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OCT-15-2003 11:39AM FROM-ARDEN REAL IC +6102688303 T-900 P 003/003 F-406

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

In re.
Allegiance Telecom of California, Inc

Case Number
03-13069

USBC SOUTHERN DISTRICT OF NEW YORK
FILED
ALLEGIANCE TELECOM, INC
03-13057 (RRD)
2389

s1948

YOUR CLAIM IS SCHEDULED AS.

$730 00 UNSECURED

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C § 503

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if this address differs from the address on the envelope sent to you by the court.

Name of Creditor and Address.

ARDEN REALTY
c/o Law Offices of Patrick C McGarrigle, APC
1100 Glendon Avenue, Suite 2150
Los Angeles, California 90024
(310) 208-3300 (T), (310) 208-3309 (F)

Creditor Telephone Number ( )

The amounts and nature of your claim reflected above constitute your claim as scheduled by the Debtor If you agree with the amounts set forth herein, and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.

If the amounts shown above are listed as Contingent Unliquidated or Disputed, a proof of claim must be filed
If you have already properly filed a proof of claim with the Bankruptcy Court, you do not need to file again

CREDITOR TAX I D #	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR	Check here if this claim ☐ replaces or ☐ amends a previously filed claim dated
- - - -	- - - -	

1 BASIS FOR CLAIM

☐ Goods sold ☐ Personal injury/wrongful death ☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Services performed ☐ Taxes ☐ Wages, salaries, and compensation (Fill out below)
☐ Money loaned ☒ Other (describe briefly below) Your social security number

Unpaid compensation for services performed from _____ (date) to _____ (date)

Commercial Lease Obligations

2 DATE DEBT WAS INCURRED 2003 **3. IF COURT JUDGMENT, DATE OBTAINED**

4 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED

$ _____ (unsecured) $ 730 00 (secured) $ _____ (unsecured priority) $ 730 00 ** (total)

** Arden reserves all rights re lease rejection damages, post-petition rent & related charges, etc

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges.

5 SECURED CLAIM

☒ Check this box if your claim is secured by collateral (including a right of setoff)

Brief description of collateral

☐ Real Estate
☐ Motor Vehicle
☒ Other Sec. Deposit

Value of collateral $ 22,663 49 (approx)

Amount of arrearage and other charges at time case filed included in secured claim above, if any $ 730 00

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim

RECD
DEC 03 2003
BMC

Specify the priority of the claim

☐ Wages salaries, or commissions (up to $4 650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U S C § 507(a)(3)
☐ Contributions to an employee benefit plan - 11 U S C § 507(a)(4)
☐ Up to $2,100* of deposits toward purchase, lease, or rental of property or services for personal, family or household use - 11 U S C § 507(a)(6)
☐ Alimony maintenance or support owed to a spouse, former spouse, or child -11 U S C § 507(a)(7)
☐ Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)
☐ Other - Specify applicable paragraph of 11 U S C § 507(a) _____

*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 SUPPORTING DOCUMENTS. *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices Itemized statements of running accounts contracts, court judgments mortgages, security agreements, and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

9 DATE-STAMPED COPY. To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 5 00 p m , November 26, 2003, Prevailing Eastern Time

BY MAIL TO
United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
Bowling Green Station, P O Box 95
New York, NY 10274-0095

BY HAND OR OVERNIGHT DELIVERY TO
United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
One Bowling Green, Room 534
New York, NY 10004-1408

THIS SPACE FOR COURT USE ONLY

RECEIVED
NOV 26 2003
CLAIMS PROCESSING CENTER

DATE SIGNED	SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)
11/25/03	Patrick C McGarrigle, Esq , Atty For Arden Realty, Inc

Penalty for presenting fraudulent claim is a fine of up to $500,000 or imprisonment for up to 5 years, or both 18 U S C §§ 152 AND 3571

Allegiance Claim
02568

See Other Side For Instructions

STANDARD OFFICE LEASE

GOVERNOR PARK

By and Between

John Hancock Mutual Life Insurance Company, as Lessor

and

Allegiance Telecom, Inc , as Lessee

Dated March 25, 1999

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EXHIBIT A	PREMISES FLOOR PLAN
EXHIBIT B	OFFICE BUILDING PROJECT
EXHIBIT C	RULES AND REGULATIONS
EXHIBIT D	WORK LETTER

STANDARD OFFICE LEASE
[Governor Park]

1 Basic Lease Provisions ("Basic Lease Provisions")

1 1 Parties This Lease dated for reference purposes only, March 25, 1999 is made by and between John Hancock Mutual Life Insurance Company a Massachusetts corporation (herein called 'Lessor'), and Allegiance Telecom Inc , a Delaware corporation (herein called "Lessee')

1 2 Premises A total of approximately 9,427 rentable square feet, more or less of the building described in paragraph 1 3, located on the third floor and identified as Suite 300, as defined further in paragraph 2 and as shown on Exhibit A hereto (the "Premises")

1 3 Building Commonly described as being located at 6165 Greenwich Drive, in the City of San Diego, County of San Diego, State of California, as indicated as Building 1 on Exhibit B hereto, and as defined in paragraph 2, and consisting of 52,196 rentable square feet

1 4 Permitted Use General office use subject to paragraph 6

1 5 Term Seven (7) years commencing as set forth in paragraph 3 1, and subject to renewal in accordance with paragraph 51

1 6 Base Rent $17,911 30, per month payable on the 1st day of each month in advance, per paragraph 4 1

1 7 Base Rent Increase The monthly Base Rent payable under paragraph 1 6 above shall be adjusted as provided in paragraph 4 1 below

1 8 Rent Paid Upon Execution The first month's base rent $17 911 30

1 9 Security Deposit $22,663 49

1 10 Lessee's Share and Lessee's Tax Share Eighteen and six hundredths percent (18 06%) subject to paragraph 4 2, and subject to adjustment to the actual rentable square footage of the Premises

1 11 Expense Base Year Calendar year 1999

1 12 Tax Base Year July 1 1999, to June 30 2000

2 Premises, Parking and Common Areas

2 1 Premises The Premises are a portion of a building, herein sometimes referred to as the 'Building identified in paragraph 1 3 of the Basic Lease Provisions Building shall include adjacent parking facilities used in connection therewith The Premises, the Building the Common Areas the land upon which the same are located along with all other buildings and improvements thereon or thereunder are herein collectively referred to as the Office Building Project" Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein the real property referred to in the Basic Lease Provisions paragraph 1 2, as the "Premises" including rights to the Common Areas as hereinafter specified

2 2 Vehicle Parking So long as Lessee is not in default beyond any applicable cure period, and subject to the rules and regulations attached hereto as Exhibit C and as established by Lessor on a reasonable nondiscriminatory basis from time to time, Lessee shall be entitled to use, at no extra charge, up to four (4) parking spaces per 1,000 usable square feet leased in the Premises which shall be unreserved spaces If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect with regard to the use of parking, then Lessor shall have the right without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor

2 3 Common Areas—Definition The term 'Common Areas' is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Office Building Project that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor Lessee and of other lessees of the Office Building Project and their respective employees suppliers shippers customers and invitees including but not limited to, common entrances, lobbies corridors stairways and stairwells public restrooms, elevators escalators parking areas to the extent not otherwise prohibited by this Lease loading and unloading areas trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways landscaped areas and decorative walls

2 4 Common Areas—Rules and Regulations Lessee agrees to abide by and conform to the rules and regulations attached hereto as Exhibit C with respect to the Office Building Project and Common Areas and to cause its employees, suppliers shippers customers and invitees to so abide and conform In the event of any conflict between the terms of said rules and regulations and the terms of this Lease the terms of this Lease shall control Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to modify, amend and enforce said rules and regulations on a reasonable, nondiscriminatory basis Lessor shall not be responsible to Lessee for the noncompliance with said rules and regulations by other lessees, their agents, employees and invitees of the Office Building Project

2 5 **Common Areas—Changes** Lessor shall have the right in Lessor's sole discretion from time to time

2 5 1 To make changes to the Building interior and exterior and Common Areas, including without limitation, changes in the location, size, shape, number and appearance thereof, including but not limited to the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas ingress egress direction of traffic, decorative walls, landscaped areas and walkways, provided however, Lessor shall at all times provide to Lessee the parking facilities required by the terms of this Lease

2 5 2 To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available

2 5 3 To designate other land and improvements outside the boundaries of the Office Building Project to be a part of the Common Areas, provided that such other land and improvements have a reasonable and functional relationship to the Office Building Project

2 5 4 To add additional buildings and improvements to the Common Areas

2 5 5 To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Office Building Project or any portion hereof

2 5 6 To do and perform such other acts and make such other changes in to or with respect to the Common Areas and Office Building Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate

In exercising any of the foregoing rights Lessor shall use reasonable efforts to minimize interference with Lessee's use and occupancy of the Premises

3 **Term**

3 1 **Term** The term of this Lease shall be seven (7) years, commencing upon the Commencement Date The "Commencement Date" of this Lease shall be the earlier of (a) the date on which Lessee takes possession of the Premises or any substantial portion thereof for commencement of its operations, or (b) the date of the Tender of Possession under paragraph 3 2 1 below In the event that the Lease term would otherwise expire on other than the last day of a calendar month the term shall be extended to expire at 11 59 p m on the last day of such calendar month

3 2 **Delay in Possession** Notwithstanding said Commencement Date, if for any reason Lessor cannot deliver possession of the Premises to Lessee in the condition called for by the work letter of even date herewith being entered into by and between Lessor and Lessee a copy of which is attached hereto as Exhibit D ("Work Letter"), on the target Commencement Date set forth below and subject to paragraph 3 2 2, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof, but in such case, Lessee shall not be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease except as may be otherwise provided in this Lease until possession of the Premises is tendered to Lessee as hereinafter defined Lessor and Lessee shall mutually establish a reasonable target date for occupancy based upon a mutually agreed upon schedule for planning construction and substantial completion of Lessee's interior improvements The current target Commencement Date is June 15, 1999 During the construction of Lessee's improvements Lessee shall be granted access during reasonable times, in order to install equipment and telephones, provided that Lessee shall not interfere with the construction of such improvements Notwithstanding the foregoing in the event that Tender of Possession is not achieved by July 15, 1999 ("Outside Date") which Outside Date shall be extended one (1) day for each day of delay caused by force majeure or a tenant-caused delay under the Work Letter then Lessee may within ten (10) days after such deadline, as its sole remedy for such delay terminate this Lease by delivering irrevocable written notice of such termination to Lessor within such 10-day period

3 2 1 Possession Tendered—Defined Possession of the Premises shall be deemed tendered to Lessee ("Tender of Possession") when (1) the improvements to be provided by Lessor under this Lease and the Work Letter are substantially completed, other than punch-list items which do not individually, or in the aggregate, materially affect Lessee's use of the Premises for its intended use, (2) the Building utilities are ready for use in the Premises (3) Lessee has reasonable access to the Premises and (4) five (5) business days shall have expired following advance verbal or written notice to Lessee of the occurrence of the matters described in (1) (2) and (3) above of this paragraph 3 2 1

3 2 2 Delays Caused by Lessee There shall be no abatement of rent to the extent of any delays caused by acts or omissions of Lessee, its agents employees and contractors

3 3 **Early Possession** If Lessee occupies the Premises prior to said Commencement Date such occupancy shall be subject to all provisions of this Lease such occupancy shall not change the termination date, and Lessee shall pay prorated rent for such occupancy based on the actual number of days in the applicable month Notwithstanding the foregoing the installation of equipment and telephones in the Premises shall not constitute occupancy of the Premises

3 4 **Uncertain Commencement** Upon the determination of the actual Commencement Date, Lessor shall deliver to Lessee correspondence ("Commencement Memorandum") which shall establish the Commencement Date pursuant to paragraph 3 1 above

4 Rent

4 1 Basic Rent Except as may be otherwise expressly provided in this Lease Lessee shall pay to Lessor the Base Rent for the Premises set forth in paragraph 1 6 of the Basic Lease Provisions without offset or deduction Lessee shall pay Lessor upon execution hereof the advance Base Rent described in paragraph 1 8 of the Basic Lease Provisions Rent for any period during the term hereof which is for less than one month shall be prorated based upon the actual number of days of the calendar month involved Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing The monthly Base Rent shall be as follows

Lease Year	Monthly Base Rent
1	$17 911 30
2	$18 627 75
3	$19,372 86
4	$20,147 77
5	$20,953 68
6	$21 791 82
7	$22,663 49

4 2 Definitions The following definitions shall apply to this Article 4

4 2 1 Expense Base Year shall mean calendar year 1999

4 2 2 Tax Base Year shall mean July 1 1999, to June 30 2000

4 2 3 "Expense Comparison Year shall mean each successive calendar year after the Expense Base Year during the Lease Term

4 2 4 Tax Comparison Year shall mean each successive July 1 to June 30 after the Tax Base Year during the Lease Term

4 2 5 "Lessee's Share' is defined, for purposes of this Lease, as the percentage set forth in paragraph 1 10 of the Basic Lease Provisions which percentage has been determined by dividing the approximate rentable square footage of the Premises by the total approximate square footage of the rentable space contained in the Office Building Project, which percentage shall be applied to Operating Expenses determined for the Base Year It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Lessor and Lessee agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises or a change in the rentable square footage in the Office Building Project It is further agreed that Lessee shall in no event be entitled to a credit to or adjustment of Lessee s Share of Operating Expenses payable hereunder, even if the ratio of Operating Expenses actually paid by Lessee compared to total Operating Expenses actually paid by other lessees of the Office Building Project exceeds Lessee s Share (as it might by way of example only and not limitation if some leases of the Office Building Project are made on a ' full gross ' basis in which case the lessees under such leases would not directly pay any portion of the Operating Expenses or increase therein)

4 2 6 Lessee's Tax Share ' shall mean the percentage of Lessee's Tax Share specified in the Basic Lease Provisions Lessee's Tax Share was calculated by dividing the rentable area of the Premises by the total rentable area of the office space in the Building In the event either the rentable area of the Premises or the total rentable area of the office space in the Building is changed, Lessee's Tax Share shall be appropriately adjusted, and as to the Tax Year in which such change occurs, Lessee's Tax Share for such year shall be prorated for the periods before and after such change on the basis of the number of days during such Tax Year with respect to each such Lessee's Tax Share

4 2 7 "Operating Expenses" is defined, for purposes of this Lease, to include without duplication, all costs if any actually incurred by Lessor in the exercise of its reasonable discretion for

4 2 7 1 The operation repair, maintenance and replacement in neat, clean, safe, good order and condition, of the Office Building Project including but not limited to the following

4 2 7 1 1 The Common Areas including their surfaces coverings decorative items, carpets, drapes and window coverings and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways driveways landscaped areas striping bumpers, irrigation systems, Common Area lighting facilities building exteriors and roofs fences and gates,

4 2 7 1 2 All heating, air conditioning plumbing, electrical systems life safety equipment, telecommunication and other equipment used in common by, or for the benefit of, lessees or occupants of the Office Building Project, including elevators and escalators lessee directories, and fire detection systems, including sprinkler system maintenance and repair

4.2.7.2 Trash disposal, janitorial and security services,

4.2.7.3 Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense"

4.2.7.4 The cost of the premiums for the liability and property insurance policies to be maintained by Lessor under paragraph 8 hereof

4.2.7.5 The amount of the real property taxes to be paid by Lessor under paragraph 10.1 hereof,

4.2.7.6 The cost of water, sewer, gas, electricity, and other publicly mandated services to the Office Building Project, provided, however, that with respect to any utilities separately metered to the Premises, only a reasonable allocation of such utilities applicable to the Common Areas shall be included as an Operating Expense

4.2.7.7 Labor, salaries and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Office Building Project and accounting and reasonable and customary management fee attributable to the operation of the Office Building Project

4.2.7.8 Replacing and/or adding improvements mandated after the date of this Lease by any governmental agency and any repairs or removals necessitated thereby, including without limitation, for seismic safety or compliance with the American Disabilities Act, such costs to be amortized over the useful life of the applicable equipment or capital improvement according to Federal income tax regulations or guidelines for depreciation thereof (including interest on the unamortized balance as is then reasonable in the judgment of Lessor's accountants), and

