

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Alliance Telecom, Inc., et al.</u>		Case Number <u>03-13057</u>
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.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>KM Complex, L.P.</u>		<b>REC'D JUL 19 2004</b>  <b>FILED</b> <b>SOUTHERN DISTRICT OF NEW YORK</b> <b>ALLIANCE TELECOM, INC.</b> <b>03-13057 (RRD)</b> <b>2854</b>
Name and address where notices should be sent:  <u>KM Complex, L.P.</u> <u>6256 Greenwich Drive, Suite #550</u> <u>San Diego, CA 92122</u>		
Telephone number:  		
Account or other number by which creditor identifies debtor:		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to this debtor. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Check here <input type="checkbox"/> replaces if this claim a previously filed claim, dated: _____ <input type="checkbox"/> amends		THIS SPACE IS FOR COURT USE ONLY
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Lease Damages</u> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed: \$ <u>789,772.26</u></b> (unsecured) (secured) (priority) (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. (Itemized on Exhibit B attached) <input type="checkbox"/> 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.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> 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). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> 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). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<b>6. Unsecured Nonpriority Claim \$ <u>789,772.26</u></b> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  <b>RECEIVED</b> <b>JUL 16 2004</b> <b>CLAIMS PROCESSING CENTER</b> <b>USBC, SDNY</b>
<b>9. Supporting Documents:</b> 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. (See Lease attached as Exhibit A)		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date <u>7/14/04</u>	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): <u>T. J. [Signature] Todd M. Yearman - National Director of Leasing</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



## **EXHIBIT A**

STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS  
AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION



1 Basic Provisions ("Basic Provisions")

1.1 Parties This Lease ("Lease"), dated for reference purposes only, October 4, 19 95, is made by and between RREEF West-V, Inc, a Delaware corporation ("Lessor") and CTS Network Services, a Division of Datel Systems, Inc, a California corporation ("Lessee"), (collectively the "Parties," or individually a "Party")

1.2(a) Premises That certain portion of the Building, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 8913 Complex Drive, Suite B, located in the City of San Diego, County of San Diego, State of CA, with zip code 92123, as outlined on Exhibit A attached hereto ("Premises") The "Building" is that certain building containing the Premises and generally described as (describe briefly the nature of the Building) 8913 Complex Drive, Suite B, of which approximately 1,868 square feet comprises the Premises

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the Building or to any other buildings in the Industrial Center. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Industrial Center" (Also see Paragraph 2)

1.2(b) Parking N/A unreserved vehicle parking spaces ("Unreserved Parking Spaces"), and N/A reserved vehicle parking spaces ("Reserved Parking Spaces") (Also see Paragraph 2.6)

1.3 Term 1 years and 6 months ("Original Term") commencing October 6, 1995 ("Commencement Date") and ending March 31, 1997 ("Expiration Date") (Also see Paragraph 3)

1.4 Early Possession N/A ("Early Possession Date") (Also see Paragraphs 3.2 and 3.3)

1.5 Base Rent \$ 1,283.50 per month ("Base Rent"), payable on the first day of each month commencing October 6, 1995 (Also see Paragraph 4)

☒ If this box is checked, this Lease provides for the Base Rent to be adjusted per Addendum 1, attached hereto

1.6(a) Base Rent Paid Upon Execution \$ 1,076.48 as Base Rent for the period October 6, 1995 - October 31, 1995

1.6(b) Lessee's Share of Common Area Operating Expenses tbd percent (tbd %) ("Lessee's Share") as determined by ☒ prorata square footage of the Premises as compared to the total square footage of the Building or ☐ other criteria as described in Addendum       

1.7 Security Deposit \$ 1,400.00 ("Security Deposit") (Also see Paragraph 5)

1.8 Permitted Use Housing of networking equipment and support/technical personnel as allowed under existing zoning ("Permitted Use") (Also see Paragraph 6)

1.9 Insuring Party Lessor is the "Insuring Party" (Also see Paragraph 8)

1.10(a) Real Estate Brokers The following real estate broker(s) (collectively, the "Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes)

☐ N/A represents Lessor exclusively ("Lessor's Broker"),  
☐ N/A represents Lessee exclusively ("Lessee's Broker"), or  
☐ N/A represents both Lessor and Lessee ("Dual Agency") (Also see Paragraph 15)

1.10(b) Payment to Brokers Upon the execution of this Lease by both Parties, Lessor shall pay to said Broker(s) jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Broker(s) (or in the event there is no separate written agreement between Lessor and said Broker(s), the sum of \$       ) for brokerage services rendered by said Broker(s) in connection with this transaction

1.11 Guarantor The obligations of the Lessee under this Lease are to be guaranteed by        ("Guarantor") (Also see Paragraph 37)

1.12 Addenda and Exhibits Attached hereto is an Addendum or Addenda consisting of Paragraphs 1 through 4, and Exhibits A through D, all of which constitute a part of this Lease

2 Premises, Parking and Common Areas

2.1 Letting Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental and/or Common Area Operating Expenses, is an approximation which Lessor and Lessee agree is reasonable and the rental and Lessee's Share (as defined in Paragraph 1.6(b)) based thereon is not subject to revision whether or not the actual square footage is more or less

2.2 Condition Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems and loading doors, if any, in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date. If a non-compliance with said warranty exists as of the Commencement Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within thirty (30) days after the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense

2.3 Compliance with Covenants, Restrictions and Building Code Lessor warrants that any improvements (other than those constructed by Lessee or at Lessee's direction) on or in the Premises which have been constructed or installed by Lessor or with Lessor's consent or at Lessor's direction shall comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Lessor further warrants to Lessee that Lessor has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable building codes, regulations, or ordinances exist with regard to the Premises as of the Commencement Date. Said warranties shall not apply to any Alterations or Utility Installations (defined in Paragraph 7.3(a)) made or to be made by Lessee. If the Premises do not comply with said warranties, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee given within six (6) months following the Commencement Date and setting forth with specificity the nature and extent of such non-compliance, take such action, at Lessor's expense, as may be reasonable or appropriate to rectify the non-compliance. Lessor makes no warranty that the Permitted Use in Paragraph 1.8 is permitted for the Premises under Applicable Laws (as defined in Paragraph 2.4)

2.4 Acceptance of Premises Lessee hereby acknowledges (a) that it has been advised by the Broker(s) to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects and compliance with the Americans with Disabilities Act and applicable zoning, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record (collectively, "Applicable Laws") and the present and future suitability of the Premises for Lessee's intended use, (b) that Lessee has made such investigation as it deems necessary with reference to such matters, is satisfied with reference thereto, and assumes all responsibility therefore as the same relate to Lessee's occupancy of the Premises and/or the terms of this Lease, and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease

2.5 Lessee as Prior Owner/Occupant The warranties made by Lessor in this Paragraph 2 shall be of no force or effect if immediately prior to the date set forth in Paragraph 1.1 Lessee was the owner or occupant of the Premises. In such event, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties

WEB  
JS

2.6 **Vehicle Parking** Lessee shall use the number of Unreserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles shall be parked and loaded or unloaded as directed by Lessor in the Rules and Regulations (as defined in Paragraph 40) issued by Lessor. (Also see Paragraph 2.9)

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

(b) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, 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.

(c) Lessor shall at the Commencement Date of this Lease, provide the parking facilities required by Applicable Law.

2.7 **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 Industrial Center and interior utility raceways within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other lessees of the Industrial Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights** Lessor hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Industrial Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations** 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 establish, modify, amend and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 40. Lessee agrees to abide by and conform to all such Rules and Regulations and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said rules and regulations by other lessees of the Industrial Center.

2.10 **Common Areas - Changes** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways,
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available,
- (c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas,
- (d) To add additional buildings and improvements to the Common Areas,
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Industrial Center, or any portion thereof, and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Industrial Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3 Term

3.1 **Term** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession** If an Early Possession Date is specified in Paragraph 1.4 and if Lessee totally or partially occupies the Premises after the Early Possession Date but prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early occupancy. All other terms of this Lease, however, (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses and to carry the insurance required by Paragraph 8) shall be in effect during such period. Any such early possession shall not affect nor advance the Expiration Date of the Original Term.

3.3 **Delay in Possession** If for any reason Lessor cannot deliver possession of the Premises to Lessee by the Early Possession Date, if one is specified in Paragraph 1.4, or if no Early Possession Date is specified, by the Commencement Date, 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, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until Lessor delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (10) days after the end of said sixty (60) day period, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder, provided further, however, that if such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the Original Term actually commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the period free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to the period during which the Lessee would have otherwise enjoyed under the terms hereof but minus any days of delay caused by the acts, changes or omissions of Lessee.

4 **Rent** increases only on above base year 1995 (95/96 Tax Base Year)

4.1 **Base Rent** Lessee shall pay Base Rent and other rent or charges, as the same may be adjusted from time to time, to Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one full month shall be prorated based upon the actual number of days of the month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

4.2 **Common Area Operating Expenses** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6(b)) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Industrial Center, including, but not limited to, the following:

- (i) The operation, repair and maintenance, in neat, clean, good order and condition, of the following:
  - (aa) The Common Areas, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators and roof
  - (bb) Exterior signs and any tenant directories
  - (cc) Fire detection and sprinkler systems
- (ii) The cost of water, gas, electricity and telephone to service the Common Areas
- (iii) Trash disposal, property management and security services and the costs of any environmental inspections
- (iv) Reserves set aside for maintenance and repair of Common Areas
- (v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10.2(b)) for the Building and the Common Areas
- (vi) Any "Insurance Cost Increase" (as defined in Paragraph 8.1) (Base Year 1995) (Base Year 95/96)
- (vii) The cost of insurance carried by Lessor with respect to the Common Areas
- (viii) Any deductible portion of an insured loss concerning the Building or the Common Areas
- (ix) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Industrial Center or to the operation, repair and maintenance thereof, shall be allocated entirely to the Building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Industrial Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Industrial Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within ten (10) days after a reasonably detailed statement of actual expenses is presented to Lessee by Lessor. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly as Lessor shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during said preceding year exceed Lessee's Share as indicated on said statement, Lessor shall be credited the amount of such overpayment against Lessee's Share of Common Area Operating Expenses next becoming due. If Lessee's payments under this Paragraph 4.2(d) during said preceding year were less than Lessee's Share as indicated on said statement, Lessee shall pay to Lessor the amount of the deficiency within ten (10) days after delivery by Lessor to Lessee of said statement.

\*(x) HVAC maintenance contract and HVAC repairs

5 **Security Deposit** Lessee shall deposit with Lessor upon Lessee's execution hereof the Security Deposit set forth in Paragraph 17 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee fails to pay Base Rent or other rent or charges due hereunder, or otherwise Defaults under this Lease (as defined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefore deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor as an addition to the Security Deposit so that the total amount of the Security Deposit 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 15. Lessor shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacated the Premises, return to Lessee (or at Lessor's option to the last assignee if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered to be held in trust to bear interest or other increment for its use, or to be prepayment for any monies to be paid by Lessee under this Lease.

6 Use

6.1 Permitted Use

(a) Lessee shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8 or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates waste or a nuisance or that disturbs owners and/or occupants of, or causes damage to the Premises or neighboring premises or properties.

(b) Lessor hereby agrees to not unreasonably withhold or delay its consent to any written request by Lessee, Lessee's assignees or subtenants and by prospective assignees and subtenants of Lessee, its assignees and subtenants, for a modification of said Permitted Use, so long as the same will not impair the structural integrity of the improvements on the Premises or in the Building or the mechanical or electrical systems therein, does not conflict with uses by other lessees, is not significantly more burdensome to the Premises or the Building and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. If Lessor elects to withhold such consent, Lessor shall within five (5) business days after such request give a written notification of same, which notice shall include an explanation of Lessor's reasonable objections to the change in use.

6.2 Hazardous Substances

(a) **Reportable Uses Require Consent** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety or welfare of the environment, or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Lessee shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner (at Lessee's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Laws require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but upon notice to Lessor and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of the Permitted Use, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Lessee upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Lessor's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

(b) **Duty to Inform Lessor** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises or the Building, other than as previously consented to by Lessor, Lessee shall immediately give Lessor written notice thereof together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) **Indemnification** Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee or by anyone under Lessee's control. Lessee's obligations under this Paragraph 6.2(c) shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.3 **Lessee's Compliance with Requirements** Lessee shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner comply with all Applicable Requirements, which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on in, under or about the Premises, including soil and groundwater conditions and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Lessee shall within five (5) days after receipt of Lessor's written request provide Lessor with copies of all documents and information including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Requirements specified by Lessor and shall immediately upon receipt notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Requirements.

6.4 **Inspection, Compliance with Law** Lessor, Lessor's agents, employees, contractors and designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Requirements (as defined in Paragraph 6.3) and Lessor shall be entitled to employ experts and/or consultants in connection therewith to advise Lessor with respect to Lessee's activities, including but not limited to Lessee's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease by Lessee or a violation of Applicable Requirements or a contamination, caused or materially contributed to by Lessee, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

7 Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations

7.1 Lessee's Obligations

(a) Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 7.2 (Lessor's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part hereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connections if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2 below. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain a contract, with copies to Lessor, in customary form and substance for and with a contractor specializing and experienced in the inspection, maintenance and service of the heating, air conditioning and ventilating system for the Premises; however, Lessor reserves the right, upon notice to Lessee, to procure and maintain the contract for the heating, air conditioning and ventilating systems, and if Lessor elects, Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after ten (10) days prior written notice to Lessee (except in the case of an emergency in which case no notice shall be required), perform such obligations on Lessee's behalf and put the Premises in good order, condition and repair, in accordance with Paragraph 13.2 below.

7.2 **Lessor's Obligations** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler and/or standpipe and hose (if located in the Common Areas) or other automatic fire extinguishing system including fire alarm



and/or smoke detection systems and equipment, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Building, Industrial Center or Common Areas in good order, condition and repair.

### 7.3 Utility Installations, Trade Fixtures, Alterations

(a) **Definitions, Consent Required** The term "Utility Installations" is used in this Lease to refer to all air lines, power panels, electrical distribution, security, fire protection systems, communications systems, lighting fixtures, heating, ventilating and air conditioning equipment, plumbing and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment which can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises which are provided by Lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures. "Lessee-Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a). Lessee shall not make nor cause to be made any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may however make non-structural Utility Installations to the interior of the Premises (excluding the roof) without Lessor's consent but upon notice to Lessor so long as they are not visible from the outside of the Premises, do not involve puncturing, relocating or removing the roof or any existing walls, or changing or interfering with the fire sprinkler or fire detection systems and the cumulative cost thereof during the term of this Lease as extended does not exceed \$2,500.00.

(b) **Consent** Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities; (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon; and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and be in compliance with all Applicable Requirements. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor. Lessor may, (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs \$2,500.00 or more upon Lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation.

(c) **Lien Protection** 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 on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on, or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense, defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys' fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

### 7.4 Ownership, Removal, Surrender, and Restoration

(a) **Ownership** Subject to Lessor's right to require their removal and to cause Lessee to become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Installations made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee-Owned Alterations and Utility Installations. Unless otherwise instructed per Subparagraph 7.4(b) hereof, all Lessee-Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon the Premises and be surrendered with the Premises by Lessee.

(b) **Removal** Unless otherwise agreed in writing, Lessor may require that any or all Lessee-Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding that their installation may have been consented to by Lessor. Lessor may require the removal at any time of all or any part of any Alterations or Utility Installations made without the required consent of Lessor.

(c) **Surrender/Restoration** Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified herein, the Premises, as surrendered, shall include the Alterations and Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment and Lessee-Owned Alterations and Utility Installations, as well as the removal of any storage tank installed by or for Lessee and the removal, replacement or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Requirements and/or good practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

## 8 Insurance, Indemnity

### 8.1 Payment of Premium Increases

(a) As used herein, the term "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance applicable to the Building and required to be carried by Lessor pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b) ("Required Insurance"), over and above the Base Premium as hereinafter defined, calculated on an annual basis. "Insurance Cost Increase" shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, increased valuation of the Premises, and/or a general premium rate increase. The term "Insurance Cost Increase" shall not, however, include any premium increases resulting from the nature of the occupancy of any other lessee of the Building. If the parties insert a dollar amount in Paragraph 1.9, such amount shall be considered the "Base Premium." If a dollar amount has not been inserted in Paragraph 1.9 and if the Building has been previously occupied during the twelve (12) month period immediately preceding the Commencement Date, the "Base Premium" shall be the annual premium applicable to such twelve (12) month period. If the Building was not fully occupied during such twelve (12) month period, the "Base Premium" shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Commencement Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$1,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to or extending beyond the term of this Lease shall be prorated to coincide with the corresponding Commencement Date or Expiration Date.

### 8.2 Liability Insurance See Addendum I

(a) **Carried by Lessee** Lessee shall obtain and keep in force during the term of this Lease a Commercial General Liability policy of insurance protecting Lessee, Lessor and any Lender(s) whose names have been provided to Lessee in writing (as additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor** Lessor shall also maintain liability insurance described in Paragraph 8.2(a) above in addition to and not in lieu of the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

### 8.3 Property Insurance-Building, Improvements and Rental Value except with regard to earthquake and/or flood where insurance may be for a lesser amount

(a) **Building and Improvements** Lessor shall obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to any Lender(s), insuring against loss or damage to the Premises. Such insurance shall be for full replacement cost as the same shall exist from time to time or the amount required by any Lender(s), but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. Lessee-Owned Alterations and Utility Installations, Trade Fixtures and Lessee's personal property shall be insured by Lessee pursuant to Paragraph 8.4. If the coverage is available and commercially appropriate, Lessor's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance. Said policy or policies shall also contain an agreed valuation provision in lieu of any co-insurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located or at Lessor's discretion.

(b) **Rental Value** Lessor shall also obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and any Lender(s), insuring the loss of the full rental and other charges payable by all lessees of the Building to Lessor for one year (including all Real Property Taxes, insurance costs, all Common Area Operating Expenses and any scheduled rental increases). Said insurance may provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, and the amount of coverage shall be adjusted annually to reflect the projected rental income, Real Property Taxes, insurance premium costs and other expenses, if any, otherwise payable, for the next 12-month period. Common Area Operating Expenses shall include any deductible amount in the event of such loss.

(c) **Adjacent Premises** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Industrial Center if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements** Lessor is the Insuring Party, Lessor shall not be required to insure Lessee-Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease

8 4 **Lessee's Property Insurance** Subject to the requirements of Paragraph 8 5, Lessee at its cost shall either by separate policy or at Lessor's option, by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property, Trade Fixtures and Lessee-Owned Alterations and Utility Installations in, on or about the Premises similar in coverage to that carried by Lessor as the Insuring Party under Paragraph 8 3(a). Such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property and the restoration of Trade Fixtures and Lessee-Owned Alterations and Utility Installations. Upon request from Lessor, Lessee shall provide Lessor with written evidence that such insurance is in force.

8 5 **Insurance Policies** Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located and maintaining during the policy term a "General Policyholders Rating" of at least B+ V or such other rating as may be required by a Lender as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. Lessee shall cause to be delivered to Lessor, within seven (7) days after the earlier of the Early Possession Date or the Commencement Date, certified copies of or certificates evidencing the existence and amounts of, the insurance required under Paragraph 8 2(a) and 8 4. No such policy shall be cancelable or subject to modification except after thirty (30) days' prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand.

8 6 **Waiver of Subrogation** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss or damage to their property arising out of or incident to the perils required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto. Lessor and Lessee agree to have their respective insurance companies issuing property damage insurance waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8 7 **Indemnity** ~~Except for Lessee's negligence and/or breach of express warranties~~, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving or in connection with the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, 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.

8 8 **Exemption of Lessor from Liability** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or from any other cause, whether said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other lessee of Lessor nor from the failure by Lessor to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9 **Damage or Destruction** Except to the extent caused by or arising from the gross negligence or willful misconduct of Lessor or its agents, employees or contractors.

#### 9 1 Definitions

(a) **'Premises Partial Damage'** shall mean damage or destruction to the Premises, other than Lessee-Owned Alterations and Utility Installations, the repair cost of which damage or destruction is less than fifty percent (50%) of the then Replacement Cost (as defined in Paragraph 9 1(d)) of the Premises (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction.

(b) **'Premises Total Destruction'** shall mean damage or destruction to the Premises, other than Lessee-Owned Alterations and Utility Installations, the repair cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost of the Premises (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction. In addition, damage or destruction to the Building other than Lessee-Owned Alterations and Utility Installations and Trade Fixtures of any lessees of the Building, the cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures of any lessees of the Building) of the Building shall, at the option of Lessor, be deemed to be Premises Total Destruction.

(c) **'Insured Loss'** shall mean damage or destruction to the Premises, other than Lessee-Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8 3(a) irrespective of any deductible amounts or coverage limits involved.

(d) **'Replacement Cost'** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(e) **'Hazardous Substance Condition'** shall mean the occurrence or discovery of a condition involving the presence of or a contamination by a Hazardous Substance as defined in Paragraph 6 2(a), in, on, or under the Premises.

9 2 **Premises Partial Damage - Insured Loss** If Premises Partial Damage that is an Insured Loss occurs, then Lessor shall at Lessor's expense repair such damage (but not Lessee's Trade Fixtures or Lessee-Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect. In the event, however, that there is a shortage of insurance proceeds and such shortage is due to the fact that, by reason of the unique nature of the improvements in the Premises, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, Lessor shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds in which case this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within such ten (10) day period, and if Lessor does not so elect to restore and repair, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9 3 rather than Paragraph 9 2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9 3 **Partial Damage - Uninsured Loss** If Premises Partial Damage that is not an Insured Loss occurs unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect), 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 receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following such commitment from Lessee. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9 4 **Total Destruction** Notwithstanding any other provision hereof, if Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event however that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 9 7.

9 5 **Damage Near End of Term** If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option, and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten (10) days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate as of the date set forth in the first sentence of this Paragraph 9 5.

#### 9 6 Abatement of Rent, Lessee's Remedies

(a) In the event of (i) Premises Partial Damage or (ii) Hazardous Substance Condition for which Lessee is not legally responsible, the Base Rent, Common Area Operating Expenses and other charges, if any, payable by Lessee hereunder for the period during which such damage or condition exists, repair, remediation or restoration continues, shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not in excess of proceeds from insurance required to be carried under Paragraph 8 3(b). Except for abatement of Base Rent, Common Area Operating Expenses and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair, remediation or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence in a substantial and meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after the receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph 9 shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises whichever occurs first.

**9.7 Hazardous Substance Conditions** If a Hazardous Substance Condition occurs unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by Applicable Requirements and this Lease shall continue in full force and effect but subject to Lessor's rights under Paragraph 6.2(c) and Paragraph 13), Lessor may at Lessor's option either (i) investigate and remediate such Hazardous Substance Condition if required as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000 whichever is greater, give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the excess costs of (a) investigation and remediation of such Hazardous Substance Condition to the extent required by Applicable Requirements, over (b) an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following said commitment by Lessee. In such event this Lease shall continue in full force and effect and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time period specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**9.8 Termination - Advance Payments** Upon termination of this Lease pursuant to this Paragraph 9, Lessor shall return to Lessee any advance payment made by Lessee to Lessor and so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

**9.9 Waiver of Statutes** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises and the Building with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent it is inconsistent herewith.

**10 Real Property Taxes**

**10.1 Payment of Taxes** Lessor shall pay the Real Property Taxes, as defined in Paragraph 10.2(a), applicable to the Industrial Center, and except as otherwise provided in Paragraph 10.3 any increases in such amounts over the Base Real Property Taxes shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

**10.2 Real Property Tax Definitions**

(a) As used herein, the term "Real Property Taxes" 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 or estate taxes) imposed upon the Industrial Center by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Lessor in the Industrial Center or any portion thereof, Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in Applicable Law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Industrial Center or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

(b) As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

**10.3 Additional Improvements** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Industrial Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.1 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2 the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

**10.4 Joint Assessment** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof in good faith shall be conclusive.

**10.5 Lessee's Property Taxes** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee-Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or stored within the Industrial Center. When possible, Lessee shall cause its Lessee-Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

**11 Utilities** Lessee shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security, gas and cleaning of the Premises, together with any taxes thereon. If any such utilities or services are not separately metered to the Premises or separately billed to the Premises, Lessee shall pay to Lessor a reasonable proportion to be determined by Lessor of all such charges jointly metered or billed with other premises in the Building, in the manner and within the time periods set forth in Paragraph 4.2(d).

**12 Assignment and Subletting**

**12.1 Lessor's Consent Required**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, assign) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 3.6.

(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise) whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of full execution and delivery of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any Guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1, or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a non-curable Breach, Lessor shall have the right to either (i) terminate this Lease, or (ii) upon thirty (30) days' written notice ("Lessor's Notice"), increase the monthly Base Rent for the Premises to the greater of the then fair market rental value of the Premises, as reasonably determined by Lessor, or one hundred ten percent (110%) of the Base Rent then in effect. Pending determination of the new fair market rental value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credited against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to the then fair market value as reasonably determined by Lessor (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition) or one hundred ten percent (110%) of the price previously in effect, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new rental bears to the Base Rent in effect immediately prior to the adjustment specified in Lessor's Notice.

(e) Lessee's remedy for any breach of this Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

**12.2 Terms and Conditions Applicable to Assignment and Subletting**

(a) Regardless of Lessor's consent, any assignment or subletting shall not (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, nor (iii) alter the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.

(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of Lessor. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent for performance shall constitute a waiver or stoppage of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of 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 assignee or 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 under this Lease or the sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or the sublease.



(d) In the event of any Default or Breach of Lessee's obligation under this Lease, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of the Lessee's obligations under this Lease, including any sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a non-refundable deposit of \$1,000 or ten percent (10%) of the monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

(g) The occurrence of a transaction described in Paragraph 12(c) shall give Lessor the right (but not the obligation) to require that the Security Deposit be increased by an amount equal to six (6) times the then monthly Base Rent, and Lessor may make the actual receipt by Lessor of the Security Deposit increase a condition to Lessor's consent to such transaction.

(h) Lessor, as a condition to giving its consent to any assignment or subletting, may require that the amount and adjustment schedule of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment schedule for property similar to the Premises as then constituted, as determined by Lessor.

**12.3 Additional Terms and Conditions Applicable to Subletting** 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.

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises 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 Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease, Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of the foregoing provision 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 Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against such sublessee or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee 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 the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease, provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior defaults or breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Lessor herein.

(d) No sublessee under a sublease approved by Lessor shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

### **13 Default, Breach, Remedies**

**13.1 Default, Breach** Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined) \$350.00 is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said default. A "Default" by Lessee is defined as a failure by Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach" by Lessee is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, and shall entitle Lessor to pursue the remedies set forth in Paragraphs 13.2 and/or 13.3.

(a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.

(b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent, Lessee's Share of Common Area Operating Expenses, or any other monetary payment required to be made by Lessee hereunder as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.

(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable Requirements per Paragraph 6.3, (ii) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (iii) the rescission of an unauthorized assignment or subletting per Paragraph 12.1, (iv) a Tenancy Statement per Paragraphs 16 or 37, (v) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements) or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Lessor to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof that are to be observed, complied with or performed by Lessee, other than those described in Subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee, provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making by Lessee of any general arrangement or assignment for the benefit of creditors, (ii) Lessee's becoming a "debtor" as defined in 11 U.S.C. Section 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 thirty (30) 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 thirty (30) days, provided, however, in the event that any provision of this Subparagraph 13.1(e) is contrary to any applicable law, such provision shall be of no force or effect and shall not affect the validity of the remaining provisions.

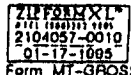
(f) The discovery by Lessor that any financial statement of Lessee or of any Guarantor, given to Lessor by Lessee or any Guarantor, was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with written alternative assurances of security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies** If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease within ten (10) days after written notice to Lessee (or in case of an emergency, without notice), Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its own option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee (as defined in Paragraph 13.1), with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination, (ii) the worth at the time of 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 the Lessee proves could have been reasonably avoided, (iii) 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 the Lessee proves could be reasonably avoided, and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the 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 the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph 13.2. If termination of this Lease is obtained

Initials



through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under Subparagraph 13 1(b), (c) or (d) was not previously given, a notice to pay rent or quit or to perform or quit as the case may be given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by Subparagraph 13 1(b), (c) or (d). In such case, the applicable grace period under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of the two (2) such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code Section 1951 4) after Lessee's Breach and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. Lessor and Lessee agree that the limitations on assignment and subletting in this Lease are reasonable. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver to protect the Lessor's interest under this Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13 3 Inducement Recapture In Event of Breach** Any agreement by Lessor for free or abated rent or other charges applicable to the Premises or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, Inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach (as defined in Paragraph 13 1) of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor, as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this Paragraph 13 3 shall not be deemed a waiver by Lessor of the provisions of this Paragraph 13 3 unless specifically so stated in writing by Lessor at the time of such acceptance.

