicable laws, regulations and any other safety provisions. In case of default by the Lessee of the obligations contained herein, it will have a cure period to amend the situation as described under section 6.01.

#### **4.01 Park Regulation.-**

The Lessee shall respect at all times the Park's Internal Regulations, in its current text and as it may be amended and restated in the future. Said regulations, which the Lessee is aware of and accepts, are attached hereto as **Exhibit Two**. The Developer herein acknowledges that the provisions of the Park's Internal Regulations does not contravene the terms and conditions herein established in this Agreement.

#### **4.02 Repairs and improvements.-**

The Developer shall be obligated to provide for the maintenance, at its expense, of the Real Estate in general including but not limited to the structural elements, exterior pluvial and sewage water systems, as well as all other maintenance or repairs derived from the normal wear and tear of the Real Estate. In addition, the Lessee will be entitled to require Developer to make reasonable improvements to the Real Estate, for up to a total overall amount of Two Hundred and Eighty Six Thousand Dollars (US\$ 286,000), to compensate the improvements covered by Lessee in the facilities currently being occupied by Lessee at the Exactus Building within Global Park.

Any damages or repairs caused or generated by the Lessee's negligence or willful misconduct shall run at the Lessee's expense, as well as all of the secondary elements added to the Real Estate on behalf of the Lessee. Without prejudice to the above, the Lessee shall not, without the prior written consent of the Developer, make changes or adjustments to the Real Estate, even if related to indoor or outdoor maintenance works. It shall not be necessary to obtain prior consent from the Developer to make indoor changes, adjustments or maintenance works whenever these do not affect the Real Estate's structure or are not permanently affixed to it. If authorization is received, all investments, non removable improvements or the improvement that once removed may cause damage to the Real Estate, shall be for the benefit of the Developer, without giving rise to the Lessee requesting a deduction in the Rent or an economic compensation for these upon termination of the lease.

#### **4.03 Responsibility for damages.-**

The Lessee shall be liable for any damage or loss incurred to or suffered by the Real Estate, which is caused by or attributable to its employees, officers and/or agents, or by third parties or clients that visit or use the Real Estate.

Furthermore, it shall be responsible for the damages caused, by any of the aforementioned individuals, to common areas of the Park. Any form of damage caused by the Lessee, or any of the aforementioned individuals in this clause, shall be repaired by the Lessee, at its own expense, without the right to demand from the Developer a reimbursement or cost deduction from the lease. Repairs shall be initiated within a term no greater than eight calendar days, except in cases of emergency, whereby they should be fixed immediately, allowing the Lessee to hire the workers it deems suitable. Prior to making the repairs, it shall have the approval in writing of the Developer, which shall not be unreasonably withheld, with regards to quality and work opportunity. In such cases, the Developer must respond within the following twenty-four hours following the receipt of a written communication by the Lessee. Should the Developer not respond within the aforementioned time frame, the authorization will not be deemed granted, but the eight (8) day period will not begin until the day after an affirmative response is rendered by the Developer. If repair works have not been performed in the aforementioned term, the Developer shall notify the Lessee of said noncompliance and it shall provide to the Lessee a cure period of eight calendar days ("Cure Period") to initiate the repairs. If the Lessee does not initiate the repairs within the Cure Period, the Developer can request the termination of the Agreement due to non-fulfillment and is fully authorized to deduct from the Deposit the necessary amount for repairs, and perform them on behalf of the Lessee. By virtue of this clause, the Lessee's liability is comprehensive and includes any violation acts to the legal system, may these be civil, labor, environmental, health-related or any other sector, even when these acts are not subjected to an economic compensation. In case of default by the Lessee of the obligation contained herein, it will have a cure period to amend the situation as described under section 6.01.

#### **4.04 Accidents.-**

The Developer or the Lessor shall not have any civil, criminal, labor or any other type of liability, for damages or losses suffered by the Lessee or third parties, including but not limited to, business losses or lost profits, whenever such losses or damages are motivated or occurred as a consequence of accidents, property damage, personal injury or wrongful death caused by or attributable to the Lessee its employees, officers and/or agents, their negligence or fault, as well as due to force majeure. Except for Developer's gross negligence or willful misconduct, the Lessee shall indemnify and hold harmless the Developer and the Lessor, and their respective employees, officers and/or agents, from and against any loss, liabilities, damages, penalties, claims, suits, costs, expenses and disbursements, including attorney's fees, imposed on, incurred by or asserted against the Developer or the Lessor, arising out of accidents, property damage, personal injury or wrongful death caused by or attributable to the Lessee its employees, officers and/or agents, their negligence or fault, as well as due to force majeure.

#### **4.05 Subleasing and Assignment of Rights.-**

The Lessee shall not assign or in any way dispose of all or any part of its rights or obligations under this Agreement or enter into any sublease of all or any part of the Real Estate without the prior written consent of Lessor and the Developer. The Parties hereby agree, that the Lessor can assign totally or partially its rights under this Agreement to Scotiabank de Costa Rica, S.A., or any other third party interested in compliance with the terms and conditions of the Trust Agreement. The assignment hereby authorized does not affect the validity or the effectiveness of this Agreement. The Lessor and the Developer herein acknowledge that the provisions set forth in the Trust Agreement do not contravene the terms and conditions of this Lease Agreement, all in accordance with Article twenty-four of the Urban and Sub-urban Lease Act in effect.

**4.06 Laws, Regulations, Permitting.-**

Lessee shall comply with all laws, regulations and orders of any governmental branch or agency which relate to the use of the Real Estate or the operation of its trade or business in the Real Estate, and shall use the Real Estate in the regular course of its business only, within its normal capacity.. The Lessee shall be responsible for the application, processing and acquisition of all permits necessary for the operation of its trade or business, or any other activities performed within the Real Estate.

In the event that the Developer authorizes the execution of refurbishing or improvements on the Real Estate, the Lessee shall assume the costs for the permits, authorizations and other necessary approval or consent for their execution and completion. The Developer shall cooperate with the Lessee in the obtention of these permits or authorizations whenever its assistance is required for this purpose. In case of default by the Lessee of the obligation contained herein, it will have a cure period to amend the situation as described under section 6.01.

**4.07 Signage.-**

The Lessee shall not place, or allow the placement, of signs or notices of any type, in any exterior area of the building or common areas of the Park, other than in the sites that are clearly designated by the Developer for these purposes. Moreover, the Lessee shall comply with the signage specifications included in the Park's Internal Regulations or other applicable documents to the Lessee by virtue of the present Agreement.

**4.08 Notification of failures or accidents to the Developer.-**

The Lessee shall be required to notify the Developer and the Lessor of those failures or accidents occurred in the Real Estate that may generate civil, criminal or tort liability, directly or indirectly, to the Developer and/or Lessor. The notice of said failures or accidents should be made by the Lessee within the ensuing twenty-four hours of its knowledge. The notification to the Developer shall not

allow it assume more responsibilities than those specifically stated in the Agreement herein under its charge or that result of legal imperative.

**4.09 Compliance with the laws and applicable norms.-**

The Lessee must comply with and execute, whenever the case, the provisions of any norms, ordinances, rules, orders, acts, regulations and requirements of the legal system in effect applicable to the Real Estate or the activities the Lessee shall perform in it. The Lessee shall exclusively bear all expenses resulting from the compliance with the judicial system in effect.

**4.10 Prohibition of Obstruction of Common Areas.-**

The obstruction of common areas of the Business Park with equipment, vehicles, machinery, raw material or any other goods owned by the Lessee or his/her contractors, employees, dependents or visitors, or any other person related with him/her, is expressly prohibited. The Lessee must always supervise that common areas are free from obstructions caused by any of the persons mentioned in this clause. Particularly, the parking of vehicles owned by the Lessee's personnel or visitors in the main streets of the Park, is expressly prohibited. The Lessee accepts to pay a twenty-dollar fine, plus the cost of the obstruction removal resulting from the non-compliance with this provision. The amount corresponding to the fine shall be charged in the rent corresponding to the next month.

**4.11 Prohibition of Obstruction of Transit Areas.-**

Sidewalks, entrances, passageways, elevators, stairs, lobbies and other common transit areas may not be obstructed, used or occupied differently for the entrance or exit of machinery, material, equipment, vehicles or persons, depending on the case, related with the activities developed by the Lessee. The Lessee must guarantee the compliance with this obligation on the part of his/her representatives, contractors, employees, dependents, visitors and other related people.

**4.12 Delays in the Rendering of Services.-**

The eventual delay for just cause, understood as "force majeure" or acts of God ("caso fortuito o fuerza mayor") as defined by Costa Rican Civil Law, to grant a service or perform an improvement, despite reasonable efforts, shall not be a reason to exempt the Lessee from the obligation to pay the price of the lease or any other obligation herein established, unless this Agreement or the applicable legislation in effect expressly disposes so.

The delay on services due to other circumstances, shall be communicated by Lessee to the Developer. Upon such notice the Developer shall have a forty-eight (48) hour cure period to remedy any such delay. If within the cure period the Developer fails to remedy such delay, the Lessee shall have the right to reduce from the service fee the cost incurred by the Lessee to cover such service.

**4.13 Transfer of Material, Machinery, or Heavy Equipment.-**

The Lessee may not move any equipment, goods or heavy machinery in and outside the building without the suitable means to avoid damaging of the constructions located in the Real Estate, and it must be done in coordination with the Developer. Any damage resulting from the removal or relocation of the goods mentioned in this clause must be repaired by the Lessee pursuant to the terms established in clauses 4.03 and 4.14 of the present Agreement.

**4.14 Maintenance.-**

The Developer shall bear the cost of maintaining the structure of the constructions located in the Real Estate (exterior walls), as well as the exterior rain water or sewage systems, as long as the Lessee uses them appropriately, in accordance with the technical specifications they were constructed with, as well as any other expense or repair corresponding to the General Urban and Suburban Lease Law in effect, and Section 4.02. The Lessee shall bear the cost of any other repair such as broken glasses, burnt light bulbs, gaskets and, generally, any service accessory or accessories incorporated to the Real Estate, except for those generated by the normal wear and tear of the Real Estate.

**4.15 Compensation for Non-Compliance with the Obligations.-**

The Lessee must compensate the Developer and/or the Lessor for all those costs, expenses, responsibilities, losses, damages, trials, processes, fines, penalties, complaints, and lawsuits, including the costs incurred by the Developer and/or the Lessor resulting from the non-compliance on the part of the Lessee with the obligations derived from the judicial system and this Agreement.

**4.16 Other commitments**

In addition, (a) the Lessee must execute simultaneously a service agreement with the Developer under the terms and conditions currently in effect, and (b) the Lessee shall remain as a free zone company.

**5.01 Payment of Real Estate and Municipal Taxes.-**

The Developer shall pay the applicable municipal and real estate taxes for the Real Estate during the term this Agreement.

**5.02 Inspection Right.-**

The Lessor or the Developer reserves the right to visit the Real Estate any moment, provided that it informs the Lessee at least twenty-four (24) hours in advance. Inspections referred in this clause must be done by the Developer, during Lessee's working hours, through its officers or third parties hired to that effect. Exceptionally, with prior authorization by the Lessee, inspections may be carried out off the regular working hours.

**5.03 Ownership of the Goods Left in the Real Estate.-**

After fifteen working days of the termination date of the present agreement, for any cause imputable or not to the Lessee, or in case of eviction for non-compliance with the payment, any goods owned by the Lessee found inside the Real Estate or in the common areas of the Park shall be considered abandoned by the Lessee. Therefore, the Developer may take possession of the same. The Lessee resigns as of this moment any right to complain related with such circumstance.

**5.04 Showing of Facilities.-**

If any of the Parties notifies the other Party of its intent to not extend the term of this Agreement as established in section 3.01, the Developer shall have the right to show the Real Estate to people interested in leasing it, during the last six months of the Initial Term or Extension then in effect. The visits to show the Real Estate must be scheduled by the Developer within Lessee's working hours, with a previous oral communication to the Lessee.