4.2.7.9 Replacements of equipment or improvements, as amortized over such equipment or improvement's useful life for depreciation purposes according to federal income tax guidelines, and

For purposes of this Lease, Operating Expenses shall not include taxes covered under paragraph 4.2.8 below, interest expense (except as provided in paragraph 4.2.7.8 above), leasing commissions, depreciation on the improvements contained in the Building (except as provided in paragraph 4.2.7.8 above), the cost of capital expenditures or improvements not included within paragraphs 4.2.7.8 or 4.2.7.9 above or any costs which are paid or reimbursed by any tenant directly to third parties or as to which Lessor is otherwise reimbursed by any other tenant, third party or by insurance or condemnation proceeds, the cost of providing any tenant improvements, marketing, advertising and promotional costs and expenditures, leasing commissions, the initial construction cost of the Building and the Office Building Project, legal expenses incurred in enforcing any leases, debt service on any financing and other fees, costs and expenses incurred in connection with any financing, costs incurred by Lessor on account of Lessor's default under any lease, any bad debt loss, rent loss or reserves for bad debts or rent loss, ground rent, interest or penalties resulting from any late payments by Lessor, except to the extent proximately caused by Lessee's default under this Lease, the wages of any off-site management personnel (except to the extent Lessor elects to cease operating an on-site management office in which case a reasonable allocation of off-site personnel wages shall be chargeable as Operating Expenses hereunder), salaries, wages and other compensation paid to officers or directors of Lessor in their capacity as officers or directors, the cost of operating any parking garage and any retail space contained in the Office Building Project to the extent such costs are paid by such retail tenant or garage operator or are provided exclusively thereto, costs incurred by Lessor in connection with the operation of the business entity which constitutes Lessor (as opposed to the operation of the Office Building Project), any fines or penalties incurred due to violations by Lessor of any applicable legal requirement provided that such violation is not attributable to any act or omission of Lessee or any of its employees, agents, contractors or invitees, costs incurred in connection with any sale or change of ownership of the Building or the Office Building Project, including, without limitation, brokerage commissions, attorneys' and accountants' fees, closing costs, title insurance premiums, transfer taxes and debt losses, rent losses and reserves for such losses, any political contributions or any charitable contributions, amounts paid to any person, firm or other entity related to or otherwise affiliated with Lessor which are in excess of arm's length competitive prices in the San Diego area for such services or goods provided, costs arising from the removal, remediation or abatement of hazardous materials except in the course of routine maintenance and except those introduced to the Building or the Office Building project by Lessee or any of its contractors, agents, employees or invitees, costs arising from conditions which, on the Lease Commencement Date, violate the American with Disabilities Act or any other applicable law. The computation of Operating Expenses shall be made in accordance with fair and reasonable accounting principles customarily applied by owners of similar properties in San Diego, California.

4.2.8 Applicable Taxes shall mean all taxes, assessments and charges levied on or with respect to the Building, the Office Building Project or any personal property of Lessor used in the operation thereof and payable by Lessor. Applicable Taxes shall include, without limitation, all general real property taxes and general and special assessments, fees, assessments or charges for transit, police, fire, housing, other governmental services or purported benefits of the Building, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease or on the use or occupancy of the Building or any part thereof or on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied on or assessed against Lessor by, or payable by Lessor as a result of, the requirements of the United States of America, the State of California or any political subdivision, public corporation, district or other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes. Applicable Taxes shall not include franchise, transfer, inheritance or capital stock taxes or income taxes measured by the net income of Lessor from all sources unless, due to a change in the method of taxation, any of such taxes are levied or assessed against Lessor as a substitute for, in whole or in part, any other tax which would otherwise constitute an Applicable Tax. Applicable Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with good faith proceedings to contest, determine or reduce Applicable Taxes. Notwithstanding, anything to the contrary in this Lease, in the event that any Applicable Taxes are payable, or may at the option of the taxpayer be paid in installments, such

Applicable Taxes shall be deemed to have been paid in installments, regardless of the method of actual payment by Lessor, and Lessee's Share of such Applicable Taxes shall only include those installments which would become due and payable during the Term

4 3 **Payment of Increases** If with respect to any Expense Comparison Year the Operating Expenses shall be higher than the Operating Expenses for the Expense Base Year Lessee shall from and after the first anniversary of the Commencement Date pay to Lessor as additional rent Lessee's Share of Operating Expenses of any such increase in Operating Expenses in the manner provided herein If, with respect to any Tax Comparison Year, the Applicable Taxes shall be higher than the Applicable Taxes for the Tax Base Year, Lessee shall, from and after the first anniversary of the Commencement Date, pay to Lessor as additional rent, Lessee's Tax Share of any such increase in Applicable Taxes in the manner provided herein

4 4 **Time for Payment** The payments contemplated under paragraph 4 3 shall be made as follows

4 4 1 During each month of each Comparison Year Lessee shall pay to Lessor with each installment of Base Rent, such amounts as are reasonably estimated by Lessor to be one-twelfth (1/12th) of the amounts payable pursuant to paragraph 4 3 with respect to each Tax Comparison Year and Expense Comparison Year, provided however that Lessor may, by written notice to Lessee, reasonably revise its estimates for such year in which event subsequent payments during the Comparison Year shall be based upon such revised estimate

4 4 2 With reasonable promptness after the end of each Tax and/or Expense Comparison Year Lessor shall deliver to Lessee an itemized statement setting forth the actual Operating Expenses and Applicable Taxes for the Comparison Year, a comparison with the Operating Expenses and Applicable Taxes for the Base Year and a comparison of any amounts payable under paragraph 4 3 with the estimated payments made by Lessee If the amounts payable under paragraph 4 3 are less than the estimated payments made by Lessee with respect to such Comparison Year the statement shall be accompanied by a refund of the excess by Lessor or at Lessor's election, provided the Lease has not expired or otherwise terminated a notice that Lessor shall credit the excess to the next succeeding monthly installments of the Base Rent If the amounts payable under paragraph 4 3 are more than the estimated payments made by Lessee with respect to such Comparison Year Lessee shall pay the deficiency to Lessor within thirty (30) days after delivery of such statement Statements provided by Lessor shall be final and binding upon Lessee, if Lessee fails to contest the same within six (6) months after the date of delivery to Lessee

4 5 **Partial Year** If the Commencement or Expiration Date shall occur on a date other than the first or last day of a Comparison Year Lessee's Tax Share and Lessee's Share of Operating Expenses for such Comparison Year shall be prorated according to the ratio that the number of days during said Comparison Year that the Lease was in effect bears to 365

4 6 **Vacancy Adjustment** Notwithstanding anything to the contrary in the Lease, if during all or any portion of the Expense Base Year or any Expense Comparison Year the Building is less than 95% occupied, for the purposes of computing Lessee's Share of Operating Expenses for said year, those Operating Expenses which vary based upon occupancy levels shall be calculated as though the Building were 95% occupied throughout such year provided however, in no event shall the aggregate amount of Operating Expenses collected by Lessor from all tenants in the Building exceed the actual Operating Expenses for said year

4 7 **Lessee's Right to Audit** If Lessee has paid the Operating Expenses and Real Property Taxes as billed by Lessor and if within six (6) months following Lessee's receipt of Lessor's annual statement of actual Operating Expenses pursuant to paragraph 4 4 Lessee notifies Lessor that Lessee desires to audit Lessor's statement Lessor shall cooperate with Lessee to permit such audit during normal business hours at Lessee's sole cost and expense Lessee's rights under this paragraph 4 7 may be exercised only by independent Certified Public Accountants or real estate professionals with accounting background In no case shall such audit be conducted by any (a) former employee of Lessor or of Lessor's managing agent or (b) any auditor working for a contingency fee or fee based upon Lessee's savings or refund pursuant to the audit

5 **Security Deposit** Lessee shall deposit with Lessor upon execution hereof the Security Deposit set forth in paragraph 1 9 of the Basic Lease Provisions as security for Lessee's faithful performance of Lessee's obligations hereunder If Lessee fails to pay rent or other charges due hereunder or otherwise defaults beyond any applicable cure period with respect to any provision of this Lease Lessor may use apply or retain all or any portion of said deposit for the payment of any rent or other charge in default for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor suffers thereby If Lessor so uses or applies all or any portion of said deposit Lessee shall within ten (10) business days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount then required of Lessee If after the initial seven year term the monthly Base Rent shall from time to time increase during the term of this Lease Lessee shall at the time of such increase deposit with Lessor additional money as a security deposit so that the total amount of the Security Deposit held by Lessor shall at all times bear the same proportion to the then current Base Rent as the initial Security Deposit bears to the initial Base Rent set forth in paragraph 1 6 of the Basic Lease Provisions Lessor shall not be required to keep said security deposit separate from its general accounts Said deposit or so much thereof as has not theretofore been applied by Lessor, shall be returned without payment of interest or other increment for its use, to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof, and within thirty (30) days after Lessee has vacated the Premises No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit, and under no circumstances shall Lessor be required to keep the Security Deposit separate from its other funds or in an interest-bearing account, nor shall Lessee be entitled to any interest on such amounts regardless of whether or not the Security Deposit is deposited in an interest-bearing account

6 Permitted Use

6 1 Permitted Use The Premises shall be used and occupied only for the purpose set forth in paragraph 1 4 of the Basic Lease Provisions and for no other purpose

6 2 Compliance with Law

6 2 1 Lessor makes no representation or warranty to Lessee regarding the condition of the Premises or with respect to whether or not the Premises or the use for which Lessee will occupy the Premises will violate any covenants or restrictions of record, or any applicable building code, regulation, law or ordinance in effect on the Lease term Commencement D ate or at any other time

6 2 2 Lessee shall occupy the Premises and utilize the Office Building Project in compliance with all applicable statutes ordinances rules, regulations orders covenants, conditions and restrictions of record (including without limitation the contents of Summers Governor Park Design Guide' which includes but is not limited to, copies of Declaration of Restrictions recorded in the Office of the San Diego County California Recorder on June 30, 1982, as Instrument No 82-203798, Agreement by and between the City of S an Diego and Genstar Development, Inc and the Amendment to Agreement, by and between the same p arties, recorded in the Office of the San Diego County Californi a Recorder on M ay 21 1979 as Instrument No 79-766368, and on December 9, 1980 as Instrument No 80-253258 respectively and Section 101 0435 1 of the City of S an Diego Zoning Ordinance regarding the M-IP [Manufacturing-Industri al] Zone) and requirements of any fire insur ance underwriters or rating bureaus now in effect or which may hereafter come into effect whether or not they reflect c hange in policy from that now existing during the term or any part of the term hereof relating in any manner to the Premises and the occupation and use by Lessee of the Premises Lessee sh all conduct its business in a l awful m anner and sh all not use or permit the use of the Premises or the Common Areas in any manner that will tend to create w aste or n uisance or sh all tend to disturb other occupants of the Office Building Project

6 3 Condition of Premises

6 3 1 L essor shall deliver the Premises to Lessee on the Lease Commencement Date (unless Lessee is already in possession) but makes no representation or warranty reg arding the condition of the Premises, except as expressly set forth in this L ease

6 3 2 E xcept as otherwise provided in this L e ase and excepting latent defects, L essee hereby accepts the Premises and the Office Building Project in their condition existing as of the Le ase Commencement D ate or the date that L essee takes possession of the Premises whichever is e arlier subject to all applicable zoning municipal county and state laws ordinances and regulations governing and regul ating the use of the Premises and any easements covenants or restrictions of record and accepts this L ease subject thereto and to all m atters disclosed thereby and by any exhibits attached hereto Lessee acknowledges that it has satisfied itself by its own independent investigation that the Premises are suitable for its intended use, and that neither Lessor nor L essor's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Office Building Project for the conduct of Lessee s business

6 3 3 Notwithst anding anything to the contr ary contained herein Lessor represents and warrants to L essee that as of the execution of this Le ase, the Common Are as comply with the requirements of the American with Disabilities Act

7 M aintenance, Repairs, Alterations and Common Area Services

7 1 Lessor's Obligations L essor sh all keep the Office Building Project including the Premises interior and exterior walls roof building systems and Common Are as in good condition and repair provided however L essor shall not be obligated to paint repair or repl ace w all coverings, or to repair or repl ace any improvements that are not ordinarily a part of the Building or are above then Building st andards E xcept as provided in paragraph 9 5 or as otherwise attributable to the gross negligence or willful misconduct of L essor or any of its agents employees or contr actors there shall be no ab atement of rent or liability of Lessor on account of any injury or interference with L essee's business with respect to any improvements alterations or repairs made by L essor to the Office Building Project or any part thereof or on account of any interruption of services or of access to the Premises Building or Office Building Project L essee expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford L ess ee the right to make repairs at L essor's expense or to terminate this L ease because of L essor s failure to keep the Premises in good order condition and repair L essor sh all provide j anitorial service customar ily for comparable office buildings five (5) days per week (currently scheduled Sunday through Thursd ay) regular p arking lot sweeping and regul ar Common Area l andsc aping services

7 2 L essee's Oblig ations

7 2 1 Notwithst anding L essor s oblig ation to keep the Premises in good condition and rep air, Lessee sh all be responsible for p ayment of the cost thereof to L essor as addition al rent for that portion of the cost of any m aintenance and repair of the Premises, or any special equipment (wherever loc ated) that serves only L essee or the Premises to the extent such cost is attributable to c auses beyond normal wear and tear L essee shall be responsible for the cost of painting repairing or replacing wall coverings and to rep air or replace any Premises improvements that are not ordinarily a part of the Building or that are above then Building standards Lessor may at its option upon re asonable notice elect to have L essee perform any particular such maintenance or repairs the cost of which is otherwise Lessee s responsibility hereunder

7 2 2 On the last day of the term hereof or on any sooner termination Lessee sh all surrender the Premises to Lessor in the s ame condition as received, ordinary we ar and tear and damage from casualty excepted clean and free of debris Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could

have been prevented by good maintenance practices by Lessee Lessee shall repair any damage to the Premises occasioned by the installation or removal of Lessee's trade fixtures, alterations, furnishings and equipment Except as otherwise stated in this Lease, Lessee shall leave the air lines power panels electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings carpets, wall paneling, ceilings and plumbing on the Premises and in good operating condition

7 3 Alterations and Additions

7 3 1 Lessee shall not without Lessor's prior written consent, make any alterations, improvements additions Utility Installations or repairs in on or about the Premises or the Office Building Project, which consent shall not be unreasonably withheld in the case of alterations and improvements which do not affect the structure of the Building or any building systems As used in this paragraph 7 3 the term Utility Installation' shall mean carpeting window and wall coverings power panels electrical distribution systems lighting fixtures air conditioning plumbing and telephone and telecommunication wiring and equipment At the expiration of the term Lessor may require the removal of any or all of said alterations improvements additions or Utility Installations and the restoration of the Premises and the Office Building Project to their prior condition at Lessee's expense Should Lessor permit Lessee to make its own alterations improvements, additions or Utility Installations, Lessee shall use only such contractor as has been expressly approved by Lessor, and, with respect to any work in excess of $100,000 Lessor may require Lessee to provide Lessor at Lessee's sole cost and expense a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor or use a contractor not expressly approved by Lessor, Lessor may, at any time during the term of this Lease, require that Lessee remove any part or all of the same

7 3 2 Any alterations improvements additions or Utility Installations in or about the Premises or the Office Building Project that Lessee shall desire to make shall be presented to Lessor in written form, with proposed detailed plans If Lessor shall give its consent to Lessee's making such alteration improvement addition or Utility Installation, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from the applicable governmental agencies, furnishing a copy thereof to Lessor prior to the commencement of the work, and compliance by Lessee with all conditions of said permit in a prompt and expeditious manner

7 3 3 Lessee shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises which claims are or may be secured by any mechanic's or materialmen's lien against the Premises the Building or the Office Building Project or any interest therein