**13 4 Late Charges** Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and 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 upon Lessor by the terms of any ground lease, mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) 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 six percent (6%) 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 or Breach with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding Paragraph 4 1 or any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13 5 Breach by Lessor** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph 13 5 a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor and by any Lender(s) whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed, provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Lessor shall not be in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

**14 Condemnation** If the Premises or any portion thereof 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 the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas designated for Lessee's parking, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not 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 Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises 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 of value of the leasehold or for the taking of the fee, or as severance damages, provided, however, that Lessee shall be entitled to any compensation, separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its net severance damages received, over and above Lessee's Share of the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

#### **15 Brokers' Fees**

**15 1 Procuring Cause** The Broker(s) named in Paragraph 1 10 is/are the procuring cause of this Lease.

**15 2 Additional Terms** ~~Unless Lessor and Broker(s) have otherwise agreed in writing, Lessor agrees that: (a) if Lessee exercises any Option (as defined in Paragraph 39 1) granted under this Lease or any Option subsequently granted, or (b) if Lessee acquires any rights to the Premises or other premises in which Lessor has an interest, or (c) if Lessee remains in possession of the Premises with the consent of Lessor after the expiration of the term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Broker(s) a fee in accordance with the schedule of said Broker(s) in effect at the time of the execution of this Lease.~~

**15 3 Assumption of Obligations** Any buyer or 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. Each Broker shall be an intended third party beneficiary of the provisions of Paragraph 1 10 and of this Paragraph 15 to the extent of its interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

**15 4 Representations and Warranties** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder other than as named in Paragraph 1 10(a) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Broker(s) is entitled to any commission or finder's fee in connection with said transaction. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against 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, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

#### **16 Tenancy and Financial Statements**

**16 1 Tenancy Statement** Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in a form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

**16 2 Financial Statement** If Lessor desires to finance, refinance, or sell the Premises or the Building, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

**17 Lessor's Liability** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15 3, upon such transfer or assignment and delivery of the Security Deposit as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease hereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

**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** Any monetary payment due Lessor hereunder other than late charges, not received by Lessor within ten (10) days following the date on which it was due, shall bear interest from the date due at the prime rate charged by the largest state chartered bank in the state in which the Premises are located plus four percent (4%) per annum, but not exceeding the maximum rate allowed by law, in addition to the potential late charge provided for in Paragraph 13 4.

**20 Time of Essence** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

**21 Rent Defined** All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

**22 No Prior or other Agreements, Broker Disclaimer** This Lease contains all agreements between the Parties with respect to any matter mentioned herein and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. Each Broker shall be an intended third party beneficiary of the provisions of this Paragraph 22.

## 23 Notices

**23.1 Notice Requirements** All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing or delivering notices to Lessee. 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 written notice to Lessee.

**23.2 Date of Notice** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

**24 Waivers** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or any other term, covenant or condition hereof. Lessor's consent to, or approval of, any such act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be a waiver of any Default or Breach by Lessee of any provision hereof. Any payment given Lessor by Lessee may be accepted by Lessor on account of moneys or damages due Lessor notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

**25 Recording** Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

**26 No Right To Holdover** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. In the event that Lessee holds over in violation of this Paragraph 26 then the Base Rent payable from and after the time of the expiration or earlier termination of this Lease shall be increased to two hundred percent (200%) of the Base Rent applicable during the month immediately preceding such expiration or earlier termination. Nothing contained herein shall be construed as a consent by Lessor to any holding over by Lessee.

**27 Cumulative Remedies** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**28 Covenants and Conditions** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions.

**29 Binding Effect, Choice of Law** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

## 30 Subordination, Attornment, Non-Disturbance

**30.1 Subordination** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Lessor upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default pursuant to Paragraph 13.5. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device notwithstanding the relative dates of the documentation or recordation thereof.

**30.2 Attornment** Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one month's rent.

**30.3 Non-Disturbance** With respect to Security Devices entered into by Lessor after the execution of this lease, Lessee's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the Lender that Lessee's possession and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

**30.4 Self-Executing** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents, provided however, that upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein.

**31 Attorneys' Fees** If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the other Party or Broker of its claim or defense. 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. Lessor shall be entitled to attorneys' fees, costs and expenses incurred in 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 or resulting Breach. Broker(s) shall be intended third party beneficiaries of this Paragraph 31.

**32 Lessor's Access, Showing Premises, Repairs** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred eighty (180) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement of rent or liability to Lessee.

**33 Auctions** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises 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.

**34 Signs** Lessee shall not place any sign upon the exterior of the Premises or the Building, except that Lessee may with Lessor's prior written consent install (but not on the roof) such signs as are reasonably required to advertise Lessee's own business so long as such signs are in a location designated by Lessor and comply with Applicable Requirements and the signage criteria established for the Industrial Center by Lessor. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations). Unless otherwise expressly agreed herein, Lessor reserves all rights to the use of the roof of the Building, and the right to install advertising signs on the Building, including the roof, which do not unreasonably interfere with the conduct of Lessee's business. Lessor shall be entitled to all revenues from such advertising signs.

**35 Termination, Merger** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises, provided, however, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

## 36 Consents

(a) Except for Paragraph 33 hereof (Auctions) or as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor. In addition to the deposit described in Paragraph 12.2(e), Lessor may, as a condition to considering any such request by Lessee, require that Lessee deposit with Lessor an amount of money (in addition to the Security Deposit held under Paragraph 5) reasonably calculated by Lessor to represent the cost Lessor will incur in considering and responding to Lessee's request. Any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment of this Lease or subletting of the Premises by Lessee shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. The failure to specify herein any particular condition to Lessor's consent shall not preclude the impositions by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

## 37 Guarantor

**37.1 Form of Guaranty** If there are to be any Guarantors of this Lease per Paragraph 1.11, the form of the guaranty to be executed by each such Guarantor shall be in the form most recently published by the American Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this lease, including but not limited to the obligation to provide the Tenancy Statement and Information required in Paragraph 16.



LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND ALL TERMS AND PROVISIONS CONTAINED HEREIN, AND BY THE 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 COMMERCIALY 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 YOUR ATTORNEY'S REVIEW AND APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY FOR THE POSSIBLE PRESENCE OF ASBESTOS, UNDERGROUND STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKERS OR THEIR CONTRACTORS, AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

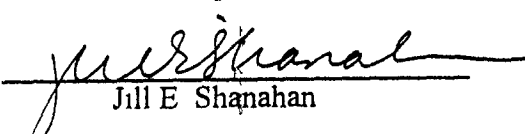
**LESSOR.**

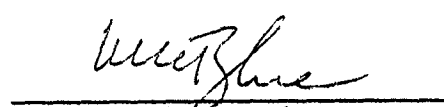
**LESSEE:**

RREEF WEST-V, INC.,  
a Delaware corporation

CTS Network Services,  
a Division of Datel Systems, Inc.,  
a California corporation

BY RREEF Management Company,  
a California corporation

BY   
Jill E. Shanahan

BY   
William E. Blue

TITLE District Manager

TITLE President

DATE 10/6/95  
8949-C Complex Drive  
San Diego, CA 92123

DATE 10/6/95  
4444 Convoy Street, Suite B  
San Diego, CA 92123



## ADDENDUM

This Addendum is attached to and made a part of the Lease agreement dated October 4, 1995, between RREEF WEST-V, Inc , a Delaware corporation ("Lessor"), and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), for the Premises commonly known as 8913 Complex Drive, Suite B, San Diego, California 92123, consisting of approximately 1,868 square feet

### 1. RENT SCHEDULE

Rent for the period 10/06/95 through 09/30/96 shall be \$ 1,283 50 per month

Rent for the period 10/01/96 through 03/31/97 shall be \$ 1,334 84 per month

### 2. RELOCATION

Lessor, at its sole expense, on at least ninety (90) days prior written notice, may require Lessee to move from the Premises to other space of comparable size and decor in order to permit Lessor to consolidate the space leased to Lessee with other adjoining space leased or to be leased to another tenant. Provided, however, that in the event of receipt of any such notice, Lessee by written notice to Lessor may elect not to move to the other space and in lieu thereof terminate this Lease, effective 60 days after date of the original notice of relocating by Lessor. In the event of any such relocation, Lessor will pay all expenses of preparing and decorating the new premises so that they will be substantially similar to the Premises from which Lessee is moving and Lessor will also pay the expense of moving Lessee's furniture and equipment to the relocated premises. In such event this Lease and each and all of the terms and covenants and conditions hereof shall remain in full force and effect and thereupon be deemed applicable to such new space except that a revised Exhibit A shall become part of this Lease and shall reflect the location of the new premises

### 3. LIABILITY INSURANCE CONTINUED

In addition to the provision of Section 8 2(a) of this Lease, Lessee's liability insurance shall contain an annual aggregate limit of not less than \$2,000,000. Lessee shall provide evidence of Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident, insurance protecting against liability under Workman's Compensation Laws with limits at least as required by statute, (a) Employers Liability with limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease--each employee, (b) All Risk or Special Form coverage protecting Lessee against loss of or damage to Lessee's alterations, additions, improvements, carpeting, floor coverings, panelings, decorations, fixtures, inventory and other business personal property situated in or about the premises to the full replacement value of the property so insured, and, (c) Business Interruption Insurance with limit of liability representing loss of at least approximately six months of income

*WWS* EQUIPMENT IS DEFINED AS ALL STANDARD OFFICE & ELECTRONIC EQUIPMENT, ALL DATA SERVICE EQUIPMENT RELATING IN ANY WAY TO THE OPERATION OF CTS NETWORK SERVICES, AND ALL INSTALLATION & REINSTALLATION CHARGES BY OUTSIDE CONTRACTORS OR VENDORS

TO THE RELOCATION

Whenever Lessee shall undertake any alterations, additions or improvements in to or about the Premises ("Work") the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, without limitation including liability under any applicable structural work act, and such other insurance as Lessor shall require, and the policies of our certificates evidencing such insurance must be delivered to Lessor prior to the commencement of any such Work

### 4. LIMITATION OF LESSOR'S LIABILITY

Redress for any claim against Lessor under this Lease shall be limited to and enforceable only against and to the extent of Lessor's interest in the Building. The obligations of Lessor under this Lease are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties, of any of its trustees or board of directors and officers, as the case may be, its investment manager, the general partners thereof, or any beneficiaries, stockholders, employees or agents of Lessor, or the investment manager

#### LESSOR

RREEF WEST-V, INC ,  
a Delaware corporation

BY RREEF Management Company,  
a California corporation

BY *Jill E Shanahan*  
Jill E Shanahan

TITLE District Manager

DATE 10/6/95

#### LESSEE.

CTS Network Services,  
a Division of Datel Systems, Inc ,  
a California corporation

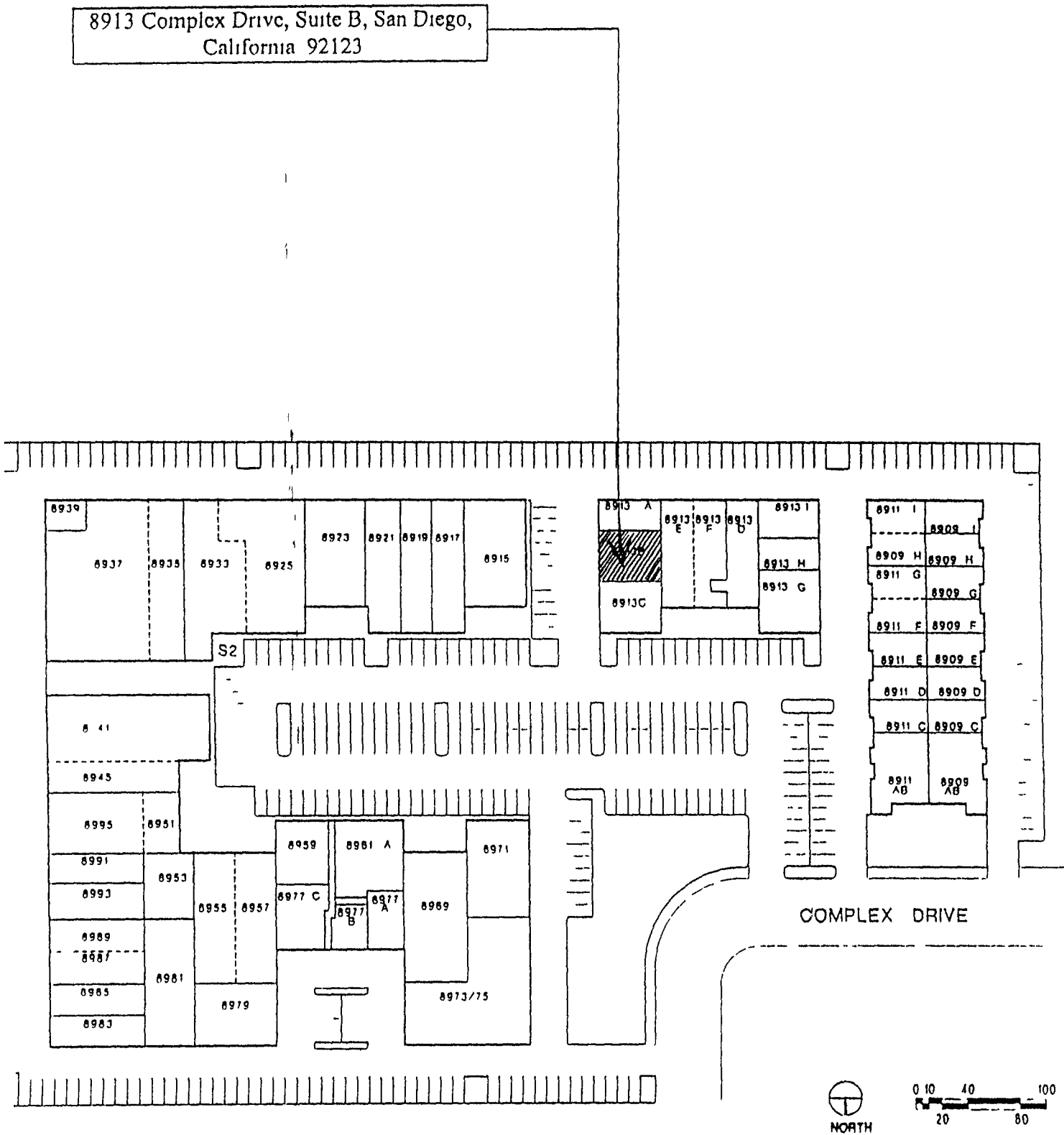
BY *William E Blue*  
William E Blue

TITLE President

DATE 10/6/95

EXHIBIT A

This Exhibit A is attached to and made a part of the Lease dated October 4, 1995, between RREEF WEST-V, Inc , a Delaware corporation ("Lessor"), and CTS Network Services, a Division of Dattel Systems, Inc , a California corporation ("Lessee"), for the Premises commonly known as 8913 Complex Drive, Suite B, San Diego, California 92123, consisting of approximately 1,868 square feet

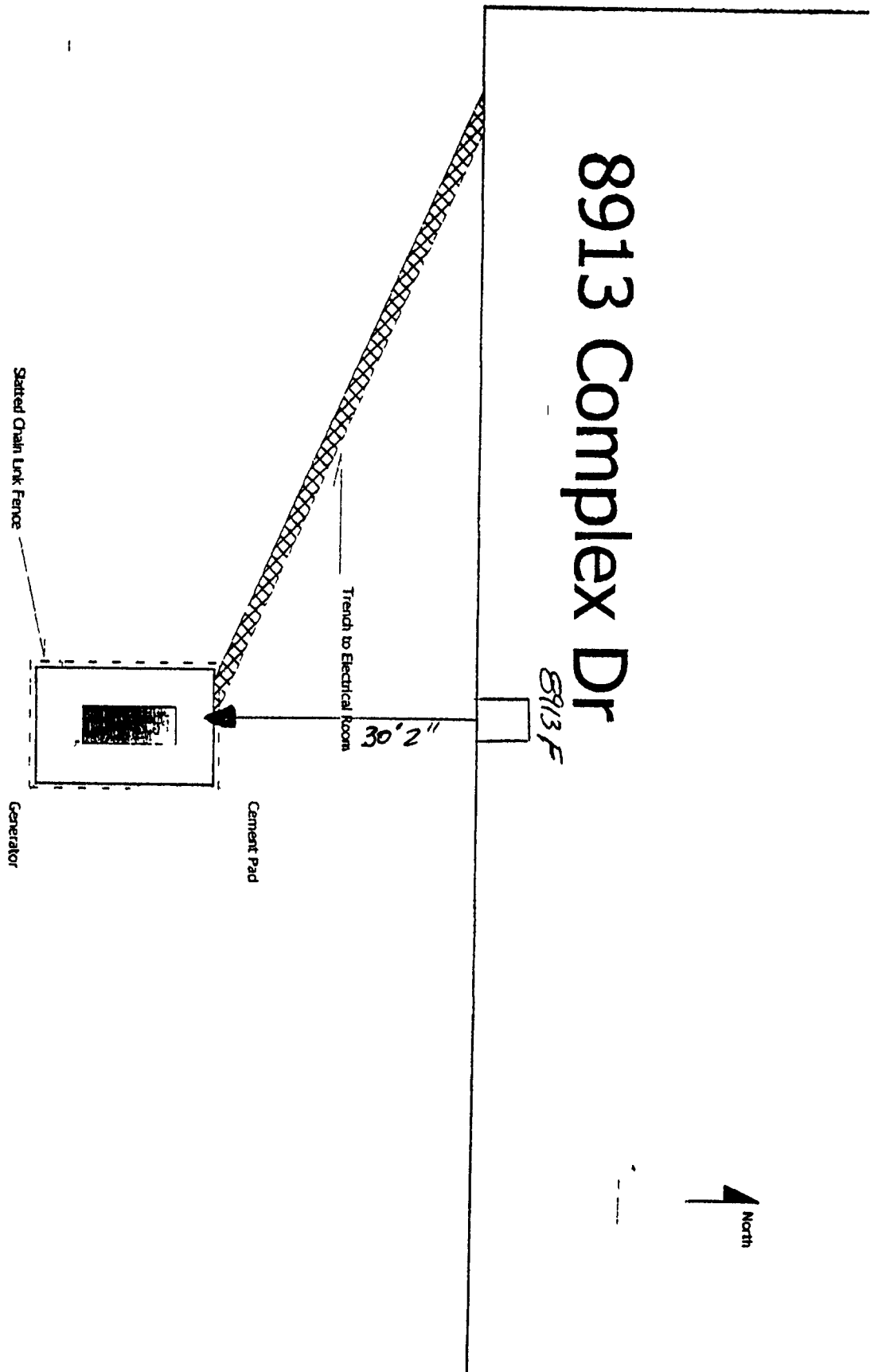


This site plan is intended only to show the general layout of the property or a part thereof Lessor reserves the right to alter, vary, add to or omit in whole or in part any structures and/or common areas and/or land area shown on this site plan All measurements and distances are approximate This plan is not to be scaled

CTSNETWK ADD

Initial

EXHIBIT "A-2"

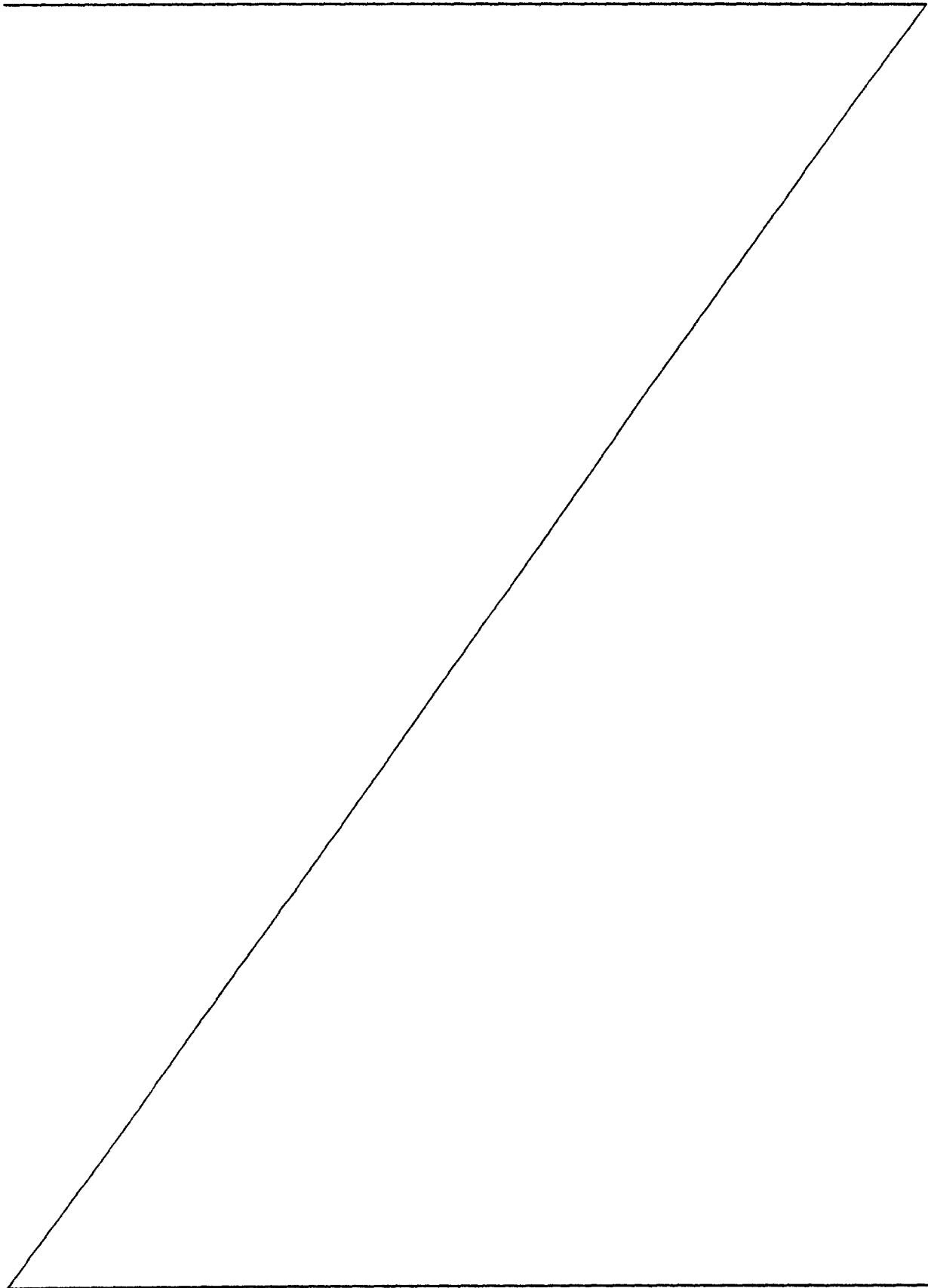


INITIALS  
[Signature]  
DATE

**EXHIBIT B**  
**WORK TO BE DONE IN THE PREMISES**

This Exhibit B is attached to and made a part of the Lease dated October 4, 1995, between RREEF WEST-V, Inc , a Delaware corporation ("Lessor"), and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), for the Premises commonly known as 8913 Complex Drive, Suite B, San Diego, California 92123, consisting of approximately 1,868 square feet

Lessee acknowledges and accepts the Premises in an "as is" condition

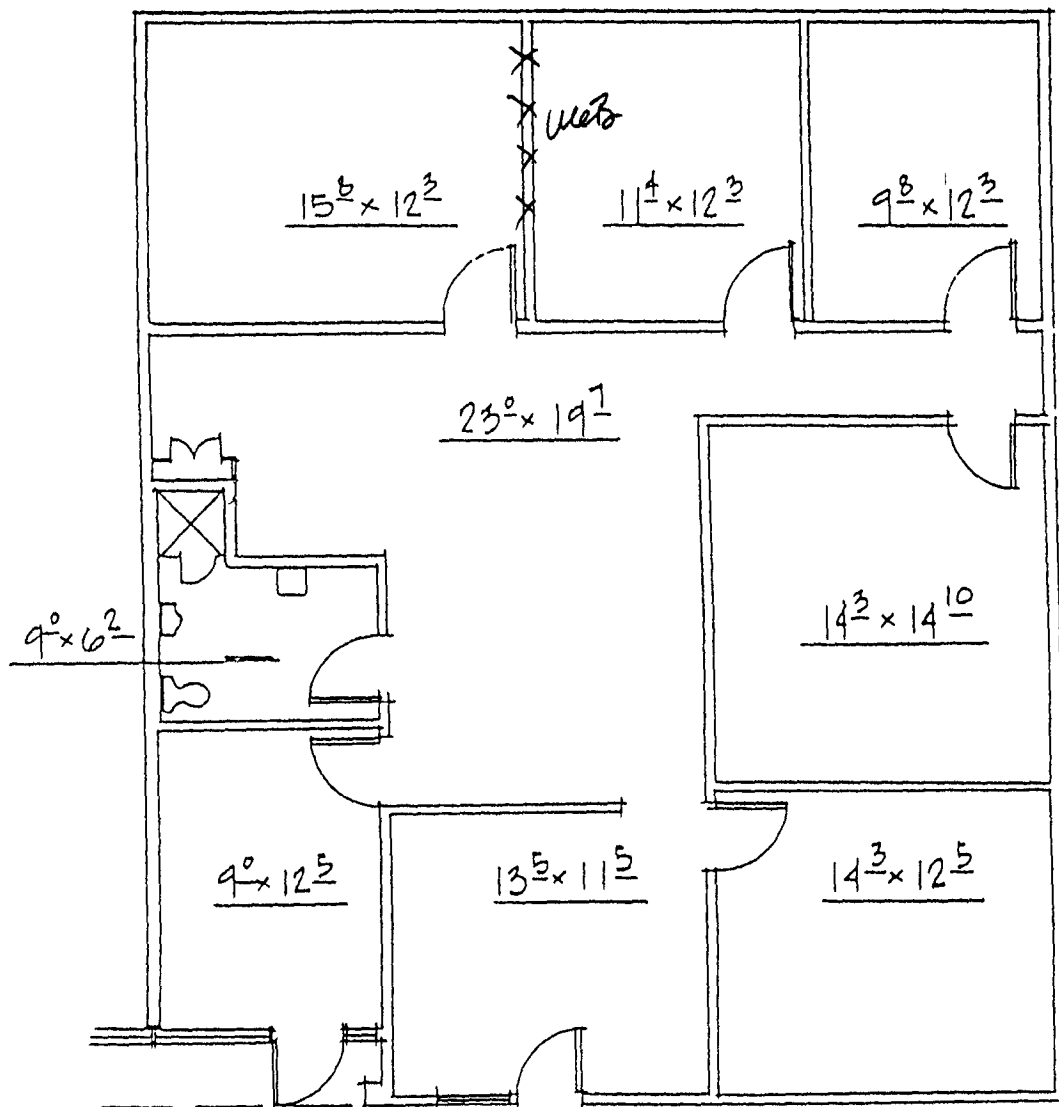


CTSNETWK ADD

  
  
INITIAL

EXHIBIT B-1  
AS-BUILT

This Exhibit B-1 is attached to and made a part of the Lease dated October 4, 1995, between RREEF WEST-V, Inc, a Delaware corporation ("Lessor"), and CTS Network Services, a Division of Datel Systems, Inc, a California corporation ("Lessee"), for the Premises commonly known as 8913 Complex Drive, Suite B, San Diego, California 92123, consisting of approximately 1,868 square feet



8913 Complex Drive, Suite B  
1,868 square feet

CTSNETWK ADD

*[Signature]*  
INITIAL



## EXHIBIT C

### RULES AND REGULATIONS

This Exhibit C is attached to and made a part of Lease dated October 4, 1995, between RREEF WEST-V, Inc , a Delaware corporation ("Lessor"), and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), for the Premises commonly known as 8913 Complex Drive, Suite B, San Diego, California 92123, consisting of approximately 1,868 square feet

1 REFUSE All garbage and refuse shall be kept in the container supplied by Lessor and placed at the location prepared for refuse collection, in the manner and at the times and places specified by Lessor

2 PARKING Lessee shall be entitled to park in common with other tenants of Lessor Lessee agrees not to overburden the parking facilities and agrees to cooperate with Lessor and other Lessees in the use of parking facilities Lessor reserves the right in its absolute discretion to determine whether parking facilities are becoming overcrowded and, in such event, to allocate parking spaces among Lessee or to designate areas within which Lessee must park

3 SIGN CRITERIA No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building without written consent of the Lessor first obtained and Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Lessee Lessee shall be entitled to signage which complies with governmental regulations and similar to that allowed other tenants in the Park, subject to Lessor's approval

4 No aerial shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the written consent of the Lessor Any aerial so installed without such written consent shall be subject to removal without notice at any time

5 No loud speakers, televisions, phonographs, radios, or other devises shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of the Lessor


6 The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by the Lessee to the satisfaction of the Lessor and Lessee shall not place or permit any obstruction or materials in such areas No exterior storage shall be allowed without permission in writing from Lessor

7 The plumbing facilities shall not be used for any other purpose than which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Lessee, who shall, or whose employees, agents, or invitees, have caused it

8 Lessee shall not burn any trash or garbage of any kind in or about the Premises, or the park

9 Lessor reserves the right from time to time to amend or supplement the foregoing rules and regulations, and to adopt and promulgate additional reasonable rules and regulations applicable to the Premises Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Lessee

# Exhibit "D" - Sign Re ion Worksheet

LESSEE CTS Network Services, a Division of Datel Systems, Inc , a California corporation	DATE October 4, 1995	 <p>The RREEF Funds 8949 C Complex Drive San Diego, California 92123 (619) 268 7770 FAX (619) 268 1264</p>
LOCATION Kearny Mesa Complex	REVISED	
8913 Complex Drive, Suite B		
San Diego, CA 92123		

Within 30 days after the execution of the Lease, Lessee is required to submit to Lessor for review and approval specifications and drawings for a tenant identification sign to be erected within 60 days after execution of Lease at Lessee's sole cost and expense. To assure that all tenants have equal visibility, and that a uniform environment is maintained, a sign criteria has been established for your facility as follows:

No sign, banner, placard, picture, advertisement, freestanding signs, name or notice, shall be inscribed, displayed, printed or affixed onto any part of the outside or inside of the Premises, including windows without the written consent of the Lessor. Lessor shall have the right to remove any such unapproved sign, banner, placard, picture, advertisement, name or notice without notice at any time and at Lessee's expense.