**5.05 Entry Right on the part of the Developer to Repair Damages.-**

The Developer, its employees or contractors, shall have the right to enter the Real Estate in order to make repairs that might correspond to it, in accordance with this Agreement and the legislation in effect. Nevertheless, the Developer must previously coordinate with the Lessee the time in which such repairs shall take place, trying as far as possible, and pursuant to the particularities of the repair, that its execution must be done on the less prejudicial moment for the normal functioning of the Lessee's activities. Except for emergency situations where immediate repairs are necessary to preserve the integrity of the Real Estate, Developer shall coordinate with Lessee and agree on a timeframe for any such visits to the Real Estate to make any required repairs. Furthermore, Lessee



shall have the right to escort and supervise any visitors to the Real Estate for the purposes described in this Section, except for emergency situations.

**5.06 Right of Sale of the Real Estate.-**

The Lessor shall have the right to sell the Real Estate to an interested third party during the term of this Agreement, and the third party must respect all the terms and conditions herein established.

**5.07 Release of liability in case of accidents.-**

The Lessee releases the Developer and the Lessor from any responsibility for any accidents resulting from electricity, flood, gas or any other phenomena resulting or not from the Real Estate usage, unless such were caused by the gross negligence or willful misconduct of the Developer.

**5.08 Release of liability in case of robbery or theft.-**

The Lessee discharges the Developer and the Lessor from any responsibility for robbery or theft in the Real Estate, unless the same was caused by negligence or imprudence or willful misconduct, as defined under the Civil Code of the Republic of Costa Rica, on the part of the Developer or the security company contracted by the Developer.

**5.09 Non waiver of rights.-**

The circumstance that the Developer or the Lessor does not demand the compliance with any of the terms and conditions herein established, may not be considered as a waiver to the rights and actions granted by means of the present Agreement or the legislation applicable to the case.

**5.10 Non-compliance on the part of the Lessee.-**

The lack of payment within the first ten natural days of the rent or any other payment responsibilities of the Lessee or the non-compliance with any of the clauses stated under clause 6.01 shall give reasons to consider the Lease Agreement as terminated and eviction action shall proceed, in which case the Lessee must recognize the damages it might have caused and the cost of any eventual judicial actions subject to applicable law.

**5.11 Insurance.-**

The Lessee shall have All Risk insurance to protect the goods of his/her property inside the offices. The Developer, on the other hand, shall have All Risk insurance that includes the coverage against earthquake, fire and any other

damage resulting from nature to protect the Real Estate and other related civil works. Both, the Developer as well as the Lessee, shall maintain their insurance at replacement values. In such insurance, there shall not be a subrogation right on the part of the insurers against the Developer or Lessee, as long as this is acceptable for the INS or the corresponding insuring entity. Neither the Developer, the Lessor nor the Lessee shall cover the deductibles of the other party, in case of loss.

**5.12 Additional Parking Space.-**

Should the Lessee require a number of parking spaces in addition to the number of parking space made available to the Lessee, the Developer will verify if such number of parking spaces is available. Should the Developer determine that the parking spaces are available, then it will proceed to award them to the Lessee. The Developer will charge forty Dollars (US\$40.00) per month for each additional parking space granted.

**5.13 Vote of the Developer in the Joint Tenants.-**

The Developer hereby acknowledges and guarantees that it will vote negative in the condominium meeting regarding any issues or proposals that may have an adverse effect on the Lessee's ability to use the Real Estate for its stated purpose under clause 2.01. Prior to the joint tenant meeting, the Developer shall communicate to the Lessee the content of the agenda to be known in the meeting. The Lessee shall communicate its decision to the Developer within the following two natural days if an issue included in the agenda produces an adverse effect. In case the Lessee does not notify in writing within the two-day term to the Developer, the Developer shall consider that the content of the agenda is approved by the Lessee, and that no adverse effect is considered in the agenda.

**Section Six: Termination of the Agreement**

**6.00 Moment of Termination.-**

The Lessee shall remain obligated to pay the corresponding lease as long as it does not return the Real Estate's keys in the same domicile indicated for the payment, even if it has vacated the same.

**6.01 Termination in advance on the part of the Lessor and the Developer.-**

The Lessor and the Developer may terminate the present Agreement at any moment due to non-compliance on the part of the Lessee with the obligations established on clauses 3.00, 4.00, 4.03, 4.06, and 4.10 or any other cause expressly authorized by the legislation in effect ("Events of Default"). Once the Developer detects an Event of Default, it will communicate so in writing to the

Lessee. The Lessee will have ten (10) calendar days (“Cure Period”) subsequent to the receipt of the communication to remedy the situation that is causing the Event of Default. If the Lessee does not amend the situation during the Cure Period or gives a satisfactory response to the Developer, at least requesting an extension of the Cure Period, and if it is unreasonable, the Lessor and the Developer will be entitled to terminate this Agreement with responsibility for the Lessee and the Developer will recover from them a satisfactory indemnification in accordance with clause 6.02.

**6.02 Termination in advance on the part of the Lessee.-**

In case the Lessee wishes to terminate in advance the present Agreement, it must give a prior notice in writing to the Lessor and to the Developer with six months in advance of the expected termination date, pursuant to the following terms and conditions: If the Lessee wishes to vacate the Real Estate at any moment before the completion of the lease term, the Lessee shall pay as a penalty for early termination a sum equal to one year rent, at the then current monthly rental fee. Additionally, the Developer will be entitled to retain the Deposit without any objection by the Lessee. Should the Lessee intend to vacate the Real Estate at any moment after the third year of contractual relationship, the Lessee will communicate in writing to the Lessor and to the Developer at least six months before the termination date. As sole compensation for such termination, the Developer will be entitled to retain the full amount of the Deposit.

**Section Seven: Final and Miscellaneous Provisions**

**7.00 Communications and Notices.-**

Any notice that the Parties are required to make in accordance with this Agreement, shall be made in writing by means of a personal delivery or any other written means, in which the remission and reception date are irrefutably recorded, and sent to the following addresses and during office hours:

- a) To the Lessor: At Forum Business Center, Próspero Fernández Highway, Santa Ana, Costa Rica. Attention: Luis Manuel Castro Ventura  
Fax number: (506) 204-3141
- b) to the Developer: At the administrative offices of Global Park, located in La Aurora de Heredia, to the attention of Carlos Wong. Fax number (506) 209-5960.
- c) To the Lessee At the Exactus Building second floor, Global Park, located in la Aurora de Heredia, to the attention of General Telephone number: (408) 470-1116

**7.01 Governing Law and Dispute Resolution.-**

This Agreement shall be interpreted and governed in general by the laws of the Republic of Costa Rica and in particular by the General Urban and Suburban Lease Law in effect in Costa Rica.

According to the Law “Ley sobre Resolución Alternativa de Conflictos y Promoción de la Paz Social” No. 8828, approved on December 4<sup>th</sup>, 1998 and published on January 14<sup>th</sup>, 1998 in the Official Newspaper “La Gaceta”, particularly but not limited to article 22, it is accepted by the Parties that this Agreement shall be interpreted and governed by the laws of the Republic of Costa Rica.

Any dispute or claim (“The Dispute”) with respect to the validity, construction or enforceability of this Agreement or arising out of or in relation to this Agreement, or for the breach hereof shall be initially resolved by the Parties in good faith within 30 Days (“the Initial Period”) from the day of notice by any of the Parties to the other Party as to the existence of a dispute or claim. If the Parties are unable to settle The Dispute within the period of time indicated before, the Dispute shall be finally settled by arbitration in Costa Rica by three arbitrators selected in accordance with the commercial arbitration rules of the Conciliation and Arbitration Chamber of the Costa Rican Chamber of Commerce. All rules of the Conciliation and Arbitration Chamber of the Costa Rican Chamber of Commerce shall apply to the arbitration and the arbitration process and for purposes of article 19 of Law 8828 it is agreed that, under such Law, the arbitration shall be considered an arbitration of law. The arbitrators should decide which party should be liable for the payment of all costs, expenses and fees related to the arbitration. Any such arbitration shall be conducted in the Spanish language.

The arbitration award shall be well founded, in writing and shall be final and unappealable, with the exemption of the revision and nullity appeals, according to the rules of the Costa Rican Chamber of Commerce.

**7.02 Amendments to the Agreement.-**

Any agreed modifications to the present Agreement must be done in writing and signed by the Parties. This clause shall be of special application for anything related with the lease price and its form of payment; therefore, no modification may be alleged, unless the previous procedure is followed.

**7.03 Estimation.-**

The present Agreement is estimated in the sum of fifty thousand five hundred Dollars (US\$ 50,500).

**7.04 Notarization.-**

The Parties authorize reciprocally to notarize the present lease agreement; nevertheless, the other party must receive a copy of the respective testimony.

**7.05 Vested Rights.-**

The Lessee recognizes that the present Agreement shall not create any right of use in his/her favor, or any equivalent one in virtue of which the eventual increase in the commercial value of the real estate shall be recognized for its use or occupation, and that in case such rights ever arose in reason of the legal applicable disposition or commercial practice, he/she transfers it, as of now, to the Lessor in the sum of one dollar, legal currency of the United States of America. The Lessee recognizes that this provision is essential to concrete the intention on the part of the Lessor to subscribe the present Agreement.

**7.06 Headings.-**

The tiles used as headings for each clause and chapter of this Agreement are introduced to ease its reading and shall not be considered as part of the text thereof, to interpret its contents.

**7.07 Incorporation of Exhibits.-**

The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

**7.08 Survival.-**

All indemnities contained in any section of this Agreement shall survive the expiration or other termination of this Agreement with respect to acts or events occurring or alleged to occur during the term of this agreement and are expressly made for the benefit of, and shall be enforceable by any or all of the indemnified Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on [as of] the date first above written.

(SIGNATURE PAGE FOLLOWS)

By/ /s/ [ILLEGIBLE]

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**KPMG Fides (Costa Rica), S.A. -Lessor**

By/ /s/ [ILLEGIBLE]

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**Lessee-Align Technologies de Costa Rica, S.R.L.**

By/ /s/ [ILLEGIBLE]

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**Lessee- Align Technologies de Costa Rica, S.R.L.**

By/ /s/ [ILLEGIBLE]

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**Global Park, S.A.  
Developer**

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EXHIBIT LIST

Exhibit One	Conditions and characteristics of the Real Estate
Exhibit Two	Condominium Bylaws
Exhibit Three	Waste Water Treatment Plant Regulations

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**Exhibit One**

**Conditions and Characteristics of the Real Estate**



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[Building At Global Park Appears Here]

GENERAL DESCRIPTION PROJECT: ALIGN

The building is located at GLOBAL PARK in La Aurora, Heredia, Lot #10. The building is basically a pre-cast concrete structure that holds in the inside a mezzanine for corporate offices. The measurements of the building are 87 meters by 60 meters between axis with a free corner that define the main accesses, located at north east part of the building. It has a reception module that allows the visitor to access the production area, human resource department and administrative offices (second floor). It has 45 parking spaces on the front with one main vehicle entrance and exit on the same area (principal elevation).

It has an employee entrance that goes directly to lockers and bathrooms and then into the workstations. For the production area (926 workstations) it has bathrooms for women (12 toilets, 10 sinks) and for men (6 toilets, 6 urinals, 10 sinks). These are divided in two modules: one on east side and the other west side. It has 2 meeting rooms for 10 people each one, a facility storage, IT storage, IDF storage and 2 emergency exits one located on the south elevation and the other on west elevation.

The workstation module has a dimension of .70 cm x 1.20 cm each one and they are combine in groups of 20 creating an island that is separated from the next one with 2 meters walkway.

Under the mezzanine there is a cafeteria to hold 175 seats inside (a/c) and 36 seats in an outdoorroofed terrace, another bathroom facility that holds 8 toilets, 7 sinks for women and 5 toilets, 3 urinals and 7 sinks for men, 2 meeting rooms for 10 people each, telecom room and the human resource department.

This first floor has a total area of 5211 m<sup>2</sup>.

SECOND LEVEL

On the second level, we have the Administrative offices which includes: Reception, 5 meeting rooms (one of them for 25 people), 2 bathrooms for women, 2 bathrooms for men (2 toilet, 2 sinks each one), a copy and paper station, 11 private offices, telecom room storage, file room, janitorial-supplies, 18 workstations and a training room with a capacity of 80 seats which can be also used as 2 more meeting rooms. On the west part of the mezzanine it will have a staircase that will connect in a more internal way the first floor with the second.