7 3 4 Lessee shall give Lessor not less than ten (10) days notice prior to the commencement of any work in the Premises by Lessee and Lessor shall have the right to post notices of nonresponsibility in or on the Premises or the Building as provided by law Lessee shall at all times keep the Premises the Building and the Office Building Project free and clear of liens attributable in any way to any work of improvement commissioned by Lessee, or to the acts or omissions of Lessee any of Lessee's employees agents or contractors or any of their employees, agents or subcontractors If Lessee shall, in good faith, contest the validity of any such lien claim or demand then Lessee shall at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Premises the Building or the Office Building Project upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount not less than one hundred fifty percent (150%) of the amount of such contested lien claim or demand indemnifying Lessor against liability for the same and holding the Premises, the Building and the Office Building Project free from the effect of such lien or claim In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is to Lessor's best interest so to do

7 3 5 All alterations, improvements, additions and Utility installations (whether or not such Utility Installations constitute trade fixtures of Lessee) which may be made to the Premises by Lessee, including but not limited to, floor coverings, panelings, doors, drapes built-ins, moldings sound attenuation, and lighting and telephone or communication systems conduit wiring and outlets shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be deemed to be conveyed to Lessor at the expiration of the term and remain upon and be surrendered with the Premises unless Lessor requires their removal pursuant to paragraph 7 3 1 Notwithstanding the provisions of this paragraph 7 3 5 Lessee's personal property and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises or the Building, and other than Utility Installations shall remain the property of Lessee and may be removed by Lessee subject to the provisions of paragraph 7 2

7 3 6 Lessee shall provide Lessor with as-built plans and specifications for any alterations, improvements additions or Utility Installations

7 4 Utility Additions Lessor reserves the right to install new or additional utility facilities throughout the Office Building Project for the benefit of Lessor or Lessee or any other lessee of the Office Building Project including but not by way of limitation, such utilities as plumbing electrical systems, security systems, communication systems, and fire protection and detection systems so long as such installations do not unreasonably interfere with Lessee's use of the Premises

8 Insurance, Indemnity

8 1 Liability Insurance—Lessee Lessee shall at Lessee's expense, obtain and keep in force during the term of this Lease a policy of broad form Commercial Liability insurance on an occurrence basis, in an amount of not less than $2,000,000 per occurrence of bodily injury and property damage combined or in a greater amount as reasonably determined

by Lessor and shall insure Lessee with Lessor as an additional insured against liability arising out of the use, occupancy or maintenance of the Premises Compliance with the above requirement shall not, however, limit the liability of Lessee hereunder

8 2 Liability Insurance—Lessor Although Lessor shall not be required to maintain any liability insurance any premiums for liability insurance maintained by Lessor relating to the Premises the Building or the Office Building Project shall be Operating Expenses hereunder

8 3 Property Insurance—Lessee Lessee shall at Lessee's expense obtain and keep in force during the term of this Lease for the benefit of Lessee replacement cost special form causes of loss insurance including without limitation fire and extended coverage insurance with vandalism and malicious mischief sprinkler leakage and earthquake sprinkler leakage endorsements, in an amount sufficient to cover not less than 100% of the full replacement costs, as the same may exist from time to time, of all of Lessee's personal property, fixtures equipment and tenant improvements

8 4 Property Insurance—Lessor Lessor shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Office Building Project improvements, but not Lessee's personal property fixtures equipment or tenant improvements in the amount of the full replacement cost thereof as the same may exist from time to time utilizing Insurance Services Office standard form or equivalent providing protection against all perils included within the classification of fire, extended coverage vandalism, malicious mischief plate glass and such other perils as Lessor deems advisable or may be required by a lender having a lien on the Office Building Project In addition Lessor shall obtain and keep in force, during the term of this Lease a policy of rental value insurance covering a period of one year with loss payable to Lessor which insurance shall also cover all Operating Expenses for said period Lessee will not be named in any such policies carried by Lessor and shall have no right to any proceeds therefrom The policies required by these paragraphs 8 2 and 8 4 shall contain such deductibles as Lessor or the aforesaid lender may determine Lessee shall not do or permit to be done anything which shall invalidate the insurance policies carried by Lessor Lessee shall pay the entirety of any increase in the property insurance premium for the Office Building Project over what it was immediately prior to the commencement of the term of this Lease if the increase is specified by Lessor's insurance carrier as being caused by the nature of Lessee's occupancy or any act or omission of Lessee

8 5 Insurance Policies Lessee shall deliver to Lessor certificates evidencing the existence and amounts of the liability insurance policies required under paragraphs 8 1 and 8 3 within seven (7) days after the Commencement Date of this Lease

Each policy required to be obtained by Lessee hereunder shall (a) be issued by insurers authorized to do business in the state of California and rated not less than financial class X and not less than policyholder rating A in the most recent version of Best's Key Rating Guide or the equivalent rating in any other comparable guide selected by Lessor (provided that, in any event the same insurance company shall provide the coverages described in paragraphs 8 1 and 8 3 above) (b) be in form reasonably satisfactory from time to time to Lessor (c) name Lessee as named insured thereunder and shall name Lessor and at Lessor's request Lessor's mortgagees and ground lessors of which Lessee has been informed in writing, as additional insureds (d) not have a deductible amount exceeding Five Thousand Dollars ($5 000 00), (e) specifically provide that the insurance afforded by such policy for the benefit of Lessor and Lessor's mortgagees and ground lessors shall be primary and any insurance carried by Lessor or Lessor's mortgagees and ground lessors shall be excess and noncontributing (f) except for worker's compensation insurance contain an endorsement that the insurer waives its right to subrogation as described in paragraph 8 6 below, and (g) contain an undertaking by the insurer to notify Lessor (and the mortgagees and ground lessors of Lessor who are named as additional insureds) in writing not less than thirty (30) days prior to any material change, reduction in coverage cancellation or other termination thereof Lessee agrees to deliver to Lessor, as soon as practicable after the placing of the required insurance but in no event later than ten (10) days after the date Lessee takes possession of all or any part of the Premises certificates from the insurance company evidencing the existence of such insurance and Lessee's compliance with the foregoing provisions of this paragraph 8 Lessee shall cause certificates of replacement policies to be delivered to Lessor not less than thirty (30) days prior to the expiration of any such policy or policies If any such initial or replacement certificates are not furnished within the time(s) specified herein, Lessee shall be deemed to be in material default under this Lease without the benefit of any additional notice or cure period provided herein and Lessor shall have the right but not the obligation, to procure such policies and certificates at Lessee's expense

8 6 Waiver of Subrogation Lessee and Lessor each hereby release and relieve the other, and waive their entire right of recovery against the other for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party whether due to the negligence of Lessor or Lessee or their agents, employees contractors and/or invitees If necessary all property insurance policies required under this Lease shall be endorsed to so provide

8 7 Indemnity Lessee shall indemnify and hold harmless Lessor and its agents shareholders directors employees partners and lenders from and against any and all claims for damage to the person or property of anyone or any entity arising from Lessee's use of the Office Building Project or from the conduct of Lessee's business or from any activity work or things done, permitted or suffered by Lessee in or about the Premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims costs and expenses arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or omission of Lessee, or any of Lessee's agents contractors employees or invitees and from and against all costs reasonable attorneys' fees, expenses and liabilities incurred by Lessor as the result of any such use conduct activity work, things done, permitted or suffered breach default or negligence, and in dealing reasonably therewith, including but not limited to the defense or pursuit of any claim or any action or proceeding involved therein and in case any action or proceeding be brought against Lessor by reason of any such matter Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense Lessor need not have first paid any such claim in order to be so indemnified Lessee, as a material part of the consideration to Lessor hereby assumes all risk of damage to property of Lessee or injury to persons in upon or about the Office Building Project arising from any

cause other than the gross negligence or willful misconduct of Lessor or any of its agents, employees or contractors and Lessee hereby waives all claims in respect thereof against Lessor other than claims arising from the gross negligence or willful misconduct of Lessor or any of its agents, employees or contractors

8 8 Exemption of Lessor from Liability Except for matters arising from the gross negligence or willful misconduct of Lessor or any of its agents employees or contractors Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for loss of or damage to the goods wares merchandise or other property of Lessee Lessee's employees invitees customers or any other person in or about the Premises or the Office Building Project, nor shall Lessor be liable for injury to the person of Lessee Lessee's employees agents or contractors whether such damage or injury is caused by or results from theft fire, steam, electricity gas, water or rain or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Office Building Project, or from other sources or places or from new construction or the repair alteration or improvement of any part of the Office Building Project or of the equipment fixtures or appurtenances applicable thereto, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible, Lessor shall not be liable for any damages arising from any act or neglect of any other lessee, occupant or user of the Office Building Project nor from the failure of Lessor to enforce the provisions of any other lease of any other lessee of the Office Building Project

8 9 No Representation of Adequate Coverage Lessor makes no representation that the limits or forms of coverage of insurance specified in this paragraph 8 are adequate to cover Lessee's property or obligations under this Lease

9 Damage or Destruction

9 1 Definitions

9 1 1 "Premises Damage" shall mean if the Premises are damaged or destroyed to any extent

9 1 2 "Premises Building Partial Damage" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is less than fifty percent (50%) of the then Replacement Cost of the Building

9 1 3 "Premises Building Total Destruction" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is fifty percent (50%) or more of the then Replacement Cost of the Building

9 1 4 "Office Building Project Buildings" shall mean all of the buildings on the Office Building Project site

9 1 5 "Office Building Project Buildings Total Destruction" shall mean if the Office Building Project Buildings are damaged or destroyed to the extent that the cost of repair is fifty percent (50%) or more of the then Replacement Cost of the Office Building Project Buildings

9 1 6 "Insured Loss" shall mean damage or destruction which was caused by an event required to be covered by the insurance described in paragraph 8 The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss

9 1 7 "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring excluding all improvements made by lessees other than those installed by Lessor at Lessee's expense

9 2 Premises Damage, Premises Building Partial Damage

9 2 1 Insured Loss Subject to the provisions of paragraphs 9 4 and 9 5 if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of either Premises Damage or Premises Building Partial Damage then Lessor shall as soon as reasonably possible and to the extent insurance proceeds are available and the required materials and labor are readily available through usual commercial channels, at Lessor's expense, repair such damage (but not Lessee's fixtures, equipment or tenant improvements originally paid for by Lessee) to its condition existing at the time of the damage and this Lease shall continue in full force and effect

9 2 2 Uninsured Loss Subject to the provisions of paragraphs 9 4 and 9 5 if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), which damage prevents Lessee from making any substantial use of the Premises, Lessor may at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease as of the date of the occurrence of such damage in which event this Lease shall terminate as of the date of the occurrence of such damage

9 3 Premises Building Total Destruction, Office Building Project Total Destruction Subject to the provisions of paragraphs 9 4 and 9 5, if at any time during the term of this Lease there is damage, whether or not it is an Insured Loss, which falls into the classifications of either (i) Premises Building Total Destruction or (ii) Office Building Project Total Destruction then Lessor may at Lessor's option either (i) repair such damage or destruction as soon as

reasonably possible at Lessor's expense (to the extent the required materials are readily available through usual commercial channels) to its condition existing at the time of the damage, but not Lessee's fixtures, equipment or tenant improvements, and this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of occurrence of such damage of Lessor's intention to cancel and terminate this Lease, in which case this Lease shall terminate as of the date of the occurrence of such damage

9.4 Damage Near End of Term

9.4.1 Subject to paragraph 9.4.2, if at any time during the last twelve (12) months of the term of this Lease there is substantial damage to the Premises, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage

9.4.2 Notwithstanding paragraph 9.4.1, in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired, Lessee shall exercise such option, if it is to be exercised at all, no later than twenty (20) days after the occurrence of an Insured Loss falling within the classification of Premises Damage during the last twelve (12) months of the term of this Lease. If Lessee duly exercises such option during said twenty (20) day period, Lessor shall, at Lessor's expense, repair such damage, but not Lessee's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said twenty (20) day period, then Lessor may at Lessor's option terminate and cancel this Lease as of the expiration of said twenty (20) day period by giving written notice to Lessee of Lessor's election to do so within ten (10) days after the expiration of said twenty (20) day period, notwithstanding any term or provision in the grant of option to the contrary.

9.5 Abatement of Rent, Lessee's Remedies

9.5.1 If, in the event of Premises Damage or Premises Partial Damage, Lessor repairs or restores the Building or Premises pursuant to the provisions of this paragraph 9, and any part of the Premises are not usable (including loss of use due to loss of access or essential services), the rent payable hereunder (including Lessee's Share of Operating Expenses) for the period during which such damage, repair or restoration continues, shall be abated, provided (1) the damage was not the result of the negligence of Lessee, and (2) such abatement shall only be to the extent the operation of Lessee's business as operated from the Premises is adversely affected. Except for said abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

9.5.2 If Lessor shall elect to repair or restore the Premises or the Building under the provisions of this paragraph 9 and shall not commence such repair or restoration within sixty (60) days after such occurrence, or if Lessor shall not complete the restoration and repair within six (6) months after such occurrence, Lessee may at Lessee's option cancel and terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement or completion, respectively, of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.5.3 Lessee agrees to cooperate with Lessor in connection with any such restoration and repair, including but not limited to the approval and/or execution of plans and specifications required.

9.6 Termination—Advance Payments. Upon termination of this Lease pursuant to this paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

9.7 Waiver. Lessor and Lessee waive the provisions of any statute which relates to termination of leases when leased property is destroyed, including without limitation California Civil Code Section 1932, Subsection 2 and Section 1933, Subsection 4, and agree that such event shall be governed by the terms of this Lease.

10 Taxes

10.1 Payment of Real Property Taxes. Lessor shall pay the real property tax, as defined in paragraph 10.3, applicable to the Office Building Project, except as otherwise provided in paragraph 10.2.

10.2 Additional Improvements. Lessee shall not be responsible for paying any increase in real property tax specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Office Building Project by other lessees or by Lessor for the exclusive enjoyment of any other lessee. Lessee shall, however, pay to Lessor at the time that Operating Expenses are payable under paragraph 4.3, the next scheduled rental payment comes due, the entirety of any increase in real property tax if assessed solely by reason of additional improvements placed upon the Premises by Lessee or at Lessee's request.

10.3 Definition of "Real Property Tax." As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, franchise, gift, transfer or estate taxes) imposed on the Office Building Project or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Office Building Project or in any portion thereof, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Office Building Project. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinabove included within the definition of "real property tax," or (iii) which

is imposed for a service or right not charged prior to June 1, 1978, or if previously charged has been increased since June 1, 1978, or (iv) which is imposed as a result of a change in ownership, as defined by applicable local statutes for property tax purposes of the Office Building Project or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such change of ownership, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

10.4 **Joint Assessment.** If the improvements or property, the taxes for which are to be paid separately by Lessee under paragraph 10.2 or 10.5 are not separately assessed, Lessee's portion of that tax shall be equitably determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information (which may include the cost of construction) as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.**

10.5.1 Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere.

10.5.2 If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay to Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11 Utilities.

11.1 **Services Provided by Lessor.** Lessor shall provide to the Common Areas heating, ventilation, air conditioning and janitorial service in reasonably required reasonable amounts of electricity for normal lighting and office machines, hot and cold water for reasonable and normal drinking and lavatory use, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Costs incurred by Lessor in providing such services shall be Operating Expenses.

11.2 **Services Exclusive to Lessee.** Lessor shall provide adequate supplies of and Lessee shall pay for, all water, gas, heat, light, power, telephone, HVAC and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. Electricity for the Premises shall be separately metered and shall be paid by Lessee directly to San Diego Gas & Electric Company. If any such services are not separately metered to the Premises, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises in the Building.