Sign boxes or metal cans may be mounted by the Lessor on the front of each space at a location determined by the Lessor's sole discretion, which have the suite number and space for your company's name. Lessee is responsible for ordering and paying for the company name portion of the sign, including installation. All sign cans are the property of the Lessor and must remain a part of the Premises. No electrical or audible signs will be allowed.

All frames are painted by the Lessor and are to remain the existing color. Your personalized acrylic lettering must remain the complex's standard color. See page 2 of 2 worksheet.

To add variety and provide individual identity, custom logos may be applied with or without lettering to the sign. Lessee must submit a proof copy of the entire proposed sign to Lessor and to the sign maker, Gray Whale Graphics, 7920 Silverton Avenue, Suite C, San Diego, CA 92126, (619) 536 9610, fax (619) 536 9610, or other sign maker designated by Lessor for reproduction purposes. Lessor shall approve all copy and/or logo design prior to installation of sign.

If a company logo is used, the following may not apply:

Lettering sizes have been determined by calculating the longest line length per letter height, all done by computer.

The two letter heights allowed: 3' for one line text, and 2.5' for two line text.  
 For 1 line, large letters - maximum characters including spaces: 3 (up to 11 char/spaces)  
 For 2 lines, small letters - maximum characters including spaces: 2.5 (up to 14 char/spaces)

Lessee hereby agrees to comply with the terms and conditions of these regulations. VIOLATION OF THIS PROVISION SHALL CONSTITUTE A MATERIAL BREACH OF THE LEASE.

Lessee agrees to remove vinyl text and return the face of the building to its original condition upon the expiration of the Lease or any extension thereof.

Please fill out the attached worksheet as soon as possible, complete with exact copy and size, fax to RREEF Management. If you have any questions, please call RREEF, Operations Department.

2 LINE SIGN  
(LARGER LETTERS  
FOR 1 LINE)

8959

GRAY WHALE  
GRAPHICS

DRAW IN OR USE  
LETTERHEAD

LAYOUT AS YOU WOULD LIKE IT TO READ

## FIRST AMENDMENT TO LEASE

This First Amendment to Lease dated January 10, 1996, between RREEF West-V, Inc , a Delaware corporation ("Lessor"), whose address is 8949-C Complex Drive, San Diego, California 92123, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, California 92123, who agree as follows

1 **RECITALS** This First Amendment to Lease is made with reference to the following facts and objectives

- a Lessor and Lessee entered into a written Lease dated October 4, 1995, (the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suite B, San Diego, California 92123, (the "Premises"), and further described as approximately 1,868 square feet
- b The parties desire to alter the terms of the Lease, effective January 16, 1996

2. **PREMISES.** Article 1 2(a) of the Lease, ("Premises"), shall hereinafter be expanded to provide as follows

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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B & C, San Diego, California 92123, and described as 3,598 square feet (altered from the Lease by the addition of Suite C, comprising approximately 1,730 square feet) as further described in Exhibit A attached hereto and made a part hereof

3 **RENT SCHEDULE.** Addendum, Article 1 of the Lease ("Rent Schedule"), shall hereinafter provide as follows

Rent for the period 01/16/96 through 09/30/96 shall be \$2,546 40 per month  
Rent for the period 10/01/96 through 01/15/97 shall be \$2,597 74 per month  
Rent for the period 01/16/97 through 03/31/97 shall be \$2,632 14 per month

4. **SECURITY DEPOSIT.** Article 1 7 of the Lease, ("Security Deposit"), shall hereinafter provide as follows

Lessor acknowledges that Lessee currently has on account \$1,400 00 which Lessee agrees to increase to \$2,700 00 upon the execution of this First Amendment to Lease

5 **TENANT IMPROVEMENTS.**

Lessor shall, at its own expense, paint the interior walls of Suite C, clean existing carpet in Suite C, replace the existing tile area in the front office of Suite C with building standard carpet, and construct a doorway between Suites B & C, at a site mutually agreed upon by Lessor and Lessee

6. **INDEMNIFICATION PROVISION**

Lessor shall not be liable and Lessee hereby waives all claims against Lessor for any damage to any property or any injury to any person in or about the Premises or the Building by or from any cause whatsoever, (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Building not being in good condition or repair, gas, fire, oil, electricity or theft), except that Lessor will indemnify and hold Lessee harmless from such claims to the extent caused by the

6. **INDEMNIFICATION PROVISION.** (continued)

damages, liability, and expense (including, without limitation, attorneys' fees) arising from (a) the act, neglect, fault, or omission to meet the standards imposed by any duty with respect to the loss, damage, or injury by Lessee, its agents, servants, employees, contractors, customers or invitees, (b) the conduct or management of any work or thing whatsoever done by the Lessee in or about the Premises or from transactions of the Lessee concerning the Premises, (c) Lessee's failure to comply with any and all governmental laws, ordinances and regulations applicable to the use of all the Premises and its occupancy, or (d) any breach or default on the part of the Lessee in the performance of any covenant or agreement on the part of the Lessee to be performed pursuant to the Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability occurring prior to such termination.

7. **EFFECTIVENESS OF LEASE.** Except as set forth in this First Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect.

8. **CORPORATE AUTHORITY.** If Lessee is a corporation, Lessee represents and warrants that this First Amendment to Lease and the undersigned's execution of this First Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this First Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this First Amendment to Lease on behalf of the corporation.

LESSOR:

RREEF WEST-V, INC ,  
a Delaware corporation

BY RREEF Management Company,  
a California corporation

BY

  
Jill E. Shanahan

TITLE District Manager

DATE

1/17/96

LESSEE:

CTS NETWORK SERVICES,  
a Division of Datel Systems, Inc ,  
a California corporation

BY

  
William E. Blue

TITLE President

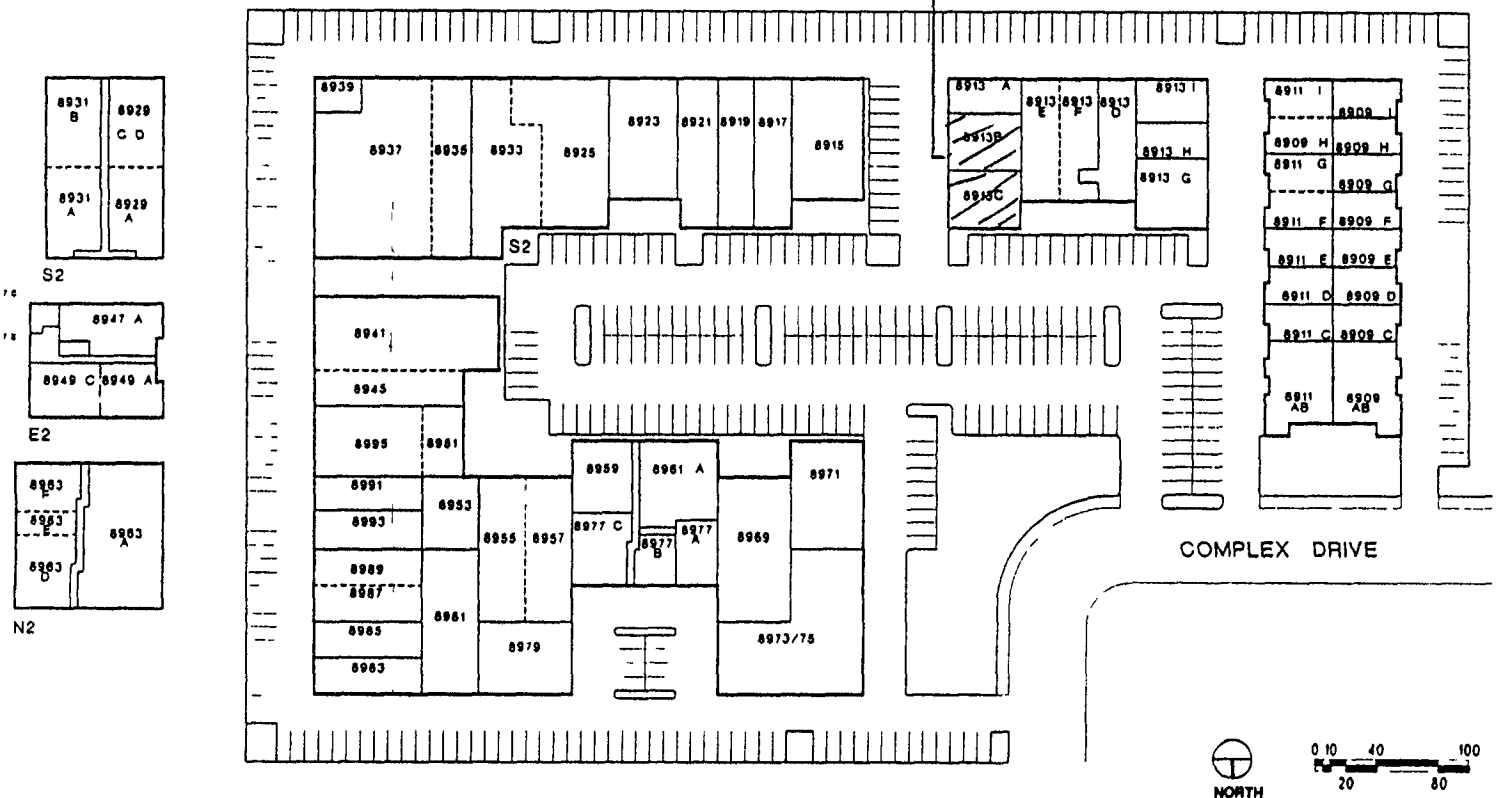
DATE

1/17/96

**EXHIBIT A**

This Exhibit A is attached to and made a part of the January 10, 1996, between RREEF West-V, Inc , a Delaware corporation ("Lessor"), whose address is 8949-C Complex Drive, San Diego, California 92123, and CTS Network Services, a Division of Dattel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suites B & C, San Diego, California 92123, consisting of approximately 3,598 square feet

**8913 Complex Drive, Suites B & C  
San Diego, CA 92123**



This site plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit in whole or in part any structures and/or common areas and/or land area shown on this site plan. All measurements and distances are approximate. This plan is not to be scaled.



## SECOND AMENDMENT TO LEASE

This Second Amendment to Lease dated August 1, 1996, between RREEF West-V, Inc , a Delaware corporation ("Lessor"), whose address is 8949-C Complex Drive, San Diego, California 92123, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, California 92123, who agree as follows

1. **RECITALS.** This Second Amendment to Lease is made with reference to the following facts and objectives

a Lessor and Lessee entered into a written Lease dated October 4, 1995 and First Amendment to Lease dated January 10, 1996, (collectively the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B and C, San Diego, California 92123, (the "Premises"), and further described as approximately 3,598 square feet

b The parties desire to alter the terms of the Lease, effective August 1, 1996

2 **COMMUNICATION WIRING** Subject to the provisions of the Lease regarding approval of plans and specifications and construction standards, Lessee shall be entitled to install and use wiring ("Communications Wiring") from the public utility lines in the street adjacent to the Building to the vault of the communications provider at or near the entrance to the Building to the Premises Lessee shall not employ any contractor for installation of Communications Wiring without the approval of such contractor by Lessor, which consent shall not be unreasonably withheld or delayed Lessee shall not install any additional Communications Wiring without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed, nor shall Lessee remove any Communications Wiring without such consent Lessee shall be responsible for, and indemnify and hold Lessor harmless from and against, all injuries and damages to persons or property and all expenses, claims and liabilities resulting from the installation, use, maintenance, repair or replacement of Communications Wiring by Lessee or anyone employed by Lessee All Communications Wiring shall be treated as a Utility Installation for purposes of Paragraph 7 4 of the Lease ~~To the extent the Communications Wiring may be utilized to provide communications access for other tenants in the Building without impeding the use of the Communications Wiring by Lessee, Lessee shall permit such other tenants to use the Communications Wiring for a reasonable fee~~ *WLB*

3 **EFFECTIVENESS OF LEASE** Except as set forth in this Second Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect

4. **CORPORATE AUTHORITY** If Lessee is a corporation, Lessee represents and warrants that this Second Amendment to Lease and the undersigned's execution of this Second Amendment to Lease has been duly authorized and approved by the corporation's Board of Director's The undersigned officers and representatives of the corporation executing this Second Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Second Amendment to Lease on behalf of the corporation

### LESSOR

RREEF WEST-V, INC ,  
a Delaware corporation

BY RREEF Management Company,  
a California corporation

BY *Jill E Shanahan*  
Jill E Shanahan

TITLE District Manager

DATE 8/9/96

### LESSEE

CTS NETWORK SERVICES,  
a Division of Datel Systems, Inc ,  
a California corporation

BY *William E Blue*  
William E Blue

TITLE President

DATE 8/9/96

### THIRD AMENDMENT TO LEASE

This Third Amendment to Lease dated September 18 1996, between RREEF WEST-V, Inc , a Delaware corporation ("Lessor"), whose address is 8949-C Complex Drive, San Diego, California 92123, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, California 92123, who agree as follows

1. **RECITALS.** This Third Amendment to Lease is made with reference to the following facts and objectives

a Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996 and Second Amendment to Lease dated August 1, 1996, (collectively the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B & C, San Diego, California 92123, (the "Premises"), and further described as approximately 3,598 square feet

b The parties desire to alter the terms of the Lease, effective October 1, 1996

2. **PREMISES.** Article 1 2(a) of the Lease, ("Premises"), shall hereinafter be expanded to provide as follows

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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D and E, San Diego, California 92123, and described as 6,880 square feet (altered from the Lease by the addition of Suites D and E, comprising approximately 3,282 square feet) as further described in Exhibit A attached hereto

3 **TERM.** Article 3 of the Lease, ("Term"), shall hereinafter provide as follows

The Term of the Lease shall be extended for three (3) years and six (6) months commencing October 1, 1996, and ending on March 31, 2000, (the "First Extended Term"), unless sooner terminated pursuant to any provision hereof

4. **RENT SCHEDULE.** Addendum, Article 1 of the Lease and Article 3 of the First Amendment to Lease ("Rent Schedule"), shall hereinafter provide as follows

Rent for the period 10/01/96 through 01/15/97 shall be \$4,960 78 per month

Rent for the period 01/16/97 through 03/31/97 shall be \$4,995 18 per month

Rent for the period 04/01/97 through 03/31/98 shall be \$4,953 60 per month

Rent for the period 04/01/98 through 03/31/99 shall be \$5,201 28 per month

Rent for the period 04/01/99 through 03/31/00 shall be \$5,461 34 per month

5 **BASE YEAR FOR OPERATING EXPENSES.** Article 4 2 of the Lease dated October 4, 1995, shall hereinafter provide that for 8913 Complex Drive Suites D and E only, Lessee shall pay their pro rata share for all common area maintenance charges Lessee will continue to have a Base Year of 1995 for 8913 Complex Drive, Suites B and C Effective April 1, 1997, Article 4 2 of the Lease dated October 4, 1995, shall hereinafter provide that Lessee will pay their pro rata share of all common area maintenance charges for 8913 Complex Drive, Suites B, C, D and E

6 **SECURITY DEPOSIT.** Article 1 7 of the Lease and Article 4 of the First Amendment to Lease, ("Security Deposit"), shall hereinafter provide as follows

Lessor acknowledges that Lessee currently has on account \$2,700 00 which Lessee agrees to increase to \$5,700 00 upon the execution of this Third Amendment to Lease

7. **TENANT IMPROVEMENTS.** Lessor shall provide a Tenant Improvement Allowance ("TI Allowance") not to exceed Fifteen Thousand and No/100 Dollars (\$15,000 00), toward mutually acceptable tenant improvements approved in writing by Lessor, which are to be fixed in Suite D and shall remain with the Premises, including construction plans and permits Said TI Allowance shall not be attributed towards Lessee's furniture, fixtures or equipment Work is to be performed by a mutually acceptable, licensed contractor conforming to Lessor's requirements for insurance, bonding, experience, etc Such allowance shall be paid to Lessee within thirty (30) days from the time (1) the period allowed for the filing of mechanic's liens has expired or duly executed lien waivers from all contractors, subcontractors and materialmen who have performed work on behalf of Lessee at the Premises are presented to Lessor, and (2) the Lessee has provided to Lessor a Certificate of Occupancy, a copy of Lessee's Recorded Notice of Completion, copies of all building permits, indicating inspection and approval by the issuer of said permits, invoices, and a complete set of "as-built" construction documents for all the work performed by Lessee and/or Lessee's contractors and subcontractors

8. **RENEWAL OPTION.** Lessee shall, provided the Lease is in full force and effect and Lessee is not in default under any of the other terms and conditions of the Lease at the time of notification or commencement, have one (1) successive option to renew this Lease for a term of three (3) years, for the portion of the Premises being leased by Lessee as of the date the renewal term is to commence, on the same terms and conditions set forth in the Lease, except as modified by the terms, covenants and conditions as set forth below

(a) If Lessee elects to exercise said option, then Lessee shall provide Lessor with written notice no earlier than the date which is one hundred - eighty (180) days prior to the expiration of the then current term of the Lease but no later than the date which is one hundred - twenty (120) days prior to the expiration of the current term of the Lease, and the annual rent and monthly installment in effect at the expiration of the then current term of the Lease shall be increased, commencing on the first day of the new renewal term, to reflect the current fair market rental for comparable space in other similar buildings in the same rental market as of the date the renewal term is to commence If Lessee fails to provide such notice, Lessee shall have no further or additional right to extend or renew the term of the Lease The notice shall be given in the manner provided in the Lease for the giving of notices to Lessor

(b) Lessor shall advise Lessee of the new annual rent and monthly installment for the Premises no later than thirty (30) days after receipt of Lessee's written request therefor Said request shall be made no earlier than thirty (30) days prior to the first date on which Lessee may exercise its option under this Paragraph Said notification of the new annual rent may include a provision for its escalation to provide for a change in fair market rental between the time of notification and the commencement of the renewal term Neither party to the Lease shall have the right to have a court or third party set the annual rent and monthly installment and in no event shall the annual rent and monthly installment for any option period be less than the annual rent and monthly installment in preceding period

(c) This option is not transferable, the parties hereto acknowledge and agree that they intend that the aforesaid option to renew this Lease shall be "personal" to Lessee as set forth above and that in no event will any assignee or sublessee have any rights to exercise the aforesaid option to renew

9. **INDEMNIFICATION PROVISION.**

Lessor shall not be liable and Lessee hereby waives all claims against Lessor for any damage to any property or any injury to any person in or about the Premises or the Building by or from any cause whatsoever, (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Building not being in good condition or repair, gas, fire, oil, electricity or theft), except that Lessor will indemnify and hold Lessee harmless from such claims to the extent caused by the negligent or willful act of Lessor, or its agents, employees or contractors. Lessee shall defend, indemnify, and save Lessor harmless from and against any and all claims, actions, lawsuits, damages, liability, and expense (including, without limitation, attorneys' fees) arising from (a) the act, neglect, fault, or omission to meet the standards imposed by any duty with respect to the loss, damage, or injury by Lessee, its agents, servants, employees, contractors, customers or invitees, (b) the conduct or management of any work or thing whatsoever done by the Lessee in or about the Premises or from transactions of the Lessee concerning the Premises, (c) Lessee's failure to comply with any and all governmental laws, ordinances and regulations applicable to the use of all the Premises and its occupancy, or (d) any breach or default on the part of the Lessee in the performance of any covenant or agreement on the part of the Lessee to be performed pursuant to the Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability occurring prior to such termination.

10. **EFFECTIVENESS OF LEASE.** Except as set forth in this Third Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect.

11. **CORPORATE AUTHORITY** If Lessee is a corporation, Lessee represents and warrants that this Third Amendment to Lease and the undersigned's execution of this Third Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this Third Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Third Amendment to Lease on behalf of the corporation.

LESSOR.

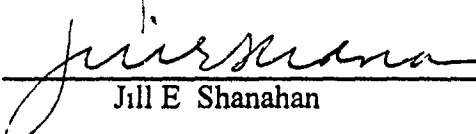
LESSEE.

RREEF WEST-V, INC ,  
a Delaware corporation

CTS NETWORK SERVICES, a Division of  
Datel Systems, Inc , a California corporation

BY RREEF Management Company,  
a California corporation

BY

  
Jill E. Shanahan

BY

  
William E. Blue

TITLE District Manager

TITLE President

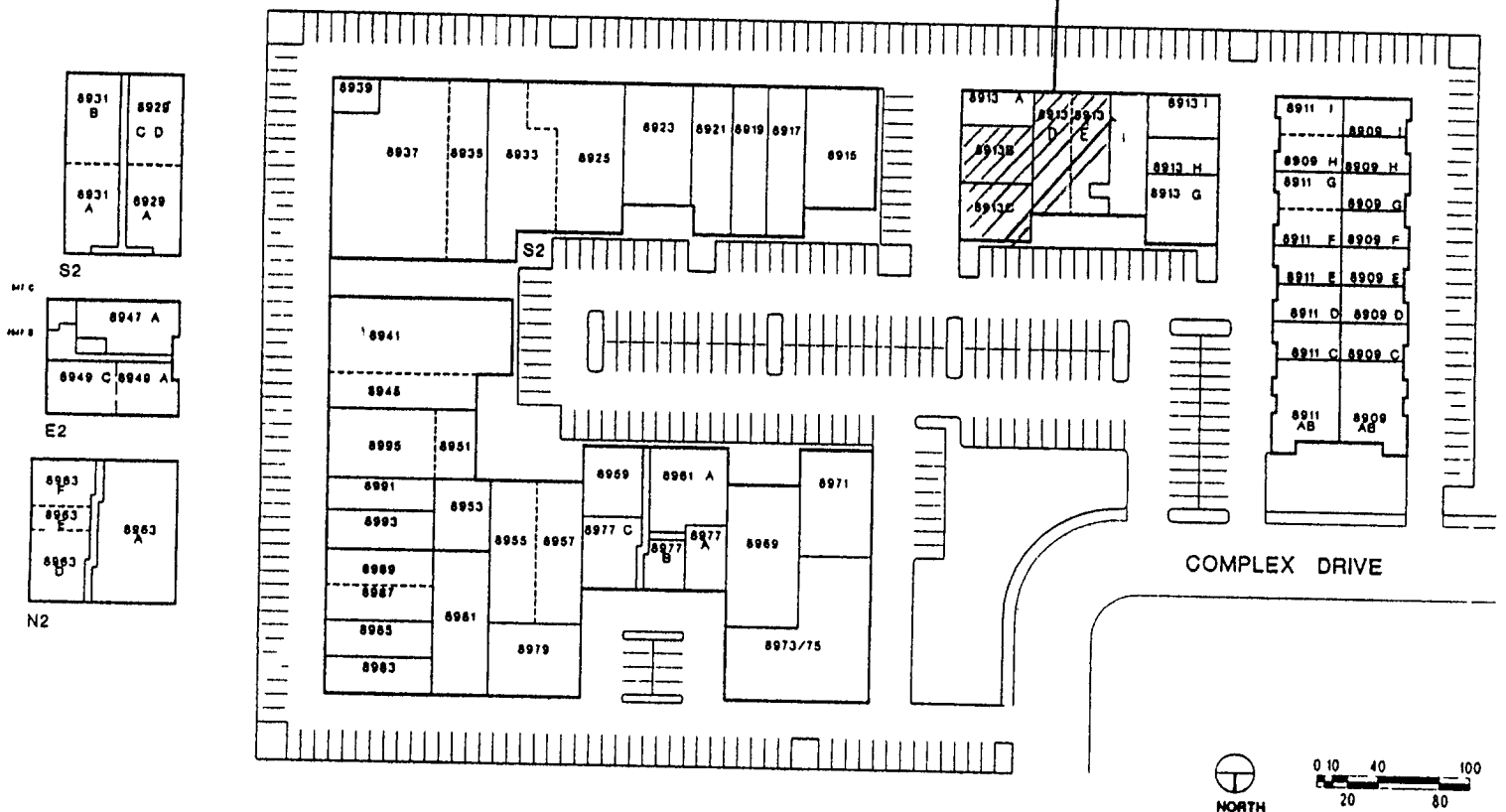
DATE 9/27/96

DATE 9/26/96

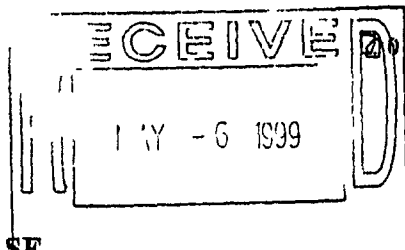
# EXHIBIT A SITE PLAN

This Exhibit A is attached hereto and made part of this Third Amendment to Lease dated September 18, 1996, between RREEF WEST-V, Inc , a Delaware corporation ("Lessor"), whose address is 8949-C Complex Drive, San Diego, California 92123, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee")

8913 Complex Drive, Suites B, C, D & E  
San Diego, CA 92123







# FOURTH AMENDMENT TO LEASE

This Fourth Amendment to Lease dated April 9 1998, is by and between KM Complex, L P , a California Limited Partnership (as Successor in Interest to RREEF WEST-V Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr, Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

1 **RECITALS.** This Fourth Amendment to Lease is made with reference to the following facts and objectives

- a Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, and Third Amendment to Lease dated September 18, 1996 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D and E, San Diego, California 92123, (the "Premises"), and further described as approximately 6,880 square feet
- b The parties desire to alter the terms of the Lease effective April 9, 1998, to expand the premises to include the use of roof space for the sole and exclusive purpose of installing an antenna thereon, and to adjust the base rent accordingly

2 **PREMISES** Article 1 2 of the Lease, ("Premises") shall hereinafter be expanded as follows

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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D and E and described as 6,880 square feet The Premises shall also include that portion, and only that portion of the roof, necessary for installation one antenna, not to exceed ten (10) feet in height The approximate location of said antenna on the roof of the premises is shown in Exhibit A attached hereto The actual location shall be agreed to by Lessee and Lessor prior to the installation of the antenna

3. **RENT SCHEDULE.** The rent schedule set forth in the Lease shall hereinafter be amended as follows

Minimum monthly rent shall be as follows

Rent for the period 5/1/98 through 3/31/99 shall be \$5,301 28 per month

Rent for the period 4/1/99 through 3/31/00 shall be \$5,561 34 per month

4. **ROOF RIDER.** The Roof Rider to Standard Industrial/Commercial Multi-Tenant Lease ("Roof Rider"), attached hereto as Exhibit B, is hereby incorporated into The Lease and this amendment Lessee agrees and acknowledges that the Roof Rider is a material term of the Lease and this Amendment, and that Lessee agrees to each and every term thereof

5 **EFFECTIVENESS OF LEASE.** Except as set forth in this Fourth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect

Initial:

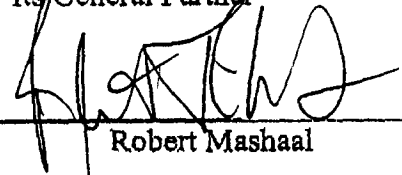
*[Handwritten initials]*  
*[Handwritten initials]*

6 **CORPORATE AUTHORITY.** If Lessee is a corporation, Lessee represents and warrants that this Fourth Amendment to Lease and the undersigned's execution of this Fourth Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this Fourth Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Fourth Amendment to Lease on behalf of the corporation.