**MATERIALS**

The structure of the mezzanine will be a precast concrete element (columns and slab). All the partitions and ceiling will be on gypsum and some areas will also have drop ceiling, carpet floor with an exception of the bathroom area that will have ceramic tile. The doors in general will be on MDF material. There will be windows on both sides of the mezzanine one of them will be more like an internal elevation looking from the production area (first level). This mezzanine is inside the big "shell" (main building). The main building is also a pre-cast concrete structure with a height of 6.5 m up to the lowest roof beam. It's basically combination of .40 x .40 cm concrete columns and 2.42 vertical and horizontal concrete panels (skin). It will have an insulated roof system that is made of two layers of galvanized iron and 2 inches of insulation. The floor of the production area will be on carpet. There will be exposed elements such as ducts, lighting, voice and data cable, and power lines running through the roof structure and then connected to each workstation island.

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**Exhibit Two**  
**Condominium Bylaws**

**TWELFTH: CONDOMINIUM AND MANAGEMENT BYLAWS:** In compliance with Articles Thirty-Three and Thirty-Four of THE LAW, the Condominium and Management Bylaws of **CONDominio GLOBAL** are constituted, which shall regulate the relations of the condominium owners:

**DEFINITIONS.** The following words will be understood, for all of the purposes of this Bylaws, according to their respective definitions, to wit:

**ADMINISTRATOR:** The individual or corporation named to exercise the management of the Condominium according to the procedures described in this Bylaw; **SHARED AREAS OR ELEMENTS:** Shared elements should be understood as all those zones that are set aside for shared use and enjoyment, within which we can mention the following, without restriction: green areas, spaces set aside for pedestrian circulation, sidewalks, streets, access ways, surveillance posts, electrical substations, water reservoir tank, drinking water systems, fire extinguisher systems, treatment plant, pump station, control booth, as well as those which are stipulated as such by Law, the building blueprints and the Condominium deed of constitution; **RESTRICTED USE SHARED AREA:** These will be those shared areas that the Condominium Owners' General Meeting shall determine by a vote of two-thirds of the total value of the Condominium, which shall be used only by one or multiple specific joint owners as a result of their industrial or commercial operational needs within the Condominium, resulting from the location of the shared area or because of any circumstance which in the judgment of the Owner's General Meeting justifies that the use and enjoyment of the shared area be restricted to one or several specific joint owners, either through a direct request made to the Meeting or because the Meeting so decides.

**BUILDING COMMITTEE:** The official body designated by the Condominium Owners' General Meeting to approve, inspect and regulate construction within the Condominium and within its subsidiary areas and the Independent Condominiums,

which shall ensure compliance with the architectural, urban, building, structural, esthetic and landscape standards of the Condominium and the Independent Condominiums, over which it shall also exercise all of its attributes. **THE CONDOMINIUM:** Condominio Global. **INDEPENDENT CONDOMINIUM:** That which shall be formed by subjecting each subsidiary property of Condominio Global to the Condominium Property System. The independent condominium bylaw will be subject to the stipulations of the Condominio Global Bylaw, and to the Building Bylaw, and will be subject to the Building Committee of Condominio Global. **CONDOMINIUM JOINT OWNERS:** These are the individuals or companies, who/which reside in the Condominium or not, which hold property title over the subsidiary properties of the Condominium. In the case in which the subsidiary property is at the same time the parent property of an independent condominium, such condominium will be considered a joint owner of Condominio Global and shall participate in the Meetings and voting of Condominio Global under one single representation which shall have one single opinion and orientation to vote in regard to the matters that are heard in each Meeting. **ORDINARY AND EXTRAORDINARY MAINTENANCE FEE:** A proportional part of the general expenses that the joint owners are obligated to cancel and which shall be set according to the square meters of developed private area in each subsidiary property, i.e., the developed private area within the Condominium's property coefficient in relation to the Condominium's total area. There shall be no obligation to pay neither an ordinary nor an extraordinary maintenance fee for undeveloped private areas. **EXECUTIVES:** Administrators, legal representatives and corporate executives in general who are installed in the Condominium. **SUBSIDIARY PROPERTY:** Each one of the lots that make up the Condominium, duly identified by a Lot number, and which shall be subject to different stages of development, all of which constitute the private areas of the Condominium.

**SHARED EXPENSES:** Shared expenses will be understood to be those which refer to the management and maintenance of the Condominium which the joint owners are obligated to contribute to in a manner which is proportional to the percentage of their private property with regard to the overall value of the Condominium, i.e., the percentage that corresponds to their property within the stated total value. Shared expenses are those which are established by Law, the collection of solid wastes, security, shared area maintenance, as well as those expenses which are specified by the Condominium Meeting by recommendation of Condominium Management in compliance with its obligations. **LAW:** The Regulating Law of Condominium Property, Law Number seven thousand nine hundred thirty-three of November Twenty-Five, Nineteen Ninety-Nine, and its reforms. **ADMINISTRATIVE STAFF:** Individuals in general who render personal services to the companies which are installed in the Condominium or to the Administrator thereof. **PROPERTY OF THE CONDOMINIUM:** This is understood to be all of the area described in the Deed of Constitution of the Condominium which subjects said area to the Condominium Property System, including all of the corresponding improvements and entitlements thereto. **SERVICE PROVIDER:** The individual or company which the Administrator of the Condominium will be empowered to hire to provide the general services that the joint owners pay through their maintenance fee. **BYLAW:** The current Condominium and Management Bylaw of Condominio Global. **BUILDING CODE:** The Code will be established by the Building Committee for the approval, inspection and regulation of construction within the Condominium, within its subsidiary properties and Independent condominiums, and shall specify and develop the architectural, urban, construction, structural, esthetic and landscaping standards for the Condominium and the Independent Condominiums. **AFFILIATED SUBSIDIARY:** The subsidiary properties of the Independent Condominiums.

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[Floor Plan Appears Here]



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[Floor Plan Appears Here]

**WORKERS:** Individuals in general who render personal service to the companies installed in the Condominium. **VISITORS:** These are people who visit the Condominium for any reason, either invited by Management or by the joint owners, lessees, occupants or holders, under any title, or those people who work doing repairs, maintenance, construction, cleaning, or who simply visit, or people looking for work, with the exception of the administrative personnel and executives and workers of the companies which are installed in the Condominium. **FIRST CHAPTER: SCOPE AND TERM: FIRST ARTICLE: General obligatory nature:** This Condominium and Management Bylaw is obligatory on all the joint owners, lessees, occupants or holders under any title derived from the property in condominium, as well as any visitors to whom it may apply. Also, it will be obligatory on the successors of those rights or people who are entitled thereto under any title, lessees or subleases, as well as anybody, either individual or corporation, who under private contract or court ruling should acquire the property, possession thereof, the use and enjoyment of any of the subsidiary properties resulting from the Condominium, which shall be governed by Law, as well as the terms and conditions of the Deed of Constitution of the Condominium. Condominio Global is planned in such manner that each one of its subsidiary properties may be constructed and subjected to different stages of development which shall be independent one from others, each of which subsidiary properties shall be capable of being converted into the parent property of an independent condominium, without thereby losing its nature as a subsidiary property to the Condominium, in other words, all of the stages of development will always be connected as part of a general whole which shall enjoy the same services and shared areas. Consequently, the bylaw of each one of the independent condominiums which will be constituted by each of the subsidiary properties shall be in complete harmony and uniformity with this Condominium and Management Bylaw, which

shall be generally applied and abided by the Condominium, and its stipulations shall prevail in the case of discrepancy, omission or confusion, over the stipulations of the Condominium and Management Bylaw of the independent condominiums that are constituted by each one of the subsidiary properties that make up the Condominium, since they, even if they become the parent properties of new independent condominiums, shall conserve their nature as subsidiary properties to Condominio Global. **SECOND ARTICLE: Irrevocability:** Should there exist any reserved private contract subscribed between the persons indicated in the preceding article which in any manner modifies, alters, or revokes the legal system established by Law and this Bylaw, it shall be found null for all purposes and shall lack validity in regard to the joint owners of the Condominium and in regard to third parties, as well as any stipulation of the internal management regulation of each one of the independent condominiums which may be constituted by the subsidiary properties of the Condominium which modify, alter, revoke the stipulations of this Bylaw. Expressly excluded from this provision are the documents that are mentioned in the Twenty-Ninth Article of this Bylaw, which are acknowledged as valid and binding on all the joint owners. **THIRD ARTICLE: Reforms:** This Bylaw shall be duly approved and enter in effect from the moment in which the Condominium is registered in the Public Registry. Any reform to this Bylaw, as well as the emission of new text shall correspond solely and exclusively to the Condominium Owners' General Meeting, by unanimous decision of all the Condominium owners, according to the provision of Article Twenty-Seven, Paragraph 5, of the Law. In accordance with the above, any reform or draft of a new Bylaw must be verified by public deed and registered in the Public Registry, if such procedure is possible. **SECOND CHAPTER. PRIVATE ASSETS AND SHARED ASSETS.—Private Assets:** The Condominium consists of thirteen subsidiary properties which are described as land for the

construction of office buildings, industrial or commercial units, and which make up the private area of the Condominium. Each one of the subsidiary properties has been identified by means of a lot number, as appears on the corresponding blueprint as well as in the deed of constitution. The joint owners acquire, together with the subsidiary or private assets, the right to use the shared elements that are defined by Law and this Bylaw, as well as those entitlements and obligations which are acknowledged and imposed by this Bylaw. In such manner that each one of the joint owners may hold and derive from the entitlement that they may have over the subsidiary property understood to be the private area, the right to enjoy all of those elements of the Condominium that are stipulated for shared use and are necessary for its existence and conservation. **FIFTH ARTICLE: Shared Assets:** Shared assets will be understood to be civil infrastructure works, such as: vehicular access ways and on-site concrete or paved roads, sidewalks and gutters with their respective curbs, the rainwater runoff system, sanitary waste system, drinking water system, power distribution and exterior lighting grid, telephone and cable TV network, irrigation system, waste water treatment plant, green zones and parks, master power control room, water supply control room, surveillance and vehicular access control stations, and perimeter fence, as well as any other urban development required according to law in keeping with the type of industrial or commercial development to be executed in the Condominium, as well as those set forth in Article Ten of the Law. the Condominium expressly gives the right of way through the shared areas to all government and local agencies that govern or regulate basic public utilities, such as *Empresa de Servicios Públicos de Heredia*<sup>1</sup> ESPH, in the case of the private supplier of water and power service, the Costa Rican Institute of Electricity ICE, Costa Rican Institute of Aqueducts

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<sup>1</sup> TN—Heredia Public Utilities Company

and Sewers AyA, *Radiográfica Costarricense S.A.*<sup>2</sup> RACSA, and any other data communications or general services company of the Condominium which may have been previously approved and contracted by Management or by the Condominium Owners' General Meeting to execute work necessary for the operation and maintenance of the shared areas. Likewise and under Article Twenty-Seven of the Law, shared assets will be those which are qualified as such by the Condominium Owners' General Meeting, even if they are not so by nature, or also those originated out of the necessity, security, health, access, ornamentation and conservation of the Condominium. **SIXTH ARTICLE: The relationship between private and shared assets:** No joint owner may be limited in the rational use and enjoyment of shared things, nor may any person allege entitlement to greater use of those things because the percentage of ownership of a private area may exceed that of other joint owners in accordance with the provisions of Law. The rights of each joint owner in regard to shared things may not be pledged, encumbered, attached, or transferred to separate dominion, as they are inherent property rights of the subsidiary property and are consequently inseparable therefrom. The pecuniary liability of the joint owner in regard to shared assets shall be determined on the basis of the percentage of developed privately-owned area that the owner's subsidiary property represents with regard to the overall area of the Condominium, and renouncement of the use and enjoyment of shared things, be it express or implied, shall not relieve the joint owner from responsibility in regard to the conservation and reconstruction of said assets, or even from the payment of maintenance fees, together with any obligation derived from the Condominium Property System, meaning that the joint owners' liability in regard to shared assets are inalienable. Those assets for shared use and enjoyment may be subjected to leasing, prior agreement of the Condominium Owners' General Meeting by a vote

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<sup>2</sup> TN—The local telecommunications company

which shall not represent less than two thirds of the total value of the Condominium. **SEVENTH ARTICLE: Use of shared assets:** The owners are obligated to ensure the due use of the shared assets of the Condominium, as well as to notify the Administrator of any situation, fact or act which jeopardizes the security and conservation of those assets. Each joint owner, lessee, occupant or holder, or any individual or corporation which occupies a subsidiary property, independently from the owner thereof, shall be responsible for damages caused to shared things through fault or negligence, or by its tenants, employees, salespeople, or visitors, and they will be liable to cover the costs incurred for repairs, failing which the sanctions set forth herein will be applied. Also, all of the joint owners, lessees, occupants and holders under any title shall abstain from all acts, even within their own property, which impede or lessen the efficiency of the operation or use of the shared areas. **EIGHTH ARTICLE: Improvements to shared assets and maintenance:** Under Article Thirty of the Law, the Administrator is responsible on behalf of the Condominium Owners' General Meeting for the care and surveillance of the shared assets and services, the care and operation of the installations and general services, as well as of all of the conservation processes of the Condominium. Furthermore, the Condominium Owners' General Meeting may set the corresponding guidelines for the Administrator to perform his/her duties, and particularly regarding the care of the shared assets. Improvements to the shared assets shall be approved in the Condominium Owners' General Meeting according to Article Fourteen of the Law in the following manner: **a)** Necessary improvements shall be approved by owner votes representing a simple majority of the value of the Condominium, and **b)** Useful improvements, by owner votes representing two thirds of the value of the Condominium. The joint owners, lessees, occupants or holders, under any title, are obligated to permit and support the

annoyance caused by maintenance work in shared and private areas, as well as conservation work and repairs. Consequently, the access and throughway of the people in charge of overseeing, directing and performing such work shall be allowed in all of the areas of the Condominium that are involved in maintenance. The Administrator, on his/her part, shall implement all pertinent measures to ensure that the maintenance work produces as little annoyance or damage as possible.