11.3 **Hours of Service.** Said services and utilities shall be provided during the hours between 7:00 a.m. and 6:00 p.m. on Monday through Friday, except for nationally recognized holidays, or such other days or hours as may hereafter be set forth in the Rules and Regulations or any amendments thereto. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof. Currently, the HVAC services may be accessed directly by Lessee after hours through a telephone link to the computer controlling the HVAC system utilizing a specific security code to be provided to Lessee for such purpose. Lessee shall pay Lessor the standard hourly charge for the Building for use of after hours HVAC, which hourly charge is currently $25.00 per activated HVAC zone. Notwithstanding such limitation on normal service hours, Lessee shall be provided access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, throughout the term of this Lease.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security services, over standard office usage for the Office Building Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service, regardless of whether or not the cause thereof was within Lessor's control, provided, however, if such interference is caused by Lessor and the Premises are rendered untenantable for more than three (3) consecutive business days, rent shall abate on an equitable basis commencing on the fourth (4th) business day.

12 Assignment and Subletting.

12.1 **Lessor's Consent Required.** Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet or otherwise transfer or encumber all or any part of Lessee's interest in the Lease or in the Premises without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Lessor shall respond to Lessee's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a material default and breach of this Lease without the need for notice to Lessee under paragraph 13.1. Transfer, within the meaning of this paragraph 12, shall include the transfer or transfers aggregating (a) if Lessee is a corporation whose stock is not publicly traded, more than twenty-five percent (25%) of the voting stock of such corporation or more than twenty-five (25%) of the voting stock of Lessee's parent or (b) if Lessee is a partnership or limited liability company, more than twenty-five percent (25%) of the profit and loss participation in such entity. Notwithstanding anything herein to the contrary, the consent of Lessor will not be required in the case of any assignment of Lessee's interest in this Lease or a subletting of all or any portion of the Premises to a corporation, partnership or other entity into or with which Lessee is merged or consolidated, or to which substantially all of Lessee's assets are transferred or to any corporation, partnership or other entity which controls or is controlled by Lessee or Lessee's parent or is under common control with Lessee or Lessee's parent (any of the foregoing an "Affiliate"). Lessee shall provide prompt

written notice to Lessor of any such Transfer to an Affiliate No such Transfer to an Affiliate shall release Lessee from any liability under the Lease

12 2 Terms and Conditions Applicable to Assignment and Subletting

12 2 1 Regardless of Lessor's consent, no assignment or subletting shall release Lessee of Lessee's obligations hereunder or alter the primary liability of Lessee to pay the rent and other sums due Lessor hereunder including Lessee's Share of Operating Expenses and to perform all other obligations to be performed by Lessee hereunder

12 2 2 Lessor may accept rent from any person other than Lessee pending approval or disapproval of such assignment without being deemed to have consented thereto

12 2 3 Neither a delay in the approval or disapproval of such assignment or subletting, nor the acceptance of rent shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the breach of any of the terms or conditions of this paragraph 12 or this Lease

12 2 4 If Lessee's obligations under this Lease have been guaranteed by third parties, then an assignment or sublease, and Lessor's consent thereto, shall not be effective unless said guarantors give their written consent to such sublease and the terms thereof

12 2 5 The consent by Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the sublessee However, Lessor may consent to subsequent sublettings and assignments of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable on the Lease or sublease and without obtaining their consent and such action shall not relieve such persons from liability under this Lease or said sublease, provided, however, such persons shall not be responsible to the extent any such amendment or modification enlarges or increases the obligations of the Lessee or sublessee under this Lease or such sublease

12 2 6 In the event of any default under this Lease Lessor may proceed directly against Lessee, any guarantors or anyone else responsible for the performance of this Lease, including the sublessee without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor or Lessee

12 2 7 Lessor's written consent to any assignment or subletting of the Premises by Lessee shall not constitute an acknowledgment that no default then exists under this Lease of the obligations to be performed by Lessee nor shall such consent be deemed a waiver of any then existing default except as may be otherwise stated by Lessor at the time

12 2 8 The discovery of the fact that any financial statement relied upon by Lessor in giving its consent to an assignment or subletting was materially false when delivered to Lessor shall, at Lessor's election, render Lessor's said consent null and void

12 2 9 Any disapproval by Lessor of any proposed assignee or sublessee based on the fact that such party is an existing tenant of the Office Building Project shall be deemed to be reasonable

12 2 10 With respect to any proposed assignment or sublease with the exception of a Transfer to an Affiliate under paragraph 12 1 above Lessor shall have the right at its election to be exercised by giving written notice to Lessee within ten (10) days following receipt of notice from Lessee requesting Lessor's consent, to recapture the Premises or a portion thereof, as applicable, for the purpose of directly marketing the Premises or the applicable portion thereof to any third party selected by Lessor Such recapture shall be effective as of the date specified by Lessee in its request for consent of Lessor as the proposed commencement date for the assignment or sublease or, if no date is so specified, on the date selected by Lessor In the event of such recapture by Lessor, the Lease shall be amended to document the elimination of the applicable portion of the Premises Any necessary documents in connection with such recapture shall be prepared by Lessor In the event of such recapture Lessee shall be released from all liability accruing from and after the date of the recapture with respect to the Premises or as applicable the portion thereof recaptured

12 3 Additional Terms and Conditions Applicable to Subletting Regardless of Lessor's consent, the following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein

12 3 1 Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease heretofore or hereafter made by Lessee and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease provided however that until a default shall occur in the performance of Lessee's obligations under this Lease Lessee may receive collect and enjoy the rents accruing under such sublease Lessor shall not by reason of this or any other assignment of such sublease to Lessor nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such sublease Lessee hereby irrevocably authorizes and directs any such sublessee upon receipt of a written notice from Lessor stating that a default exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents due and to become due under the sublease Lessee agrees that such sublessee shall have the right to rely upon any such statement and request from Lessor and that such sublessee shall pay such rents to Lessor without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Lessee to the contrary Lessee shall have no right or claim against said sublessee or Lessor for any such rents so paid by said sublessee to Lessor

12 3 2 No sublease entered into by Lessee shall be effective unless and until it has been approved in writing by Lessor, to the extent such approval is required pursuant to paragraph 12 1 above In entering into any sublease,

Lessee shall use only such form of sublease as is reasonably satisfactory to Lessor, and once approved by Lessor, to the extent such approval is required pursuant to paragraph 12.1 above such sublease shall not be changed or modified without Lessor's prior written consent. Any sublessee shall by reason of entering into a sublease under this Lease, be deemed for the benefit of Lessor to have assumed and agreed to conform and comply with each and every obligation herein to be performed by Lessee other than such obligations as are contrary to or inconsistent with provisions contained in a sublease to which Lessor has expressly consented in writing.

12.3.3 In the event Lessee shall default in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of Lessee under such sublease from the time of the exercise of said option to the termination of such sublease provided however Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to Lessee or for any other prior defaults of Lessee under such sublease.

12.3.4 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent except to an Affiliate of Lessee.

12.3.5 With respect to any subletting to which Lessor has consented Lessor agrees to deliver a copy of any notice of default by Lessee to the sublessee. Such sublessee shall have the right to cure a default of Lessee within three (3) days after service of said notice of default upon such sublessee, and the sublessee shall have a right of reimbursement and offset from and against Lessee for any such defaults cured by the sublessee.

12.3.6 Notwithstanding anything to the contrary in the foregoing fifty percent (50%) of any rent or other economic consideration received by Lessee as a result of an assignment or subletting which exceeds, on a square foot basis, in the aggregate, (i) the total rent which Lessee is obligated to pay to Lessor under the Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) plus (ii) any reasonable and customary brokerage commissions (not to exceed five percent (5%) of base rent payable under the assignment or sublease), plus (iii) any actual, reasonable relocation expenses paid to the transferee plus (iv) the build-out cost incurred by Lessee in preparing the Premises for such transferee actually paid by Lessee in connection with such assignment or subletting shall be paid to Lessor within ten (10) days after receipt thereof as additional rent hereunder, without altering or reducing any other obligations of Lessee hereunder.

12.4 Lessor's Expenses. In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act Lessee proposes to do then Lessee shall pay Lessor's reasonable costs and expenses incurred in connection therewith, including without limitation reasonable attorneys', architects', engineers' and other consultants' fees.

12.5 Conditions to Consent. Lessor reserves the right to condition any approval to assign or sublet upon Lessor's determination that (i) the proposed assignee or sublessee shall conduct a business on the Premises of a quality substantially equal to that of Lessee and consistent with the general character of the other occupants of the Office Building Project and not in violation of any exclusives or rights then held by other tenants, and (b) the proposed assignee or sublessee be at least as financially responsible as Lessee was expected to be at the time of the execution of this Lease or of such assignment or subletting, whichever is greater.

13 Default, Remedies

13.1 Default. The occurrence of any one or more of the following events shall constitute a "default" of this Lease by Lessee.

13.1.1 The vacation or abandonment of the Premises by Lessee. Vacation of the Premises shall include the failure to occupy the Premises for a continuous period of sixty (60) days or more, whether or not the rent is paid.

13.1.2 The breach by Lessee of any of the covenants, conditions or provisions of paragraphs 12.1 (assignment or subletting), 13.1.6 (false statement), 16.1 (estoppel certificate), 29.3 (subordination), 32 (auctions), or 40.1 (easements), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by Lessor to Lessee thereof.

13.1.3 The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of seven (7) days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

13.1.4 The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than those referenced in paragraphs 13.1.2 and 13.1.3, above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee, provided, however, that if the nature of Lessee's noncompliance is such that more than thirty (30) days are reasonably required for its cure then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion. To the extent permitted by law such thirty (30) day notice shall constitute the sole and exclusive notice required to be given to Lessee under applicable Unlawful Detainer statutes.

13.1.5 (i) The making by Lessee of any general arrangement or general assignment for the benefit of creditors, (ii) Lessee becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days), (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease,

where possession is not restored to Lessee within sixty (60) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within sixty (60) days. In the event that any provision of this paragraph 13.1.5 is contrary to any applicable law, such provision shall be of no force or effect.

13.1.6 The discovery by Lessor that any financial statement given to Lessor by Lessee, or by any guarantor of Lessee's obligation hereunder, was materially false when made.

13.2 Lessor's Remedies.

13.2.1 Termination. In the event of any default by Lessee, in addition to any other remedies available to Lessor under this Lease, at law or in equity, Lessor shall have the immediate option to terminate this Lease and all rights of Lessee hereunder. In the event that Lessor shall elect to so terminate this Lease, then Lessor may recover from Lessee:

13.2.1.1 the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

13.2.1.2 the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus

13.2.1.3 the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

13.2.1.4 any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things, would be likely to result therefrom including, but not limited to: Unreimbursed Leasehold Improvement Costs (as defined below), attorneys' fees, brokers' commissions, the costs of refurbishment, alterations, renovation and repair of the Premises and removal (including the repair of damage caused by such removal) and storage (or disposal) of Lessee's personal property, equipment, fixtures, Lessee's alterations, additions, leasehold improvements and any other items which Lessee is required under this Lease to remove but does not remove. As used herein, the term "Unreimbursed Leasehold Improvement Costs" shall mean the product when multiplying (i) the sum of any leasehold improvement allowance plus any other costs provided, paid or incurred by Lessor in connection with the design and construction of the initial leasehold improvements installed in the Premises on or prior to the Commencement Date pursuant to the Work Letter, by (ii) the fraction, the numerator of which is the number of months of the term of this Lease not yet elapsed as of the date on which this Lease is terminated (excluding any unexercised renewal options), and the denominator of which is the total number of months of the term of this Lease (excluding any unexercised renewal options). For example, if the total costs paid or incurred by Lessor with respect to the initial leasehold improvements was $100,000.00, the Lease term was sixty (60) months, and the Lease was terminated by reason of Lessee's default at the end of twelve (12) months, the Unreimbursed Leasehold Improvement Costs would be equal to $80,000.00 (i.e., $80,000.00 equals $100,000.00 x 48/60).

As used in subparagraphs 13.2.1.1 and 13.2.1.2 above, the "worth at the time of award" is computed by allowing interest at the maximum interest rate which Lessor is permitted by law to charge Lessee (the "Lease Rate"). As used in subparagraph 13.2.1.3 above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

13.2.2 Re-Entry Rights. In the event of any default by Lessee, in addition to any other remedies available to Lessor under this Lease, at law or in equity, Lessor shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to this Lease or any other procedures permitted by applicable law. No re-entry or taking possession of the Premises by Lessor pursuant to this paragraph 13.2.2, and no acceptance of surrender of the Premises or other action on Lessor's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction.

13.2.3 Continuation of Lease. In the event of any default by Lessee, in addition to any other remedies available to Lessor under this Lease, at law or in equity, Lessor shall have the right to continue this Lease in full force and effect, whether or not Lessee shall have abandoned the Premises. The foregoing remedy shall also be available to Lessor pursuant to California Civil Code Section 1951.4 and any successor statute thereof in the event Tenant has abandoned the Premises. In the event Lessor elects to continue this Lease in full force and effect pursuant to this paragraph 13.2.3, then Lessor shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due. Lessor's election not to terminate this Lease pursuant to this paragraph 13.2.3 or pursuant to any other provision of this Lease at law or in equity, shall not preclude Lessor from subsequently electing to terminate this Lease or pursuing any of its other remedies.

13.2.4 Rights and Remedies Cumulative. All rights, options and remedies of Lessor contained in this paragraph 13.2 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this paragraph 13.2 shall be deemed to limit or otherwise affect Lessee's indemnification of Lessor pursuant to any provision of this Lease.

13.3 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first Mortgage or deed of trust covering the Premises whose name and address shall have theretofore been

furnished to Lessee in writing specifying wherein Lessor has failed to perform such obligation, provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently pursues the same to completion

13.4 **Late Charges** Lessee hereby acknowledges that late payment by Lessee to Lessor of Base Rent, Lessee's Share of Operating Expenses or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Office Building Project. Accordingly, if any installment of Base Rent, Operating Expenses, or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within seven (7) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

14 Condemnation If the Premises or any portion thereof or the Office Building Project are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of (a) Lessor's election, the entire Lease shall terminate, as of the date the condemning authority takes title or possession, whichever first occurs; provided that if so much of the Premises or the Office Building Project (including, without limitation, the taking of parking areas) are taken by such condemnation as would substantially and adversely affect the operation and profitability of Lessee's business conducted from the Premises, Lessee shall have the option, to be exercised only in writing within thirty (30) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession), to terminate this Lease as of the date the condemning authority takes such possession. If neither Lessor nor Lessee elects to terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent and Lessee's Share of Operating Expenses shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. Common Areas taken shall be excluded from the Common Areas usable by Lessee and no reduction of rent shall occur with respect thereto or by reason thereof. Lessor shall have the option in its sole discretion to terminate this Lease as of the taking of possession by the condemning authority by giving written notice to Lessee of such election within thirty (30) days after receipt of notice of a taking by condemnation of any part of the Premises or the Office Building Project. Any award for the taking of all or any part of the Premises or the Office Building Project under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any separate award for moving expenses, as well as any loss of or damage to Lessee's trade fixtures, removable personal property and unamortized tenant improvements that have been paid for by Lessee. For that purpose the cost of such improvements shall be amortized over the original term of this Lease excluding any options. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall, to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority.

15 Broker's Fee

15.1 Payment The brokers involved in this transaction are SI NTRE Partners as listing broker and Partners National Real Estate Group, Inc., as "cooperating broker" licensed real estate broker(s). A "cooperating broker" is defined as any broker other than the listing broker entitled to a share of any commission arising under this Lease. Lessor shall pay to the brokers a fee as set forth in a separate agreement between Lessor and the listing broker. From such fee, cooperating broker is to receive from Lessor a total fee of $42,926.78 (the sum of three percent (3%) of the aggregate Base Rent for months one through sixty of the Lease term and one and one-half percent (1.5%) of the aggregate Base Rent for months sixty-one to eighty-four of the Lease term). All brokerage fees hereunder shall be due as follows: one-half (½) within five (5) business days after full execution and delivery of the Lease and one-half (½) within five (5) business days after the Commencement Date.

15.2 Successors Lessor agrees to pay said fee not only on behalf of Lessor but also on behalf of any person, corporation, association, or other entity having an ownership interest in said real property or any part thereof when such fee is due hereunder. Any transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this paragraph 15.