LESSOR:

KM COMPLEX L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner

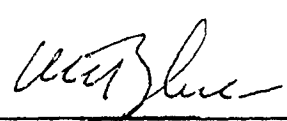
BY   
Robert Mashaal

TITLE Manager

DATE 4/30/98

LESSEE:

CTS Network Services, a Division of Datel  
Systems, Inc, a California corporation

BY   
William E Blue

TITLE President

DATE 4/9/98

BY

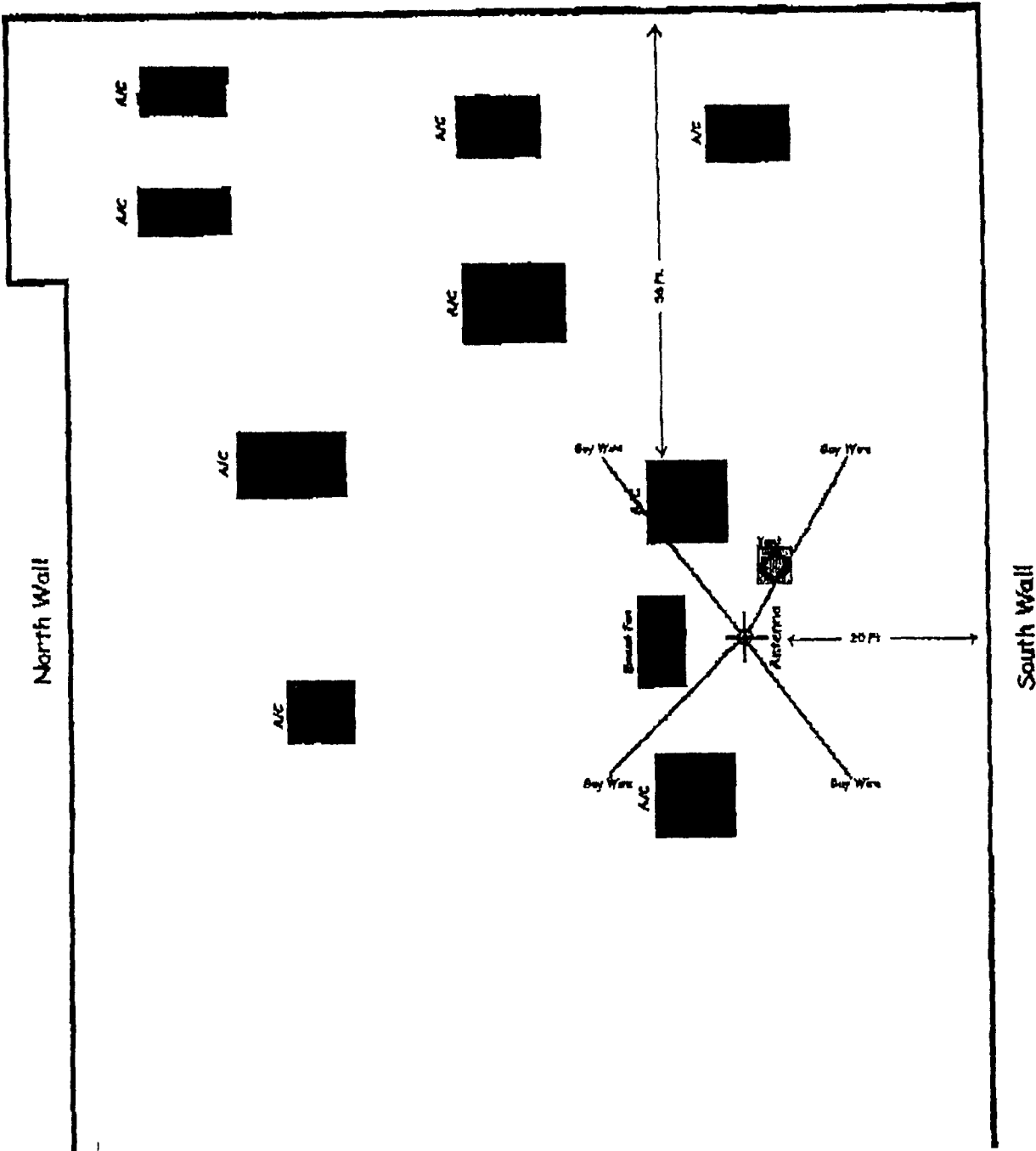
TITLE

DATE

EXHIBIT "A"

APR-03-99 05:26 PM CTS NETWORK SVCS

619 637 3630



## EXHIBIT "B"

## Roof Rider to Standard Industrial/Commercial Multi-Tenant Lease

This Roof Rider ("Rider") is attached and incorporated into the Fourth Amendment to Lease dated April 9, by and between KM Complex I.P., a California Limited Partnership (as Successor in Interest to Lessor WEST-V, Inc. a Delaware Corporation) ("Lessor") whose address is 6256 Greenwich Dr., Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datal Systems, Inc., a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B,C,D and E San Diego, CA 92123. This Roof Rider is hereby incorporated into the Lease dated October 4, 1995 and all amendments thereto.

- 1 Lessor hereby grants Lessee the right to occupy certain space on the roof of the Building ("Roof Space") for the use by Lessee for the reception of communications signals and uses incidental thereto. In connection with said use, Lessee may install (1) antenna and mast, not to exceed ten (10) feet in height, along with associated cables, wires, cable trays and other related appurtenances (collectively, the "Antenna"). The Roof Space is generally depicted on Exhibit A attached hereto and incorporated herein.
  - 2 Lessee shall pay all charges in connection with the construction, installation, operation and maintenance of the Antenna, as well as any and all utilities utilized by Lessee for the operation of its Antenna. Lessee shall also pay all personal property taxes assessed against Lessee's personal property.
  - 3 The commencement of any work to be performed by Lessee or its contractor shall be scheduled through Lessor's Representative. No work shall be performed on the roof without permission of Lessor.
  - 4 Any damage caused by Lessee's improvements, now or in the future will be at Lessee's cost.
  - 5 All governmental requirements will be Lessee's responsibility.
  - 6 Throughout the Period of Construction Lessee and its Contractor shall maintain insurance, issued by an insurance company or companies which are rated "A-VII" or better in Best's Key Rating Guide and authorized to transact business in the state in which the Building is located, protecting Lessor and Yale Properties, USA Inc. against liabilities arising out of the operations of Lessee, Contractor and any subcontractors and sub-subcontractors. A certificate of insurance naming Lessor and Yale Properties USA, Inc. as Additional Insureds under the policy must be provided to Lessor prior to commencement of work. Said policy of insurance shall have minimum limits as follows: General Liability Limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, Workers Compensation statutory limits, and automobile liability of 1,000,000.
  - 7 Lessee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of the Lessee, operation of law or otherwise to be attached to or be placed upon Lessors title or interest in the Project, and any and all liens and encumbrances created by Lessee shall attach to Lessee's interest only. Lessee covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Project with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Lessee or the Premises by the Contractor, and in case of any such lien attaching, Lessee covenants and agrees to pay for all associated costs and to cause it to be immediately released and removed of record.
- In the event that such lien is not immediately released and removed within thirty (30) days after such lien, or notice thereof, is filed, Lessor, at its sole option, may take all action necessary to release and remove such lien (without any duty to investigate the validity thereof) and Lessee shall within five (5) days upon notice reimburse Lessor for all sums costs, and expenses (including attorney's fees) incurred by Lessor in connection with such lien. Notwithstanding the foregoing, Lessee may contest as long as the Project or any part thereof, would not by reason of such postponement of payment be, in Lessor's judgment, in danger of being forfeited or lost and Lessee shall have provided Lessor with security satisfactory to Lessor to payment of such contested lien.
- 8 At the time of lease expiration and vacation of premises, you agree if requested by Lessor, to remove and return premises to its original condition.
  - 9 Lessee will pay for all associated costs and pay for the services of Lessor's construction consultant, if any, who will oversee construction activities with regards to this work and Lessee will abide by said consultants' guidelines and directives.
  - 10 Lessee desires to install an antenna and associated equipment on the roof of its premises (hereinafter referred to as the Work of Improvement). The Work of Improvement has not been requested by the Lessor nor is the Work of Improvement required by terms of the Lease. In order to induce Lessor to consent to the Work of Improvement, Lessee has agreed to indemnify Lessor for any loss, damage or claim which might be asserted against Lessor or the Premises as a result of, or in connection with the Work of Improvement. As a material condition for allowing the Work of Improvement Lessee agrees as follows. Lessee shall indemnify and hold Lessor harmless against and from any and all claims, loss or damage arising from or in connection with the Work of Improvement, including all costs, attorneys' fees, expenses or liabilities incurred as a result of any such claim or any action or proceeding brought thereon. Lessee shall, upon written request from Lessor, defend Lessor in any such action or proceeding at Lessee's expense with legal counsel approved by Lessor. Any default by Lessee hereunder shall constitute a default

WVF  
 RT

under the Lease and in such event, without limiting the remedies available to Lessor hereunder and by law, Lessor shall be entitled to exercise any of its remedies under terms of the Lease. In the event any action or proceeding is brought by either party hereto to enforce the provisions of this agreement, the prevailing party shall be entitled to recover all costs and expenses including its reasonable attorneys' fees. This indemnification agreement shall be governed by the laws of the State of California and any action brought hereunder shall be filed in the County of San Diego, State of California.

## LESSOR

KM COMPLEX, L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner

BY

  
Robert Mashaal

TITLE Manager

DATE

4/30/98

## LESSEE.

CIS Network Services, a Division of Datel Systems,  
Inc. a California corporation

BY

  
William E. Blue

TITLE

President

DATE

4/9/98

## FIFTH AMENDMENT TO LEASE

This Fifth Amendment to Lease dated July 13, 1998, is by and between KM Complex, L P , a California Limited Partnership (as Successor in Interest to RREEF WEST-V, Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr, Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

1 **RECITALS.** This Fifth Amendment to Lease is made with reference to the following facts and objectives

- a Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, Third Amendment to Lease dated September 18, 1996 and Fourth Amendment to Lease dated April 9, 1998 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D and E, San Diego, California 92123, (the "Premises"), and further described as approximately 6,880 square feet
- b The parties desire to alter the terms of the Lease, effective <sup>June 1, 1999</sup> ~~August 1, 1998~~, to expand the premises by 2,839 square feet to include 8913 Complex Drive, Suite F

2 **PREMISES** Article 1 2 of the Lease, ("Premises") shall hereinafter be modified as follows

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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E and F described as 9,719 square feet (altered from the Lease by the addition of Suite F, comprising 2,839 square feet as further described in Exhibit A-1 attached hereto) and exclusive use of the approximately 20' 2" x 13' 1" cement pad as depicted on Exhibit A-2 attached hereto

3. **RENT SCHEDULE** The rent schedule set forth in the Lease shall hereinafter be amended as follows

Minimum monthly rent shall be as follows

Rent for the period 8/1/98 through 5/31/99 shall be \$5,301 28 per month  
Rent for the period 6/1/99 through 7/31/99 shall be \$8,400 00 per month  
Rent for the period 8/1/99 through 3/31/00 shall be \$8,542 00 per month  
Rent for the period 4/1/00 through 7/31/00 shall be \$10,205 00 per month  
Rent for the period 8/1/00 through 7/31/01 shall be \$10,715 00 per month  
Rent for the period 8/1/01 through 7/31/02 shall be \$11,251 00 per month  
Rent for the period 8/1/02 through 7/31/03 shall be \$11,814 00 per month

Initial: \_\_\_\_\_

*[Handwritten signature]*  
\_\_\_\_\_  
*[Handwritten signature]*  
\_\_\_\_\_

4. **Condition of Premises.** Lessee hereby acknowledges and agrees that, prior to the execution of the Lease, Lessee has performed all inspections of the Premises that Lessee deems necessary or appropriate, and Lessee hereby accepts the Premises "As-Is" in its current condition. Lessor shall provide no Tenant Improvement allowance for the Premises or Expansion Premises. Lessee further acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or its suitability for the conduct of Lessee's business therein. The taking of possession of the Premises by Lessee shall conclusively establish that the Premises were, at such time, in satisfactory condition.

5. **BASE YEAR.** Lessee shall pay its pro rata share of Common Area Maintenance, Insurance, and Real Estate Taxes on all premises for suites B,C,D,E, & F.

6. **SECURITY DEPOSIT.** Article 17 of the Lease and Article 6 of the Third Amendment to Lease, (Security Deposit), shall hereinafter provide as follows:

Lessor acknowledges that Lessee currently has on account \$5,700.00 which Lessee agrees to increase to \$8,539.00 by June 30, 1999.

7. **EFFECTIVENESS OF LEASE.** Except as set forth in this Fifth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect.

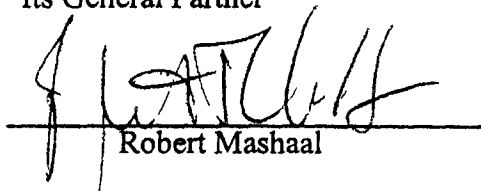
8. **CORPORATE AUTHORITY.** If Lessee is a corporation, Lessee represents and warrants that this Fifth Amendment to Lease and the undersigned's execution of this Fifth Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this Fifth Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Fifth Amendment to Lease on behalf of the corporation.

LESSOR:

KM COMPLEX, L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner

BY

  
Robert Mashaal

TITLE

Manager

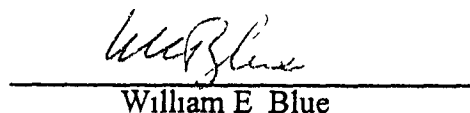
DATE

9/17/98

LESSEE:

CTS Network Services, a Division of Datel  
Systems, Inc., a California corporation

BY

  
William E. Blue

TITLE

President

DATE

7/28/98

BY

\_\_\_\_\_

TITLE

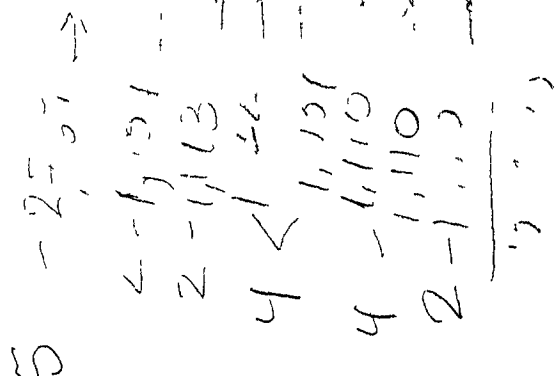
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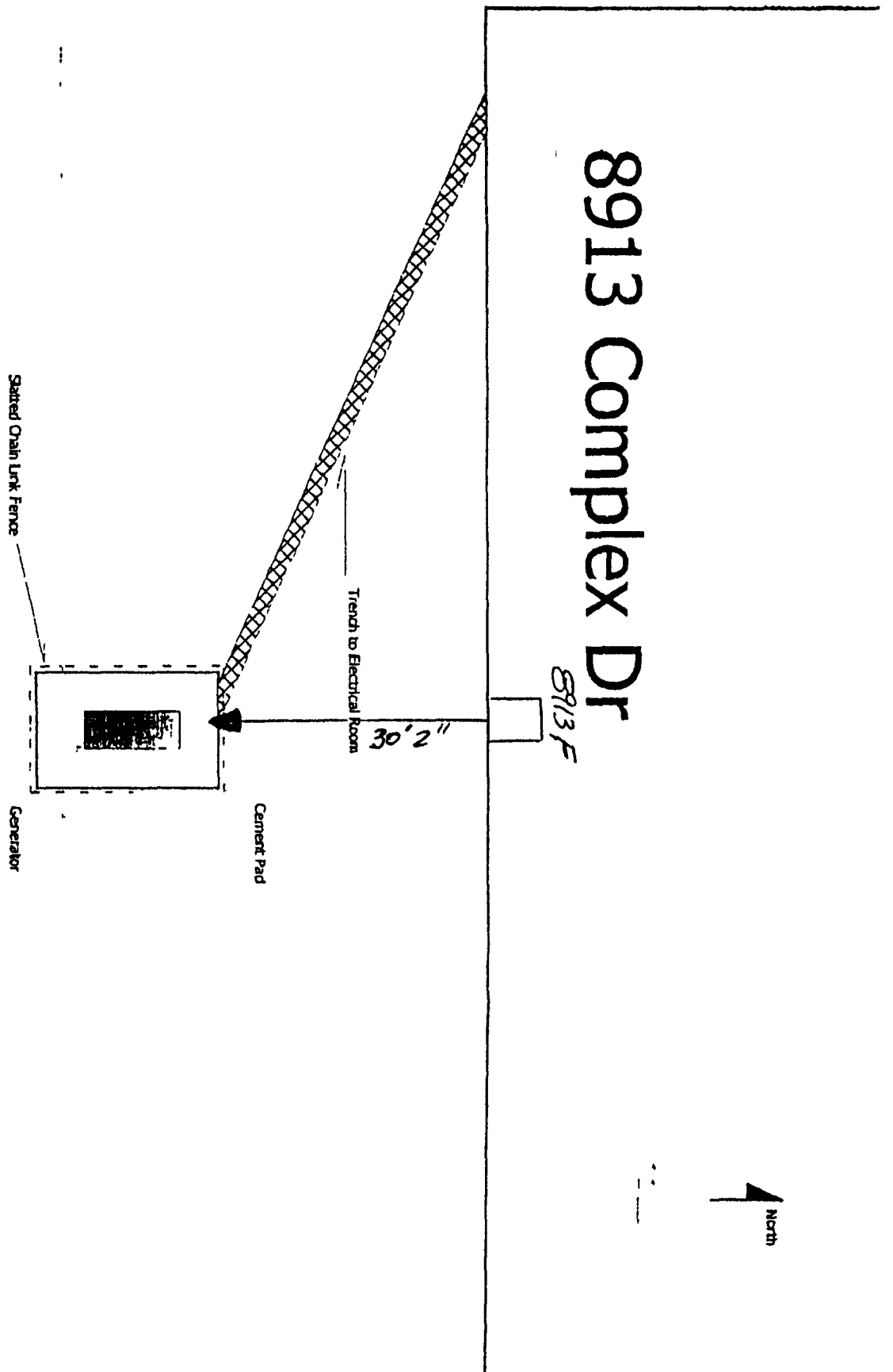
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2007	2003 B	2003 C
2049 A	2003 A	2003 D
2049 C	2003 E	2003 F



*[Handwritten signature]*

EXHIBIT "A-2"



*Handwritten signature*

## SIXTH AMENDMENT TO LEASE

This Sixth Amendment to Lease dated February 9, 1999, is by and between KM Complex, L P , a California Limited Partnership (as Successor in Interest to RREEF WEST-V, Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr , Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

**RECITALS** This Sixth Amendment to Lease is made with reference to the following facts and objectives

- a Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, Third Amendment to Lease dated September 18, 1996, Fourth Amendment to Lease dated April 9, 1998, and Fifth Amendment to Lease dated July 13, 1998 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E & F San Diego, California 92123, (the "Premises"), and further described as approximately 9,719 square feet
- b The parties desire to alter the terms of the Lease, effective March 1, 1999, to change the commencement date of the Expansion into 8913 Complex Drive, Suite F, (as documented by the Fifth Amendment), from June 1, 1999 to March 1, 1999

1. **RENT SCHEDULE.** The rent schedule set forth in the Lease shall hereinafter be amended as follows

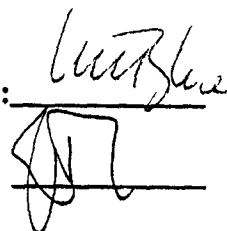
Minimum monthly rent shall be as follows

Rent for the period 3/1/99 through 7/31/99 shall be \$8,400 00 per month  
Rent for the period 8/1/99 through 3/31/00 shall be \$8,542 00 per month  
Rent for the period 4/1/00 through 7/31/00 shall be \$10,205 00 per month  
Rent for the period 8/1/00 through 7/31/01 shall be \$10,715 00 per month  
Rent for the period 8/1/01 through 7/31/02 shall be \$11,251 00 per month  
Rent for the period 8/1/02 through 7/31/03 shall be \$11,814 00 per month

2 **DELAY IN POSSESSION.** Notwithstanding the commencement date for the Expansion Premises, (March 1, 1999), if for any reason Lessor cannot deliver possession of the Expansion Premises to Lessee on said date Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of the Lease, this Sixth Amendment to Lease, or the obligations of Lessee hereunder. In the event Lessor fails to timely deliver the Expansion Premises, Lessee's sole remedy shall be rental abatement on the Expansion Premises on a per diem basis until the Expansion Premises are delivered. There shall be no rent abatement for any delay in delivery of the Expansion Premises which result from a Lessee Delay

3 **EFFECTIVENESS OF LEASE** Except as set forth in this Sixth Amendment to Lease, all the provisions of the Lease shall remain unchanged and in full force and effect

Initial: \_\_\_\_\_

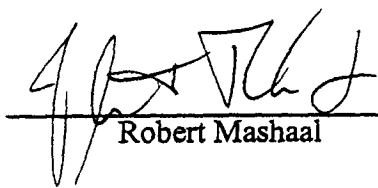


4. **CORPORATE AUTHORITY.** If Lessee is a corporation, Lessee represents and warrants that this Sixth Amendment to Lease and the undersigned's execution of this Sixth Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this Sixth Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Sixth Amendment to Lease on behalf of the corporation.

**LESSOR.**

KM COMPLEX, L P  
A California Limited Partnership

BY      Kearny Mesa Complex LLC  
         Its General Partner


BY        
         Robert Mashaal

TITLE      Manager

DATE      2/24/99

**LESSEE.**

CTS Network Services, a Division of Datel  
Systems, Inc , a California corporation

BY        
         William E. Blue

TITLE      President

DATE      2/15/99

BY      \_\_\_\_\_

TITLE

DATE      \_\_\_\_\_

## SEVENTH AMENDMENT TO LEASE

This Seventh Amendment to Lease dated May 21, 1999, is by and between KM Complex, L P , a California Limited Partnership (as Successor in Interest to RREEF WEST-V, Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr , Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

**RECITALS.** This Seventh Amendment to Lease is made with reference to the following facts and objectives

A Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, Third Amendment to Lease dated September 18, 1996, Fourth Amendment to Lease dated April 9, 1998, Fifth Amendment to Lease dated July 13, 1998, and Sixth Amendment to Lease dated February 9, 1999 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E & F San Diego, California 92123, (the "Premises"), and further described as approximately 9,719 square feet

B The parties desire to alter the terms of the Lease to expand the premises and extend the term

1 **TERM** Article 3 of the Lease ('Term') shall hereinafter provide as follows

The Term of the Lease shall be extended for ten (10) months commencing on June 1, 1999 and ending on May 31, 2004 unless sooner terminated pursuant to any provision hereof

2 **PREMISES** Article 1 2 of the Lease, ("Premises") shall hereinafter be modified as follows

Effective June 1, 1999 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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C ,D, E and F and 8909 Complex Drive Suites A&B described as 12,486 square feet (altered from the Lease by the addition of 8909 Complex Drive Suites A&B, comprising 2,767 square feet as further described in Exhibit A-1 attached hereto)

3 **RENT SCHEDULE** The rent schedule set forth in the Lease shall hereinafter be amended as follows

Minimum monthly rent shall be as follows

Rent for the period 6/1/99 through 7/31/99 shall be \$10,779 62 per month  
Rent for the period 8/1/99 through 3/31/00 shall be \$10,976 96 per month  
Rent for the period 4/1/00 through 7/31/00 shall be \$13,155 35 per month  
Rent for the period 8/1/00 through 7/31/01 shall be \$13,758 70 per month  
Rent for the period 8/1/01 through 7/31/02 shall be \$14,460 72 per month  
Rent for the period 8/1/02 through 7/31/03 shall be \$15,189 74 per month  
Rent for the period 8/1/03 through 5/31/04 shall be \$15,946 46 per month

4 **CONDITION OF PREMISES** Lessee hereby acknowledges and agrees that, prior to the execution of the Lease, Lessee has performed all inspections of the Premises that Lessee deems necessary or appropriate, and Lessee hereby accepts the Premises in its "As-Is" current condition Lessor shall provide no Tenant Improvement allowance for the

Initial •



Premises Lessee further acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or its suitability for the conduct of Lessee's business therein. The taking of possession of the Premises by Lessee shall conclusively establish that the Premises were, at such time, in satisfactory condition.

- 5 **SECURITY DEPOSIT** Article 17 of the Lease, Article 6 of the Third Amendment and Article 6 of the Fifth Amendment to Lease, (Security Deposit), shall hereinafter provide as follows:

Lessor acknowledges that Lessee currently has on account \$8,539.00 which Lessee agrees to increase to \$15,946.46 upon execution of this Amendment.

- 6 **CORPORATE AUTHORITY.** If Lessee is a corporation, Lessee represents and warrants that this Seventh Amendment to Lease and the undersigned's execution of this Seventh Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this Seventh Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Seventh Amendment to Lease on behalf of the corporation.
- 7 **BROKER'S FEE.** Lessee warrants and represents that Lessee has not dealt with any real estate broker or agent in connection with the Lease or its negotiation. Lessee shall indemnify and hold Lessor and the Premises harmless from and against any and all costs, expenses and liability (including actual attorney's fees and court costs) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with the Lease or its negotiation based upon any act of Lessee.
- 8 **COMMON AREA OPERATING EXPENSES** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of all Common Area Operating Expenses.
- 9 **EFFECTIVENESS OF LEASE** Except as set forth in this Seventh Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect.

**LESSOR**

KM COMPLEX, L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner

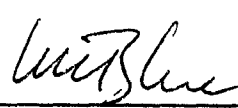
BY   
Robert Mashaal

TITLE Manager

DATE 8/1/99

**LESSEE.**

CTS Network Services, a Division of Datel  
Systems, Inc., a California corporation

BY   
William E. Blue

TITLE President

DATE 5/25/99

BY \_\_\_\_\_

TITLE

DATE \_\_\_\_\_

## **EIGHTH AMENDMENT TO LEASE**

This Eighth Amendment to Lease dated September 13, 1999, is by and between KM Complex, L P, a California Limited Partnership (as Successor in Interest to RREEF WEST-V, Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr , Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

**RECITALS** This Eighth Amendment to Lease is made with reference to the following facts and objectives

A Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, Third Amendment to Lease dated September 18, 1996, Fourth Amendment to Lease dated April 9, 1998, Fifth Amendment to Lease dated July 13, 1998, Sixth Amendment to Lease dated February 9, 1999, and Seventh Amendment to Lease dated May 21, 1999 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E & F and 8909 Complex Drive Suites A&B, San Diego, California 92123, (the "Premises"), and further described as approximately 12,486 square feet

B The parties desire to alter the terms of the Lease to expand the premises and extend the term

1 **TERM** Article 3 of the Lease ('Term') shall hereinafter provide as follows

The Term of the Lease shall be extended for five (5) months from and after May 31, 2004 through October 31, 2004 unless sooner terminated pursuant to any provision hereof

2 **PREMISES** Article 1 2 of the Lease, ("Premises") shall hereinafter be modified as follows

Effective November 4, 1999 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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C ,D, E ,F, & I and 8909 Complex Drive Suites A&B described as 13,509 square feet (altered from the Lease by the addition of 8913 Complex Drive Suite I, comprising 1,023 square feet (the "Expansion Premises") as further described in Exhibit A-1 attached hereto)



3 **RENT SCHEDULE** The rent schedule set forth in the Lease shall hereinafter be amended as follows

Minimum monthly rent shall be as follows

Rent for the period 11/4/99 through 11/30/99 shall be \$11,897 66 per month  
Rent for the period 12/1/99 through 3/31/00 shall be \$11,999 96 per month  
Rent for the period 4/1/00 through 7/31/00 shall be \$14,178 35 per month  
Rent for the period 8/1/00 through 10/31/00 shall be \$14,781 70 per month  
Rent for the period 11/1/00 through 7/31/01 shall be \$14,832 85 per month  
Rent for the period 8/1/01 through 10/31/01 shall be \$15,534 87 per month  
Rent for the period 11/1/01 through 7/31/02 shall be \$15,588 58 per month  
Rent for the period 8/1/02 through 10/31/02 shall be \$16,317 60 per month  
Rent for the period 11/1/02 through 7/31/03 shall be \$16,373 99 per month  
Rent for the period 8/1/03 through 10/31/03 shall be \$17,130 71 per month  
Rent for the period 11/1/03 through 5/31/04 shall be \$17,189 92 per month  
Rent for the period 6/1/04 through 10/31/04 shall be \$17,987 25 per month

4 **CONDITION OF PREMISES** Lessee hereby acknowledges and agrees that, prior to the execution of this Amendment, Lessee has performed all inspections of the Premises and Expansion Premises that Lessee deems necessary or appropriate, and Lessee hereby accepts the Premises and the Expansion Premises in their "As-Is" current condition Lessor shall provide no Tenant Improvement allowance for the Premises or Expansion Premises Lessee further acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or Expansion Premises or their suitability for the conduct of Lessee's business therein The taking of possession of the Premises and Expansion Premises by Lessee shall conclusively establish that the Premises and Expansion Premises were, at such time, in satisfactory condition

5 **SECURITY DEPOSIT.** Article 1 7 of the Lease , Article 6 of the Third Amendment, Article 6 of the Fifth Amendment, and Article 5 of the Seventh Amendment to Lease, (Security Deposit), shall hereinafter provide as follows

Lessor acknowledges that Lessee currently has on account \$15,946 46 which Lessee agrees to increase by \$1,243 46 upon execution of this Amendment, for a total Security Deposit of \$17,189 92

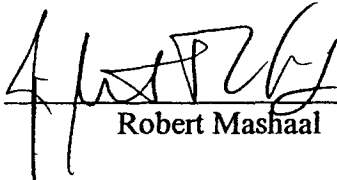
6. **CORPORATE AUTHORITY** If Lessee is a corporation, Lessee represents and warrants that this Eighth Amendment to Lease and the undersigned's execution of this Eighth Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors The undersigned officers and representatives of the corporation executing this Eighth Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Eighth Amendment to Lease on behalf of the corporation

- 7 **BROKER'S FEE** Lessee warrants and represents that Lessee has not dealt with any real estate broker or agent in connection with the Lease or its negotiation. Lessee shall indemnify and hold Lessor and the Premises harmless from and against any and all costs, expenses and liability (including actual attorney's fees and court costs) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with the Lease or its negotiation based upon any act of Lessee.
- 8 **DELAY IN POSSESSION.** Notwithstanding the commencement date for the Expansion Premises, (November 4, 1999), if for any reason Lessor cannot deliver possession of the Expansion Premises to Lessee on said date Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of the Lease, this Eighth Amendment to Lease, or the obligations of Lessee hereunder. In the event Lessor fails to timely deliver the Expansion Premises, Lessee's sole remedy shall be rental abatement on the Expansion Premises on a per diem basis until the Expansion Premises are delivered. There shall be no rent abatement for any delay in delivery of the Expansion Premises which result from a Lessee Delay.
- 9 **EFFECTIVENESS OF LEASE.** Except as set forth in this Eighth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect.