**THIRD CHAPTER. GOVERNING AND ADMINISTRATION BODIES: NINTH ARTICLE: On the Condominium Owners' General Meeting, meetings, convocation and quorum:** The Condominium Owners' General Meeting is the Supreme Organ of the Condominium and therefore its governing body, and its decisions are binding on all the joint owners, lessees, occupants or holders, under any title, of the subsidiary properties or areas of the Condominium. The Condominium Owners' General Meeting is formed by all the joint owners, either individuals or corporations, which hold property title over the subsidiary properties of the Condominium. The meetings of the Condominium Owners' General Meeting must be held ordinarily according to law and this Bylaw at least one time per year during the month of November, and extraordinarily when so convoked by a number of owners who shall represent one third of the total value of the Condominium or by the Administrator in performance of his/her duties under Article Twenty-Five of the Law or when so stipulated during a preceding General Meeting. Quorum to call the General Meeting to order on the First Convocation will be formed by joint owners representing a minimum of two thirds of the total value of the Condominium, and by any number of joint owners present for the Second Convocation. All convocations shall be issued in writing and with acknowledgment of receipt by any adult person in his/her right mind who may be working at the domicile of the joint owners which they notified to the Condominium Management for

that purpose. In cases in which the subsidiary is also the parent of another condominium, notice of convocation must be delivered to the office of the administrator of the Independent Condominium. At the option of the Condominium Management, convocation must be made by means of a publication in a national newspaper at least ten business days in advance of the date on which the General Meeting will be held, without considering the day of the publication or the date of the meeting when calculating said period. Convocation notices must specify the agenda with specific issues for consideration, as no miscellaneous matters will be allowed; the place, date and time set for the first and second convocations. Failure to fulfill any of the above-stated requisites will result in the annulment of General Meeting to be held. Once the General Meeting is convoked, those subsidiary properties which are also the parents of independent condominiums must hold their own General Meetings in advance to delineate a single position to be taken in regard to the issues submitted for consideration on the agenda in the convocation of Condominio Global, as well as to appoint a representative to attend the General Meeting and vote according to instructions. In that case, the General Meeting of each individual subsidiary condominium will hear or resolve its own internal issues, which may not have been previously included or described in the agenda of convocation of Condominio Global, though point number one of convocation and the primary reason for convoking the meetings shall be to appoint the representative and provide voting instructions for the Condominio Global General Meeting. The Condominium's General Meeting will be presided over by the Administrator, except that the duly constituted General Meeting should agreed otherwise by simple majority vote of the attendee owners. **TENTH ARTICLE: General Meeting competence and qualified votes:** It is the competence of the Condominium Owners' General Meeting to resolve matters of shared interest that do not fall within the



powers and obligations which shall be specified below for the Administrator. The Ordinary Meeting shall hear the Administrator's report and accounts, approve the budget of the following year and determine how to fund said budget. The following agreements are the exclusive to the Condominium Owners' General Meeting and **require unanimous approval of all the owners:** **a)** Those which modify the general destination of the condominium. **b)** Variations of the proportional areas of the subsidiary properties with relation to the total area of Condominium or the area of the shared assets. **c)** Renouncement of the condominium property system. **d)** The encumbrance or pledging of the totality of the Condominium. **e)** Modification of the deed of constitution or this Bylaw. **f)** Variation of the specific destination of a subsidiary property. **g)** Variation of the destination of existing shared assets. **h)** Modification of the general guidelines of the Condominium's architectural language and the construction quality standards established herein. **i)** Modification of the constitution of the Building Committee membership and alternate within their term of appointment, removing them from their posts. Excluded are the cases of resignation of some member or alternate in which case the substitution will be made as established in the Sixteenth Article of this Bylaw. Furthermore, approval **by at least two thirds of the votes of the total value of the Condominium will be required:** **a)** To build new floors or basements, to dig or authorize one of the joint owners lessees, occupants or holders, under any title, to conduct any work. **b)** To acquire new shared assets or specify in any manner how they may be utilized, as well as to destine parts or sections of the Condominium as joint-owned property which are not so by nature or which are essential to the existence, security and conservation thereof. Also, to restrict shared use areas to one or several of the Condominium joint owners as defined in this Bylaw. **c)** To authorize shared things to be leased. **d)** To approve the total or partial reconstruction of the

Condominium. e) To determine the amount of insurance coverage that must be taken out on the Condominium, beyond the coverage stipulated by law. f) To modify the Building Code set by the Building Committee. Under Article Twenty-Seven of the Law, when, in all of the preceding cases, a single owner represents less than fifty percent of the total value of the condominium, the remaining fifty percent of votes met in General Meeting will be required to resolve the stated agreements. All other agreements, except the Administrator's appointment, as well as removal or to hear his/her resignation and the determination the amount of remuneration for his/her services, will be resolved by simple majority of the Condominium Owners' General Meeting attending votes, such as and without being limited to the amount of the Condominium's maintenance fee which each owner must cover in proportion to the value of that owner's subsidiary property, as well as the determination and authorization of extraordinary maintenance fees. The Condominium Owners' General Meeting may delegate its powers provided that it is not against the law or this Bylaw. All vote counts during Condominium Owners' General Meetings will be calculated on the basis of the private area in square meters, in other words, each subsidiary property vote will count and be added up according to the percentage of ownership with regard to the total area of the Condominium that is specified in the description of the registered subsidiary properties of the Condominium. **ELEVENTH ARTICLE: Representation in the Condominium Owners' General Meetings:** The joint owners may be represented in the Condominium Owners' General Meetings by general or universal proxies, duly qualified by a notarized affidavit no older than five calendar days, or by a proxy granted to any person, owner or not, which the proxy holder must submit in original, duly authenticated by an attorney. In those cases in which the subsidiary property is also the parent property of another independent condominium, it must be represented in the

Condominium Owners' General Meetings by a special holder duly appointed for that purpose by the General Meeting of Owners' of such independent condominium subsidiary property, who may be the administrator of the Independent Condominium. The special power of attorney granted for these purposes must be legalized and the special holder must accredit such legalization by presenting the original affidavit of the deed of legalization of the agreement, which shall specify the matters that the special holder may vote on, and how the holder should vote, and which matters may be discussed by means of a brief description of the arguments. Also, in the case in which the same subsidiary property belongs to more than one owner, or if rights of real usufruct or simple possession have been constituted thereupon, both the co-owners as well as the real property title holders and bare property holder shall be represented by one single person in the General Meetings, producing one single vote for the subsidiary property according to the provisions of law in regard to the person who is entitled to vote or by a legitimate decision of the parties, in which case the respective proxy letter, authenticated by a lawyer, shall be submitted. **TWELFTH ARTICLE: The Condominium Books:** All General Meeting resolutions shall be consigned in a Minutes Book that will be kept by the Condominium for that purpose, which shall be duly legalized by the Condominium Properties Section of the Public Registry under Article Twenty-Eight of the Law. The Minutes shall be signed by the President and Secretary of each General meeting. Also, the remaining accounting books will be kept as needed for the order, control and reporting capability of the Condominium management, which must also be legalized by said agency, or otherwise by the General Office of Internal Revenue. **THIRTEENTH ARTICLE: On the Administrator, Appointment, fees, removal, resignation and substitution:** The Condominium Management shall be in charge of an Administrator, who may be an individual or corporation, a

joint owner or not, who in regard to the Condominium and the shared assets shall have universal powers of attorney without limit of sum according to Article One Thousand Two Hundred Fifty-Three of the Civil Code. The Administrator will remain in the position for a period of five years beginning on the date of appointment by the Condominium Owners' General Meeting and may be reelected indefinitely for equal and consecutive periods. In the case of electing a corporation, it will designate an individual who will execute the corresponding functions in its name and behalf. The appointment of the Administrator shall be made by a two thirds vote of the total value of the Condominium in the Condominium Owners' General Meeting convoked for that purpose, from among the candidates proposed by any joint owner, the Condominium Owners' General Meeting, or the outgoing Administrator. The Administrator will earn a monthly fee which will be set by the Condominium Owners' General Meeting that chooses him/her/it, which will be reviewed one time per year. The Administrator who is appointed for the Condominium may be removed prior to the expiration of the term of appointment by a vote representing two thirds of the total value of the Condominium and for causes which may be discussed and resolved in the General Meeting convoked for that purpose. The Administrator may resign at any time, due to which a Condominium Owners' General Meeting must be convoked and reported to at least sixty calendar days in advance of the date on which the resignation becomes effective, so that the Condominium Owners' General Meeting may resolve the substitution, and receive and approve the Administrator's final management report during that term. The Condominium Owners' General Meeting shall appoint a Commission, which the outgoing Administrator may be on, to find suitable candidates to manage the Condominium within a term of thirty calendar days beginning on the submission date of the Administrator's resignation, and it shall submit a recommendation

thereof to the following Condominium Owners' General Meeting which shall be held during the last five business days of the thirty calendar day term given to the Commission to find candidates, which shall plan accordingly up to the date of convocation, and the appointment of the substitute will be conducted so that him/she/it may take charge on the date of effect of the outgoing Administrator's resignation at the expiration of the sixty calendar days stipulated hereinabove, date until which the Administrator shall function normally. The term between the appointment of the substitute Administrator and the date of effect of the Administrator's resignation will be used by both to inform the substitute Administrator regarding everything related to the Condominium and the Administrator's current duties, as well as the obligation and entitlements provided by that position. When the Condominium Owners' General Meeting appoints a substitute Administrator or a new one at the expiration of the term, the outgoing Administrator shall turn all the Condominium's Books, Accounting and Financial Statements, and all of the documentation, office equipment and accouterments that were specified for management use, over to the new or substitute Administrator. The new or substitute Administrator will have the same faculties, obligations, responsibilities and entitlements established by this Bylaw and the Law once the appointment has been accepted. The substitution of the Administrator and the appointment of the new one resulting from the expiration of term will be immediately registered in the Public Registry on the date of effect of the new appointment. **FOURTEENTH ARTICLE: On the Faculties of the Administrator.** Under Article Thirty of the Law, the faculties of the Administrator of the Condominium are: **a)** The care and vigilance of the shared assets and shared services, providing the Condominium with a team of guards to guarantee the safety of the shared assets and the people within it, and to ensure compliance with the provisions on entry, stopover, and exit of people, vehicles

and goods as established in the Bylaw. **b)** Attention to, maintenance and operation of the public or shared installations and services of the Condominium, among which are without limitation: the maintenance and conservation of green areas, streets and vehicular and pedestrian access roads, sidewalks, curbs and gutters, the main entrance, the shared parking areas of the Condominium, and shared service installations, as well as the maintenance of the public lighting service in the shared areas. The Administrator will authorize access into the Condominium of all government and local agencies, governing and regulatory bodies, basic utilities, general services previously hired by the Condominium from data communications and cable television companies; **c)** Everything to do with the management and conservation of the Condominium, with the exception of the maintenance of the private areas of the subsidiary properties that are occupied by joint owners, including their administrative, green and service areas. The maintenance of the shared areas, public and shared streets and access ways, as well as green zones, and external and shared gardening shall be the responsibility of Management; **d)** The execution of the Condominium Owners' General Meeting agreements. **e)** Prior being empowered by the respective joint owner, the Administrator may file for the eviction of any occupant other than a property owner, who repeatedly violates the Law, this Bylaw, the Condominium's other internal codes, or who disturbs or alters the normal peace of the joint owners. **f)** To demand compliance by the joint owners of their obligations under this Bylaw and the Law; to oversee the protection of their rights, impose fines, sanctions and lodge court actions resulting from breaches and on behalf of the Condominium, and to issue the respective notifications and processes to the joint owners with regard to the norms that regulate the Condominium, and to issue advices and evict joint owners accordingly and by means of the applicable mechanisms and procedures.