15.3 No Other Brokers Lessee and Lessor each represents and warrants to the other that neither has had any dealings with any person, firm, broker or finder (other than the person(s), if any, whose names are set forth in paragraph 15.1 above) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and no other broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transaction, and Lessee and Lessor do each hereby indemnify and hold the other harmless from and against any costs, expenses, attorneys' fees or liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying party.

16 Estoppel Certificate

16.1 Delivery Each party (as "responding party") shall at any time upon not less than ten (10) days' prior written notice from the other party ("requesting party") execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other

charges are paid in advance if any and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party or specifying such defaults if any are claimed, and (iii) in the case of Lessee certify as to such other matters as may be requested by Lessor or by a prospective purchaser or encumbrancer of all or any part of the Office Building Project Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Office Building Project or of the business of Lessee

16 2 **Failure to Provide** At the requesting party s option the failure to deliver such statement within such time shall be a material default of this Lease by the party who is to respond, without any further notice to such party, or it shall be conclusive upon such party that (i) this Lease is in full force and effect without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, (iii) if Lessor is the requesting party, not more than one month's rent has been paid in advance, and (iv) if Lessor is the requesting party there are no remaining obligations of the requesting party under this Lease yet to be performed

17 **Lessor's Liability** The term Lessor as used herein shall mean only the owner or owners at the time in question of the fee title or a Lessee s interest in a ground lease of the Office Building Project and except as expressly provided in paragraph 15, in the event of any transfer of such title or interest Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest shall be delivered to the grantee The obligations contained in this Lease to be performed by Lessor shall subject as aforesaid be binding on Lessor s successors and assigns only during their respective periods of ownership

18 **Severability** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof

19 **Interest on Past-due Obligations** Except as expressly herein provided any amount due to Lessor not paid when due (after giving effect to any applicable grace period) shall bear interest at the maximum rate then allowable by law or judgments from the date due Payment of such interest shall not excuse or cure any default by Lessee under this Lease, provided, however, that interest shall not be payable on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee

20 **Time of Essence** Time is of the essence with respect to the obligations to be performed under this Lease

21 **Additional Rent** All monetary obligations of Lessee to Lessor under the terms of this Lease including expenses payable by Lessee hereunder shall be deemed to be rent

22 **Incorporation of Prior Agreements, Amendments** This Lease contains all agreements of the parties with respect to any matter mentioned herein No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective This Lease may be modified in writing only, signed by the parties in interest at the time of the modification Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in paragraph 15 hereof nor any cooperating broker on this transaction nor except as expressly provided herein the Lessor or any employee or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Premises or the Office Building Project and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease

23 **Notices** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, nationally recognized overnight delivery service or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Lessee or to Lessor at the address noted below or adjacent to the signature of the respective parties, as the case may be Personally delivered or overnight notices shall be deemed given upon actual receipt or rejection Either party may by notice to the other specify a different address for notice purposes A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee

24 **Waivers** No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision Lessor's consent to or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor s consent to or approval of any subsequent act by Lessee The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor s knowledge of such preceding breach at the time of acceptance of such rent

25 **Recording** Lessor and Lessee shall upon request of Lessor, execute acknowledge and deliver to the other a "short form' memorandum of this Lease for recording purposes

26 **Holding Over** If Lessee with Lessor s consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee except that the rent payable shall be one hundred fifty percent (150%) of the rent payable immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy

27 **Covenants and Conditions** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition

28 Binding Effect, Choice of Law Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of paragraph 17, this Lease shall bind the parties their personal representatives successors and assigns This Lease shall be governed by the laws of the State of California applicable to contracts to be wholly performed within such State

29 Subordination

29 1 Right to Subordinate Lessor shall have the right to subordinate this Lease and Lessee shall at Lessor's request, subordinate its rights under this Lease, to any existing or future ground lease covenants, conditions and restrictions, easements rights of way or any construction, operation and reciprocal easement agreements, deeds of trust or mortgages encumbering the Office Building Project, any advances made on the security thereof and any renewals modifications consolidations replacements or extensions thereof whenever made or recorded However Lessee s right to quiet possession of the Premises during the Term shall not be disturbed if Lessee pays the rent and performs all of Lessee's obligations under this Lease and is not otherwise in default If any ground lessor beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage, and gives written notice thereof to Lessee then this Lease shall be deemed prior to such ground lease deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof

29 2 Attornment If Lessor's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust mortgagee or purchaser at a foreclosure sale Lessee shall attorn to the transferee of or successor to Lessor's interest in the Premises and recognize such transferee of or successor as Lessor under this Lease provided that the purchaser or lessor shall acquire and accept the Premises subject to this Lease Lessee waives the protection of any statute or rule of law which gives or purports to give Lessee any right to terminate this Lease or surrender possession of the Premises upon the transfer of Lessor s interest

29 3 Documents Lessee shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so provided that such interests or documents recognize that Lessee's right to quiet possession of the Premises shall not be disturbed so long as Lessee is not in default of its obligations pursuant to this Lease beyond any applicable notice and cure period If Lessee fails to do so within ten (10) days after written request, Lessee hereby makes constitutes and irrevocably appoints Lessor or any transferee or successor of Lessor the attorney-in-fact of Lessee to execute and deliver any such instrument or document

29 4 Nondisturbance Lessor shall deliver to Lessee a nondisturbance agreement in commercially reasonable form from any lender with a current security interest in the Building Lessee's obligation to subordinate to a future lender under this paragraph 29 shall be conditioned upon Lessor's delivery from such Lender of a nondisturbance agreement in commercially reasonably form

30 Attorneys' Fees

30 1 Right to Receive If either party or the broker(s) named herein bring an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action trial or appeal thereon, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit, and whether or not such action is pursued to decision or judgment The provisions of this paragraph shall inure to the benefit of the broker named herein who seeks to enforce a right hereunder

30 2 All Reasonable Fees The attorneys fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys fees reasonably incurred in good faith

30 3 Notices of Default Lessor shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith whether or not a legal action is subsequently commenced in connection with such default

31 Lessor's Access

31 1 Right of Entry Lessor and Lessor s agents all have the right to enter the Premises at reasonable times upon reasonable prior notice to Lessee (except in the event of an emergency) for the purpose of inspecting the same performing any services required of Lessor showing the same to prospective purchasers lenders or lessees taking such safety measures erecting such scaffolding or other necessary structures making such alterations, repairs improvements or additions to the Premises or to the Office Building Project as Lessor may reasonably deem necessary or desirable and the erecting using and maintaining of utilities services pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises Lessor may at any time place on or about the Premises or the Building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred twenty 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs

31 2 No Abatement All activities of Lessor conducted in accordance with this paragraph shall be without abatement of rent nor shall Lessor have any liability to Lessee for the same

31 3 Keys Lessor shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction Lessee waives any charges for damages or injuries or interference with Lessee's property or business in connection therewith

32 Auctions Lessee shall not conduct nor permit to be conducted either voluntarily or involuntarily, any auction upon the Premises or the Common Areas without first having obtained Lessor's prior written consent Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent The holding of any auction on the Premises or Common Areas in violation of this paragraph shall constitute a material default of this Lease

33 Signs Lessee shall not place any sign upon the Premises or the Office Building Project without Lessor's prior written consent Lessee shall be entitled to suite entry signage and exterior signage at the base of the Building as mutually agreed upon between Lessor and Lessee at Lessor's cost and expense, and in accordance with all applicable laws, regulations, ordinances and recorded covenants conditions and restrictions

34 Merger The voluntary or other surrender of this Lease by Lessee or a mutual cancellation thereof, or a termination by Lessor shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor operate as an assignment to Lessor of any or all of such subtenancies

35 Consents Except for paragraphs 32 (auctions) and 33 (signs) hereof, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld delayed or conditioned

36 Guarantor In the event that there is a guarantor of this Lease said guarantor shall have the same obligations as Lessee under this Lease

37 Quiet Possession Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Office Building Project

38 Options

38 1 Definitions As used in this paragraph the word 'Option' has the following meaning (1) the right or option to terminate this Lease extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor, (2) the option right of first refusal or right of first opportunity to lease the Premises or the right of first offer to lease the Premises or the right of first refusal or right of first opportunity to lease other space within the Office Building Project or other property of Lessor or the right of first offer to lease other space within the Office Building Project or other property of Lessor (3) the right or option to purchase the Premises or the Office Building Project or the right of first refusal to purchase the Premises or the Office Building Project or the right or first offer to purchase the Premises or the Office Building Project or the right or option to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor or the right of first offer to purchase other property of Lessor

38 2 Options Personal Each Option granted to Lessee in this Lease is personal to the original Lessee and may be exercised only by the original Lessee while occupying the Premises who does so without the intent of thereafter assigning this Lease or subletting the Premises or any portion thereof and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Lessee, provided however, that an Option may be exercised by or assigned to any Affiliate The Options, if any herein granted to Lessee are not assignable separate and apart from this Lease nor may any Option be separated from this Lease in any manner either by reservation or otherwise

38 3 Multiple Options In the event that Lessee has any multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised

38 4 Effect of Default on Options

38 4 1 Lessee shall have no right to exercise an Option notwithstanding any provision in the grant of Option to the contrary (i) during the time commencing from the date Lessor gives to Lessee a notice of default pursuant to paragraph 13 1 3 or 13 1 4 and continuing until the noncompliance alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Lessor is due from Lessee and unpaid (without any necessity for notice thereof to Lessee) and continuing until the obligation is paid or (iii) in the event that Lessor has given to Lessee three or more notices of default under paragraph 13 1 3, or paragraph 13 1 4 whether or not the defaults are cured, during the 12-month period of time immediately prior to the time that Lessee attempts to exercise the subject Option, (iv) if Lessee has committed any noncurable breach including without limitation those described in paragraph 13 1 2 or is otherwise in default of any of the terms covenants or conditions of this Lease beyond any applicable cure period

38 4 2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of paragraph 38 4 1

38 4 3 All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if after such exercise and thereafter, during the term of this Lease Lessee defaults under the Lease as defined in paragraph 13 1 above

39 Security Measures—Lessor's Reservations

39 1 Guard Service Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Office Building Project Lessee assumes all responsibility for the protection of Lessee its agents, and invitees and the property of Lessee and of Lessee's agents and

invitees from acts of third parties Nothing herein contained shall prevent Lessor, at Lessor's sole option, from providing security protection for the Office Building Project or any part thereof, in which event the cost thereof shall be included within the definition of Operating Expenses as set forth in paragraph 4 2 7

39 2 Reservation of Rights Without limiting its rights at law or elsewhere under this Lease, Lessor shall have the following rights

39 2 1 To change the name, address or title of the Office Building Project or building in which the Premises are located upon not less than 90 days' prior written notice,

39 2 2 To, at Lessor's expense provide and install Building standard graphics on such portions of the Common Areas as Lessor shall reasonably deem appropriate,

39 2 3 To permit any lessee the exclusive right to conduct any business as long as such exclusive does not conflict with any rights expressly given herein

39 2 4 To place such signs notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the buildings or the Office Building Project or on pole signs in the Common Areas

39 3 Restrictions Lessee shall not

39 3 1 Use a representation (photographic or otherwise) of the Building or the Office Building Project or their name(s) in connection with Lessee's business,

39 3 2 Suffer or permit anyone, except in emergency, to go upon the roof of the Building

40 Easements

40 1 Reservation of Rights Lessor reserves to itself the right from time to time to grant such easements, rights and dedications that Lessor deems necessary or desirable, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Parcel Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee and the other rights and benefits accorded to Lessee hereunder Lessee shall sign any of the aforementioned documents upon the reasonable request of Lessor and failure to do so within ten (10) business days following written request therefor shall constitute a material default of this Lease by Lessee without the need for further notice to Lessee

40 2 No View Easement The obstruction of Lessee's view, air or light by any structure erected in the vicinity of the Building whether by Lessor or third parties shall in no way affect this Lease or impose any liability upon Lessor

41 Building Planning At any time during the term that the rentable square footage of the Premises has been reduced to seven thousand (7 000) or less Lessor shall have the right to relocate the Premises to another part of the Building in accordance with the following

41 1 Similarity The new premises shall be substantially the same size dimensions configuration and decor as the Premises described in this Lease and if the relocation occurs after the Commencement Date shall be placed in that condition by Lessor at its cost

41 2 Notice Lessor shall give Lessee at least sixty (60) days written notice of Lessor's intention to relocate the Premises

41 3 Move As nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday If the physical relocation has not been completed in that time Base Rent shall abate in full from the time the physical relocation commences to the time it is completed Upon completion of such relocation the new premises shall become the 'Premises' under this Lease

41 4 Costs All reasonable costs incurred by Lessee as a result of the relocation shall be paid by Lessor

41 5 Proportionate Reduction If the new premises are smaller than the Premises as it existed before the relocation, Base Rent shall be reduced proportionately

41 6 Amendment The parties hereto shall immediately execute an amendment to this Lease setting forth the relocation of the Premises and the reduction of Base Rent if any

42 Lessor's Right to Perform Except as specifically provided otherwise in this Lease all covenants and agreements by Lessee under this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any abatement or offset of rent If Lessee shall fail to pay any sum of money (other than Basic Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for ten (10) days with respect to monetary obligations (or twenty (20) days with respect to nonmonetary obligations) then notwithstanding anything to the contrary provided elsewhere herein, after Lessee's receipt of written notice thereof from Lessor, Lessor may without waiving or releasing Lessee from any of Lessee's obligations make such payment or perform such other act on behalf of Lessee All sums so paid by Lessor and all necessary incidental costs incurred by Lessor in performing such other acts together with interest at the Lease Rate (as defined in paragraph 13 2 1), shall be payable by Lessee to Lessor within ten (10) days after demand therefor as additional rent The foregoing rights are in addition to any and all remedies available to Lessor upon Lessee's default as described in paragraph 13 2

43 Limitation on Liability

43.1 Of Lessor Notwithstanding anything contained in this Lease to the contrary the obligations of Lessor under this Lease (including any actual or alleged breach or default by Lessor) do not constitute personal obligations of the individual partners, members, directors officers or shareholders of Lessor or Lessor's partners, and Lessee shall not seek recourse against the individual partners directors, officers or shareholders of Lessor or Lessor's partners or members, or any of their personal assets for satisfaction of any liability with respect to this Lease In addition in consideration of the benefits accruing hereunder to Lessee and notwithstanding anything contained in this Lease to the contrary, Lessee hereby covenants and agrees for itself and all of its successor and assigns that the liability of Lessor for its obligations under this Lease (including any liability as a result of any actual or alleged failure breach or default hereunder by Lessor), shall be limited solely to and Lessee's and its successors' and assigns' sole and exclusive remedy shall be against Lessor's interest in the Office Building Project and proceeds therefrom and no other assets of Lessor

43.2 Of Lessee Notwithstanding anything to the contrary in this Lease to the contrary the obligations of Lessee under this Lease (including any actual or alleged breach or default by Lessee) do not constitute personal obligations of the individual partners, members, directors, officers or shareholders of Lessee or Lessee's partners or members, or any of their personal assets for satisfaction of any liability with respect to this Lease

44 Toxic Materials

44.1 Definitions

For purposes of this paragraph 44, "Hazardous Material" shall mean any substance

(i) the presence of which requires investigation or remediation under any federal state or local statute regulation ordinance order action or policy, or

(ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal state or local statute, regulation, ordinance or amendments thereto including, without limitation the Comprehensive Environmental Response, Compensation and Liability Act (42 U S C section 9601 et seq) and or the Resource Conservation and Recovery Act (42 U S C section 6901 et seq) or

(iii) which is toxic explosive corrosive flammable infectious radioactive carcinogenic mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority agency department commission, board agency or instrumentality of the United States the State of California or any political subdivision thereof or

(iv) the presence of which on the Premises, Building or Office Building Project causes or threatens to cause a nuisance upon the Premises, Building or Office Building Project or to adjacent properties or poses or threatens to pose a hazard to the Premises Building or Office Building Project or to the health or safety of persons on or about the Premises, Building or Office Building Project or

(v) which contains gasoline diesel fuel or other petroleum hydrocarbons or

(vi) which contains polychlorinated biphenyls (PCBs) asbestos or urea formaldehyde foam insulation, or