**LESSOR:**

KM COMPLEX, L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner


BY   
Robert Mashaal

TITLE Manager

DATE 10/7/99

**LESSEE**

CTS Network Services, a Division of Datel  
Systems, Inc., a California corporation

BY   
William E. Blue

TITLE President

DATE 8/15/99

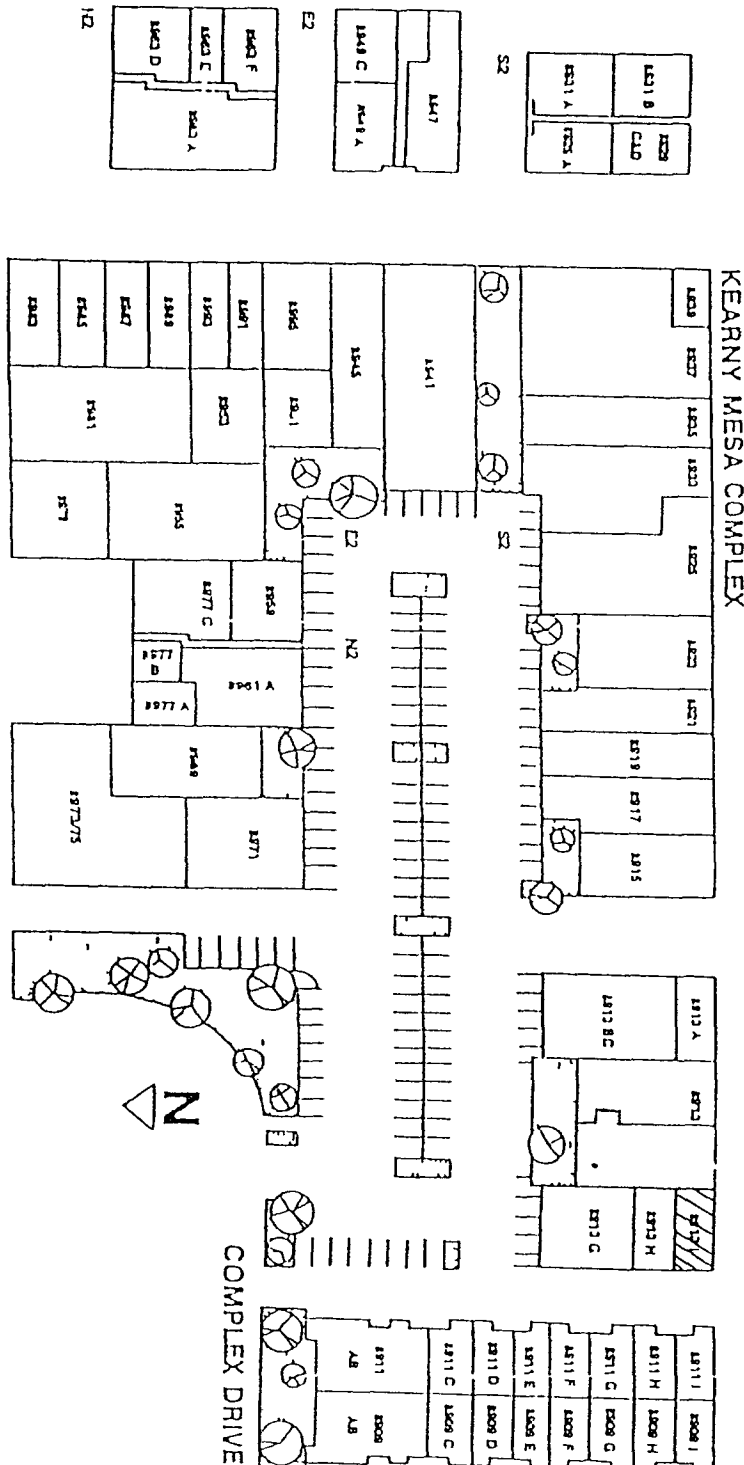
BY \_\_\_\_\_

TITLE

DATE \_\_\_\_\_

# EXHIBIT A-1 Expansion Premises

This Site plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit, in whole or in part, any structures and/or improvements, and/or common areas, and/or land areas shown on this plan. All measurements and distances are approximate. This plan is not to be scaled.



Initials *[Signature]*

## NINTH AMENDMENT TO LEASE

This Ninth Amendment to Lease dated February 10, 2000, is by and between KM Complex, L P , a California Limited Partnership (as Successor in Interest to RREEF WEST-V, Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr , Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

**RECITALS** This Ninth Amendment to Lease is made with reference to the following facts and objectives

A Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, Third Amendment to Lease dated September 18, 1996, Fourth Amendment to Lease dated April 9, 1998, Fifth Amendment to Lease dated July 13, 1998, Sixth Amendment to Lease dated February 9, 1999, Seventh Amendment to Lease dated May 21, 1999 and Eight Amendment to Lease dated September 13, 1999 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, & I and 8909 Complex Drive Suites A&B, San Diego, California 92123, (the "Premises"), and further described as approximately 13,509 square feet

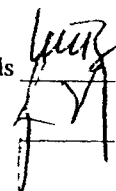
B. The parties desire to alter the terms of the Lease to expand the premises and extend the term

1 **TERM.** Article 3 of the Lease ('Term') shall hereinafter provide as follows

The Term of the Lease shall be extended for five (5) months from and after October 31, 2004 through March 31, 2005 unless sooner terminated pursuant to any provision hereof

2 **PREMISES** Article 1 2 of the Lease, ("Premises") shall hereinafter be modified as follows

Effective April 1, 2000 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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C ,D, E ,F, & I and 8909 Complex Drive Suites A,B,&C described as 14,613 square feet (altered from the Lease by the addition of 8909 Complex Drive Suite C, comprising 1,104 square feet (the "Expansion Premises") as further described in Exhibit A-1 attached hereto)

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- 3 **RENT SCHEDULE.** The rent schedule set forth in the Lease shall hereinafter be amended as follows

Minimum monthly rent shall be as follows

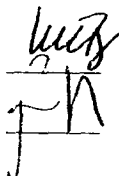
Rent for the period 4/1/00 through 7/31/00 shall be \$15,392 75 per month  
Rent for the period 8/1/00 through 10/31/00 shall be \$15,996 10 per month  
Rent for the period 11/1/00 through 3/31/01 shall be \$16,047 25 per month  
Rent for the period 4/1/01 through 7/31/01 shall be \$16,107 97 per month  
Rent for the period 8/1/01 through 10/31/01 shall be \$16,809 99 per month  
Rent for the period 11/1/01 through 3/31/02 shall be \$16,863 70 per month  
Rent for the period 4/1/02 through 7/31/02 shall be \$16,927 45 per month  
Rent for the period 8/1/02 through 10/31/02 shall be \$17,656 47 per month  
Rent for the period 11/1/02 through 3/31/03 shall be \$17,712 87 per month  
Rent for the period 4/1/03 through 7/31/03 shall be \$17,779 81 per month  
Rent for the period 8/31/03 through 10/31/03 shall be \$18,536 53 per month  
Rent for the period 11/1/03 through 3/31/04 shall be \$18,595 74 per month  
Rent for the period 4/1/04 through 5/31/04 shall be \$18,666 03 per month  
Rent for the period 6/1/04 through 10/31/04 shall be \$19,463 36 per month  
Rent for the period 11/1/04 through 3/31/05 shall be \$20,362 72 per month

- 4 **CONDITION OF PREMISES** Lessee hereby acknowledges and agrees that, prior to the execution of this Amendment, Lessee has performed all inspections of the Premises and Expansion Premises that Lessee deems necessary or appropriate, and Lessee hereby accepts the Premises and the Expansion Premises in their "As-Is" current condition Lessor shall provide no Tenant Improvement allowance for the Premises or Expansion Premises Lessee further acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or Expansion Premises or their suitability for the conduct of Lessee's business therein The taking of possession of the Premises and Expansion Premises by Lessee shall conclusively establish that the Premises and Expansion Premises were, at such time, in satisfactory condition

- 5 **SECURITY DEPOSIT** Article 1 7 of the Lease , Article 6 of the Third Amendment, Article 6 of the Fifth Amendment, Article 5 of the Seventh Amendment, and Article 5 of the Eighth Amendment to Lease, (Security Deposit), shall hereinafter provide as follows

Lessor acknowledges that Lessee currently has on account \$17,189 92 which Lessee agrees to increase by \$1,476 11 upon execution of this Amendment, for a total Security Deposit of \$18,666 03

- 6 **CORPORATE AUTHORITY** If Lessee is a corporation, Lessee represents and warrants that this Ninth Amendment to Lease and the undersigned's execution of this Ninth Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors The undersigned officers and representatives of the corporation executing this Ninth Amendment to

Initials 

Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Ninth Amendment to Lease on behalf of the corporation

7. **BROKER'S FEE.** Lessee warrants and represents that Lessee has not dealt with any real estate broker or agent in connection with this Ninth Amendment to Lease or its negotiation. Lessee shall indemnify and hold Lessor and the Premises harmless from and against any and all costs, expenses and liability (including actual attorney's fees and court costs) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Ninth Amendment to Lease or its negotiation based upon any act of Lessee
  
8. **DELAY IN POSSESSION.** Notwithstanding the commencement date for the Expansion Premises, (April 1, 2000), if for any reason Lessor cannot deliver possession of the Expansion Premises to Lessee on said date Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of the Lease, this Ninth Amendment to Lease, or the obligations of Lessee hereunder. In the event Lessor fails to timely deliver the Expansion Premises, Lessee's sole remedy shall be rental abatement on the Expansion Premises on a per diem basis until the Expansion Premises are delivered. There shall be no rent abatement for any delay in delivery of the Expansion Premises which result from a Lessee Delay
  
9. **LEASING FEE.** Lessee shall pay to Lessor, upon execution of this Ninth Amendment to Lease, a Leasing Fee in the amount of One Thousand Five Hundred Dollars (\$1,500 00)

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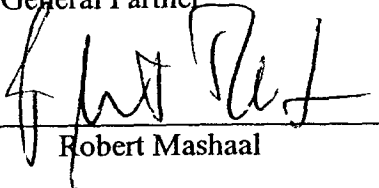
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10. **EFFECTIVENESS OF LEASE** Except as set forth in this Ninth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect

**LESSOR**

KM COMPLEX, L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner

BY   
Robert Mashaal

TITLE Manager

DATE 2/25/00

**LESSEE**

CTS Network Services, a Division of Datel  
Systems, Inc , a California corporation

BY   
William E Blue

TITLE President

DATE 2/10/00

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_



# EXHIBIT A-1

## Expansion Premises

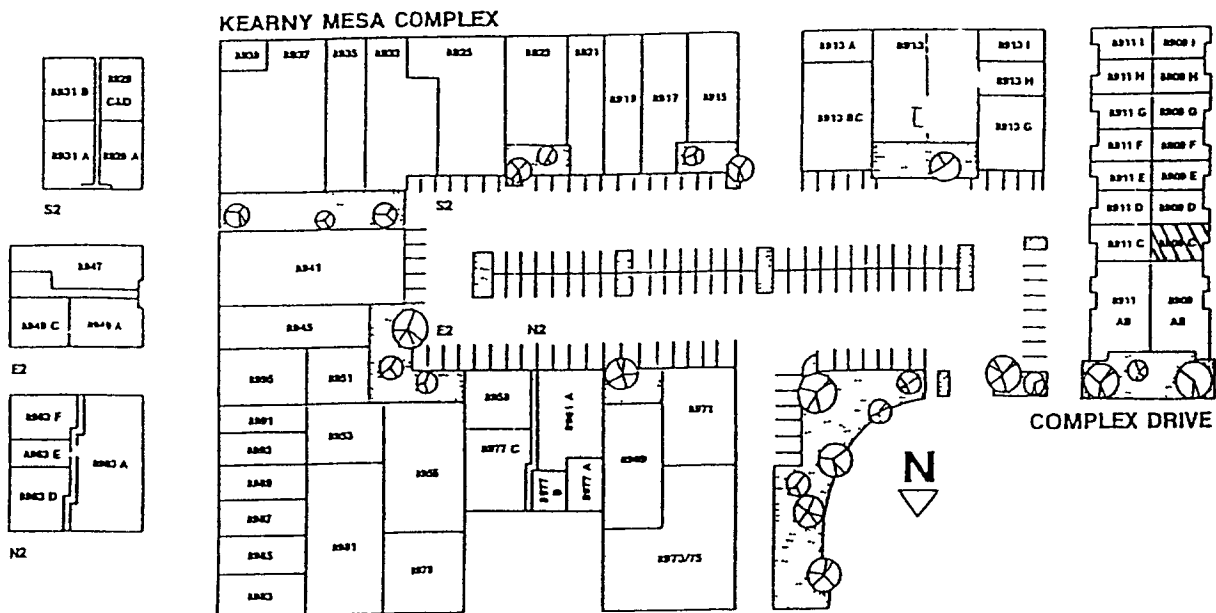
### KEARNY MESA COMPLEX

San Diego, California

Address 8909 Complex Drive, Suite C

Totaling 1,104 Square Feet

This plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit, in whole or in part, any structures, and/or improvements, and/or common areas, and/or land areas shown on this plan. All measurements and distances are approximate. This plan is not to be scaled.



## TENTH AMENDMENT TO LEASE

This Tenth Amendment to Lease dated May 16, 2000, is by and between KM Complex, L P , a California Limited Partnership (as Successor in Interest to RREEF WEST-V, Inc a Delaware Corporation) ("Lessor"), whose address is 6256 Greenwich Dr , Suite #230, San Diego, California 92122, and CTS Network Services, a Division of Datel Systems, Inc , a California corporation ("Lessee"), whose address is 8913 Complex Drive, Suite B, San Diego, CA 92123, who agree as follows

**RECITALS** This Tenth Amendment to Lease is made with reference to the following facts and objectives

A. Lessor and Lessee entered into a written Lease dated October 4, 1995, First Amendment to Lease dated January 10, 1996, Second Amendment to Lease dated August 1, 1996, Third Amendment to Lease dated September 18, 1996, Fourth Amendment to Lease dated April 9, 1998, Fifth Amendment to Lease dated July 13, 1998, Sixth Amendment to Lease dated February 9, 1999, Seventh Amendment to Lease dated May 21, 1999, Eighth Amendment to Lease dated September 13, 1999, and Ninth Amendment to Lease dated February 10, 2000 (collectively referred to as the "Lease"), in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, & I and 8909 Complex Drive Suites A,B,&C San Diego, California 92123, (the "Premises"), and further described as approximately 14,613 square feet

B The parties desire to alter the terms of the Lease to expand the premises and extend the term

1. **TERM** Article 3 of the Lease ('Term') shall hereinafter provide as follows

The Term of the Lease shall be extended for two (2) months from and after March 31, 2005 through May 31, 2005 unless sooner terminated pursuant to any provision hereof

2. **PREMISES** Article 1 2 of the Lease, ("Premises") shall hereinafter be modified as follows

Effective June 1, 2000 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, that certain real property situated in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C ,D, E ,F, G,& I and 8909 Complex Drive Suites A,B,&C described as 16,988 square feet (altered from the Lease by the addition of 8913 Complex Drive Suite G, comprising 2,375 square feet (the "Expansion Premises") as further described in Exhibit A-1 attached hereto) The Premises shall also include three (3) parking spaces for installation of one (1) generator The location of said generator will be adjacent to Lessee's existing generator The approximate location is described in

Exhibit A-1 attached hereto The actual location shall be agreed to by Lessee and Lessor prior to the installation of the generator

3 **RENT SCHEDULE.** The rent schedule set forth in the Lease shall hereinafter be amended as follows

Minimum monthly rent shall be as follows

Rent for the period 6/1/00 through 7/31/00 shall be \$19,080 25 per month  
Rent for the period 8/1/00 through 10/31/00 shall be \$19,683 60 per month  
Rent for the period 11/1/00 through 3/31/01 shall be \$19,734 75 per month  
Rent for the period 4/1/01 through 5/31/01 shall be \$19,795 47 per month  
Rent for the period 6/1/01 through 7/31/01 shall be \$19,979 85 per month  
Rent for the period 8/1/01 through 10/31/01 shall be \$20,681 87 per month  
Rent for the period 11/1/01 through 3/31/02 shall be \$20,735 57 per month  
Rent for the period 4/1/02 through 5/31/02 shall be \$20,799 33 per month  
Rent for the period 6/1/02 through 7/31/02 shall be \$20,992 92 per month  
Rent for the period 8/1/02 through 10/31/02 shall be \$21,721 94 per month  
Rent for the period 11/1/02 through 3/31/03 shall be \$21,778 34 per month  
Rent for the period 4/1/03 through 5/31/03 shall be \$21,845 28 per month  
Rent for the period 6/1/03 through 7/31/03 shall be \$22,048 55 per month  
Rent for the period 8/1/03 through 10/31/03 shall be \$22,805 27 per month  
Rent for the period 11/1/03 through 3/31/04 shall be \$22,864 48 per month  
Rent for the period 4/1/04 through 5/31/04 shall be \$22,934 78 per month  
Rent for the period 6/1/04 through 10/31/04 shall be \$23,945 54 per month  
Rent for the period 11/1/04 through 3/31/05 shall be \$24,844 90 per month  
Rent for the period 4/1/05 through 5/31/05 shall be \$25,863 03 per month

4 **CONDITION OF PREMISES** Lessee hereby acknowledges and agrees that, prior to the execution of this Amendment, Lessee has performed all inspections of the Premises and Expansion Premises that Lessee deems necessary or appropriate, and Lessee hereby accepts the Premises and the Expansion Premises in their "As-Is" current condition Lessor shall provide no Tenant Improvement allowance for the Premises or Expansion Premises Lessee further acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or Expansion Premises or their suitability for the conduct of Lessee's business therein The taking of possession of the Premises and Expansion Premises by Lessee shall conclusively establish that the Premises and Expansion Premises were, at such time, in satisfactory condition

5. **SECURITY DEPOSIT** Article 1 7 of the Lease , Article 6 of the Third Amendment, Article 6 of the Fifth Amendment, Article 5 of the Seventh Amendment, Article 5 of the Eighth Amendment, and Article 5 of the Ninth Amendment to Lease, (Security Deposit), shall hereinafter provide as follows

Lessor acknowledges that Lessee currently has on account \$18,666 03 which Lessee agrees to increase by \$3,752 88 upon execution of this Amendment, for a total Security Deposit of \$22,418 91

6. **CORPORATE AUTHORITY.** If Lessee is a corporation, Lessee represents and warrants that this Tenth Amendment to Lease and the undersigned's execution of this Tenth Amendment to Lease has been duly authorized and approved by the corporation's Board of Directors The undersigned officers and representatives of the corporation executing this Tenth Amendment to Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Tenth Amendment to Lease on behalf of the corporation
7. **BROKER'S FEE** Lessee warrants and represents that Lessee has not dealt with any real estate broker or agent in connection with this Tenth Amendment to Lease or its negotiation Lessee shall indemnify and hold Lessor and the Premises harmless from and against any and all costs, expenses and liability (including actual attorney's fees and court costs) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Tenth Amendment to Lease or its negotiation based upon any act of Lessee
- 8 **DELAY IN POSSESSION.** Notwithstanding the commencement date for the Expansion Premises, (June 1, 2000), if for any reason Lessor cannot deliver possession of the Expansion Premises to Lessee on said date Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of the Lease, this Tenth Amendment to Lease, or the obligations of Lessee hereunder In the event Lessor fails to timely deliver the Expansion Premises, Lessee's sole remedy shall be rental abatement on the Expansion Premises on a per diem basis until the Expansion Premises are delivered There shall be no rent abatement for any delay in delivery of the Expansion Premises which result from a Lessee Delay

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9. **EFFECTIVENESS OF LEASE.** Except as set forth in this Tenth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect

**LESSOR:**

KM COMPLEX, L P  
A California Limited Partnership

BY Kearny Mesa Complex LLC  
Its General Partner

BY

  
Robert Mashaal

TITLE

Manager

DATE

6/8/00

**LESSEE:**

CTS Network Services, a Division of Datel  
Systems, Inc , a California corporation

BY

  
William E Blue

TITLE

President, Technical Director

DATE

BY

TITLE

DATE

# EXHIBIT A - 1

## Expansion Premises

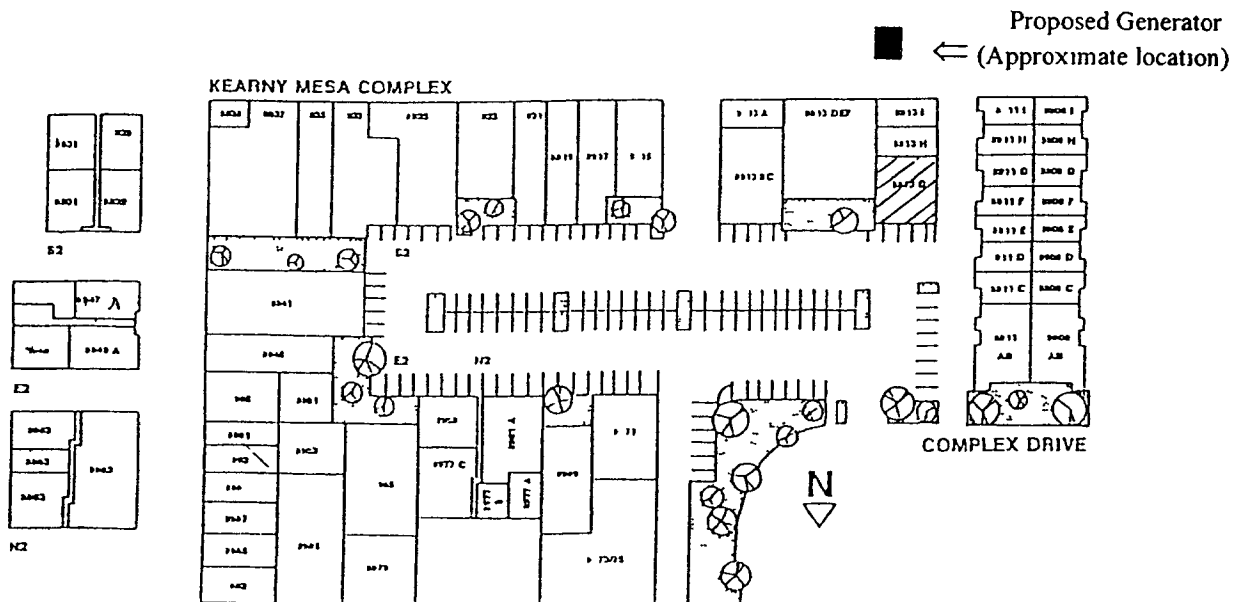
### KEARNEY MESA COMPLEX

San Diego, California

Address 8913 Complex Drive, Suite G

Totaling 2 375 Square Feet

This plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit, in whole or in part, any structures, and/or improvements, and/or common areas, and/or land areas shown on this plan. All measurements and distances are approximate. This plan is not to be scaled.



## ELEVENTH AMENDMENT TO LEASE

This Eleventh Amendment to Lease ("Amendment") dated effective as of November 1, 2000 (the "Effective Date") is by and between **KM COMPLEX, L.P.**, a California limited partnership (successor-in-interest to **RREEF West-V, Inc.**, a Delaware corporation) ("Lessor"), and **CTSnet, INC** (formerly known as **CTS ACQUISITION, INC.**), a Delaware corporation ("Lessee"), and is entered into with reference to the recitals set forth below

### RECITALS

A. **RREEF West-V, Inc** (predecessor-in-interest to Lessor) and **CTS Network Services**, a division of **Datel Systems, Inc**, a California corporation (predecessor-in-interest to Lessee) entered into that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated October 4 1995, that certain First Amendment to Lease dated January 10, 1996, that certain Second Amendment to Lease dated August 1, 1996, that certain Third Amendment to Lease dated September 18, 1996, and Lessor and CTS Network Services entered into that certain Fourth Amendment to Lease dated April 9, 1998, that certain Fifth Amendment to Lease dated July 13, 1998, that certain Sixth Amendment to Lease dated February 9, 1999, that certain Seventh Amendment to Lease dated May 21, 1999, that certain Eighth Amendment to the Lease dated September 13, 1999, that certain Ninth Amendment to Lease dated February 10, 2000, and that certain Tenth Amendment to Lease dated May 16, 2000 (collectively, the "Lease") pursuant to which Lessor is leasing to Lessee, and Lessee is leasing from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, G and I and 8909 Complex Drive, Suites A, B and C, San Diego, California 92123 (the "Premises"), and further described as 16,988 square feet.

B Lessee is an indirectly, wholly owned subsidiary of **Allegiance Telecom, Inc**, a Delaware corporation ("Allegiance")

C Allegiance is the "Guarantor" of the Lease pursuant to that certain Guaranty of Lease dated October 25, 2000 ("Guaranty of Lease")

D The parties desire to amend the terms and conditions of the Lease to incorporate Suite H ("Expansion Premises"), consisting of approximately 1112 square feet, in the building located at 8911 Complex Drive, which is a portion of the building located at 8909-8993 Complex Drive, San Diego, California 92123 (the "Building"), as depicted on Exhibit "A-1" attached hereto and incorporated herein, into the Premises and extend the Term, on the terms and conditions set forth below

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below

### AGREEMENT

1. **Contingency** This Amendment shall not be effective until the Guarantor has executed the acknowledgment attached hereto and incorporated herein
2. **Defined Terms.** Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease
3. **As-Is Condition.** Lessee acknowledges and agrees that the Expansion Premises shall be delivered to Lessee in their "as-is, where-is" condition without any representations and/or warranties by Lessor and that any modifications that Lessee desires to make to the Expansion Premises shall be subject to the terms of the Lease, including, without limitation, Lessor's approval rights. Lessor represents that the HVAC and Building systems serving the Expansion Premises are operational on the Effective Date and that Lessor has not received any notice of building code violations with regard to the Expansion Premises

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4. **Modification of Lease Terms.** Lessor's consent to this Amendment is conditioned on Lessee agreeing to the following modifications to the Lease, and the Lease shall be deemed to be so amended

4.1 **Term.** The Term of the Lease for the Expansion Premises and the Premises shall terminate on October 31, 2005

4.2 **Rent Schedule - Expansion Premises** The monthly installment of Base Rent for the Expansion Premises ("Expansion Premises Rent") shall be One and 35/100 Dollars (\$1.35) per rentable square foot for the first year the Expansion Premises are subject to the terms and conditions of the Lease, and increased at a rate of five percent (5%) per annum thereafter in accordance with the following schedule

<u>Period</u>	<u>Expansion Premises Monthly Base Rent</u>
Year 1	\$1,501.20
Year 2	\$1,576.26
Year 3	\$1,655.07
Year 4	\$1,737.83
Year 5	\$1,824.72

4.3 **Rent Schedule.** The Lease is hereby amended so that the monthly installment of Base Rent for the remaining term shall include the Expansion Premises Rent, and shall be as set forth in the following Schedule of Monthly Base Rent.