**FIFTEENTH ARTICLE: On the**

**Obligations of the Administrator:** It shall be the obligation of the Administrator: **a)** To render an annual report on management operations and results to the Condominium's General Ordinary Meeting which is held in November of each year, and in each General Meeting as requested by any joint owner or by the Condominium Owners' General Meeting. **b)** To submit the projected Annual Management Budget and Financial Statements related to the results of the Administrator's performance, supported by accounting books which may be audited independently at the request of the Condominium Owners' General Meeting by simple majority of attending votes and by an auditor appointed thereby. **c)** To resolve conflicts that arise between joint owners related to the use and enjoyment of the shared assets of the Condominium. **d)** To collect maintenance fees and establish and maintain a legal reserve fund, as well as collect fines, impose terms for the correction of breaches of this Bylaw and the Building Code, to take action according to pertinent court rulings, to issue advices and execute evictions of joint owners. **e)** To oversee that the tranquility and order that must prevail in the Condominium are not disrupted in any manner, and to adopt any necessary corrective measures to correct such situations. **f)** To submit and make available Condominium information to joint owners, upon request. **g)** To certify the outstanding debt of owners under title of ordinary and extraordinary maintenance fees, interest and fines, requested by any joint owner or the Condominium Owners' General Meeting. **h)** To investigate, issue findings and opinions as requested by the Building Committee regarding matters of its competence, and to attend the hearings of that Committee, when invited, with voice but not vote, and to contribute to the functions of the Committee insofar as possible to the Administrator's office. **i)** To execute all of the processes entrusted by the Condominium Owners' General Meeting or imposed by Law or this Bylaw. **j)** The Administrator shall employ the care of a good parent in

the fulfillment of him/her/its duties and will be only be liable for failings, faults, or negligence in attending and managing administration. The Administrator will not be liable for losses, damage and injury caused by actions taken or omitted under specific provisions of the Condominium Owners' General Meeting, the Law or this Bylaw, or resulting from individual instructions given by joint owners, as may be. The Administrator will be liable for losses imputable thereto as a result of him/her/its management, fraud, dolus, failings, faults or negligence, and because of acts performed other than as ordered by the Condominium Owners' General Meeting, the Law or this Bylaw, which shall be paid by the administrator from him/her/its own pocket and such shall be reflected in the statement of earnings of the Administrator's term of management. **SIXTEENTH ARTICLE: On the Building Committee: Appointment, term, substitution, fees, meetings:** The Condominium Owners' General Meeting shall appoint by unanimous vote of the total value of the Condominium and in a General Meeting convoked for that purpose, a Building Committee which shall be formed by three permanent members who may be individuals or corporations who will appoint as required a representative for the purposes of the Committee who may be joint owners or not of the Condominium. The General Meeting will also appoint an alternate, who will be either an individual or corporation, a joint owner or not, who will substitute during the temporary absences of any of the permanent members. Among the permanent members there must be at least one civil engineer or architect, duly associated in Costa Rica. The Condominium Owners' General Meeting may propose eligible candidates from within itself and they may accept or reject the nomination during the meeting if they are present or by a letter sent to the General Meeting, which the President thereof shall read out once the nomination of all the candidates is made. The Building Committee and appointed alternate will occupy their posts



for a term of ten years, after which the members may be reelected or they may resign during the term, or they may be removed at anytime by unanimous vote of the total value of the Condominium as established in the Tenth Article of this Bylaw. The resignation of a permanent member of the Building Committee should be addressed to the Joint Owners of the Condominium by means of a letter that the resigning member shall submit to the Administrator, who will distribute it to inform of the resignation. The Administrator will immediately convoke a Condominium Owners' General Meeting in which a substitute will be appointed by unanimous vote of the total value of the Condominium by a General Meeting convoked for that purpose. Beginning on the date of resignation, the post of the resigning permanent member will be filled by the alternate, who may be ratified by the General Meeting as permanent and the new alternate named. If the resigning member should be the alternate, the General Meeting must be convoked by the Administrator to fill the vacancy. The members of the Building Committee will work under honorary title, due to which they will receive no economic retribution nor will they earn any fee for performing their job. The Building Committee will meet ordinarily one time per quarter and extraordinarily when convoked by any of its permanent members to resolve any issue submitted by a joint owner or the Condominium within the term establish in the following Eighteenth Clause. The alternate will attend all of the Building Committee meetings to substitute the post of any permanent member who does not show; the alternate may participate with voice but no vote in the resolution of issues, due to which he/she will be kept permanently duly informed. Any permanent member may be substituted by the alternate upon request during the meetings. The Building Committee will keep a Meeting Minutes Book, duly identified and approved by the Condominium Owners' General Meeting, in which every item heard, its background, Building Committee considerations and vote and the final decision

on each matter will be consigned. The Minutes will be drafted by whomsoever is designated by the Building Committee from among its members, and it shall be signed by the members who attend each meeting. The Building Committee will keep a legally numbered independent file for each matter heard, with all the inherent documentation of each case. The Building Committee Minutes Book and files on each issue shall be kept in custody by the Administrator and shall remain in the Administrator's office except when being used by the Building Committee, and they will be public documents as regards the Joint Owners or people specifically authorized thereby in writing. **SEVENTEENTH ARTICLES: Faculties of the Building Committee:** The Building Committee will have the following faculties: **a)** To issue, interpret and apply the Building Code according to the structural, architectural, construction, esthetic, urban and landscaping guidelines that are established in the Public Deed of Constitution of the Condominium, in the approved Plans and Blueprints of the Condominium approved by the corresponding authorities, and in the Bylaw of the Condominium, in such manner that all of their specifications become an application, extension or logical consequence of such specifications, developing them and facilitating their application. No provision of the Bylaw shall contradict or invalidate that which has been approved by the corresponding authorities on the Plans and Blueprints, in the provisions of the Deed and by the Bylaw of the Condominium. **b)** To modify the Building Code by unanimous vote of all its members, as required by the Condominium and its Joint Owners, the Deed of Constitution, Bylaw, and approved Plans and Blueprints of the Condominium. Any modification to the Building Code shall be notified in writing to the joint owners by the Administrator. **c)** To fulfill all the functions and tasks that the Condominium Owners' General Meeting assigns thereto. **d)** To approve and inspect all construction in the shared and private areas of the Condominium, in

accordance with the procedure established by this Bylaw and the Building Code. **e)** To ensure that all construction in the Condominium, either in its shared or private areas, meets the applicable norms and regulations of all public regulatory agencies, plans and the general design of Condominio Global, its Deed of Constitution, Bylaw and the Building Code, **f)** To impose the fines and sanctions established in this Bylaw and reflected by the Building Code on joint owners who violate its provisions, in which the Administrator will fully collaborate. **g)** To recommend to the Condominium Owners' General Meeting the establishment or modification of said fines and sanctions, or other necessary norms in the Bylaw of the Condominium. **h)** To recommend to the Condominium Owners' General Meeting to lodge legal action against Joint Owners who violate the construction, architectural and urban codes of the Condominium, **i)** To propose modifications or improvements to the Condominium's shared areas. **k)** To name at discretion up to two professional advisors to attend to each issue that is put before it, and to set reasonable fees for the advisory services rendered thereby to resolve a matter of the Committee's competence. The fees of such advisors will be paid by the applicant Joint Owner, or by the one affected by the matter put before the Committee or by the Joint Owner who is affected by the Committee's resolution, as is set forth and established in the Building Code. The Committee's advisors will be selected according to criteria of absolute reasonability and will be hired by the Committee to issue a suitable technical or professional criteria to solve each issue. **l)** To ask the Administrator of the Condominium for decisions, investigations, recommendations, and opinion on those matters of the Committee's competence and to which the Administrator may contribute in regard to his/her/its functions, and to summon the Administrator to meetings and hearings of the Building Committee with voice but not vote. **m)** To modify the specifications of the architectural language of the Condominium and the quality

standards of the construction established by the Building Code and the Building Committee, provided that they do not contradict the stipulations of this Bylaw.

**EIGHTEENTH ARTICLE: Building Approval Procedure:** Any construction in the subsidiary properties which the joint owners, lessees, occupants or holders under any title may wish to execute, including without limitation, modifications, improvements or electrical installations and mechanical additions, must be approved by the Building Committee of Condominio Global. For this, they will submit a preliminary building plan to the Committee which shall include all of the general relevant information, such as infrastructure specifications, location on the subsidiary property, connection with the public utility installations of the Condominium, and all of the other requisites which the public regulatory agencies demand to issue permits according to the law and applicable regulations. The Committee may make suggestions and propose changes prior to the approval of the plans, and it will have ten business days counted as of the day following that on which the complete information of the projected construction is submitted. Approval of the preliminary project and plans by the Building Committee must be obtained before the Joint Owner processes the building permits before the public regulatory agencies. When the building plans are approved by the Committee and by the public regulatory agencies, the Building Committee will reserve a set of plans for verification and supervision of the construction and it will have unrestricted access thereto until completion, any regarding which it may request immediate changes, when construction does not coincide with what was previously approved. The building approval procedure will be developed and regulated in greater detail in the Building Code that the Building Committee will issue. The Bylaw will establish in detail the procedures that the Building Committee will be governed by, which shall be assessed by the Condominium Owners' General Meeting by a two thirds vote of the total

value of the Condominium. **NINETEENTH ARTICLE: Sanctions:** Those joint owners who violate the stipulations and conditions of the Bylaw in regard to construction, the Building Code and guidelines established by the Building Committee, will be subject to pay a fine equivalent to **TWO THOUSAND DOLLARS** of the United States of America per calendar day from the moment of initiation of construction without the prior authorization of the Building Committee until such authorization is given. This fine will specifically apply to the cases set forth in this clause and shall exclude the application of the fine stipulated in paragraph **g**) of the Twenty-Third Article of this Bylaw, notwithstanding that the procedure to charge such fine in the case of the default of payment in good faith of the joint owner, and its purpose, may be identical to the one set forth in the stated Twenty-Third Article. If the Building Committee's suggested changes are not implemented by the given joint owner in his/her/its construction, and if the Committee considers them necessary to guarantee the harmony and balance of the structure, systems and general functions of the Condominium and the other joint owners and that they are required in defense of the common welfare, the Committee may elevate the proposed construction, suggested approval, and building approval for the joint owner, to the floor of the Condominium Owners' General Meeting, and the joint owner will equally be liable to pay the fine established above to the Condominium if construction is initiated without the prior authorization of the General Meeting, which must be given by a two thirds vote of the total value of the Condominium. **FOURTH CHAPTER: FINANCIAL PROVISIONS OF THE CONDOMINIUM: TWENTIETH ARTICLE: The Condominium Bank Account:** All of the funds that the Administrator receives and manages under title of maintenance fees according to the annual budget, as well as any other funds or amounts of money received by the Administrator in payment of the Condominium expenses, shall be deposited in a bank account