(vii) which is or becomes defined as "medical waste" under the Medical Waste Management Act (Health & Safety Code Sections 25015-25099 3)

For purposes of this paragraph 44, "Environmental Requirements" means all applicable present and future statutes, regulations rules, ordinances codes, licenses permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies departments commissions boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including without limitation

(x) all requirements including but not limited to those pertaining to reporting, licensing permitting investigation and remediation of emissions discharges releases or threatened releases of Hazardous Materials chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of chemical substances, pollutants, contaminants or hazardous or toxic substances materials or wastes, whether solid liquid or gaseous in nature and

(y) all requirements pertaining to the protection of the health and safety of employees or the public

For purposes of this paragraph 44, "Environmental Damages" means all claims judgments damages, losses, penalties, fines, liabilities (including strict liability), encumbrances liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated and of any good faith settlement of judgment of whatever kind or nature, contingent or otherwise matured or unmatured foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence on or after the date upon which Lessee takes possession of the Premises (the "Possession Date") of Hazardous Material upon about beneath the Premises Building or Office Building Project or migrating or threatening to migrate to or from the Premises, Building or Office Building Project or the existence of a violation of Environmental Requirements pertaining to the Premises, Building or Office Building Project, regardless of whether the existence of such

Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Premises, Building or Office Building Project and including without limitation

(a) damages for personal injury, or injury to property or natural resources occurring upon or off of the Premises Building or Office Building Project, foreseeable or unforeseeable including, without limitation lost profits consequential damages the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Lessee with respect to which Lessee waives any immunity to which it may be entitled under any industrial or worker's compensation laws

(b) fees incurred for the service of attorneys consultants contractors experts laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup remedial removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision or reasonably necessary to make full economic use of the Premises Building or Office Building Project or any other property or otherwise expended in connection with such conditions and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Lease or collection of any sums due hereunder,

(c) liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in subparagraph (a) herein and

(d) diminution in the value of the Premises Building or Office Building Project and damages for the loss of business and restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Premises Building or Office Building Project

44.2 Lessee's Obligations Lessee at its sole cost and expense, shall comply with all Environmental Requirements relating to the storage use and disposal of all Hazardous Materials including those materials identified in Sections 66680 through 66685 of Title 22 of the California Administrative Code Division 4 Chapter 30 (Title 22) as the same may be amended from time to time If Lessee does store use or dispose of any Hazardous Materials other than copy machine toners or similar commonly used office supplies Lessee shall notify Landlord in writing at least ten (10) days prior to the first appearance of such materials on the Premises Building or Office Building Project, and Lessor shall have the right to disapprove of Lessee's use thereof on the Premises (provided that Lessor's failure to disapprove thereof shall not constitute Lessor's approval thereof or excuse Lessee from complying with the terms of this paragraph 44), and Lessee's failure to so notify Lessor shall constitute a default under this Lease Lessee shall be solely responsible for and shall protect defend indemnify and hold Lessor, its agents and contractors harmless from and against all Environmental Damages arising out of or in connection with the storage, use and disposal of Hazardous Materials by Lessee its officers employees agents representatives servants subtenants concessionaires licensees contractors invitees or permittees If the presence of Hazardous Materials on the Premises, Building or Office Building Project caused or permitted by Lessee results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established by any governmental agency having jurisdiction over such contamination, then Lessee shall, at its sole cost and expense, promptly take any and all action necessary to clean up such contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Premises Building or Office Building Project If at any time prior to the expiration of the Lease term Lessor shall reach a reasonable good faith determination that Lessee or its officers employees agents representatives servants, subtenants concessionaires, licensees, contractors invitees or permittees have at any time violated any Environmental Requirements discharged any Hazardous Material onto the Premises Building or Office Building Project or surrounding areas or otherwise subjected Lessor or the Office Building Project to liability for Environmental Damages then Lessor shall have the right to require Lessee to conduct appropriate tests of water and soil and to deliver to Lessor the result of such tests to demonstrate that no contamination in excess of legally permitted levels has occurred as a result of Lessee's use of the Premises Building or Office Building Project If the presence of Hazardous Materials on the Premises Building or Office Building Project is caused or permitted by Lessee or its officers, employees agents representatives servants subtenants concessionaires licensees contractors invitees or permittees such that Lessor or Lessee becomes obligated to conduct the necessary clean-up of such contamination as required above, then, Lessee shall further be solely responsible for and shall protect defend, indemnify and hold Lessor, its agents and contractors harmless from and against all claims costs and liabilities including actual attorneys' fees expert witness fees and costs, arising out of or in connection with any removal, cleanup and restoration work and materials required hereunder to return the Premises, Building or office Building Project and any other property of whatever nature to conditions which existed prior to Lessee's use thereof and which are within acceptable levels according to all Environmental Requirement or any other Federal State or local governmental requirements Lessee's obligations hereunder shall survive the termination of this Lease Notwithstanding anything herein to the contrary in no event shall Lessee have any liability hereunder with respect to Hazardous Materials located on the Premises the Building or the Office Building Project which Lessee demonstrates were not introduced by Lessee or any of its officers agents employees representatives servants subtenants concessionaires, licensees contractors invitees or permittees Lessor shall indemnify and hold Lessee harmless from and against any and all losses, damages claims liabilities and costs incurred by or asserted against Lessee on account of the presence of Hazardous Materials which Lessee demonstrates were on the Premises the Building or the Office Building Project as of the Commencement Date

45 Authority If Lessee is a corporation, trust, limited liability company, or general or limited partnership, Lessee represents and warrants that each individual executing this Lease on behalf of Lessee is duly authorized to execute and deliver this Lease on behalf of said entity If Lessee is a corporation trust limited liability company, or partnership Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor

46 Conflict Any conflict between the printed provisions, Exhibits or Addenda of this Lease and the computer-generated, typewritten or handwritten provisions, if any, shall be controlled by the computer-generated, typewritten or handwritten provisions

47 **No Offer** Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to Lessee to lease This Lease shall become binding upon Lessor and Lessee only when fully executed by both parties

48 **Lender Modification** Lessee agrees to make such reasonable modifications to this Lease as may be reasonably required by an institutional lender in connection with the obtaining of normal financing or refinancing of the Office Building Project provided that such modification does not materially (i) change any of the economic terms of this Lease, (ii) reduce any of Lessee's right and benefits under this Lease or (iii) increase Lessee's obligations under this Lease

49 **Multiple Parties** If more than one person or entity is named as either Lessor or Lessee herein except as otherwise expressly provided herein the obligations of the Lessor or Lessee herein shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee respectively

50 **Right of First Refusal** During only the first sixty (60) months of the Lease term Lessee shall have an ongoing right of first refusal ("Right of First Refusal") to lease any space that becomes available on the third floor of the Building which is contiguous with the Premises upon the following terms and provisions

50 1 **Mechanics of Exercise** At such time as Lessor reasonably determines that a third party prospective tenant is seriously interested in space on the third floor of the Building which is available and is contiguous with the Premises then Lessor shall give written notice to Lessee describing the applicable premises ('Notice of Available Space') If Lessee is interested in leasing such space, then Lessee may exercise the Right of First Refusal hereunder by delivering to Lessor, not later than ten (10) business days after receipt of the Notice of Available Space written notice of Lessee's election to exercise the Right of First Refusal with respect to the space described in the Notice of Available Space ('Lessee's Notice to Rent Available Space') Upon receipt of Lessee's Notice to Rent Available Space Lessor shall deliver to Lessee as soon as possible a written statement ('Additional Rent Notice") which sets forth the amount of the Base Rent for the additional space, including any annual market escalation Any lease by Lessee of such additional space shall, as set forth herein be on the terms and conditions of this Lease If the right is exercised during the first eighteen (18) months of the Lease term the Base Rent for the additional space shall be based on the same rate per rentable square foot and the same per square foot tenant improvement allowance as the remainder of the Premises If the right is exercised thereafter, the rate of Base Rent shall reflect the lesser of (i) the terms proposed to third party tenants adjusted to reflect the applicable remaining terms, and (ii) Lessor's reasonable determination of the prevailing market rates taking into consideration all pertinent market factors including the time remaining in the Term Lessee's financial strength the condition and location of the applicable space and the tenant improvements existing therein Within five (5) business days after receipt of the Additional Rent Notice, Lessee may rescind its election to exercise its Right of First Refusal by delivery to Lessor of a written notice referring to this paragraph 50 and advising Lessor that Lessee rescinds its election to exercise its Right of First Refusal with respect to such space If Lessee does not so rescind its election, the rate of Base Rent set forth in the Additional Rent Notice shall be binding on the parties No commission shall be payable by Lessor upon the exercise of the Right of First Refusal Third floor space shall not be considered 'available" under this paragraph 50 if the occupant thereof elects to extend its lease for such space whether or not such occupant's Lease contains an express option for such extension

50 2 **No Additional Notice** Lessor shall have no further obligation to present Lessee with the option to rent any space covered by this Right of First Refusal unless Landlord improves the economic terms proposed to the third party prospective tenant by more than five percent (5%)

50 3 **Existing Rights** The Right of First Refusal provided herein shall be subject and subordinate to the existing rights of existing tenants at the Building who have executed leases prior to the full execution of the Lease

51 **Renewal Option** Lessee shall have the option to renew ('Renewal Option') the term of this Lease for one (1) additional period of three (3) years ('Renewal Term') which Renewal Option shall be exercised by unconditional written notice given by Lessee to Lessor ('Option Notice') no later than nine (9) months prior to the date of expiration of the initial Term Any termination of this Lease and any assignment of this Lease or subletting of all or a part of the Premises by Lessee to any party other than an Affiliate shall terminate the option of Lessee to extend the term of this Lease During the Renewal Term all of the terms and provisions of this Lease shall apply except that after the Renewal Term there shall be no further right of renewal, and during the Renewal Term the monthly Base Rent shall be the then prevailing market rent then being charged by Lessor to new tenants in the Building or if insufficient comparable transactions exist in the Building, then the rate being charged to new tenants for comparable space by landlords of similar buildings in the same general market area of the Building, with similar amenities, taking into consideration the size and location of the Premises, typical concessions granted for comparable space, the proposed length of the Renewal Term, the time the particular rental under consideration was agreed upon and became or is to become effective the extent of improvements and services to be provided and any other relevant terms and conditions

Lessor shall provide Lessee with its determination ('Lessor's Determination') of the Base Rent for the applicable Renewal Term within thirty (30) days of its receipt of a timely Option Notice from Lessee Lessee shall have fifteen (15) days ("Lessee's Review Period") after receipt of Lessor's Determination within which to accept Lessor's Determination or to reasonably object thereto in writing In the event Lessee fails to object to Lessor's Determination in writing within such fifteen (15) day period, Lessor's Determination shall be deemed accepted If Lessee reasonably objects to Lessor's Determination, the parties shall then have thirty (30) days ('Negotiating Period') after the expiration of Lessee's Review Period within which to agree on new Base Rent for the then applicable Renewal Term If the parties agree on the Base Rent for the Renewal Term within the Negotiating Period, they shall immediately execute an amendment to this Lease setting forth the new Base Rent If the parties are unable to agree on the Base Rent for the applicable Renewal Term within the Negotiating Period then each party shall place in a separate sealed envelope their final proposal as to Base Rent for the Renewal Term and such determination shall be submitted to arbitration as set forth below

Within ten (10) business days of the expiration of the Negotiating Period, Lessor and Lessee shall agree upon and jointly appoint a single arbitrator who shall by profession be a commercial real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable buildings If Lessor and Lessee fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the San Diego County Superior Court or if he or she refuses to act by any judge having jurisdiction over the parties Neither Lessor nor Lessee shall consult with such broker prior to the appointment as to his or her opinion as to the Base Rent for the Renewal Term The determination of the arbitrator shall be limited solely to the issue of whether Lessor's or Lessee's submitted Base Rent for the Premises is the closer to the actual prevailing market rent for the Premises as determined by the arbitrator taking into account the requirements of this paragraph 51 Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion determines is necessary In addition Lessor or Lessee may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information that such party deems relevant to the determination of Base Rent for the applicable Renewal Term ("Market Rent Data") and the other party may submit a reply in writing within five (5) business days after receipt of such Market Rent Data

The arbitrator shall within thirty (30) days of his or her appointment reach a decision as to whether the parties shall use Lessor's or Lessee's submitted Base Rent and shall notify Lessor and Lessee of such determination, provided, however, notwithstanding anything in this paragraph to the contrary, under no circumstances shall the Base Rent for the Renewal Term be less then the amount of the Base Rent payable by Lessee for the calendar month immediately preceding the commencement of such Renewal Term

The decision of the arbitrator shall be binding upon Lessor and Lessee The cost of arbitration shall be paid by Lessor and Lessee equally

If the Base Rent for the Renewal Term shall not have been determined by the commencement of the Renewal Term Lessee shall continue to pay the Base Rent payable as of the month immediately preceding such commencement until the Base Rent is established so that the Base Rent established for the Renewal Term shall be retroactive to the commencement of the Renewal Term

52 Attachments Attached hereto are the following documents which constitute a part of this Lease

EXHIBIT A PREMISES FLOOR PLAN
EXHIBIT B OFFICE BUILDING PROJECT
EXHIBIT C RULES AND REGULATIONS
EXHIBIT D WORK LETTER

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND BY EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE LESSOR, ITS COUNSEL, ANY REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO, THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE

LESSOR

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation

By _____
John Nagle
Senior Investment Officer

Address of Lessor

John Hancock Mutual Life Insurance Company
200 Clarendon Street Floor T-52
Boston MA 02117
Attention Mr John Nagle

Copy to

SENTRE Partners
225 Broadway, Suite 1700
San Diego CA 92101
Attention Mr Michael P Peckham

LESSEE

ALLEGIANCE TELECOM, INC ,
a Delaware corporation

By _____
Name _____
Title _____

By _____
Name _____
Title _____

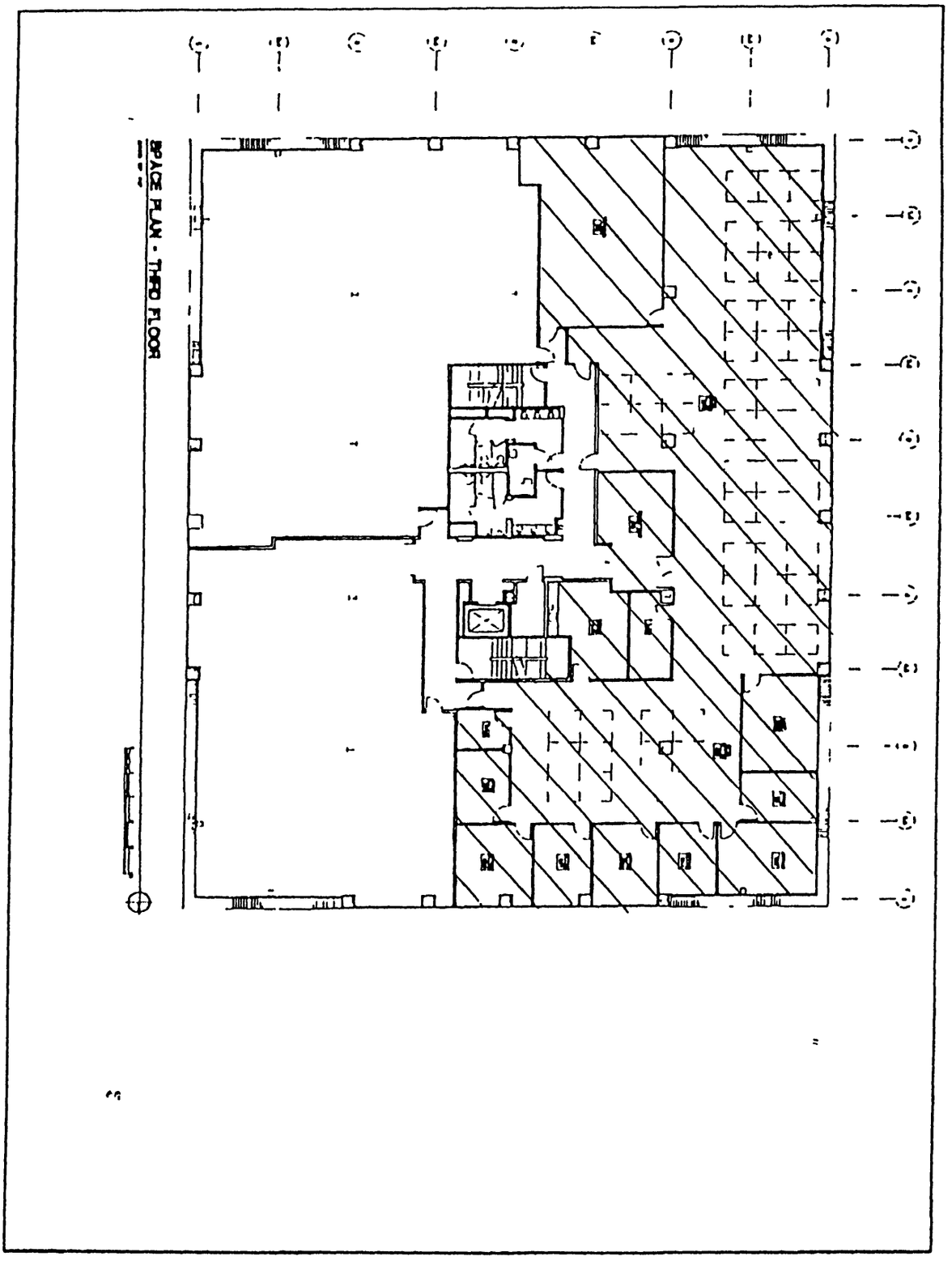
Address of Lessee

Allegiance Telecom, Inc
4 Westbrook Corporate Center Suite 400
Westchester, IL 60154
Attention Ms Patricia E Konde