<u>Lease Dates</u>	<u>Monthly Base Rent</u>
11/1/00 - 3/31/01	\$21,235.95
4/1/01 - 5/31/01	\$21,296.67
6/1/01 - 7/31/01	\$21,481.05
8/1/01 - 10/31/01	\$22,183.07
11/1/01 - 3/31/02	\$22,311.83
4/1/02 - 5/31/02	\$22,375.59
6/1/02 - 7/31/02	\$22,569.18
8/1/02 - 10/31/02	\$23,298.20
11/1/02 - 3/31/03	\$23,433.41
4/1/03 - 5/31/03	\$23,500.35
6/1/03 - 7/31/03	\$23,703.63
8/1/03 - 10/31/03	\$24,460.35
11/1/03 - 3/31/04	\$24,602.31
4/1/04 - 5/31/04	\$24,672.60
6/1/04 - 10/31/04	\$25,683.36
11/1/04 - 3/31/05	\$26,669.62
4/1/05 - 5/31/05	\$27,687.75
6/1/05 - 10/31/05	\$29,685.04

4.4 **Premises.** The Lease is hereby revised to include the Expansion Premises in the definition of "Premises." All of Lessee's obligations pursuant to the terms and conditions of the Lease shall apply to the Expansion Premises in the same manner, effect, and enforceability as they apply to the initial Premises, as expanded pursuant to the amendments set forth in Recital A above. The total rentable square footage of the Premises is 18,100 square feet.

4.5 **Lessee's Share of Operating Expense Increases.** Lessee's Share of Common Area Operating Expenses for the Building is currently eleven and 37/100 percent (11.37%), and following the incorporation of the Expansion Premises shall be Twelve percent (12%). Lessor shall have the right to adjust Lessee's Share of Common Area Operating Expenses based upon any increases or decreases of allocations of square footage for other lessees within the Building or expansions of the Building.

**4.6 Delivery of Expansion Premises.** Lessor anticipates that the Expansion Premises will be available to Lessee on or around November 1, 2000. In the event Lessor does not deliver possession of the Expansion Premises by November 1, 2000, Lessor shall not be deemed in breach or default hereunder or under the terms and conditions of the Lease, or the obligations thereunder, nor shall Lessor be subject to any liability therefore, nor shall such failure affect the validity of the Lease or this Amendment, or the obligations of Lessee under the Lease or this Amendment, or extend the Term, but in such case, Lessee shall not be obligated to pay the Base Rent for the Expansion Premises or Lessee's Share of Operating Expenses for the Expansion Premises until possession of the Expansion Premises is delivered to Lessee. In the event Lessor has not delivered possession of the Expansion Premises on or before November 30, 2000, Lessee shall have the right to terminate this Amendment by written notice to Lessor prior to the date of actual delivery of the Premises by Lessor to Lessee.

**4.7 Security Deposit.** Article 17 of the Lease, Article 6 of the Third Amendment, Article 6 of the Fifth Amendment, Article 5 of the Seventh Amendment, Article 5 of the Eighth Amendment, Article 5 of the Ninth Amendment, and Article 5 of the Tenth Amendment to Lease shall be revised to increase the Security Deposit as defined therein. Lessor acknowledges that Lessee currently has on account \$22,418.91 which Lessee agrees to increase by \$1,824.72 upon execution of this Amendment so that the Security Deposit shall equal \$24,243.63. Lessee shall deliver to Lessor a check in the amount of \$1,824.72 with the executed copy of this Amendment.

**4.8 Default of Guarantor.** In the event of the occurrence of any of the following (i) if any material portion of Guarantor's assets are seized, attached, subjected to a writ, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated or dismissed within thirty (30) days thereafter; (ii) if a petition under any state or federal bankruptcy or insolvency law or statute or any similar law or regulation shall be filed by Guarantor, or if Guarantor shall make an assignment for the benefit of creditors; (iii) if Guarantor is enjoined, restrained or any way prevented by court order from conducting all or any material part of Guarantor's obligations under the Guaranty under any section or chapter of any state or federal bankruptcy or insolvency law or statute or any similar law or regulation is filed against Guarantor or if any case or proceeding is filed against Guarantor for liquidation of Guarantor's assets and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or the filing thereof; (iv) if an application is made by the Guarantor for the appointment of a receiver, trustee, conservator or custodian for all or a material portion of Guarantor's assets; (v) if an application is made by any person other than Guarantor for the appointment of a receiver, trustee, custodian or conservator for all or a material portion of Guarantor's assets and the same is not dismissed within ninety (90) days after the application therefor; (vi) if a notice of lien, levy or assessment is filed of record with respect to all or a majority of Guarantor's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon all or a material portion of Guarantor's assets; or (vii) if any representation or warranty of the Guarantor made in Section 11 of the Guaranty of Lease shall be false in any material respect as of the effective date and/or execution date of the Guaranty of Lease, then Lessee shall obtain the commitment of an additional guarantor ("Additional Guarantor") for the obligations set forth in the Guaranty of Lease and such Additional Guarantor shall execute a guaranty that is substantially and materially similar in form and substance to the Guaranty of Lease, and which shall create joint and several liability between the Additional Guarantor and the Guarantor. In the event Lessor has not received from Lessee a copy of such additional guaranty, executed by the Additional Guarantor, within thirty (30) days of the occurrence of any of the preceding events, Lessee shall be in breach of the Lease, and Lessor shall be entitled to exercise all of its remedies as set forth in Section 13.2 of the Lease. This provision shall not release Guarantor from its obligations under the Guaranty of Lease, except to the extent such obligations have been satisfied by the Additional Guarantor. The Guarantor is not a third party beneficiary of this Amendment.

## **5 Miscellaneous Provisions.**

**5.1 Attorneys' Fees and Costs.** If any litigation, arbitration or other proceeding occurs between the parties arising from or relating to this Amendment, the prevailing party or parties in such matter shall be entitled to recover from the Lessor or parties all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

**5.2 Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, assigns, and successors

**5.3 Governing Law** This Amendment shall be governed by, construed, and enforced in accordance with the internal laws of the State of California. The parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding this Agreement. In mutual recognition of the fact that this Amendment is to be performed in San Diego County, California, the parties agree that in the event of any civil action is commenced regarding this Amendment, San Diego County, California, is the only proper county for the commencement and trial of such action

**5.4 Severability** If any part of this Amendment is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Amendment and shall in no way affect any other portion hereof

**5.5 Counterparts** This Amendment may be executed in counterparts, which, when taken together, shall constitute one fully executed original. Facsimile signatures shall be treated and have the same effect as original signatures

**5.6 Knowing and Voluntary Execution** The parties each represent that they have carefully read this Amendment and know the contents hereof and that they sign the same freely and voluntarily. The parties each further represent that each person executing this Amendment has the full and complete authority to bind any entity, corporation, joint venture, or partnership for which the person has executed the Amendment. The parties and their counsel have reviewed and revised this Amendment, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be used in interpreting this Amendment

**5.7 Indemnification** In the event of a breach of this Amendment by any party ("Breaching Party"), the Breaching Party agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to the other party) and hold harmless the other party and the other party's Released Parties from and against all losses, damage, liabilities, costs and expenses, including reasonable attorney's fees and costs, which the other may incur as the result of the breach of this Amendment by the Breaching Party.

**5.8 Brokers** Each party represents and warrants to the other that it has not dealt with any broker, finder or other party, whether or not licensed, who may be entitled to a commission, finder's fee or similar payment, and hereby indemnifies, protects, defends (with legal counsel acceptable to the other party) and holds the other party free and harmless from and against any and all costs and liabilities, including, without limitation, reasonable attorneys' fees, for causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of such party in connection with this transaction

**5.9 Entire Amendment Modification** This Amendment constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the parties relating to the subject matter hereof. The terms of this Amendment can only be amended or modified by a writing, signed by duly authorized representatives of all parties hereto, expressly stating that such modification or amendment is intended.

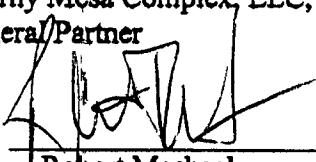
**5.10 Effectiveness of Lease.** Except as set forth in this Eleventh Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect with respect to the Premises as redefined herein.

**IN WITNESS WHEREOF,** Lessor and Lessee have executed this Amendment on the day and year first above written

By execution hereof, each signatory certifies that this document has been approved by the party for which he/she is signing, and that he/she is duly authorized to execute this document on behalf of such party

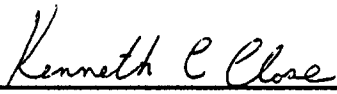
**LESSOR:**


**KM COMPLEX, L.P.,**  
a California limited partnership

By Kearny Mesa Complex, LLC,  
Its General Partner  
By   
Robert Mashaal  
Manager

**LESSEE:**

**CTSnet, INC.,** a Delaware corporation

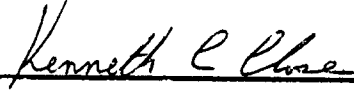
By   
Name Kenneth C. Close  
Vice President  
Real Estate & Facilities  
Title

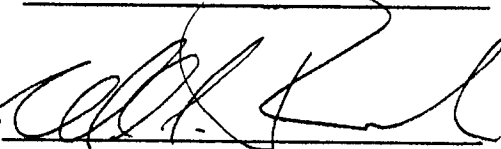
By   
Name Mark B. Tresnowski  
Senior Vice President General  
Counsel and Secretary  
Title

**ACKNOWLEDGEMENT AND CONSENT**

Allegiance Telecom, Inc., a Delaware corporation and Guarantor of the Lease, acknowledges and consents to the terms and conditions of the foregoing Eleventh Amendment to Lease dated November 1, 2000 and agrees that Guarantor's obligations pursuant to that certain Guaranty of Lease dated November 1, 2000 by Allegiance Telecom, Inc. shall include Lessee's obligations as set forth in this Amendment.

**ALLEGIANCE TELECOM, INC.,** a  
Delaware corporation

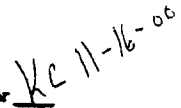
By   
Name Kenneth C. Close  
Vice President  
Real Estate & Facilities  
Title

By   
Name Mark B. Tresnowski  
Senior Vice President General  
Counsel and Secretary  
Title

1561241 6

Yale Properties USA/CTS Network Services  
Eleventh Amendment to Lease  
28571-9/1561241 v6

Page 5 of 5

Lessor   
Lessee

# EXHIBIT A-1

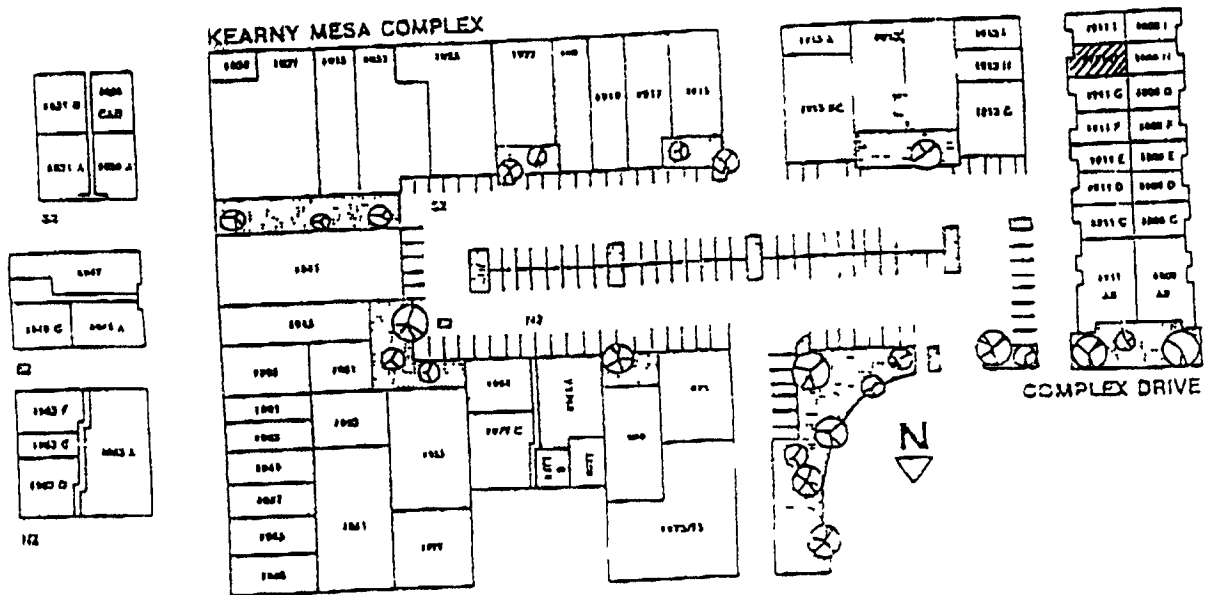
## Expansion Premises

**KEARNY MESA COMPLEX**  
San Diego, California

Address 8911 Complex Drive, Suite H

Totaling 1,112 Square Feet

This plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit, in whole or in part, any structures, and/or improvements, and/or common areas, and/or land areas shown on this plan. All measurements and distances are approximate. This plan is not to be scaled.



**CONSENT TO  
ASSIGNMENT AND ASSUMPTION OF LEASE**

KM Complex, L P , a California corporation, ("Lessor") hereby consents ("Consent") to the assignment to CTSnet, Inc , a Delaware corporation ("Assignee"), an indirectly, wholly owned subsidiary of Allegiance Telecom, Inc , a Delaware corporation ("Allegiance"), of that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated October 4, 1995 between RREEF West-V, Inc , a Delaware corporation, as predecessor-in-interest to Lessor, that certain First Amendment to Lease dated January 10, 1996, that certain Second Amendment to Lease dated August 1, 1996, that certain Third Amendment to Lease dated September 18, 1996, and Lessor and Lessee entered into that certain Fourth Amendment to Lease dated April 9, 1998, that certain Fifth Amendment to Lease dated July 13, 1998, that certain Sixth Amendment to Lease dated February 9, 1999, that certain Seventh Amendment to Lease dated May 21, 1999, that certain Eighth Amendment to the Lease dated September 13, 1999, that certain Ninth Amendment to Lease dated February 10, 2000, and that certain Tenth Amendment to Lease dated May 16, 2000 (collectively, the "Lease") pursuant to which Lessor is leasing to Lessee, and Lessee is leasing from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, G and I and 8909 Complex Drive, Suites A, B and C, San Diego, California 92123 (the "Premises"), and further described as 16,988 square feet (the "Lease") between Lessor and CTS Network Services, a division of Datel Systems, Inc , a California corporation ("Assignor"), said assignment to be evidenced by a written agreement in a form substantially identical to the "Assumption Agreement" attached hereto as Exhibit A (the "Assignment")

Lessor hereby consents to the assignment to Assignee of all of the duties of performance under the Lease by and between Lessor and Assignor, and, so long as all such obligations have been assumed by Assignee pursuant to the Assignment, hereby releases Assignor from its obligations pursuant to the Lease and agrees to look solely to Assignee, and to Guarantor pursuant to the Guaranty of Lease as defined below, for performance of all claims, obligations and duties arising from or relating to the Lease

This Consent shall replace and be substituted for that certain Consent to Assignment and Assumption of Lease dated October 25, 2000, by Lessor, which is hereby deleted, voided, and shall have no legal effect

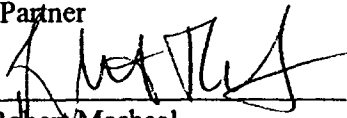
**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

This Consent shall be contingent upon Lessor's receipt of a Guaranty of Lease ("Guaranty of Lease") executed by Allegiance Telecom, Inc , a Delaware corporation, guarantying Assignee's performance under the Lease, which shall be in the form attached hereto as Exhibit "B" The Assignment shall not be effective without Lessor's receipt of such Guaranty of Lease

**LESSOR**

**KM COMPLEX, L P ,**  
a California limited partnership

By Kearny Mesa Complex, LLC,  
Its General Partner

By   
Robert Mashaal  
Manager

Dated November 17 , 2000

## EXHIBIT "A"

**ASSUMPTION AGREEMENT**

THIS ASSUMPTION AGREEMENT is dated as of this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between CTS Acquisition, Inc., a Delaware corporation ("Buyer") and Datel Systems Incorporated, a California corporation ("Seller")

WHEREAS, pursuant to an Asset Purchase Agreement dated as of October 18, 2000 (the "Asset Purchase Agreement") by and between Seller, Buyer and certain other parties, Seller has agreed to convey, transfer and assign to Buyer the Acquired Assets as defined in Section 2.1 of the Asset Purchase Agreement

WHEREAS, pursuant to the Asset Purchase Agreement, Buyer has agreed to assume only certain liabilities of the Seller, and the parties desire to execute and deliver this Assumption Agreement for the purpose of effecting Buyer's assumption of the Assumed Liabilities pursuant to Section 2.3 of the Asset Purchase Agreement

WHEREAS, capitalized terms used and not defined herein which are defined in the Asset Purchase Agreement shall have the same meaning ascribed in the Asset Purchase Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows

1 **Assumption of Liabilities** Buyer hereby assumes, and agrees to perform and pay and discharge the Assumed Liabilities

2 **Liabilities Not Assumed** Buyer does not assume, agree to pay, perform or discharge any of the Excluded Liabilities

3 **The Asset Purchase Agreement** Nothing contained in this Assumption Agreement shall be deemed to supersede any of the obligations, agreements, covenants or warranties of any of the parties contained in the Asset Purchase Agreement.

4 **Incorporation of Certain Provisions** The provisions of Sections 7.7(d) through 7.7(m) and Sections 7.7(o) through 7.7(s) of the Asset Purchase Agreement are hereby incorporated herein by this reference as if fully stated herein.

\* \* \* \* \*



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

CTS ACQUISITION, INC.

By 

Name Mark B Tresnowski

Title Senior Vice President & Secretary

DATTEL SYSTEMS INCORPORATED

By \_\_\_\_\_

Name

Title

11/07/00 12 10 FAX 708 3 5250  
10/25/00 WED 12 39 FAX J 232 9316

ALLEGIANCE LEGAL DEF  
FERRIS & BRITTON

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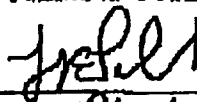
121621

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

**CTS ACQUISITION, INC.**

By. \_\_\_\_\_  
Name: Mark B. Tresnowski  
Title: Senior Vice President & Secretary

**DATTEL SYSTEMS INCORPORATED**

By.  \_\_\_\_\_  
Name: Larry E. Blund  
Title: Vice President

## TWELFTH AMENDMENT TO LEASE

This Twelfth Amendment to Lease ("Amendment") dated effective as of November 1, 2000 (the "Effective Date") is by and between **KM COMPLEX, L.P.**, a California limited partnership (successor-in-interest to RREEF West-V, Inc., a Delaware corporation) ("Lessor"), and **CTSnet, INC.** (formerly known as **CTS ACQUISITION, INC.**), a Delaware corporation ("Lessee"), and is entered into with reference to the recitals set forth below

### RECITALS

A RREEF West-V, Inc (predecessor-in-interest to Lessor) and CTS Network Services, a division of Datel Systems, Inc., a California corporation (predecessor-in-interest to Lessee) entered into that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated October 4, 1995, that certain First Amendment to Lease dated January 10, 1996, that certain Second Amendment to Lease dated August 1, 1996, that certain Third Amendment to Lease dated September 18, 1996, and Lessor and CTS Network Services entered into that certain Fourth Amendment to Lease dated April 9, 1998, that certain Fifth Amendment to Lease dated July 13, 1998, that certain Sixth Amendment to Lease dated February 9, 1999, that certain Seventh Amendment to Lease dated May 21, 1999, that certain Eighth Amendment to the Lease dated September 13, 1999, that certain Ninth Amendment to Lease dated February 10, 2000, that certain Tenth Amendment to Lease dated May 16, 2000, and Lessor and Lessee entered into that certain Eleventh Amendment to Lease dated October 27, 2000 (collectively, the "Lease") pursuant to which Lessor is leasing to Lessee, and Lessee is leasing from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, G and I, 8909 Complex Drive, Suites A, B and C, and 8911 Complex Drive, Suite H San Diego, California 92123 (the "Premises") and further described as 18 100 square feet

B Lessee is an indirectly wholly owned subsidiary of Allegiance Telecom, Inc., a Delaware corporation ("Allegiance")

C Allegiance is the "Guarantor" of the Lease pursuant to that certain Guaranty of Lease dated October 25, 2000 ("Guaranty of Lease")

D The parties desire to amend the terms and conditions of the Lease to incorporate approximately 9278 square feet, in the building located at 8967, 8969, 8971, and 8977A Complex Drive ("Expansion Premises"), which is a portion of the building located at 8909-8993 Complex Drive, San Diego, California 92123 (the "Building"), as depicted on Exhibit "A-1" attached hereto and incorporated herein, into the Premises and extend the Term, on the terms and conditions set forth below

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below

### AGREEMENT

1. **Contingency** This Amendment shall not be effective until the Guarantor has executed the acknowledgment attached hereto and incorporated herein.
2. **Defined Terms.** Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease
3. **As-Is Condition.** Lessee acknowledges and agrees that the Expansion Premises shall be delivered to Lessee in their "as-is, where-is" condition without any representations and/or warranties by Lessor and that any modifications that Lessee desires to make to the Expansion Premises shall be subject to the terms of the Lease, including, without limitation, Lessor's approval rights. Lessor represents that the HVAC and Building systems serving the Expansion Premises are operational on the Effective Date and that Lessor has not received any notice of building code violations with regard to the Expansion Premises

4. **Modification of Lease Terms.** Lessor's consent to this Amendment is conditioned on Lessee agreeing to the following modifications to the Lease, and the Lease shall be deemed to be so amended.

4.1 **Term.** The Term of the Lease for the Expansion Premises and the Premises shall terminate on October 31, 2005

4.2 **Rent Schedule - Expansion Premises** The monthly installment of Base Rent for the Expansion Premises ("Expansion Premises Rent") shall be One and 50/100 Dollars (\$1 50) per rentable square foot for the first year the Expansion Premises are subject to the terms and conditions of the Lease, and increased at a rate of five percent (5%) per annum thereafter in accordance with the following schedule

Period	Expansion Premises	Expansion Premises
	Monthly Base Rent	Per Square Foot Monthly Base Rent
Year 1	\$13,917 00	\$1 50
Year 2	\$14,612 85	\$1 58
Year 3	\$15,343 49	\$1 65
Year 4	\$16,110 67	\$1 74
Year 5	\$16,916 20	\$1 82

4.3 **Rent Schedule.** The Lease is hereby amended so that the monthly installment of Base Rent for the remaining term shall include the Expansion Premises Rent, and shall be as set forth in the following Schedule of Monthly Base Rent

Lease Dates	Total Monthly Rent
11/1/00 - 3/31/01	\$35,152 95
4/1/01 - 5/31/01	\$35,213.67
6/1/01 - 7/31/01	\$35,398 05
8/1/01 - 10/31/01	\$36,100 07
11/1/01 - 3/31/02	\$36,924 68
4/1/02 - 5/31/02	\$36,988.44
6/1/02 - 7/31/02	\$37,182 03
8/1/02 - 10/31/02	\$37,911 05
11/1/02 - 3/31/03	\$38,776 90
4/1/03 - 5/31/03	\$38,843 84
6/1/03 - 7/31/03	\$39,047 12
8/1/03 - 10/31/03	\$39,803 84
11/1/03 - 3/31/04	\$40,712 98
4/1/04 - 5/31/04	\$40,783 27
6/1/04 - 10/31/04	\$41,794 03
11/1/04 - 3/31/05	\$43,585 82
4/1/05 - 5/31/05	\$44,603 95
6/1/05 - 10/31/05	\$46,601 24

4.4 **Premises.** The Lease is hereby revised to include the Expansion Premises in the definition of "Premises." All of Lessee's obligations pursuant to the terms and conditions of the Lease shall apply to the Expansion Premises in the same manner, effect, and enforceability as they apply to the initial Premises, as expanded pursuant to the amendments set forth in Recital A above. The total rentable square footage of the Premises is 27,378 square feet.

4.5 **Lessee's Share of Operating Expense Increases.** Lessee's Share of Common Area Operating Expenses for the Building is currently Twelve percent (12 00%), and following the incorporation of the Expansion Premises shall be Eighteen and 16/100 percent (18 16%) Lessor shall have the right to adjust Lessee's Share of Common Area Operating Expenses based upon any increases or decreases of allocations of other lessee's square footage within the Building, or expansions of the Building

**4.6 Delivery of Expansion Premises.** Lessor anticipates that the Expansion Premises will be available to Lessee on or around November 1, 2000. In the event Lessor does not deliver possession of the Expansion Premises by November 1, 2000, Lessor shall not be deemed in breach or default hereunder or under the terms and conditions of the Lease, or the obligations thereunder, nor shall Lessor be subject to any liability therefore, nor shall such failure affect the validity of the Lease or this Amendment, or the obligations of Lessee under the Lease or this Amendment, or extend the Term, but in such case, Lessee shall not be obligated to pay the Base Rent for the Expansion Premises or Lessee's Share of Operating Expenses for the Expansion Premises until possession of the Expansion Premises is delivered to Lessee. In the event Lessor has not delivered possession of the Expansion Premises on or before November 30, 2000, Lessee shall have the right to terminate this Amendment by written notice to Lessor prior to the date of actual delivery of the Premises by Lessor to Lessee.

**4.7 Security Deposit.** Article 17 of the Lease, Article 6 of the Third Amendment, Article 6 of the Fifth Amendment, Article 5 of the Seventh Amendment, Article 5 of the Eighth Amendment, Article 5 of the Ninth Amendment, and Article 5 of the Tenth Amendment, Article 4 of the Eleventh Amendment to Lease shall be revised to increase the Security Deposit as defined therein. Lessor acknowledges that Lessee currently has on account Twenty Four Thousand Two Hundred Forty-Three and 63/100 Dollars (\$24,243.63) which Lessee agrees to increase by Sixteen Thousand Nine Hundred Sixteen and 20/100 Dollars (\$16,916.20) upon execution of this Amendment so that the Security Deposit shall equal Forty One Thousand One Hundred Fifty-Nine and 83/100 Dollars (\$41,159.83). Lessee shall deliver to Lessor a check in the amount of \$16,916.20 with the executed copy of this Amendment.

**4.8 Default of Guarantor.** In the event of the occurrence of any of the following (i) if any material portion of Guarantor's assets are seized, attached, subjected to a writ, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated or dismissed within thirty (30) days thereafter; (ii) if a petition under any state or federal bankruptcy or insolvency law or statute or any similar law or regulation shall be filed by Guarantor, or if Guarantor shall make an assignment for the benefit of creditors; (iii) if Guarantor is enjoined, restrained or any way prevented by court order from conducting all or any material part of Guarantor's obligations under the Guaranty under any section or chapter of any state or federal bankruptcy or insolvency law or statute or any similar law or regulation is filed against Guarantor or if any case or proceeding is filed against Guarantor for liquidation of Guarantor's assets and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or the filing thereof; (iv) if an application is made by the Guarantor for the appointment of a receiver, trustee, conservator or custodian for all or a material portion of Guarantor's assets; (v) if an application is made by any person other than Guarantor for the appointment of a receiver, trustee, custodian or conservator for all or a material portion of Guarantor's assets and the same is not dismissed within ninety (90) days after the application therefor; (vi) if a notice of lien, levy or assessment is filed of record with respect to all or a majority of Guarantor's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon all or a material portion of Guarantor's assets; or (vii) if any representation or warranty of the Guarantor made in Section 11 of the Guaranty of Lease shall be false in any material respect as of the effective date and/or execution date of the Guaranty of Lease, then Lessee shall obtain the commitment of an additional guarantor ("Additional Guarantor") for the obligations set forth in the Guaranty of Lease and such Additional Guarantor shall execute a guaranty that is substantially and materially similar in form and substance to the Guaranty of Lease, and which shall create joint and several liability between the Additional Guarantor and the Guarantor. In the event Lessor has not received from Lessee a copy of such additional guaranty, executed by the Additional Guarantor, within thirty (30) days of the occurrence of any of the preceding events, Lessee shall be in breach of the Lease, and Lessor shall be entitled to exercise all of its remedies as set forth in Section 13.2 of the Lease. This provision shall not release Guarantor from its obligations under the Guaranty of Lease, except to the extent such obligations have been satisfied by the Additional Guarantor. The Guarantor is not a third party beneficiary of this Amendment.

## **5. Miscellaneous Provisions.**

**5.1 Attorneys' Fees and Costs.** If any litigation, arbitration or other proceeding occurs between the parties arising from or relating to this Amendment, the prevailing party or

parties in such matter shall be entitled to recover from the Lessor or parties all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs

**5.2 Successors and Assigns** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, assigns, and successors

**5.3 Governing Law** This Amendment shall be governed by, construed, and enforced in accordance with the internal laws of the State of California. The parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding this Agreement. In mutual recognition of the fact that this Amendment is to be performed in San Diego County, California, the parties agree that in the event of any civil action is commenced regarding this Amendment, San Diego County, California, is the only proper county for the commencement and trial of such action

**5.4 Severability** If any part of this Amendment is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Amendment and shall in no way affect any other portion hereof

**5.5 Counterparts** This Amendment may be executed in counterparts, which, when taken together, shall constitute one fully executed original. Facsimile signatures shall be treated and have the same effect as original signatures

**5.6 Knowing and Voluntary Execution** The parties each represent that they have carefully read this Amendment and know the contents hereof and that they sign the same freely and voluntarily. The parties each further represent that each person executing this Amendment has the full and complete authority to bind any entity, corporation, joint venture, or partnership for which the person has executed the Amendment. The parties and their counsel have reviewed and revised this Amendment, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be used in interpreting this Amendment.