which shall be opened by the Condominium Owners' General Meeting in the name of the Condominium for that purpose, in which the Administrator will be authorized to sign checks, make withdrawals and deposit funds, and to execute any other usual bank account operation, except closing the bank account or opening others, which will require a decision by a simple majority of attending votes in the General Meeting. Those people who are expressly authorized by the Condominium Owners' General meeting to do so, may also sign on the bank account. **TWENTY-FIRST ARTICLE: Legal Reserve Fund.** The Condominium annual expense budgets will include the formation and maintenance of a Legal Reserve Fund formed by withholding five percent of the cash income up to a total of twenty percent of the annual budget. The legal reserve fund will be destined for the resolution of the Condominium's extraordinary conservation, maintenance and restructuring needs, or to cover any delay in the collection of maintenance fees from permanent occupants, which will be justified by the Administrator by substantiating the essential needs of the Condominium. When the fund decreases to below the percentage stipulated herein, a surcharge will be imposed, the amount and form of which will be agreed by the Condominium Owners' General Meeting, until the agreed amount is reached, in such manner that the Legal Reserve Fund remains at twenty percent of the annual budget of the Condominium. **TWENTY-SECOND ARTICLE: Maintenance Fees: a) Ordinary maintenance fees:** The joint owners of the different subsidiary properties of the Condominium are obligated to contribute an ordinary maintenance fee which shall be set according to the square meters of the constructed private area of each subsidiary property, i.e., the constructed private area within the percentage of ownership compared to the total area of the Condominium, to cover: **a.i)** Maintenance fees, the modification and repair of the shared assets of the Condominium. **a.ii)** Insurance premium

payments for the infrastructure civil works in the shared areas of the Condominium. **a.iii)** Tax, rate and fiscal or municipal contribution payments levied against the Condominium, the shared areas and fixtures thereof. **a.iv)** Administrative, security, and institutional publicity expenses, in equal proportion, **a.v)** The fee set for the Administrator. **a.vi)** Expenses under title of professional services contracted by the Condominium, be they legal, accounting, auditing, topographic and any other professional service which may need to be contracted to cover the general needs of all the joint owners of the Condominium. **a.vii)** Lastly, the ordinary maintenance fee will cover trash collection of the three point four cubic meter trash bins assigned to each joint owner. When collection requirements exceed the capacity of said bin, the service will be covered as an individual additional expense by each joint owner, who shall pay it independently and above the ordinary maintenance fee, Undeveloped private areas are not obligated to pay an ordinary maintenance fee. The ordinary maintenance fee will be set by the Condominium Owners' General Meeting by a simple majority of attending joint owners in the Condominium Owners' General Meeting as part of the approval of the Annual Budget submitted by the Administrator, and it will be collected and managed by the Administrator of the Condominium. Any delay in payment shall be subject to a late interest which shall be set by the Condominium Owners' General Meeting for that purpose, which percentage shall prevail when the Condominium Owners' General Meeting fails to expressly set a different one when it approves the ordinary maintenance fee each year. **b) Extraordinary maintenance fees:** In view that the shared areas of the Condominium are made up primarily of infrastructure and urban civil works such as: streets, sidewalks and vehicular and pedestrian access ways, curbs and their respective gutters, sewage, pluvial and sanitation systems, drinking water system, fire prevention system, power and exterior lighting network, telephone and cable television

network, irrigation system, waste water treatment plant, green zones, master power control room, water system access control room, guard houses and perimeter fence, and parks, the respective maintenance fees will be covered by the owners per month according to the Condominium's real maintenance needs, due to which the Condominium Owners' General Meeting shall require a simple majority of attending votes to establish the extraordinary maintenance fees to cover such real needs, and it will set them according to the square meters of the developed private area of each subsidiary property, i.e., the constructed private area of the percentage of ownership compared to the total area of the Condominium. The Condominium Owners' General Meeting will also set extraordinary maintenance fees to cover any extraordinary expenses or needs of the Condominium which are not specified in the approved Annual Budget, and which, due to their nature, must be paid by means of a contribution from all the joint owners according to the percentage of their installed private areas, all of which will be justified by the Administrator to the General Meeting or proposed by any one of the joint owners. There shall be no obligation for undeveloped private areas to pay extraordinary maintenance fees. Defaulted extraordinary maintenance fees will be subject to the same late interest specified for ordinary fees. **c) Maintenance fee payments:** Both ordinary and extraordinary maintenance fees must be canceled within the first five business days of each month at the office of the Administrator of the Condominium. The maintenance fee obligation will be charged directly to the joint owner, even if he/she/it does not personally occupy the subsidiary property. In the case in which the joint owner does not furbish, use or occupy the subsidiary property, and cannot be located by the Administrator to charge the maintenance fee, or if, upon having been located and notified, the joint owner does not meet the demanded payment in a preemptory term of five business days after the date of the



Administrator's collection advice, whomsoever does furnish, use or occupy the corresponding subsidiary property under any title will respond for the maintenance fee and late interest, without impairment of the civil nature of the joint and several liability of the joint owner. When a subsidiary property of the Condominium is sold or transferred under any title, the seller is under the obligation to present to the Public Notary of record of the sale a certification issued by the Administrator of the Condominium specifying that such subsidiary property is up to date in the payment of its fees under title of shared expenses. If the subsidiary property is in default and the sale is made, the buyer will be considered the joint and several debtor for the amount which will be certified by the Administrator, without impairment of charging the seller the amount that he/she/it owes under this title. **d) Maintenance fee of Independent Condominiums:** Likewise, when the subsidiary property is also the parent property of an independent condominium, the ordinary and extraordinary maintenance fees of such condominium will be defrayed by means of the proportional payment that the owners of the affiliated subsidiaries must make to the independent condominiums according to the value that their affiliated subsidiary properties represent in comparison to the total value of the independent condominium. The ordinary and extraordinary maintenance fees of the independent condominium must include in their amount the ordinary and extraordinary maintenance fees of Condominio Global, in such manner that the owners of the affiliated subsidiary properties contribute proportionally to the payment of the obligations to Condominio Global of the subsidiary property that is the parent property of the independent condominium. Said payments will be made to the independent condominium management, which will be in charge of making the full and total payment of the ordinary and extraordinary maintenance fees to Condominio Global through the office of the Administrator, while retaining the amount

of expenses that are exclusive to the independent condominium for the uses and purposes assigned thereto. **FIFTH CHAPTER. JOINT OWNER RIGHTS AND OBLIGATIONS. TWENTY-THIRD ARTICLE: On the Rights and Obligations of the Joint Owners:** **a) The use and destination of the subsidiary properties:** The Joint Owners will use their subsidiary properties in accordance with the designated use specified in this Deed of Constitution, and according to the general destination of that condominium which is made up by land where that is projected for the construction of horizontal, mixed or vertical office, industrial and commercial units, which shall jointly conform an Industrial Park which is subject in its most part to the Free Zone System approved by the Ministry of Foreign Trade and Promotora de Comercio Exterior—PROCOMER. Furthermore, the subsidiary properties may not be destined for uses that are contrary to the law, morals or customs, nor may they serve for any except the expressly agreed use. **b) Rules on the joining and division of subsidiary properties:** The Joint Owners may unite adjacent subsidiary properties into a single unit under one property title. The division or segregation of such properties will respect the minimum frontage of five linear meters along public streets in the shared areas, and a minimum area for the division of a subsidiary property of three hundred square meters, provided that the divided parts meet all of requisites of the Law and this Bylaw for subsidiary properties. **c) Building Quality Standards:** The joint owners shall comply with all of the building quality standards of the Condominium as established by its Deed of Constitution, Bylaw, Building Code, and the Building Committee of the Condominium, which shall be included in and specified on the building plans of approved constructions. **d) Private services:** The joint owners may establish, at their expense, services for their exclusive use, provided that they do not jeopardize or annoy other joint owners or the shared areas of the

Condominium. On-site building maintenance may be provided by each joint owner, lessee, occupant or holder, under any title, e) The joint owners are responsible for maintaining, responsible for maintaining, cleaning and decorating the on-site private areas that correspond to the subsidiary properties. The maintenance of road surfaces and parking foundations, the internal streets and access ways of each building and subsidiary property that form part of the private area will be the responsibility of each joint owner, as well as the care, irrigation and maintenance of the green areas and gardens within such private areas. **f) Forbidden acts:** The joint owners may not by any act or failure thereof disturb the peace of other joint owners or their private areas, or compromise the stability, safety, health or comfort of the Condominium, or in fact or potentially damage or affect the infrastructure of the Condominium and its shared areas. **g) System of Fines:** Violation of the joint owner obligations set forth in this clause and in general throughout this Bylaw will result in a fine of **TEN THOUSAND UNITED STATES OF AMERICA DOLLARS** for the fact of the breach, and the obligation of that joint owner to correct his/her/its breach within a fixed period of thirty calendar days beginning on the date of the written advice from the Administrator regarding the act, a fine and the term for correction. After that term, if the breach persists, the joint owner will be obligated to pay an additional Ten Thousand Dollars of the United States of America for each month in which said breach persists, and the term of correction of thirty calendar days. A second refusal by the joint owner to pay the fines and correct the breach will produce the request of the Administrator to the competent legal authority which will order the payment of the fines and correction of the joint owner's breach. The summary procedures established by the Civil Procedural Code are stipulated for processing the claim for payment of the fine by the joint owner, in the case in which it is not paid in good faith, and for processing the correction of the breach, though in this

case of intervention by a legal authority, current and late legal interest on the amount of the fine will accrue until the date on which the process finalizes with the corresponding payment, together with procedural and personal costs, which shall be at the expense of the joint owner in breach. The amounts under title of fines that are collected by the Condominium Management will be applied in the first instance to the Legal Reserve Fund if the corresponding percentage of such fund is not complete, and in the second instance, to approved improvement expenses of the Condominium, all without impairment of those indemnities that legally correspond against the joint owner and in favor of the Condominium should the breach thereof cause further damages to the Condominium. **h) Obligation to evict from the Condominium:** Because the Condominium is an Industrial Park subject to the Free Zone System with the sole exception of the area that corresponds to Subsidiary Property Lot Three, and regulated by the general obligatory norms related to its nature and use, the obligation of eviction from the Condominium is established within the sixty calendar days following the date on which the following acts are incurred by joint owners, lessees, occupants or holders under any title of a subsidiary property: **(i)** Reiterated violation or breach of the obligations specified by the Ministry of Health for the normal operation of a business established in a subsidiary property in particular; **(ii)** The disqualification of the company installed in a subsidiary property in particular by the Ministry of Health as a Type I-I Industrial Enterprise, if its processes and operations are very noisy and generate potential risks of contamination of other nearby companies or residences as the result of the violation of the provisions of the Industrial Regulations for Metropolitan Areas published on June Eighteen, Nineteen Ninety-Five, and its future reforms, as well as any other Ministry of Health or other government authority applicable norm, law or regulation which establishes and determines that

such company should not continue to operate or that it cannot continue its activities within the Condominium due to its location, nature and use, as an Industrial Park and with the application of the Free Zone System. **(iii)** The loss of the Free Zone System and abandonment of the subsidiary property where the company in particular operates. **(iv)** Breach in the payment of the maintenance fee to the Condominium for six consecutive months. **(v)** Repeated damage to the shared areas and services of the Condominium, or a one-time damage that is not duly repaired or compensated by the joint owner, lessee, occupant or holder under any title of a subsidiary property on particular to the Condominium within the term and for the reasonable amount specified by the Administrator and approved by the Condominium Owners' General Meeting **i) General applicability to holders under other title:** Any person who holds any title over the subsidiary properties, either as lessees, occupants or holders, or others, will be subject to obey the same rights and obligations established for joint owners, who shall ensure their compliance. The fines will be imposed on joint owners by Management, and they will rebound to the lessees, occupants or holders; nonetheless, if the joint owner does not satisfy its obligations in good faith, the lessees, occupants or holders of the subsidiary properties will be jointly liable and Management may impose exigible fines and liabilities on them under this Bylaw, who will consequently be entitled to file for redress from the joint owner in breach. **TWENTY-FOURTH ARTICLE: Architectural language of the Condominium:** Joint owners, lessees, occupants and holder, under any title, will be responsible for constructing their buildings and maintaining their subsidiary properties in suitable conditions that will not jeopardize the Condominium's general image, due to which they will abide by the following provisions: **a) Architecture:** The architecture of the buildings in each construction project on a subsidiary property must be harmonious with the architecture of the other existing