EXHIBIT A

PREMISES FLOOR PLAN

Mar-17-99 08:21A Carrier Design Group



SP-1

THIRD FLOOR

GOVERNOR EXECUTIVE CENTRE

6165 GREENWICH DRIVE SAN DIEGO, CA

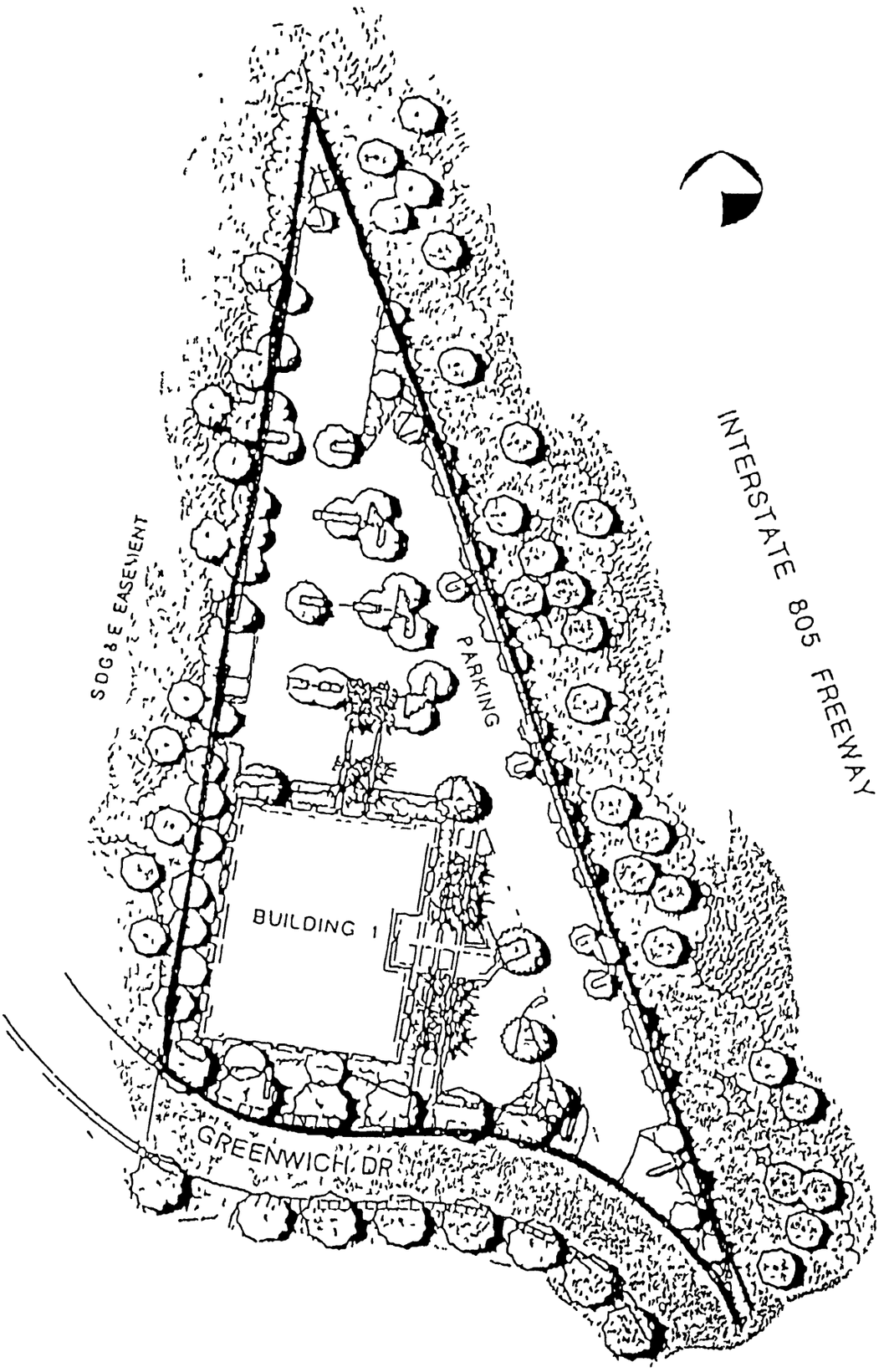
CARRIER DESIGN GROUP

SPACE PLANNING INTERIOR DESIGN

1550 Third Street Suite 100 San Diego CA 92101 619 230 0271 FAX 230 0422

EXHIBIT B

OFFICE BUILDING PROJECT



SHADED AREA NOT A PART

EXHIBIT C

RULES AND REGULATIONS
STANDARD OFFICE LEASE

GENERAL RULES

1 Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways, walkways and stairways

2 Lessor reserves the right to refuse access to any persons Lessor in good faith judges to be a threat to the safety, reputation, or property of the Office Building Project and its occupants

3 Lessee shall not make or permit any noise or odors that annoy or interfere with other lessees or persons having business within the Office Building Project

4 Lessee shall not keep animals (other than guide dogs) or birds within the Office Building Project, and shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same

5 Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose

6 No sign, advertisement of notice shall be displayed, printed or affixed on or to the Premises or to the outside or inside of the Building or so as to be visible from outside the Premises or Building without Lessor's prior written consent. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Lessee by Lessor or by a person selected by Lessor and in a manner and style acceptable to Lessor

7 The sidewalks, halls, passages, exits, entrances, elevators and stairways and other portions of the common areas shall not be obstructed by Lessee or used for any purpose other than for ingress and egress from Lessee's Premises

8 Toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein

9 Lessee shall not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, ceilings or floor or in any way deface the Premises nor shall Lessee suffer or permit any thing in or around the Premises or Building that causes excessive vibration or floor loading in any part of the Office Building Project

10 Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building. The times and manner of moving the same in and out of the Building shall be prescribed by Lessor and all such moving must be done under the supervision of Lessor. Lessor may exclude from the Building any such heavy or bulky equipment or articles the weight of which may exceed the floor load for which the Building is designed, or such equipment or articles as may violate any provisions of the Lease of which these rules and regulations are a part. Lessee shall not use any machinery or other bulky articles on the Premises, even though its installation may have been permitted, which may cause any noise or jar, or tremor in the floors or walls or which by its weight might injure the floor of the Building. Safes, large file cabinets or other heavy equipment shall, as considered necessary by Lessor, stand on a platform of such thickness as is necessary to properly distribute the weight

11 Lessee shall not use or keep in the Premises, Building or Office Building Project any kerosene, gasoline or inflammable, explosive or combustible fluid or material or use any method of heating or air-conditioning other than that supplied by Lessor

12 Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor

13 Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing drapes when the sun's rays fall directly on windows of the Premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves

14 The Premises shall not be used for manufacturing or for the storage of merchandise. Lessee shall not, without Lessor's prior written consent, occupy or permit any portion of the Premises to be occupied or used for the manufacture or sale of liquor or tobacco in any form, or as a barber or manicure shop, or as an employment bureau. The Premises shall not be used for lodging or sleeping or for any improper, objectionable or immoral purpose. No auction shall be conducted on the Premises

15 Lessee shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of the Building, the Office Building Project or neighboring buildings or premises or those having business with it by the use of any musical instrument, radio, phonographs or unusual noise, or in any other way

16 No cooking shall be done or permitted by any lessee in the Premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees, their employees and visitors shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced in or permeate from or throughout the Premises

17 The skylights, windows and doors that reflect or admit light and air into the halls passageways or other public places in the Building shall not be covered or obstructed by any lessee nor shall any bottles, parcels or other articles be placed on the windowsills

18 No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any lessee, nor shall any changes be made in existing locks or the mechanisms thereof unless Lessor is first notified thereof, gives written approval and is furnished a key thereto Each lessee must, upon the termination of its tenancy, give the Lessor all keys of stores offices or toilets and toilet rooms either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished such lessee shall pay Lessor the cost of replacing the same or of changing the lock or locks opened by such key if Lessor shall deem it necessary to make such change

19 Lessor shall have the right to prohibit any advertising by any lessee which, in Lessor s opinion, tends to impair the reputation of the Building or the Office Building Project or its desirability as an office building and upon written notice from Lessor any lessee shall refrain from and discontinue such advertising

20 Any person employed by any lessee to do janitorial work shall, while in the Building or the Office Building Project and outside of the Premises, be subject to and under the control and direction of the office of the Office Building Project (but not as an agent or servant of Lessor and the lessee shall be responsible for all acts of such persons)

21 No air conditioning unit or other similar apparatus shall be installed or used by any lessee without the prior written consent of Lessor Lessee shall pay the cost of all electricity used for air conditioning in the Premises if such electrical consumption exceeds normal office requirements or is attributable to after hours use, regardless of whether additional apparatus is installed pursuant to the preceding sentence

22 There shall not be used in any space or in the public halls of the Building, either by any lessee or others any hand trucks except those equipped with rubber tires and side guards

23 All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be florescent and/or of a quality, type, design and bulb color approved by Lessor Lessee shall not permit the consumption in the Premises of more than 2½ watts per net usable square foot in the Premises in respect of office lighting nor shall Lessee permit the consumption in the Premises of more than 1¼ watts per net usable square foot of space in the Premises in respect of the power outlets therein, at any one time In the event that such limits are exceeded, Lessor shall have the right to remove any lighting fixture or any florescent tube or bulb therein as it deems necessary and/or to charge Lessee for the cost of the additional electricity consumed

24 Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities by Lessee or its employees, agents, licensees or invitees No foreign substances of any kind are to be inserted therein

25 Lessee shall not deface the walls, partitions or other surfaces of the Premises or Office Building Project

26 Furniture, significant freight and equipment shall be moved into or out of the Building only with Lessor's knowledge and consent, and subject to such reasonable limitations techniques and timing, as may be designated by Lessor Lessee shall be responsible for any damage to the Office Building Project arising from any such activity

27 Lessee shall not employ any service or contractor for services or work to be performed on or to the Building, except as approved by Lessor

28 No window coverings, shades or awnings shall be installed by Lessee

29 No Lessee employee or invitee shall go upon the roof of the Building

30 Lessee shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as nonsmoking areas

31 Lessee shall not use any method of heating other than as provided by Lessor

32 Lessee shall not install, maintain or operate any vending machines upon the Premises without Lessor's written consent

33 Lessee shall comply with all safety fire protection and evacuation regulations established by Lessor or any applicable governmental agency

34 Lessor reserves the right to waive any one of these rules or regulations, and/or as to any particular Lessee, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Lessee

35 Lessee assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required

36 Lessor reserves the right to make such other reasonable, nondiscriminatory rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Office Building Project and its occupants Lessee agrees to abide by these and such rules and regulations

37 All doors opening onto public corridors shall be kept closed, except when being used for ingress and egress

38 The requirements of lessees will be attended to only upon application to the Office of the Building

39 Canvassing, door-to-door soliciting and peddling in the Building are prohibited and each lessee shall cooperate to prevent the same

PARKING RULES

1 Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles, including standard sport utility vehicles and minivans

2 Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers shippers, customers or invitees to be loaded unloaded or parked in areas other than those designated by Lessor for such activities

3 Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder's parking privileges Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices

4 Lessor reserves the right to refuse the sale of monthly identification devices to any person or entity that willfully refuses to comply with the applicable rules regulations, laws and/or agreements

5 Lessor reserves the right to relocate all or a part of parking spaces from floor to floor, within one floor, and/or to reasonably adjacent offsite locations(s), and to reasonably allocate them between compact and standard size spaces reserved and unreserved handicapped and nonhandicapped as long as the same complies with applicable laws ordinances and regulations

6 Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking

7 Unless otherwise instructed every person using the parking area is required to park and lock his own vehicle Lessor will not be responsible for any damage to vehicles injury to persons or loss of property, all of which risks are assumed by the party using the parking area

8 Validation if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking

9 The maintenance, washing waxing or cleaning of vehicles in the parking structure or Common Areas is prohibited

10 ILessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements

11 Lessor reserves the right to modify these rules and/or adopt such other reasonable and nondiscriminatory rules and regulations as it may deem necessary for the proper operation of the parking area

12 Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby

13 Lessor or its agent may tow or otherwise remove any vehicles which are parked illegally in the parking areas, which are parked in the parking areas for more than seventy-two (72) consecutive hours without Lessor's prior written consent or which constitute a nuisance or annoyance to other users of the Office Building Project or parking areas Such towing shall be at the sole cost and expense of the lessee which is in any way responsible for the presence of such vehicle in the parking area (for example, if the vehicle is parked by any particular lessee's invitee, customer or employee, such lessee shall be responsible for the cost of towing such vehicle)

EXHIBIT D

WORK LETTER
[Turnkey, per approved plans]

Dated March 25 1999

By and between John Hancock Mutual Life Insurance Company, a Massachusetts corporation, as "Lessor," and Allegiance Telecom, Inc , a Delaware corporation, as 'Lessee'

1 **Standard Improvements** Except as may be otherwise expressly set forth herein, the Premises shall be constructed in accordance with Lessor s Standard Improvements

2 **Completion of Improvements** Lessor shall construct and complete the improvements to the Premises ('Improvements') using building standard materials and substantially in accordance with the space plans prepared by Carrier Design Group dated March 17, 1999 a copy of which is attached as Schedule D-2 hereto

3 **Construction** Lessor shall at its sole cost and expense construct the Improvements substantially in accordance with said the plans and specifications attached as Schedule D-2 and all applicable rules regulations laws permits or ordinances, provided however that any cost of such construction in excess of $75 416 ("TI Allowance) shall be paid by Lessee Lessee shall pay one hundred percent (100%) of the amount of such excess, as estimated by Lessor, prior to the commencement of construction of the Improvements The TI Allowance shall only be applied to Improvements that are permanently affixed to the Premises and the cost of architecture and engineering fees licenses and permits in connection with the construction of the Improvements

4 **Completion**

4 1 Lessor shall obtain a building permit to construct the Improvements as soon as practically possible

4 2 Lessor shall complete the construction of the Improvements as soon as practically possible after the obtaining of necessary building permits

4 3 The term 'Completion ' as used in this Work Letter is hereby defined to mean the date the building department of the municipality having jurisdiction of the Premises shall have made a final inspection of the Improvements and authorized a final release of restrictions on the use of public utilities in connection therewith and the same are in a broom-clean condition