**5.7 Indemnification** In the event of a breach of this Amendment by any party ("Breaching Party"), the Breaching Party agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to the other party) and hold harmless the other party and the other party's Released Parties from and against all losses, damage, liabilities, costs and expenses, including reasonable attorney's fees and costs, which the other may incur as the result of the breach of this Amendment by the Breaching Party

**5.8 Brokers** Each party represents and warrants to the other that it has not dealt with any broker, finder or other party, whether or not licensed, who may be entitled to a commission, finder's fee or similar payment, and hereby indemnifies, protects, defends (with legal counsel acceptable to the other party) and holds the other party free and harmless from and against any and all costs and liabilities, including, without limitation, reasonable attorneys' fees, for causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of such party in connection with this transaction

**5.9 Entire Amendment Modification** This Amendment constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the parties relating to the subject matter hereof. The terms of this Amendment can only be amended or modified by a writing, signed by duly authorized representatives of all parties hereto, expressly stating that such modification or amendment is intended.

**5.10 Effectiveness of Lease.** Except as set forth in this Twelfth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect with respect to the Premises as redefined herein

**IN WITNESS WHEREOF,** Lessor and Lessee have executed this Amendment on the day and year first above written.

By execution hereof, each signatory certifies that this document has been approved by the party for which he/she is signing, and that he/she is duly authorized to execute this document on behalf of such party

**LESSOR.**

**KM COMPLEX, L.P.,**  
a California limited partnership

By. Kearny Mesa Complex, LLC,  
Its General Partner

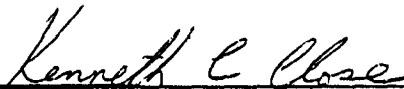
By

  
Robert Mashael  
Manager

**LESSEE:**

**CTSnet, INC.,** a Delaware corporation

By

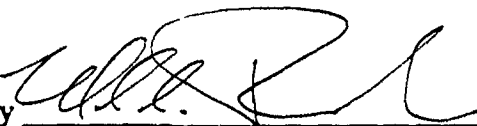


Name

Kenneth C. Clove  
Vice President  
Real Estate & Facilities

Title

By



Name

Mark B. Tresnowski  
Senior Vice President, General  
Counsel and Secretary

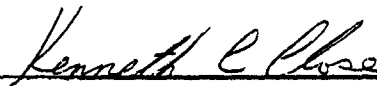
Title

**ACKNOWLEDGEMENT AND CONSENT**

Allegiance Telecom, Inc., a Delaware corporation and Guarantor of the Lease, acknowledges and consents to the terms and conditions of the foregoing Twelfth Amendment to Lease dated November 1, 2000, and agrees that Guarantor's obligations pursuant to that certain Guaranty of Lease dated November 1, 2000 by Allegiance Telecom, Inc. shall include Lessee's obligations as set forth in this Amendment

**ALLEGIANCE TELECOM, INC.,**  
a Delaware corporation

By

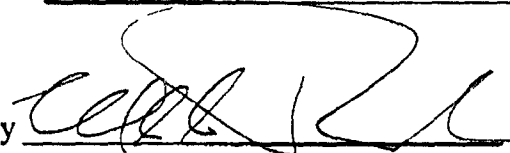


Name

Kenneth C. Clove  
Vice President  
Real Estate & Facilities

Title

By



Name

Mark B. Tresnowski  
Senior Vice President, General  
Counsel and Secretary

Title

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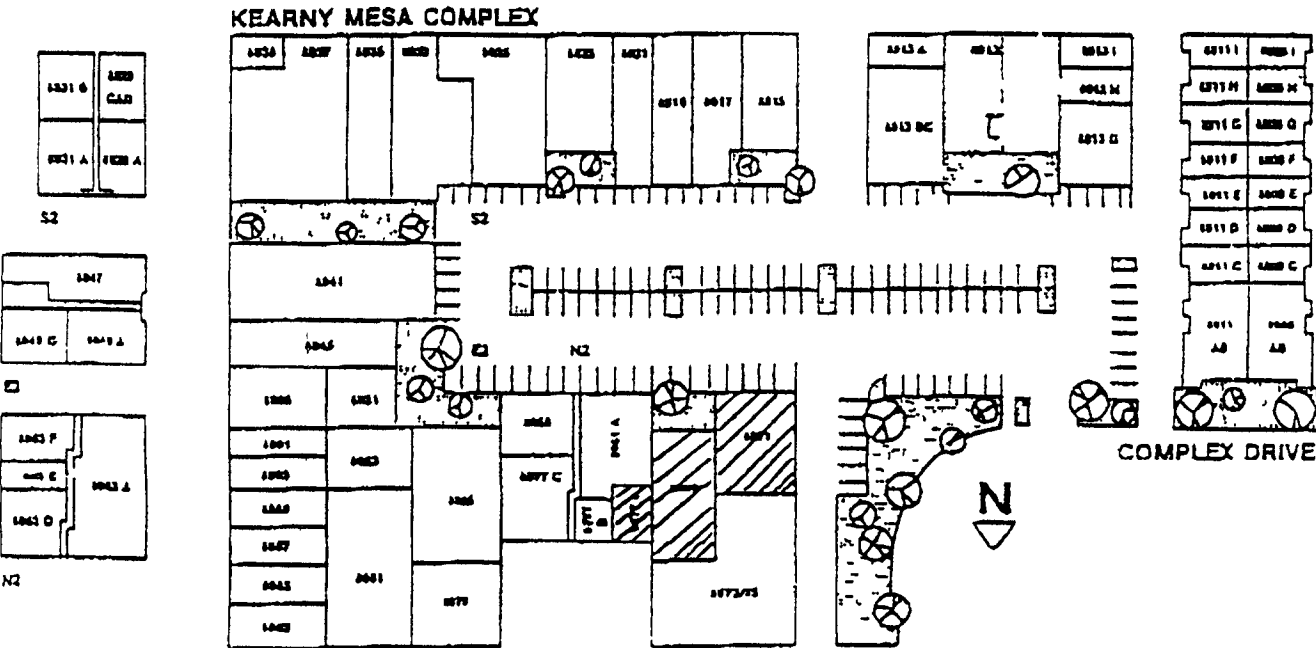
EXHIBIT A-1  
Expansion Premises

KEARNY MESA COMPLEX  
San Diego, California

Address: 8967, 8969, 8971, and 8977 Suite A Complex Drive

Totaling 9,278 Square Feet

This premises plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit, in whole or in part, any structures, and/or improvements, and/or common areas, and/or land areas shown on this plan. All measurements and distances are approximate. This plan is not to be scaled.





## THIRTEENTH AMENDMENT TO LEASE

This Thirteenth Amendment to Lease ("Amendment") dated effective as of March 1, 2001 (the "Effective Date") is by and between **KM COMPLEX, L.P.**, a California limited partnership (successor-in-interest to RREEF West-V, Inc, a Delaware corporation) ("Lessor"), and **CTSnet, INC.** (formerly known as **CTS ACQUISITION, INC**), a Delaware corporation ("Lessee"), and is entered into with reference to the recitals set forth below

### **RECITALS**

A RREEF West-V, Inc (predecessor-in-interest to Lessor) and CTS Network Services, a division of Datel Systems, Inc, a California corporation (predecessor-in-interest to Lessee) entered into that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated October 4, 1995, that certain First Amendment to Lease dated January 10, 1996, that certain Second Amendment to Lease dated August 1, 1996, that certain Third Amendment to Lease dated September 18, 1996, and Lessor and CTS Network Services entered into that certain Fourth Amendment to Lease dated April 9, 1998, that certain Fifth Amendment to Lease dated July 13, 1998, that certain Sixth Amendment to Lease dated February 9, 1999, that certain Seventh Amendment to Lease dated May 21, 1999, that certain Eighth Amendment to the Lease dated September 13, 1999, that certain Ninth Amendment to Lease dated February 10, 2000, that certain Tenth Amendment to Lease dated May 16, 2000, and Lessor and Lessee entered into that certain Eleventh Amendment to Lease dated October 27, 2000, and that certain Twelfth Amendment to lease dated November 1, 2000 (collectively, the "Lease") pursuant to which Lessor is leasing to Lessee, and Lessee is leasing from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, G and I, 8909 Complex Drive, Suites A, B and C, and 8911 Complex Drive, Suite H, and approximately 9278 square feet, in the portions of the Building located at 8967, 8969, 8971 and 8977A Complex Drive, San Diego, California 92123 (the "Premises"), and further described as 27,378 square feet

B Lessee is an indirectly wholly owned subsidiary of Allegiance Telecom, Inc, a Delaware corporation ("Allegiance")

C Allegiance is the "Guarantor" of the Lease pursuant to that certain Guaranty of Lease dated November 1, 2000 ("Guaranty of Lease")

D The parties desire to amend the terms and conditions of the Lease to incorporate approximately 1113 square feet in the portion of the Building located at 8909 Complex Drive, Suite D, San Diego, California 92123 ("Expansion Premises"), as depicted on Exhibit "A-1" attached hereto and incorporated herein, into the Premises on the terms and conditions set forth below

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below

### **AGREEMENT**

1. **Contingency** This Amendment shall not be effective until the Guarantor has executed the acknowledgment attached hereto and incorporated herein
2. **Defined Terms**. Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease
3. **As-Is Condition**. Lessee acknowledges and agrees that the Expansion Premises shall be delivered to Lessee in their "as-is, where-is" condition without any representations and/or warranties by Lessor and that any modifications that Lessee desires to make to the Expansion Premises shall be subject to the terms of the Lease, including, without limitation, Lessor's approval rights Lessor represents that the HVAC and Building systems serving the Expansion Premises are operational on the Effective Date and that Lessor has not received any notice of building code violations with regard to the Expansion Premises

4. **Modification of Lease Terms.** Lessor's consent to this Amendment is conditioned on Lessee agreeing to the following modifications to the Lease, and the Lease shall be deemed to be so amended

4.1 **Term.** The Term of the Lease for the Expansion Premises and the Premises shall terminate on October 31, 2005

4.2 **Rent Schedule – Expansion Premises** The monthly installment of Base Rent for the Expansion Premises ("Expansion Premises Rent") shall be One and 50/100 Dollars (\$1 50) per rentable square foot for the first year the Expansion Premises are subject to the terms and conditions of the Lease, and increased at a rate of five percent (5%) per annum thereafter in accordance with the following schedule

Period	<u>Expansion Premises</u>	<u>Expansion Premises</u>
	<u>Monthly Base Rent</u>	<u>Per Square Foot</u> <u>Monthly Base Rent</u>
Year 1	\$1,669 50	\$1 50
Year 2	\$1,752 98	\$1 58
Year 3	\$1,840 62	\$1 65
Year 4	\$1,932 65	\$1 74
Year 5	\$2,029 29	\$1 82

4.3 **Rent Schedule.** The Lease is hereby amended so that the monthly installment of Base Rent for the remaining term shall include the Expansion Premises Rent, and shall be as set forth in the following Schedule of Monthly Base Rent

Lease Dates	Total Monthly Rent
4/1/01 – 5/31/01	\$36,883 17
6/1/01 – 7/31/01	\$37,067 55
8/1/01 – 10/31/01	\$37,769 57
11/1/01 – 3/31/02	\$38,594 18
4/1/02 – 5/31/02	\$38,741 42
6/1/02 – 7/31/02	\$38,935 01
8/1/02 – 10/31/02	\$39,664 03
11/1/02 – 3/31/03	\$40,529 88
4/1/03 – 5/31/03	\$40,684 46
6/1/03 – 7/31/03	\$40,887 74
8/1/03 – 10/31/03	\$41,644 46
11/1/03 – 3/31/04	\$42,553 60
4/1/04 – 5/31/04	\$42,715 92
6/1/04 – 10/31/04	\$43,726 68
11/1/04 – 3/31/05	\$45,518 47
4/1/05 – 5/31/05	\$46,633 24
6/1/05 – 10/31/05	\$48,630 53

4.4 **Premises** The Lease is hereby revised to include the Expansion Premises in the definition of "Premises" All of Lessee's obligations pursuant to the terms and conditions of the Lease shall apply to the Expansion Premises in the same manner, effect, and enforceability as they apply to the initial Premises, as expanded pursuant to the amendments set forth in Recital A above The total rentable square footage of the Premises is 28,491 square feet

4.5 **Lessee's Share of Operating Expense Increases.** Lessee's Share of Common Area Operating Expenses for the Building is currently Eighteen and 16/100 percent (18 16%), and following the incorporation of the Expansion Premises shall be Eighteen and 90/100 percent (18 90%) Lessor shall have the right to adjust Lessee's Share of Common Area Operating Expenses based upon any increases or decreases of allocations of other lessee's square footage within the Building, or expansions of the Building

**4.6 Delivery of Expansion Premises.** Lessee acknowledges that the Expansion Premises is subject to the terms and conditions of an existing lease with a third party that is scheduled to terminate on March 31, 2001. Lessor anticipates that the Expansion Premises will be available to Lessee on or around April 1, 2001. Lessor shall use commercially reasonable efforts to deliver the Expansion Premises to Lessee within a commercially reasonable time following the termination of the existing lease. In the event Lessor does not deliver possession of the Expansion Premises to Lessee by April 1, 2001, Lessor shall not be deemed in breach or default hereunder or under the terms and conditions of the Lease or this Amendment, or the obligations thereunder, nor shall Lessor be subject to any liability therefore, nor shall such failure affect the validity of the Lease or this Amendment, or the obligations of Lessee under the Lease or this Amendment, or extend the Term, but in such case, Lessee shall not be obligated to pay the Base Rent for the Expansion Premises or Lessee's Share of Operating Expenses for the Expansion Premises until possession of the Expansion Premises is delivered to Lessee. In the event Lessor has not delivered possession of the Expansion Premises on or before August 1, 2001, Lessee shall have the right to terminate this Amendment by written notice to Lessor prior to the date of actual delivery of the Premises by Lessor to Lessee.

**4.7 Guarantor** The Guarantor is not a third party beneficiary of this Amendment.

## **5. Miscellaneous Provisions**

**5.1 Attorneys' Fees and Costs** If any litigation, arbitration or other proceeding occurs between the parties arising from or relating to this Amendment, the prevailing party or parties in such matter shall be entitled to recover from the Lessor or parties all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

**5.2 Successors and Assigns** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, assigns, and successors.

**5.3 Governing Law** This Amendment shall be governed by, construed, and enforced in accordance with the internal laws of the State of California. The parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding this Agreement. In mutual recognition of the fact that this Amendment is to be performed in San Diego County, California, the parties agree that in the event of any civil action commenced regarding this Amendment, San Diego County, California, is the only proper county for the commencement and trial of such action.

**5.4 Severability** If any part of this Amendment is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Amendment and shall in no way affect any other portion hereof.

**5.5 Counterparts** This Amendment may be executed in counterparts, which, when taken together, shall constitute one fully executed original. Facsimile signatures shall be treated and have the same effect as original signatures.

**5.6 Knowing and Voluntary Execution** The parties each represent that they have carefully read this Amendment and know the contents hereof and that they sign the same freely and voluntarily. The parties each further represent that each person executing this Amendment has the full and complete authority to bind any entity, corporation, joint venture, or partnership for which the person has executed the Amendment. The parties and their counsel have reviewed and revised this Amendment, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be used in interpreting this Amendment.

**5.7 Indemnification** In the event of a breach of this Amendment by any party ("Breaching Party"), the Breaching Party agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to the other party) and hold harmless the other party and the other party's Released Parties from and against all losses, damage, liabilities, costs and expenses, including reasonable attorney's fees and costs, which the other may incur as the result of the breach of this Amendment by the Breaching Party.

**5.8 Brokers** Each party represents and warrants to the other that it has not dealt with any broker, finder or other party, whether or not licensed, who may be entitled to a commission,

finder's fee or similar payment, and hereby indemnifies, protects, defends (with legal counsel acceptable to the other party) and holds the other party free and harmless from and against any and all costs and liabilities, including, without limitation, reasonable attorneys' fees, for causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of such party in connection with this transaction

**5.9    Entire Amendment Modification**    This Amendment constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the parties relating to the subject matter hereof. The terms of this Amendment can only be amended or modified by a writing, signed by duly authorized representatives of all parties hereto, expressly stating that such modification or amendment is intended

**5.10    Effectiveness of Lease**    Except as set forth in this Thirteenth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect with respect to the Premises as redefined herein

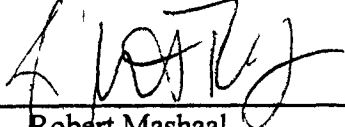
**IN WITNESS WHEREOF,** Lessor and Lessee have executed this Amendment on the day and year first above written

By execution hereof, each signatory certifies that this document has been approved by the party for which he/she is signing, and that he/she is duly authorized to execute this document on behalf of such party

**LESSOR:**

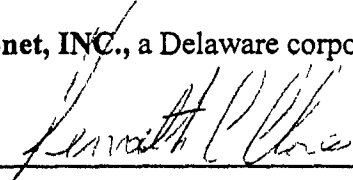
**KM COMPLEX, L.P.,**  
a California limited partnership

By    Kearny Mesa Complex, LLC,  
Its    General Partner


By   
Robert Mashaal  
Manager

**LESSEE**

**CTSnet, INC.,** a Delaware corporation

By   
Name    Kenneth C. Close  
          Vice President  
          Real Estate & Facilities

Title \_\_\_\_\_

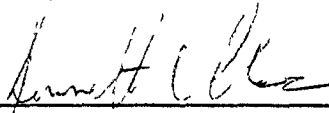
By   
Name    Mark B. Tresnowski  
          Senior Vice President, General  
          Counsel and Secretary

Title \_\_\_\_\_

**ACKNOWLEDGEMENT AND CONSENT**

Allegiance Telecom, Inc , a Delaware corporation and Guarantor of the Lease, acknowledges and consents to the terms and conditions of the foregoing Thirteenth Amendment to Lease dated March 1, 2001, and agrees that Guarantor's obligations pursuant to that certain Guaranty of Lease dated November 1, 2000 by Allegiance Telecom, Inc shall include Lessee's obligations as set forth in this Amendment

**ALLEGIANCE TELECOM, INC.,**  
a Delaware corporation

By   
Name                      Kenneth C. Close  
Vice President  
Real Estate & Facilities  
Title                     

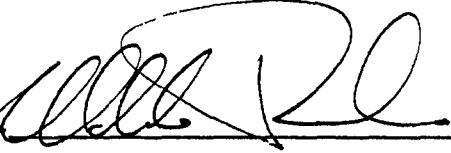
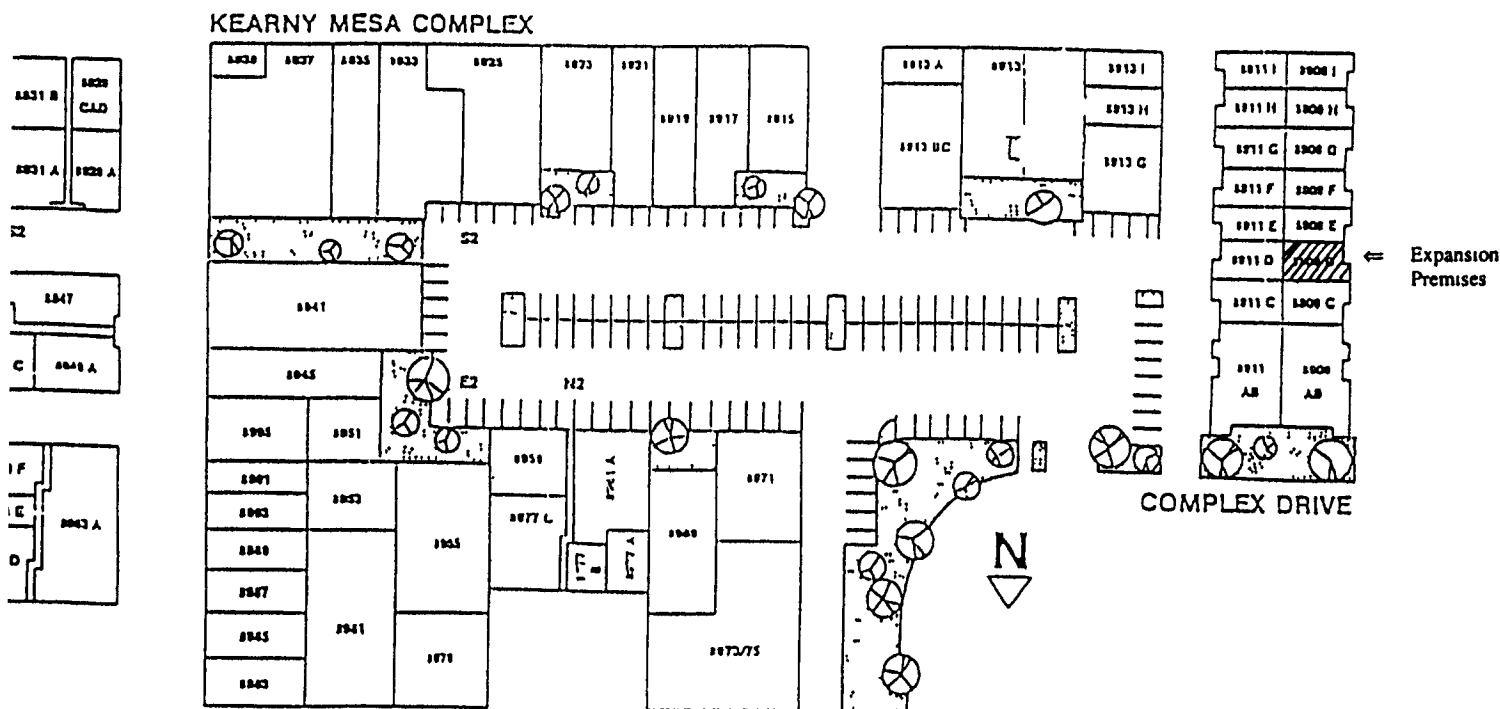
By   
Name                      Mark B. Tresnowski  
Senior Vice President, General  
Counsel and Secretary  
Title

EXHIBIT A-1  
EXPANSION PREMISES

Kearny Mesa Complex  
San Diego, California

Building Address 8909 Complex Drive, Suite D  
Rentable Square Footage 1,113

This premises plan is intended only to show the general layout of the property or a part thereof. Lessor reserves the right to alter, vary, add to or omit, in whole or in part, any structures, and/or improvements, and/or common areas, and/or land areas shown on this plan. All measurements and distances are approximate. This plan is not to be scaled.



## **FOURTEENTH AMENDMENT TO LEASE**

This Fourteenth Amendment to Lease ("Amendment") dated effective as of July 18, 2002 (the "Effective Date") is by and between **KM COMPLEX, L.P.**, a California limited partnership (successor-in-interest to RREEF West-V, Inc., a Delaware corporation) ("Lessor"), and **CTSnet, INC.** (formerly known as **CTS ACQUISITION, INC.**), a Delaware corporation ("Lessee"), and is entered into with reference to the recitals set forth below

### **RECITALS**

A RREEF West-V, Inc (predecessor-in-interest to Lessor) and CTS Network Services, a division of Datal Systems, Inc., a California corporation (predecessor-in-interest to Lessee) entered into that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated October 4, 1995, that certain First Amendment to Lease dated January 10, 1996, that certain Second Amendment to Lease dated August 1, 1996, that certain Third Amendment to Lease dated September 18, 1996, and Lessor and CTS Network Services entered into that certain Fourth Amendment to Lease dated April 9, 1998, that certain Fifth Amendment to Lease dated July 13, 1998, that certain Sixth Amendment to Lease dated February 9, 1999, that certain Seventh Amendment to Lease dated May 21, 1999, that certain Eighth Amendment to the Lease dated September 13, 1999, that certain Ninth Amendment to Lease dated February 10, 2000, that certain Tenth Amendment to Lease dated May 16, 2000, and Lessor and Lessee entered into that certain Eleventh Amendment to Lease dated October 27, 2000, that certain Twelfth Amendment to lease dated November 1, 2000, and that certain Thirteenth Amendment to Lease dated March 1, 2001 (collectively, the "Lease") pursuant to which Lessor is leasing to Lessee, and Lessee is leasing from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive, Suites B, C, D, E, F, G and I, 8909 Complex Drive, Suites A, B and C, and 8911 Complex Drive, Suite H, and approximately 9278 square feet, in the portions of the Building located at 8967, 8969, 8971 and 8977A Complex Drive, San Diego, California 92123 (the "Premises"), and further described as 28,491 square feet

B Lessee is an indirectly wholly owned subsidiary of Allegiance Telecom, Inc., a Delaware corporation ("Allegiance")

C Allegiance is the "Guarantor" of the Lease pursuant to that certain Guaranty of Lease dated November 1, 2000 ("Guaranty of Lease")

D The parties desire to amend the terms and conditions of the Lease to permit Lessee to interconnect with three (3) other tenants of the Building or Industrial Center through innerducts that may be installed on the terms and conditions set forth below


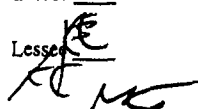
**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below

### **AGREEMENT**

1 **Contingency** This Amendment shall not be effective until the Guarantor has executed the acknowledgment attached hereto and incorporated herein

2 **Defined Terms.** Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease

3 **Modification of Lease Terms** Lessor's consent to this Amendment is conditioned on Lessee agreeing to the following modifications to the Lease, and the Lease shall be deemed to be so amended

Lessor   
Lessee 

3 1 **Rent Schedule.** The Lease is hereby amended so that the monthly installment of Base Rent for the remaining term shall include rent for the interconnection rights and innerduct right granted herein, and shall be as set forth in the following Schedule of Monthly Base Rent

Lease Dates	Total Monthly Rent
8/1/02 – 10/31/02	\$40,664 03
11/1/02 – 3/31/03	\$41,529 88
4/1/03 – 5/31/03	\$41,684 74
6/1/03 – 7/31/03	\$41,887 74
8/1/03 – 10/31/03	\$42,694 46
11/1/03 – 3/31/04	\$43,603 60
4/1/04 – 5/31/04	\$43,765 92
6/1/04 – 7/31/04	\$44,776 68
8/1/04 – 10/31/04	\$44,829 18
11/1/04 – 3/31/05	\$46,620 97
4/1/05– 5/31/05	\$47,735 74
6/1/05 – 7/31/05	\$49,733 03
8/1/05 – 10/31/05	\$49,788 15

3 2 **Interconnect Rights**

(a) Subject to the terms and conditions set forth in the Lease, as amended herein, including but not limited to the requirement in Section 3 2(b) below that Lessee utilize Lessor's facilities, Lessee shall have the right to provide dedicated point-to-point transmission capacity (the "Services") over cable facilities owned and operated by Lessee to other lessees of the Building Lessee shall provide prior written notice to Lessor of its intent to make any interconnection to any other lessee or occupant of the Building

(b) In connection therewith, Lessee is hereby granted the right to install such equipment, cables, junction boxes, conduit and facilities (collectively, the "Equipment") in the Building as Lessee reasonably deems necessary and desirable to offer and provide the Services Lessee is also granted the right, subject to Lessor's approval as to the routing and method of installation, to access the Building's air, electrical, and mechanical risers, ducts, closets, conduits, duct work and other horizontal and vertical areas (collectively, the "Spaces") for the purpose of installing, maintaining, repairing and operating the Equipment necessary to provide the Services Access pursuant to such right shall be during normal business hours Lessee hereby acknowledges that Lessor has constructed a raceway at the Industrial Center for the purpose of locating certain conduit and cabling, and in the event Lessor has available space in its raceway sufficient to accommodate Lessee's Equipment at the time Lessee elects to exercise its rights pursuant to this Section 3 2, and the location of such Equipment is technologically viable for Lessee, then Lessee shall locate such Equipment in Lessor's raceway and pay Lessor's standard rates in association therewith Lessee acknowledges that as of the Effective Date, there is no additional capacity in Lessor's raceway In the event Lessor's raceway is not sufficient to accommodate Lessee's Equipment at the time Lessee elects to exercise its rights pursuant to this Section 3 2, Lessee shall notify Lessor of Lessee's additional requirements Upon receipt of such notice, Lessor shall have thirty (30) days to provide written notice to Lessee of Lessor's election to expand its raceway to satisfy Lessee's additional requirements In the event Lessor elects to expand Lessor's raceway, Lessor shall deliver to Lessee an estimate of the cost and expense to make such installation, and, within thirty (30) days of Lessee's receipt of such estimate, Lessee shall deliver to Lessor payment in full of such estimate, plus the Lessor's Construction Management Fee Lessor shall not be obligated to commence such installation until Lessor has received such payment from Lessee Upon Lessor's completion of such installation, Lessor will determine the actual amounts of the costs and expenses to make the installation and deliver to Lessee a written statement of such amounts and the Construction Management Fee for such work If Lessee paid less than the actual amount specified in the statement, Lessee will pay the difference to Lessor within thirty (30) days following Lessee's receipt of such written statement from Lessor If Lessee paid more than the actual amount specified in the statement, Lessor will, at Lessor's option, either (a) refund the excess amount to Lessee, or (b) credit the excess amount against Lessee's next due monthly installment of Base Rent If Lessor is delayed in delivering such statement to Lessee, such delay shall not constitute Lessor's waiver of Lessor's rights under this section In the event (1) Lessor does not elect within

Lessor \_\_\_\_\_

Lessee 



such thirty (30) day period to expand its raceway, or (ii) Lessor fails to expand its raceway within a commercially reasonable time period following Lessor's receipt of Lessee's payment of the estimated cost and expense of such installation from Lessor, Lessee may exercise its right to install Lessee's Equipment pursuant to this Section 3.2, provided, however, (i) Lessee shall obtain the prior written consent of the Lessor of any contractor that Lessee will use for construction, which consent may be withheld in Lessor's sole, absolute and arbitrary discretion, (ii) such installation shall be at Lessee's sole cost and expense, (iii) Lessee shall pay to Lessor the Construction Management Fee based on Lessee's total cost and expense to make such installation, and (iv) such installation shall fully comply with the requirements of Section 7.3 of the Lease. Lessee shall not use any contractor that has not received such prior approval from Lessor.