constructions. The architectural concept consists of managing pure geometric forms and derivatives thereof. **b) Colors:** The buildings of the Condominium will use suitable colors approved in advance and in writing by the Building Committee. **c) Materials:** Top quality materials will be used in the buildings, particularly the partition walls will be made of concrete or any other material approved by the Building Committee as stated, except for metal partition walls which will not be allowed as a primary element, only in specific sections and as an architectural accent. **d) Fences:** The only fences allowed are live hedges with a maximum height of one point five meters along the borderlines of each property, prior Building Committee authorization. Under no condition will the construction of solid railings or cyclone fencing be authorized, except around the external perimeter of the Condominium or to protect restricted access areas. In this latter case, they must be covered with the appropriate material, with greenery or a material similar to black saran. **e) Signage:** For businesses to place signs, they must have Management authorization. The signs must have a compatible architectural design with the building that they identify. The materials, finishes and colors must coordinate with those of the building and be located in areas designated by Management for that purpose. Sign illumination must not be flickering. It must be located in a concrete structure at ground level. Signs hanging from the ceiling or posts are not allowed. Flag poles may be installed, providing that they do not exceed ten meters in height and the size of the flags must not exceed one hundred fifty centimeters by three hundred centimeters. **f) Paint:** The joint owners will be responsible for maintaining their buildings or industrial units and expansions suitably painted, in such manner that they do not jeopardize the image of the Condominium and they shall paint the exterior of the buildings at least every three years at the company's expense. No company may paint the buildings or industrial units that it occupies a different

color than those described previously, unless it receives the express and written authorization of the Building Committee. **g) Building Facade:** No company may change the facade of the buildings without the express written, prior authorization of the Building Committee. **h) Regulations:** No electromechanical equipment, including meters, may be exposed on the wall surfaces of the buildings. Corrugated tin partition walls are not allowed unless they are used as architectural accent elements designed according to the general architecture of the Condominium, prior written approval from the Building Committee. The roofed area of the buildings may not exceed seventy percent of the total area of each individual parent property. The clearing of the frontage of the buildings will be at least six meters from the curb line and the lateral retreats will be three meters from the property line of the individual parent property as a minimum. No building may exceed twenty meters in height and buildings over two floors in height will require a prior permit from the National Civil Aviation Administration, which will be processed by the interested joint owner and turned over to the Building Committee as a prior requisite for the approval of the respective construction. For naves or any other type of industrial installation over five meters in height, and which are adjacent to the property line of the subsidiary property, the lateral and back clearings will increase one meter for each meter of additional height, the front clearing will be nine meters. Under no condition will the construction of solid railing or cyclone fencing, with the exception of the external perimeter fences or to protect restricted access areas of the Condominium, be authorized. In this latter case, the fences must be covered with suitable materials, either greenery or a black saran-type material. No mechanical or power equipment must be exposed or showing above the surface of the subsidiary properties or future buildings. When meters, valve boxes, pedestal transformers or other public utility connections are needed, they must blend with the

infrastructure or the building, in cases when such exist, regarding the future development of the stages of this Condominio Global, and inasmuch as possible, they shall be hidden by materials that blend with the architecture or landscape of the infrastructure or building accordingly. Large equipment, such as storage tanks, generators, water cooling towers and compressors, must be placed in machine rooms or specially designed areas so that they blend with the infrastructure, architecture and landscape of the building of each subsidiary property, if required in specific cases. **I) Construction:** To maintain the image of Condominio Global, all construction shall be executed prior approval from the Building Committee of the Condominium, it must be fenced in and have controlled worker and equipment and materials entry and egress, which details are stipulated in this Bylaw. Also, the joint owners who engage the construction projects shall meet occupational safety norms guaranteeing the least number of accidents possible and they must also comply with the environmental standards of the Condominium which will be specified later in this Bylaw. The owner of the construction project will be liable for ensuring that the subcontractor who executes the project does not damage the installations or structures of the Condominium, the private and shared assets, and for guaranteeing the conservation of the ornamentation and cleanliness of the Condominium at all times. The joint owner who engages the construction work will be charged all of the inherent expenses for the replacement, repair, damages and necessary extraordinary maintenance that is directly or indirectly produced by the construction project, independently of if it is caused by an outside contractor. Failure to pay such expenses to Condominium Management according to the breakdown provided by Management to the joint owner, within five business days beginning on the day following notification from the Administrator, will accrue late interest at the same rate as was set for the Ordinary Maintenance Fee by the Condominium Owners'



General Meeting. **j) Gardening and landscaping:** The joint owners shall maintain their private green areas in a similar natural setting as the Condominium and in accordance with the Building Code. The joint owners will be responsible for maintaining the automatic sprinkler systems and hydrometers of their subsidiary properties. In no case may the joint owners maintain vegetation in their private green areas which could or may reasonably be expected to produce bad odors, sanitation or ornamentation issues, or which could damage the external or sub-surface infrastructure of the Condominium, the shared or private installed services or systems of other joint owners. In such case, the Condominium Management will caution the joint owner to immediately and definitely withdraw the damaging or potentially damaging or problematic vegetation. The Building Code will develop and specify each and every one of the aspects of the architectural tendency of the Condominium, which will also govern the Independent Condominiums. **TWENTY-FIFTH ARTICLE: Prohibitions: a) Animals:** It is forbidden to keep animals of any type in the condominium, except those which may be used by security and which will be exclusively for the purposes thereof. **b) Substances and materials:** Also, it is forbidden to keep inside of the Condominium any type of substance or product, either chemical or natural, that produces bad odors, is inflammable or may endanger the welfare and safety of people and buildings, and other structures and works of the Condominium. Therefore, it is forbidden to possess explosive, inflammable or unsanitary materials, which produce bad odors, smoke or any disturbance, or which may endanger health, with the exception of those from the operation of the industrial plant installed on each subsidiary property and its corresponding production processes, which will have previously been reported to and authorized by the Condominium Management or the Condominium Owners' General Meeting, if the Administrator should find it necessary to place the matter

before it for its knowledge and approval. **c) Food consumption:** No person may use the sidewalks, streets or green zones to ingest food. The joint owners, lessees, occupants or holders, under any title, must ensure the correct abidance of this article. In the shared recreational zones of the Condominium, exclusive areas will be installed where food may be consumed during social, sports events or at lunch hours, the use of which for specific activities must be requested by the joint owners in advance and in writing from the Administrator, after which they shall not engage in any activities other than those originally proposed and approved, meaning that in the case of requiring any modification, Management shall be notified in writing and its prior approval newly obtained. Each joint owner, lessee, occupant or holder, under any title, of a subsidiary property must destine part of the private area to the food requirements of staff and visitors, generally in accordance with the applicable Ministry of Health regulations. **d) Industrial sewage:** In regard to industrial sewage, the Condominium has its own waste water treatment plant, the use and limitations of which are binding on all the joint owners, lessees, occupants or holders under any title. Therefore, it is forbidden to allow industrial sewage to run free, especially in the following cases: **d.i)** It is forbidden to discharge untreated industrial waste into the sewers. Management may authorize such discharge prior authorization from the Ministry of Health and within the limits of the treatment system. **d.ii)** It is forbidden to discharge sewage, runoff and industrial residues into the pluvial drainage system of the Condominium. **TWENTY-SIXTH ARTICLE. The obligation of the Joint Owners for environmental conservation:** All of the joint owners, lessees, occupants or holders, under any title, are obligated to contribute to the betterment and maintenance of the natural and artificial environmental conditions that meet the vital and health needs of neighboring populations, such as by the good and healthy habits of their workers. No

establishment may operate in the Condominium if it constitutes a nuisance, danger, or if it fosters unhealthy conditions in the area, either because of the maintenance conditions of its industrial unit, the systems that it employs in its operations, because of the way it eliminates wastes and emissions, or because of the noise that its operations produces. As a result, no companies may operate which, due to the nature of their business or the conditions in which it is conducted, the materials or wastes employed, elaborated or emitted, or which due to the storage of toxic, corrosive, inflammable or explosive substances, could produce effects capable of jeopardizing or effectively damaging, in an immediate and serious manner, the environment, installations and structure of the Condominium, the lives of the inhabitants or neighboring populations of the Condominium. All of the joint owners, lessees, occupants or holders, under any title, of the Condominium's subsidiary properties, businesspeople, workers, administrative staff and visitors, are obligated to abide by the environmental commitments that govern the Condominium and which are set forth in the Environmental Impact Study of the Barreal Free Zone Project, which was submitted and approved by the National Environmental Technical Secretariat—SETENA, by its Resolution Number one hundred forty-one B ninety-nine, by the original owner of the rural property which was put under the Condominium Property System in this deed for the creation of the Condominium, **PARQUE GLOBAL SOCIEDAD ANONIMA**, Corporate Identification number three B one hundred one B two hundred thirty thousand five hundred seventy-eight, which environmental commitments form an integral part of the Bylaw and a copy of which is given to each joint owner together with the Bylaw for their due information and strict abidance. The joint owners, lessees, occupants or holders, under any title, whose activities are disturbing, unhealthy or dangerous and which operate irregularly may be closed down by the health authority without Management liability,

and in each case, its owners and administrators will be obligated to comply with the orders or instructions of the health authority for the purpose of putting and end or mitigating the unhealthy, dangerous or disturbing conditions produced thereby. It is the obligation of the companies that are established in the Condominium to place in service in the installations that they occupy the equipment and systems that are necessary to avoid the discharges, emissions, emanations or noise that their operations cause and which generate contamination. Also, it is the obligation of the joint owners, lessees, occupants or holders, under any title, to have fire and other natural disaster prevention systems as required by the Fire Department, National Emergencies Commission, and the National Insurance Institute, as well as having systems to avoid interior environmental contamination that could jeopardize the health and welfare of their staff and others. **TWENTY-SEVENTH ARTICLE: Trash or solid waste bins:** the Condominium will provide trash bins along sidewalks and pedestrian walkways. Each building must have trash bins that are suitable to its volume, which must be located in a zone authorized in writing by the Administrator and which is not visible from the main street. The location must be in a place which minimizes odors or noise to the neighboring subsidiary properties. The Administrator will coordinate solid waste collection services through private waste collectors who are authorized by the corresponding State agencies. The companies established in the Condominium will be obligated to use the trash collection system provided by Management, due to which it is forbidden for any individual or company to dispose of or accumulate solid waste in places that are not expressly authorized for that purpose, to use unsuitable means of transportation or accumulation, and to proceed to use, treat or finally dispose of waste by means of systems that have not been approved by Management under the norms established by the Ministry of Health, Municipality of the Central Canton of the