4 4 Lessor shall use its commercially reasonable efforts to achieve Completion of the Improvements on or before the target Commencement Date set forth in paragraph 3 2 of the Lease

4 5 In the event that the Improvements or any portion thereof have not reached Completion by the Commencement Date this Lease shall not be invalid, but rather Lessor shall complete the same as soon thereafter as is possible and Lessor shall not be liable to Lessee for damages in any respect whatsoever

4 6 If Lessor shall be delayed at any time in the progress of the construction of the Improvements or any portion thereof by extra work changes in construction ordered by Lessee, or by strikes, lockouts, fire, delay in transportation unavoidable casualties, rain or weather conditions, governmental procedures or delay, or by any other cause beyond Lessor's control, then the Commencement Date established in paragraph 3 1 of the Lease shall be extended by the period of such delay

5 **Lessee Costs** Notwithstanding anything to the contrary in this Work Letter, the parties agree as follows

5 1 Lessee desires to utilize its own specific choice of carpeting, for which Lessor has allocated an allowance of Twenty-one and No/100 Dollars ($21 00) per square yard The parties agree that any cost of such carpeting in excess of $21 00 per yard, which cost is included in the TI Allowance under paragraph 3 above shall be at Lessee s sole expense Any delay caused by such carpet not being timely delivered shall constitute a delay caused by Lessee under paragraph 4 6 above

5 2 Lessee desires to utilize systems-style furniture in a portion of the Premises Any cost associated with the hookup and distribution of electrical systems including any related circuitry work in connection with such systems-style furniture shall be at Lessee s sole expense

5 3 Lessee desires to install in the Premises a card key security system for after-hours access to the Premises Lessor agrees to reasonably cooperate with Lessee to facilitate the installation of such a system which is compatible with the existing Building security card key access system provided, however, that Lessee shall be responsible for approval of the specific system selected and for all costs in connection with the acquisition, installation and operation thereof

6 **Work Done by Lessee** Any work done by Lessee shall be done only with Lessor's prior written consent and in conformity with a valid building permit and all applicable rules regulations, laws and ordinances, and be done in a good and workmanlike manner of good and sufficient materials All work shall be done only by contractors designated and approved by Lessor

7 **Taking of Possession of Premises** Lessor shall notify Lessee of the Estimated Completion Date at least ten (10) days before said date Lessee shall thereafter have the right to enter the Premises to equip and furnish the Premises as long as such entry does not interfere with Lessor's work Lessee shall take possession of the Premises upon the tender thereof as provided in paragraph 3 2 1 of the Lease to which this Work Letter is attached Any entry by Lessee of the Premises under this paragraph shall be under all the terms and provisions of the Lease to which this Work Letter is attached

8 **Acceptance of Premises** Lessee shall notify Lessor in writing of any items that Lessee deems incomplete or incorrect in order for the Premises to be acceptable to Lessee within ten (10) days following Tender of Possession as set forth in paragraph 3 2 1 of the Lease to which this Work Letter is attached Lessee shall be deemed to have accepted the Premises and approved construction if Lessee does not deliver such a list to Lessor within said number of days Lessor shall complete all such punch-list items with all reasonable diligence, in a good and workmanlike manner, in accordance with the plans and specifications and all applicable laws, permits and ordinances

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re		
Allegiance Telecom, Inc , et al.,		Chapter 11 Case No 03-13057 (RDD)
Debtors		Jointly Administered

STIPULATION AND AGREED ORDER RESOLVING CLAIM 2879 ARDEN REALTY LIMITED PARTNERSHIP

This STIPULATION AND AGREED ORDER is by and between the Allegiance Telecom Liquidating Trust (the "ATLT"), as successor to the Debtors (as defined below), and Arden Realty Limited Partnership ("Claimant") The parties hereby stipulate and agree as follows

WHEREAS, on or about March 25, 1999, Debtor Allegiance Telecom, Inc ("ATI") entered into a lease (the "Lease") with Claimant for office space at 6165 Greenwich Drive, Suite 300, San Diego, California 92122, and

WHEREAS, ATI paid to Claimant a cash security deposit in the amount of $22,663 49 (the "Security Deposit"), and

WHEREAS, on May 14, 2003, ATI and its direct and indirect subsidiaries (collectively, the "Debtors") commenced voluntary cases (the "Chapter 11 Cases") under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the Southern District of New York, Case No 03-13057 (RDD) (the "Bankruptcy Court"), and

Docket #1818
eod 10/13/04

Claim 2879
2568
2941

WHEREAS, the Chapter 11 Cases were consolidated for procedural purposes only and were jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, and

WHEREAS, the Debtors filed their Third Amended Joint Plan of Reorganization dated June 8, 2004 (the "Plan") with the Bankruptcy Court and the Court entered its Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Third Amended Joint Plan of Reorganization on June 10, 2004 (the "Confirmation Order"), and

WHEREAS, in accordance with the terms of the Plan, on the Initial Effective Date, the ATLT was created, and

WHEREAS, pursuant to the Plan, Eugene I Davis was appointed as the plan administrator (the "Plan Administrator") for the ATLT, and

WHEREAS, among other things, the purpose of the ATLT is to (i) wind-down the Debtors' affairs, including making distributions as contemplated in the Plan, (ii) investigate, enforce and prosecute avoidance and other causes of action, (iii) object to, settle, compromise, dispute and/or prosecute disputed claims, and (iv) administer the Plan and take such actions as are necessary to effectuate the terms of the Plan, and

WHEREAS, the ATLT, as the successor to the rights of the Debtors, and the Plan Administrator has the authority to, *inter alia*, perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704 and 1106 of the Bankruptcy Code, and

WHEREAS, section 6 1(a) of the Plan provides in relevant part that "[p]ursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, and subject to the terms and conditions of the Purchase Agreement, all executory contracts and unexpired leases between the Debtors

and any Person or Entity that are not listed on Schedules 2, 3 and 4 shall be deemed rejected by the Debtors on the Initial Effective Date ", and

WHEREAS, pursuant to section 6 1(a) of the Plan, the Debtors rejected the Lease on the Initial Effective Date, and

WHEREAS, on or about July 1, 2004, Claimant filed a proof of claim numbered 2879 (the "Proof of Claim") for an unsecured, non-priority claim against ATI in the amount of $250,306 74 (the "Rejection Claim"), and

WHEREAS, Claimant has not filed any proofs of claim in the Chapter 11 Cases besides the Proof of Claim, and

WHEREAS, the ATLT disputes the amounts sought by Claimant in the Proof of Claim, and

WHEREAS, on or about September 2, 2004, the ATLT filed its Eleventh Omnibus Objection to Certain Lease Rejection Damages Claims, which included an objection to the Proof of Claim, and

WHEREAS, the ATLT and Claimant (i) have negotiated in good faith at arm's length and have reached a consensual resolution, as set forth below, with respect to the Proof of Claim to avoid incurring significant additional litigation expenses that would necessarily be incurred in litigating this matter to an uncertain conclusion, and (ii) request that the Court approve this Stipulation and enter same as the Order of this Court

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS.

Upon the entry of a Final Order (as defined below) approving this Stipulation, the ATLT is hereby authorized and directed to grant Claimant an allowed ATI Unsecured Claim (as such term is defined in the Plan) of $196,236 00 (the "Allowed Unsecured Claim") and an allowed Secured Claim (as such term is defined in the Plan) of $22,663 49 (the "Paid Secured Claim") in full and complete satisfaction of all Claims (as such term is defined in the Plan) held by Claimant with respect to the Debtors, the Debtors' estates, and/or the ATLT, including, but not limited to, the Rejection Claim

The ATLT and Claimant hereby stipulate and agree that (i) the Security Deposit constitutes full and final satisfaction of the Paid Secured Claim, (ii) no further amounts are due with respect to the Paid Secured Claim, and (iii) upon entry of the Final Order, Claimant can apply or setoff the Security Deposit to the Paid Secured Claim

Claimant hereby stipulates and agrees to elect the Cash Recovery (as defined in the Plan) on account of the Allowed Unsecured Claim, regardless of any prior election to the contrary

Upon the entry of a Final Order approving this Stipulation, the ATLT is hereby authorized and directed to expunge all proofs of claims relating to Claimant from the ATLT's claims register, except for the Proof of Claim, which shall be amended to include only the Allowed Unsecured Claim

Claimant hereby stipulates and agrees that it will not file any proofs of claim or requests for the payment of administrative expenses against the ATLT, the Debtors, or the Debtors' estates, whether in the Chapter 11 Cases or otherwise

Upon entry of a Final Order approving this Stipulation, Claimant hereby irrevocably, unconditionally and without reservation of any kind waives, releases and forever discharges the ATLT, the Debtors, and the Debtors' estates, and their respective parent firms and affiliates, and their officers, directors, employees, attorneys, professionals, and agents (collectively, the "Estate Parties") from and against any and all past, present and future actions, causes of action, Claims, liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether matured or unmatured, whether at law or in equity, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, discoverable or undiscoverable, contingent or non-contingent, which Claimant has, had, or may have in the future against the Estate Parties, provided, however, that (i) Claimant hereby reserves its defense and indemnity rights, if any, under insurance policies, if any, obtained by the Debtors as required by the Lease and (ii) Claimant does not waive or release any party's obligations contained in this Stipulation

Upon entry of a Final Order approving this Stipulation, the ATLT hereby irrevocably, unconditionally and without reservation of any kind waives, releases and forever discharges Claimant and its parent firms and affiliates, and their respective officers, directors, employees, attorneys, professionals, and agents (collectively, the "Claimant Parties") from and against any and all past, present and future actions, causes of action, claims, liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether matured or unmatured, whether at law or in equity, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, discoverable or undiscoverable, contingent or non-contingent, which the ATLT, the Debtors, and/or the Debtors' estates has, had, or may have in the future against the Claimant

Parties, provided, however, that the ATLT does not waive or release any party's obligations contained in this Stipulation.

This Stipulation shall be governed by New York law, excluding its conflicts of laws principles and this Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation

The undersigned on behalf of the ATLT and Claimant each warrants and represents that he or she has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such party

Claimant represents and warrants to the ATLT that, as of the date hereof, it is the sole holder of the Proof of Claim and that Claimant has not assigned, sold, hypothecated or otherwise transferred any Claims against the Debtors, the Debtors' estates, or the ATLT

This Stipulation is subject to approval by the Court and the entry of a Final Order by the Court approving this Stipulation, provided, however, that the parties shall support such Court approval and comply with this Stipulation pending the Court's entry of a Final Order approving or disapproving this Stipulation For the purposes of this Stipulation, the term "Final Order" shall mean an order approving this Stipulation that has not been stayed, reversed or amended and the time, as computed under the Bankruptcy Rules, to appeal or seek review or rehearing of such order (or any revision, modification or amendment thereof) has expired and no appeal or petition for review or rehearing of such order was filed, or if filed, remains pending

Nothing contained in this Stipulation nor any negotiations or proceedings in connection herewith shall constitute or be deemed to be evidence of an admission by any party hereto of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of

ment, of any claim or defense of any party Neither this Stipulation nor any negotiations or proceedings in connection herewith may be used in any proceeding against any party for any purpose whatsoever except with respect to effectuation and enforcement of this Stipulation.

This Stipulation contains the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous oral or written agreements The parties acknowledge that no promise, inducement, or agreement not stated herein has been made to them in connection with this Stipulation The parties understand and agree that this Stipulation may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by both parties and the Court The parties agree and acknowledge that they will make no claim at any time or place that this Stipulation has been orally altered or modified or otherwise changed by oral communication of any kind or character Each party hereto agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Stipulation.

This Stipulation may be executed simultaneously or in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument A facsimile copy of a signature page is the equivalent of an original signature page

This Stipulation shall be binding upon the ATLT, as successor to the Debtors, and Claimant, and their predecessors, successors, heirs, subsidiaries, affiliates, assignees, agents, directors, officers, employees, the Plan Administrator, and any trustee appointed under Chapter 7 of the Bankruptcy Code

Dated New York, New York
October 12, 2004

ALLEGIANCE TELECOM LIQUIDATING TRUST

By /s/ Mark Stachiw
Mark Stachiw
Allegiance Telecom Liquidating Trust
1405 S Beltline Road, Suite 100
Coppell, Texas 75019

and

AKIN GUMP STRAUSS HAUER & FELD LLP

By /s/ Colin M Adams
Ira S Dizengoff, Esq (ID-9980)
Phil C Dublin, Esq (PD-4919)
Colin M Adams, Esq (CA-2913)
Jeffrey M Anapolsky, Esq (JA-8867)
590 Madison Avenue
New York, New York 10022
Telephone (212) 872-1000

Counsel to the Allegiance Telecom Liquidating Trust

ARDEN REALTY LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP

By Arden Realty, Inc, a Maryland corporation
Its Sole General Partner

By /s/ David Swartz
David Swartz
Its Secretary and General Counsel

and

LAW OFFICES OF PATRICK C. MCGARRIGLE

By /s/ Patrick C McGarrigle
Patrick C McGarrigle, Esq
1100 Glendon Avenue
Suite 2150
Los Angeles, California 90024
Telephone (310) 208-3300

Counsel to Arden Realty Limited Partnership

SO ORDERED, this 13th day of October 2004

/s/Robert D Drain
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Allegiance Telecom, Inc., et al.
Case No. 03-13057-(RDD)-11

DOCUMENTS APPENDED TO CLAIM

On December 19, 2007, document(s) were appended to Claim Nos. **2879, 2941, and 2568** for the following reason(s):

☐ Stipulation/Order

☐ New Supporting Documents

☒ Change of Firm Name and COA

☐ Stipulation and Order

☒ Other: Per Docket Number 2548

McGARRIGLE, KENNEY & ZAMPIELLO, APC
9600 TOPANGA CANYON BLVD., SUITE 200
CHATSWORTH, CALIFORNIA 91311
TELEPHONE (818) 998-3300 FAX (818) 998-3344
E-MAIL: thefirm@mkzlaw.com

OUR FILE NUMBER:

8664-002

November 16, 2007

VIA FEDERAL EXPRESS

Clerk of the Court
United States Bankruptcy Court
Southern District
One Bowling Green
New York, NY 10004-1408

Re: In re: Allegiance Telecom, Inc., et al.
Case No. 03-13057 (RDD)

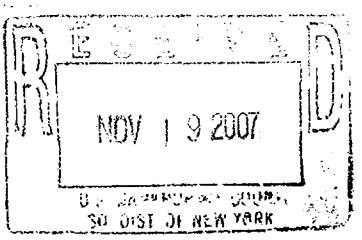
Dear Clerk:

Enclosed herewith please find the following document:

1. Notice of Change of Firm Name and Address

Please file the original of the above-mentioned document and return the conformed copy in the self-addressed stamped envelope provided for your convenience.

Please do not hesitate to contact me if you have any questions regarding this matter.



Very truly yours,

Tiffany Tanner

Tiffany Tanner of
McGARRIGLE, KENNEY & ZAMPIELLO, APC
Enclosures
8664-002\ltr\CourtClerk.001

Docket 2548

Patrick C. McGarrigle, Esq., SBN 149008
Michael J. Kenney, Esq., SBN 192775
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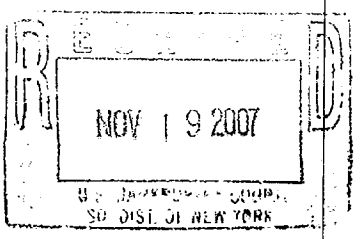
Attorneys for Creditor Arden Realty, Inc.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: ALLEGIANCE TELECOM, INC., et al. Debtors.	CASE NO.: 03-13057 (RDD) Chapter 11 **NOTICE OF CHANGE OF FIRM NAME AND ADDRESS**



TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, effective immediately, the Law Offices of Patrick C. McGarrigle, APC has: (1) changed its name to **McGarrigle, Kenney & Zampiello, APC** and; (2) has relocated its office and established new contact information as follows:

McGARRIGLE, KENNEY & ZAMPIELLO, APC
9600 Topanga Canyon Boulevard, Suite 200
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