Province of Heredia, and by the trash collection company. The Condominium will provide solid waste bins located in shared green areas and strategic places. Management will be responsible for maintaining the optimum condition of the bins; however, joint owners, lessees occupants or holders, under any title, will collaborate in promoting the adequate use and care of such bins among their staff and visitors. The trash generated by each joint owner, lessee, occupant or holder, under any title, operation, must be deposited in the easy-access enclosed bins that are provided by the companies installed in each subsidiary property and placed in specific areas only on those days when trash is collected. The location of such bins will be in an area that is protected from view from the main street and which shall avoid bad or trashy odors. In the case of toxic, metal, or other types of waste that are not admissible in the sanitary landfills where the Condominium will send its waste, the respective joint owner must hire a supplier authorized by the Ministry of Health, and it will be under its responsibility, risk and expense that such waste will be removed. To cover the trash collection expenses of each joint owner, the terms of the Twenty-Second Article, paragraph a) Ordinary Maintenance Fee, sub-paragraph a.vii) will apply. **SIXTH CHAPTER. ON ACCESS INTO THE CONDOMINIUM. TWENTY-EIGHTH ARTICLE: Control and Registration of Persons and Vehicles:** In view that the Condominium is an Industrial Park which is in great part subject to the Free Zone System, with its respective customs controls, strict control of entry and egress of vehicles and persons, is an essential part of the Condominium's security system. To achieve such access, the vehicles and administrative staff and workers of the businesses must register in the guard station which is located at the entrance to the Condominium, and they must present the identification that the Administrator will provide for that purpose as a necessary means of access which will allow the permanent access of said persons and vehicles to be controlled

and facilitated. Visitors and those other passengers or heavy vehicles which, by nature and function are necessary for the development or operation of the Condominium, given its commercial and industrial nature, such as those that transport prime materials, components or finished product under customs control, shall obtain due authorization from Management or the joint owners, lessees, occupants or holders, under any title, of the subsidiary properties which they visit to obtain access to the Condominium. The entry and egress of vehicles, buses and persons to the Condominium may only be achieved through sites that are designated for that purpose by the Condominium Management and according to the following provisions: **a) Vehicular entry and parking:** To enter the Condominium, the driver of a vehicle shall identify him/herself at the guard post or customs control station, as it may be, where the corresponding record book will be kept, which will indicate for the driver and passengers, their names, I.D. or passport numbers, place of origin, address, reason for entry, and times of entry and egress. Vehicles which enter the Condominium shall abide by the speed limits on posted traffic signs and in general they shall abide by a pedestrian zone maximum speed limit of twenty-five kilometers per hour. Drivers must use marked areas for parking, and they will not be allowed to park automobiles in restricted areas, such as the access ways into each company, loading areas, or the areas located in front of bus stops, water hydrants, or any other places that are restricted under general provisions, laws, regulations and traffic signs. Management reserves the right to tow incorrectly parked cars, and the owner of the car will pay the respective expenses plus a Twenty Dollar fine, which may be charged to the joint owners, lessees, occupants or holders, under any title, of the subsidiary property which the driver was visiting or is employed by. Management will not be liable for damages incurred by said action. Heavy vehicles which carry prime materials, components or finished product must park at the loading

dock of each subsidiary property. It is strictly forbidden for heavy vehicles to be parked on public roads, streets and access ways of the Condominium, and the marked passenger car parking spaces are not applicable to heavy vehicles. In the case in which the assigned loading dock of a property is insufficient, the heavy vehicle shall wait outside of the Condominium unless Management assigns another temporary loading dock or parking zone to it. All national laws and regulation regarding traffic and vehicular parking apply in the Condominium. Passenger cars that belong to the following duly-authorized and identified people may enter the Condominium: the staff of Promotora de Comercio Exterior PROCOMER, the General Customs Service, Ministry of Health, Ministry of Labor, Ministry of Public Safety, Ministry of the Treasury, Ministry of Economy, Industry and Commerce, General Internal Revenue Administration, and Management staff. To achieve said entry, the vehicles must be registered with Management, which will provide identification and the necessary means of access which will allow control and facilitate the permanent access of such persons. The customs station may at discretion request the inspection of an outgoing vehicle. **b) Vehicular egress:** To leave the Condominium, all unidentified vehicles will stop at the guard station to be registered internally by the guards who will authorize the egress of the vehicle, which may be denied if any anomaly is encountered, in which case it will immediately be reported to Management. Egress from the Condominium of any merchandise that may have entered under the benefits of the Free Zone System, either prime materials, finished product, equipment or machinery, must be authorized by an official of the General Customs Service and must have all the respective documents stipulated in the General Customs Law, its Bylaw, norms and procedures. All merchandise transportation vehicles, light cargo transportation vehicles with enclosed cargo beds, trucks, containers, motorcycles with cargo carriers or any other vehicle

that is specially conditioned for the transportation of goods, must be reviewed inside and outside without exception by the security guards who will authorize its egress from the Condominium. For the egress of containers or other types of tagged vehicles, the security post of the Condominium will corroborate that any vehicle that exits is carrying the exit documents that are required by the General Customs Service, and will review the tag number against the one specified on the Customs documents. Furthermore and continuing along the same vein, the security officer that makes the verification will note the following information in the book of egresses: name of the driver, transport company, vehicle license plate, type of vehicle, tag number, Customs policy number, issuing free zone company, and time of egress. This does not disallow requests for information that the Ministry of the Treasury, General Customs Service, Promotora de Comercio Exterior or Management may require for good vehicular egress control. Conditionally and in coordination with the Customs post, outgoing cargo vehicles may be searched. **c) Executive, administrative staff and worker vehicles:** In the case of executive, administrative staff and worker vehicles, Management will provide them with an identification tag valid until December of current year, whereupon the lists will be updated with Management and new identification tags will be issued valid until December of the next year, which will allow entry and egress from the Condominium. The Condominium security may at random stop any one of these vehicles and search its trunk and interior. If any anomaly is encountered, it will be reported to Management and the Customs post for the corresponding action. In the case of recidivism or a more serious fault, Management may withdraw the identification tag, resulting in permanent inspection each time the vehicle leaves the premises. **d) Entry and egress of Executives, Administrative Staff and Workers:** To control the entry and egress of people into the Condominium, the companies installed in the



subsidiary properties and Management must provide their executive, administrative staff and workers with a personal identification tag which must contain the following information at least: Company name, complete name of worker, C.R. Identification Card number, a recent photograph, authorized stamp of the company that the person works for, and date of issue. The identification tags shall not be valid beyond the month of December of the immediately following year. Management will provide said identification tag to each company at cost and it will be the responsibility of the company to immediately notify the expiration of an employment contract to Management for purposes of control and authorization for the entry of their executives and workers. The companies must be liable for controlling the merchandise of their property or in their custody. However, the Condominium Security may make random inspections of the purses or bags of the executives, administrative staff, workers and visitors when they consider it necessary. In the case of anomalies, it will be the responsibility of the security team or the company that is installed in the Condominium to report to Management, who will inform the representatives of the General Customs Service accordingly. The administrative staff, executives and workers of the companies installed in the Condominium will have free access thereto; however, they must wear the special identification tag mentioned in the preceding article, and enter and leave through the accesses provided for the Condominium by Management for that purpose, showing their identification and providing the data for their record. **e) Visitor entry egress:** To enter the Condominium, visitors must identify themselves at the guard house, providing the guard with the requested data and suitable identification and the reason for the visit. Once done, the guard will confirm the visitor with the company and if appropriate, the object for the visit, and will give the visitor an identification tag, which must be worn in plain sight as long as the visitor remains in the

Condominium. The guard post will keep a record of visitor access in the corresponding book, where the following data will be noted: name of the visitor, Identification Card or passport number, automobile license plate, company to be visited, hour of entry and of egress. **f) On salesperson access:** Except by express authorization from Management, all types of sales within the premises of the Condominium or its access ways is prohibited, including traveling salespeople.

**SEVENTH CHAPTER: MISCELLANEOUS: TWENTY-NINTH ARTICLE: General regulation which the joint owners shall abide:** In view that the Condominium is an Industrial Park subject in its majority to the Free Zone System, and that on the date when it was subjected to the Condominium Property System it obtained the respective approvals from the regulatory public agencies, such as, without limitation, the Ministry of Foreign Trade, Promotora de Comercio Exterior PROCOMER, the National Environmental Technical Secretariat SETENA, the General Customs Service, the Ministry of Health, "INVU", "IMAS" and the institutions that provide approval for the Condominium Property System, the joint owners who acquire a subsidiary property in the Condominium also acquire a property subject to the general inalienable regulations regarding the nature, use, structural and organizational make-up of the Condominium which they must abide by at all times. Consequently, the joint owners are obligated to abide by the stipulations contained in the Law and Bylaw, those of the internal Rules of Operation of Parque Global S.A., approved by PROCOMER on Two December, Nineteen Ninety-Nine, the Global Free Zone Master Plan dated Thirty October, Nineteen Ninety-Eight, a copy of which has been attached to the Notarial Book of References of Notary Jimenez-Morua as a reference document, the environmental commitments that govern the Condominium and which are set forth in the Environmental Impact Study of the Barreal Free Zone Project, which was submitted to the approval of the National Environment Technical

Secretariat by means of its Resolution Number one hundred forty-one B ninety-nine, by the original owner of the rural property that was subjected to the Condominium Property System in this deed for the creation of the Condominium, **PARQUE GLOBAL SOCIEDAD ANONIMA**, Corporate Identification number three B one hundred one B two hundred thirty thousand five hundred seventy-eight, the General Health Law, its reforms and Bylaw, and when the companies that are installed in the subsidiary properties are also subject to the Free Zone System, they must also abide by all of the stipulations established in Free Zone Law Number seven thousand two hundred ten, its reforms and bylaws, as well as by General Customs Law Number seven thousand five hundred fifty-seven, its reforms and bylaws, and all of those laws and regulations that apply to the subject and activity. The Administrator will provide the joint owners with an information pamphlet that will contain this Bylaw, the Internal Rules of Operation of Parque Global S.A., the Global Free Zone Master Plan, and the environmental commitments acquired by the Condominium before SETENA. Nevertheless, no joint owner may allege ignorance of the stipulations and regulations to which he/she/it is subject because of the fact that the Administrator does not provide such information, since the joint owner, upon acquiring the property and consequently all of the obligations specified in this Bylaw, will be subject to strict compliance and it shall be his/her/its individual obligation to be duly informed and gather the regulations that have been mentioned. Breach by the joint owner of any of the stipulations that govern the Condominium will be put before the Condominium Owners' General Meeting, which will determine the measures and sanctions that will be imposed on the respective joint owner.

**THIRTIETH ARTICLE: On the affectation of the subsidiary properties to the Condominium Property System:** In view of the legal nature of this Condominium, i.e., that each subsidiary property represents a stage of construction and each

one of them may be submitted individually to the Condominium Property System thus creating Independent Condominiums which will be joined by the shared areas of Condominio Global, the owners of the subsidiary properties which wish to submit their property to the Condominium Property System under the Law, shall abide and ensure compliance with the terms, conditions and provision contained in this Bylaw by the joint owners, lessees, occupants or holders, under any title, of the resulting Independent Condominiums. Breach of the stipulations herein will be considered a serious violation of this Bylaw and will empower the Condominium Owners' General Meeting to demand compliance. **THIRTY-FIRST ARTICLE: Modification of the Bylaw.** Any modifications of this Bylaw, be it total or partial, may only be executed by the Condominium Owners' General Meeting according to Law and by means of resolutions taken by unanimous vote of all the owners or joint owners of the Condominium. Every modification must be registered in the Public Registry and shall be informed by Management to the joint owners. The Condominium Owners' General Meeting will be the only responsible body to interpret this Bylaw, and such interpretation will be binding on the parties. To determine if the interpretation is reasonable or not, the opinion in that regard specified in writing by the legal advisors of the Condominium's Legal counsel will suffice. The lack of validity or efficiency of one or more of the stipulations of this Bylaw will not cause the lack of validity and effect of the remaining stipulations hereof. **THIRTY-SECOND ARTICLE: Extinguishment of the Condominium Property System:** The extinguishment of the Condominium Property System may take place by resolution of the joint owners met in General Meeting, by unanimous vote of all the subsidiary property owners of the Condominium, providing that such extinguishment does not disobey other legislation related to the subject, particularly in regard to the possible remaining lots or units. The extinguishment

of the system will take effect from its registration in the Public Registry. In that case, the entries of the parent property and subsidiary properties will be cancelled in the Condominium Properties Section and the new immovable properties will be registered in the General Properties Section. The acquired rights of third parties will remain intact. **TO HERE THE BYLAW OF CONDOMINIO GLOBAL.**

-----End of Text-----

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**Exhibit Three**

**Waste Water Treatment Plant Regulations**

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**USAGE REGULATION  
SEWAGE TREATMENT PLANT**

**BOD 5,20**

**COD**

**SS**

**For the rest of regulated parameters, the quality of the effluent shall meet the limits established in the Discharged and Reuse of waste Water Regulations, decree No. 26042-S-MINAE.**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Thomas M. Prescott, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Align Technology, Inc. on Form 10-Q for the quarter ended March 31, 2003 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition and results of operations of Align Technology, Inc.

By: /s/ THOMAS M. PRESCOTT

**Date: May 13, 2003**

**Name: Thomas M. Prescott**  
Title: President and Chief Executive Officer

I, Eldon M. Bullington, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Align Technology, Inc. on Form 10-Q for the quarter ended March 31, 2003 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition and results of operations of Align Technology, Inc.

By: /s/ ELDON M. BULLINGTON

**Date: May 13, 2003**

**Name: Eldon M. Bullington**  
Title: Vice President of Finance and Chief Financial Officer