(c) Prior to such installation, maintenance or repair involving the Spaces, Lessee shall advise Lessor of Lessee's intent, provide Lessor with engineering plans and specifications, obtain all necessary licenses, permits and consents. All engineering plans and studies relating to these interconnect rights shall be subject to Lessor's prior review and approval, not to be unreasonably withheld or unreasonably delayed. If Lessor desires an independent analysis or opinion of said plans and studies prior to permitting installation, Lessee shall bear the reasonable direct cost of same, and Lessor shall have the right (but not the obligation) to supervise any or all such installation, maintenance or repair subject to Lessor's right to a Construction Management Fee as set forth in Section 3.3 below.

(d) Lessee shall be responsible for any and all cost, damage or expense occasioned by such installation, maintenance or repair to the Spaces, to the Building or to the property of other lessees or occupants of the Building, including the reasonable quiet enjoyment of other lessees, and agrees to indemnify and hold Lessor harmless from and against any loss, cost, damage, or expense arising out of, or in connection with Lessee's installation, maintenance, repair or operation of its Equipment or the provision of Services in the Building, including the payment of Lessor's attorneys' fees and costs, unless caused solely by Lessor, its agents, employees or contractors.

(e) Provisions of the Lease concerning "Insurance" shall also apply to Lessee's installation, maintenance and operation of Equipment in conjunction with the above described interconnect rights.

(f) The location and operation of any of Lessee's Equipment must not interfere in any manner with the equipment of such other lessees or with the Lessor's utilities, including but not limited to communications facilities, phones, dictation equipment, lighting, air conditioning, computers, electricity, elevators and outdoor signs.

(g) Provisions of the Lease concerning the removal of said installations upon expiration of the term, shall also apply to Lessee's installation of the Equipment.

(h) Lessor reserves the right to condition said interconnect rights upon Lessee's payment to Lessor of additional monthly rent. Lessee shall be entitled, however, without obligation to pay additional rent except as set forth in Section 3.1 above, to make three (3) separate interconnections to other lessees within the Building, yet to be determined by Lessee, which shall be within the Building or Industrial Center. In the event Lessee requests additional interconnections, such interconnections shall be subject to additional rent per month, per interconnection (including diverse) to another party in an amount determined using Lessor's standard rates for such interconnections at the time of Lessee's request, plus any one-time fees that may be required by Lessor with regard to usage of the innerduct pursuant to this Section 3.2. Said interconnections, and improvements necessary to effectuate said interconnections, shall be subject to Lessor's approval, not to be unreasonably withheld, or delayed, as set forth in the Lease and as amended herein.

(i) Subject to the terms and conditions of this Lease, Lessee shall have the conditional right to license three (3) one and one-quarter inch (1 1/4") innerducts. In the event Lessee requests the right to license any additional innerducts, each such license shall be subject to an additional one-time fee per innerduct or per diverse innerduct, and additional monthly fees subject to the availability of such innerducts. The amount of such additional fees shall be determined using Lessor's standard rates for such licenses at the time of Lessee's request.

(j) Lessee acknowledges and agrees that in addition to compliance with Section 7.3 of the Lease and the Applicable Requirements for installations, Lessee shall ensure (i) that all cable installations include a minimum of six (6) feet of excess cabling in all cable junction boxes, and (ii) all rooftop installations shall be capable of temporary relocation for rooftop maintenance and/or repairs

**3.3 Construction Management Fee** Lessee shall pay to Lessor, on demand and as Additional Rent, a construction management fee ("Construction Management Fee") for Lessor's oversight of Lessee's Initial Construction, or any Alterations or Utility Installations requiring permits from any government entity, in an amount equal to five percent (5%) of the total cost of Lessee's Initial Construction, and any Alterations or Utility Installations, as applicable, and any work on the Premises performed by Lessor's contractor. The total cost of such work shall not include the acquisition cost of the Lessee's Trade Fixtures. Such Construction Management Fee shall be separate from and in addition to any management fees or administrative fees set forth in Section 4.2(a)(viii) of the Lease. Such Construction Management Fee shall be paid regardless of which party installs the Alterations or Utility Installations.

**3.4 Guarantor** The Guarantor is not a third party beneficiary of this Amendment.

#### **4 Miscellaneous Provisions**

**4.1 Attorneys' Fees and Costs** If any litigation, arbitration or other proceeding occurs between the parties arising from or relating to this Amendment, the prevailing party or parties in such matter shall be entitled to recover from the Lessor or parties all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

**4.2 Successors and Assigns** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, assigns, and successors.

**4.3 Governing Law** This Amendment shall be governed by, construed, and enforced in accordance with the internal laws of the State of California. The parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding this Agreement. In mutual recognition of the fact that this Amendment is to be performed in San Diego County, California, the parties agree that in the event of any civil action commenced regarding this Amendment, San Diego County, California, is the only proper county for the commencement and trial of such action.

**4.4 Severability** If any part of this Amendment is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Amendment and shall in no way affect any other portion hereof.

**4.5 Counterparts** This Amendment may be executed in counterparts, which, when taken together, shall constitute one fully executed original. Facsimile signatures shall be treated and have the same effect as original signatures.

**4.6 Knowing and Voluntary Execution** The parties each represent that they have carefully read this Amendment and know the contents hereof and that they sign the same freely and voluntarily. The parties each further represent that each person executing this Amendment has the full and complete authority to bind any entity, corporation, joint venture, or partnership for which the person has executed the Amendment. The parties and their counsel have reviewed and revised this Amendment, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be used in interpreting this Amendment.

**4.7 Indemnification** In the event of a breach of this Amendment by any party ("Breaching Party"), the Breaching Party agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to the other party) and hold harmless the other party and the other party's Released Parties from and against all losses, damage, liabilities, costs and expenses, including reasonable attorney's fees and costs, which the other may incur as the result of the breach of this Amendment by the Breaching Party.

**4.8 Brokers** Each party represents and warrants to the other that it has not dealt with any broker, finder or other party, whether or not licensed, who may be entitled to a commission, finder's fee or similar payment, and hereby indemnifies, protects, defends (with legal counsel

acceptable to the other party) and holds the other party free and harmless from and against any and all costs and liabilities, including, without limitation, reasonable attorneys' fees, for causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of such party in connection with this transaction

4.9 **Entire Amendment Modification** This Amendment constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the parties relating to the subject matter hereof The terms of this Amendment can only be amended or modified by a writing, signed by duly authorized representatives of all parties hereto, expressly stating that such modification or amendment is intended

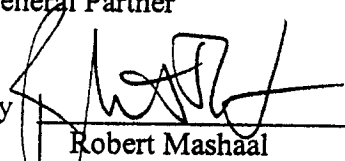
4 10 **Effectiveness of Lease** Except as set forth in this Thirteenth Amendment to Lease, all of the provisions of the Lease shall remain unchanged and in full force and effect with respect to the Premises as redefined herein

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the day and year first above written

By execution hereof, each signatory certifies that this document has been approved by the party for which he/she is signing, and that he/she is duly authorized to execute this document on behalf of such party

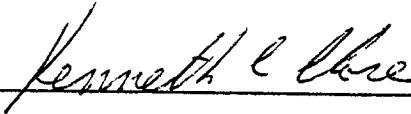
LESSOR

KM COMPLEX, L.P ,  
a California limited partnership

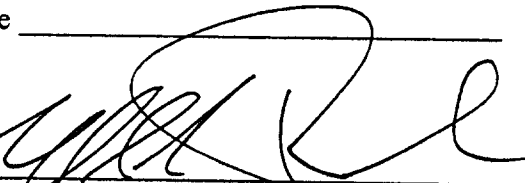
By Kearny Mesa Complex, LLC,  
Its General Partner  
By   
Robert Mashaal  
Manager

LESSEE.

CTSnet, INC , a Delaware corporation

By   
Name Kenneth C. Close  
Vice President  
Real Estate & Facilities

Title

By   
Name Mark B Tresnowski  
Senior Vice President  
and Secretary

Title

**ACKNOWLEDGEMENT AND CONSENT**

Allegiance Telecom, Inc., a Delaware corporation and Guarantor of the Lease, acknowledges and consents to the terms and conditions of the foregoing Fourteenth Amendment to Lease dated July 18, 2002, and agrees that Guarantor's obligations pursuant to that certain Guaranty of Lease dated November 1, 2000 by Allegiance Telecom, Inc shall include Lessee's obligations as set forth in this Amendment

**ALLEGIANCE TELECOM, INC.,**  
a Delaware corporation

By Kenneth C. Close

Name Kenneth C. Close  
Vice President  
Real Estate & Facilities

Title \_\_\_\_\_

By Mark B. Tresnowski

Name Mark B. Tresnowski  
Senior Vice President  
and Secretary

Title \_\_\_\_\_

## GUARANTY OF LEASE

This GUARANTY OF LEASE ("Guaranty") is executed effective as of November 1, 2000, pursuant to the terms of that certain Consent ("Consent"), executed concurrently herewith by KM Complex, L P , a California limited partnership (successor-in-interest to RREEF West-V, Inc , a Delaware corporation ("Lessor")), which Consent relates to that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated October 4, 1995 between RREEF West-V, Inc and CTS Network Services, a division of Datal Systems, Inc , a California corporation as Lessee, that certain First Amendment to Lease dated January 10, 1996, that certain Second Amendment to Lease dated August 1, 1996, that certain Third Amendment to Lease dated September 18, 1996, and Lessor and Lessee entered into that certain Fourth Amendment to Lease dated April 9, 1998; that certain Fifth Amendment to Lease dated July 13, 1998, that certain Sixth Amendment to Lease dated February 9, 1999, that certain Seventh Amendment to Lease dated May 21, 1999, that certain Eighth Amendment to the Lease dated September 13, 1999, that certain Ninth Amendment to Lease dated February 10, 2000, and that certain Tenth Amendment to Lease dated May 16, 2000 (collectively, the "Original Lease") pursuant to which Lessor is leasing to Lessee, and Lessee is leasing from Lessor, premises located in the County of San Diego, State of California, commonly known as 8913 Complex Drive Suites B, C, D E F, G and I and 8909 Complex Drive, Suites A, B and C, San Diego, California 92123 (the "Premises"), and further described as 16,988 square feet. The interest of the lessee under the Lease is being assigned to CTSnet, Inc , a Delaware corporation ("Lessee") pursuant to that certain Consent of Assignment and Assumption of Lease dated October 25, 2000 executed by Lessor. The Original Lease together with the Consent are collectively referred to herein as the "Lease." The undersigned ("Guarantor") is an entity affiliated with Lessee and is directly benefitted by the execution of the Consent. In consideration of such benefits, and as the material inducement to Lessor to enter into the Consent, Guarantor agreed to enter into this Guaranty. Guarantor acknowledges and understands that Lessor would not have agreed to enter into the Consent but for this Guaranty.

1 Guaranty As an essential inducement to Lessor's entering into the Consent, Guarantor hereby unconditionally and irrevocably guarantees to Lessor the timely payment and performance by Lessee of all rent, charges, and the payment and performance of all other obligations under and arising out of the Lease, and all other documents evidencing or securing the obligations under such Lease to be paid or performed including any and all extensions, renewals, and modifications thereof, whether now in existence or hereafter created (collectively, the "Guaranteed Obligations"). Guarantor acknowledges, covenants and agrees that this Guaranty shall survive the termination of the Lease and shall continue in full force and effect with respect to any of Lessee's obligations under the Lease which are not performed upon and which survive the termination of the Lease. This is a continuing Guaranty relating to the Guaranteed Obligations, including, without limitation, obligations and liabilities arising under modifications or amendments to the Lease that either increase, decrease or continue the Guaranteed Obligations, or, from time to time, renew Guaranteed

Obligations that have been satisfied, independent of and in addition to any other guaranty, endorsement, or collateral now or hereafter held by Lessor, whether or not furnished by the Guarantor. This Guaranty shall apply and be irrevocable with respect to any indebtedness created or incurred even after actual receipt by Lessor of any written notice of revocation by Guarantor, which indebtedness arises out of any extension, renewal, replacement or modification of the Lease prior to the actual receipt of such written notice regardless of whether such extension, renewal, replacement or modification occurs prior to revocation, and Guarantor waives any right to revoke this Guaranty and the benefits of California Civil Code 2815

2 Rights of Lessor Guarantor consents that the Lessor may and hereby authorizes Lessor at any time in its reasonable discretion to, without notice or demand and without affecting the indebtedness and liabilities of Guarantor hereunder, (i) alter any of the terms of the Guaranteed Obligations with the written consent of Lessee, (ii) take and hold any security for the Guaranteed Obligations, (iii) accept additional or substituted security, (iv) consent to the change, restructure or termination of the individual, partnership or corporate structure or existence of Lessee, Guarantor or any affiliate thereof and correspondingly restructure the Guaranteed Obligations, (v) accept partial payment of the Guaranteed Obligations, (vi) apply any collateral held by Lessor and direct the order and manner of sale thereof as Lessor in its sole discretion may determine, (vii) release the Lessee or any other party for all or part of the Guaranteed Obligations, (viii) subordinate, compromise or release any security, (ix) release Lessee of its liability for all or any part of the Guaranteed Obligations, (x) participate in any settlement offered by Lessee or any guarantor, whether in liquidation, reorganization, receivership, bankruptcy or otherwise, (xi) release, substitute or add any one or more guarantors or endorers, and (xii) assign this Guaranty, or any of the Guaranteed Obligations, in whole or in part Lessor may take any of the foregoing actions upon any terms and conditions as Lessor may elect, without giving notice to Guarantor or obtaining the consent of Guarantor and without affecting the liability of Guarantor to Lessor.

3 Independent Obligations. This Guaranty is a guaranty of payment and not of collection Guarantor's obligations under this Guaranty are independent of those of Lessee or of any other guarantor and are not conditioned or contingent upon the genuineness, validity or enforceability of the Lease or any of the other Guaranteed Obligations Lessor may bring a separate action against Guarantor without first proceeding against Lessee or any other guarantor or any security held by Lessor and without pursuing any other remedy Guarantor expressly agrees that the liability of Guarantor hereunder shall not be impaired, released, terminated or discharged, in whole or in part, by any of the foregoing notwithstanding that the same are made with or without notice to Guarantor, (i) any extensions of time for performance, whether in whole or in part, of the covenants under the Lease on the part of Lessee to be performed given prior to or after any default thereunder, (ii) any other guaranty now or hereafter executed by Guarantor or anyone else, (iii) any assignment, subletting or any transfer of the Lease by Lessee, or (iv) the failure to give Guarantor any notices whatsoever In addition, in the event any agreement or stipulation between Lessor and Lessee shall extend the time of performance or modify any of the covenants of the Lease to be performed by

Lessee, Guarantor shall continue to be liable under its Guaranty notwithstanding such agreement or stipulation

4 Waiver of Defenses Guarantor waives and agrees not to assert or take advantage of

4.1 any right to require Lessor to proceed against Lessee or any other person or any security now or hereafter held by Lessor or to pursue any other remedy whatsoever, including, without limitation, any such right, defense, or any other right set forth in or arising out of Sections 2809, 2810, 2819, 2820, 2822, 2825, 2845, 2850 or 2855 of the California Civil Code and Sections 3603, 9207 or 9504 of the California Commercial Code,

4.2 notice of acceptance of this Guaranty;

4.3 any defense based upon any legal disability of Lessee or any guarantor, or any discharge or limitation of the liability of Lessee or any guarantor to Lessor, or any restraint or stay applicable to actions against Lessee or any other guarantor, whether such disability, discharge, limitation, restraint or stay is consensual, or by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor-relief proceeding, or from any other cause, including, without limitation, any defense to the payment of rent under the Lease, attorneys' fees and costs and other charges that would otherwise accrue or become payable in respect of the Guaranteed Obligations after the commencement of any such proceeding, it being the intent of the parties that the Guaranteed Obligations shall be determined without regard to any rule of law or order that may relieve Lessee of any portion of such obligations,

4.4 setoffs, counterclaims, presentment, demand, protest or notice of any kind and any defense to performance under this Guaranty with the exception of the defenses of (i) prior payment or performance by Lessee or (ii) that there is no obligation on the part of Lessee with respect to the matter claimed to be in default,

4.5 right to trial by jury and any action or proceeding of any kind arising under or relating to this Guaranty with any interpretation, breach or enforcement hereof;

4.6 any defense based upon the modification, renewal, extension or other alteration of the Guaranteed Obligations, or of the documents executed in connection therewith,

4.7 any defense based upon the negligence of Lessor, including, without limitation, the failure to record an interest under a lease, sublease, or deed of trust, the failure to perfect any security interest, or the failure to file a claim in any bankruptcy of the Lessee or any guarantor,

4.8 all rights of subrogation, reimbursement, indemnity, all rights to enforce any remedy that Lessor may have against Lessee, and all rights to participate in any security held by Lessor for

the Guaranteed Obligations, including, without limitation, any such right or any other right set forth in Sections 2848 or 2849 of the California Civil Code, until the Guaranteed Obligations have been performed in full, and any defense based upon the impairment of any subrogation, reimbursement or indemnity rights that Guarantor might have,

4.9 any defense based upon the death, incapacity, lack of authority or termination of existence or revocation hereof by any person or entity or persons or entities, or the substitution of any party hereto;

4.10 any right to designate the obligation of any sums or property received by Lessor;

4.11 any right or defense that is or may become available to Guarantor by reason of California Civil Code Section 2787 and Sections 2855, 2899 and 3433; and

4.12 any defense based upon or related to Guarantor's lack of knowledge as to Lessee's financial condition

5 Lessee's Financial Condition. Guarantor is relying upon his own knowledge and is fully informed with respect to Lessee's financial condition. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Lessee and all other circumstances affecting Lessee's ability to perform its obligations to Lessor, and agrees that Lessor will have no duty to report to Guarantor any information which Lessor receives about Lessee's financial condition or any circumstances bearing on Lessee's ability to perform all or any portion of the Guaranteed Obligations, regardless of whether Lessor has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or have a reasonable opportunity to communicate such facts to Guarantor

6 Exercise of Subrogation Rights, Subordination. Guarantor agrees that (i) Guarantor shall have no right of subrogation, reimbursement or indemnity against Lessee or against any collateral provided to Lessor for the Lease unless and until all Guaranteed Obligations have been paid in full, (ii) Guarantor shall have no right of contribution against any other Guarantor unless and until all of the Guaranteed Obligations have been paid in full, and (iii) until the Guarantor is permitted by the terms of this paragraph to exercise any such right of subrogation, reimbursement, indemnity or contribution, Guarantor hereby waives any rights to enforce any remedy that Guarantor might have against Lessee or any other Guarantor, or to participate in any security held by Lessor for the Guaranteed Obligations, by reason of any one or more payments by Guarantor under this Guaranty, including, without limitation, any such right or any other right as set forth in Sections 2845, 2848 or 2849 of the California Civil Code. Whether or not any of the foregoing waivers of rights in respect of subrogation, reimbursement, indemnity or contribution are held to be unenforceable, (2) all existing and future obligations of Lessee to the Guarantor (including, without limitation, any



indebtedness arising by reason of any payment by Guarantor hereunder) are hereby subordinated to the Guaranteed Obligations, and, (b) without the prior written consent of Lessor, such indebtedness shall not be paid, in whole or in part, nor will the Guarantor accept any payment of or on account of such indebtedness

7. Impairment of Subrogation Rights. Upon a default of Lessee, Lessor may elect to foreclose nonjudicially or judicially against any real or personal property security it holds for the Guaranteed Obligations, if any, or any part thereof, or exercise any other remedy against Lessee or any security. No such action by Lessor will release or limit the liability of Guarantor, even if the effect of that action is to deprive Guarantor, or any other guarantor, of the right or ability to collect reimbursement from or assert subrogation, indemnity or contribution rights against Lessee or any other guarantor for any sums paid to Lessor, or to obtain reimbursement by means of any security held by Lessor for the Guaranteed Obligations. Until all obligations under this Guaranty are paid in full, Guarantor hereby waives any and all rights of subrogation (if any) which it may have against Lessee as a result of actions taken or amounts paid in connection with or relating to this Guaranty or the Lease.

8. Default. The occurrence of any one of the following events shall, at the election of Lessor, be deemed an event of default by Guarantor under this Guaranty: (i) Guarantor shall fail or neglect to perform, keep or observe any term, provision, condition or covenant, contained in this Guaranty, or (ii) if any representation or warranty made in this Guaranty shall be false in any material respect. Upon the occurrence of an event of default under this Guaranty and if any Guaranteed Obligations are then due, Guarantor's obligations hereunder that are then due or become due, shall be, at the option of Lessor, accelerated and shall all be due and payable and enforceable against Guarantor, and Lessor may, in its sole discretion, in addition to any other right or remedy provided by law, all of which are cumulative and non-exclusive, proceed to suit against Guarantor, whether suit has been commenced against Lessee.

9. Costs and Expenses. Guarantor agrees to pay, upon demand, Lessor's reasonable out-of-pocket costs and expenses, including, but not limited to, reasonable legal fees and disbursements and expert witness fees and disbursements, incurred in the administration of this Guaranty and any effort to collect or enforce any of the Guaranteed Obligations or this Guaranty, whether or not any lawsuit is filed, and in the representation of Lessor in any insolvency, bankruptcy, reorganization or similar proceeding relating to Lessee or Guarantor. Until paid to Lessor, such sums will bear interest from the date such costs and expenses are incurred at the rate set forth in the Lease for past due obligations. The obligations of Guarantor under this Section 9 shall include payment of Lessor's reasonable costs and expenses of enforcing any judgment, which obligations shall be severable from the remaining provisions of this Guaranty and shall survive the entry of judgment.

10. Reinstatement. The liability of Guarantor hereunder shall be reinstated and revived, and the rights of Lessor shall continue, with respect to any amount at any time paid on account of the Guaranteed Obligations which Lessor shall thereafter be required to restore or return in connection

with the bankruptcy, insolvency or reorganization of Lessee, or Guarantor, or otherwise, all as though such amount had not been paid. The determination as to whether any such payment must be restored or returned shall be made by Lessor in its reasonable discretion. Lessor shall be under no obligation to return or deliver this Guaranty to Guarantor, notwithstanding the payment of the Guaranteed Obligations. If this Guaranty is nevertheless returned to Guarantor or is otherwise released, then the provisions of this Section 10 shall survive such return or release, and the liability of Guarantor under this Guaranty shall be reinstated and continued under the circumstances provided in this Section 10 notwithstanding such return or release.

11 Representations and Warranties Guarantor makes the following representations and warranties, which shall be deemed to be continuing representations and warranties until payment and performance in full of the Guaranteed Obligations.

11.1 Guarantor has all the requisite power and authority to execute, deliver and be legally bound by this Guaranty on the terms and conditions herein stated,

11.2 Neither the execution and delivery of this Guaranty nor the consummation of the transactions contemplated hereby will, with or without notice and/or lapse of time, constitute a breach of any of the terms and provisions of any note, contract, document, agreement or undertaking, whether written or oral, to which Guarantor is a party or to which Guarantor's property is subject, accelerate or constitute any event entitling the holder of any indebtedness of Guarantor to accelerate the maturity of any such indebtedness, conflict with or result in a breach of any writ, order, injunction or decree against Guarantor of any court or governmental agency or instrumentality, or conflict with or be prohibited by any federal, state, local or other governmental law, statute, rule or regulation,

11.3 No consent of any other person not heretofore obtained and no consent, approval or authorization of any person or entity is required in connection with the valid execution, delivery or performance by Guarantor of this Guaranty;

11.4 Guarantor is not insolvent, and will not be rendered insolvent by the incurring of its obligations hereunder.

12. Bankruptcy The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Lessee, or by any defense Lessee may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding

13 Claims in Bankruptcy Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Lessee

relating to any indebtedness of Lessee to Guarantor, and will, upon written notice from Lessor, assign to Lessor all rights of Guarantor thereunder to the extent of Lessor's unpaid claims against Lessee under the Lease and under this Guaranty. If Guarantor does not file any such claim, then to the extent allowed by law, Lessor, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Lessor's discretion, to assign the claim to a nominee, and to cause proof of claim to be filed in the name of Lessor's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Lessor, or its nominee, shall have the sole right to accept or reject any plan proposed in such proceedings and to take any other action that a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Lessor the amount payable on such claim. Guarantor hereby assigns to Lessor all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled, provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Lessor receives cash by reason of any such payment or distribution. If Lessor receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

14 Multiple Obligors, Certain Defined Terms If "Guarantor" refers to more than one person or entity then (i) the obligations of each such person or entity shall be joint and several, (ii) all references to the "Guarantor" herein shall, unless the context otherwise requires, refer to all such parties jointly and severally, and (iii) each such person or entity hereby waives any and all defenses based upon suretyship or guaranty or impairment of collateral. The term "Lessor" will mean the Lessor named herein and any future owner or holder of the Lease, or any interest therein. The term "Lessee" shall mean both named Lessee and any other person or entity at any time assuming or otherwise becoming primarily liable for all or any part of the Guaranteed Obligations.

15 Additional Guarantors Lessor shall have the right to require Lessee to obtain additional guarantors to Lessee's obligations under the Lease, pursuant to separate written agreements between Lessor and Lessee. In the event such additional guarantors are obtained, the obligations of Guarantor and the additional guarantors shall be joint and several, and Guarantor shall not be released from any of the Guaranteed Obligations. Guarantor is not a third party beneficiary of any agreement between Lessor and Lessee regarding additional guarantors.

16 Inducement Guarantor acknowledges that the undertaking given hereunder is given in consideration of Lessor's entering into the Consent and that Lessor would not consummate the Consent but for the execution and delivery of this Guaranty.

17 Notice All notices and other communications provided for hereunder shall be in writing (including telecopied communication) and mailed or telecopied or delivered to the parties at Lessor's address designated in the Lease or at Guarantor's address as set forth on the signature page hereto, or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 17. All such notices and

communications, if mailed, shall be effective two (2) business days after deposit in the United States mail, first-class (or certified) postage prepaid, if telecopied, shall be effective when transmitted and confirmed, and if delivered in another way, shall be effective upon receipt.

18 Miscellaneous. No provision of this Guaranty or Lessor's rights hereunder can be waived or modified nor can Guarantor be released from its obligations hereunder except upon payment in full of the Guaranteed Obligations or by a writing executed by Lessor. No such waiver shall be applicable except in the specific instance for which given. No delay or failure by Lessor to exercise any right or remedy against Lessee or Guarantor will be construed as a waiver of that right or remedy. All remedies of Lessor against Lessee and Guarantor are cumulative. The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect the validity or enforceability of any other provision. This Guaranty shall be governed by and construed under the laws of the State of California. Guarantor hereby irrevocably consents to the jurisdiction of the courts of the state of California and of any federal court located in such state in connection with any action or proceeding arising out of or relating to this Guaranty. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Lessor. This Guaranty constitutes the entire agreement between Guarantor and Lessor with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings. All headings in this Guaranty are for convenience only and shall be disregarded in construing the substantive provisions of this Guaranty. Facsimile signatures shall be treated and have the same effect as original signatures.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

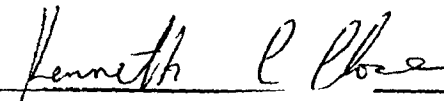
IN WITNESS WHEREOF, Guarantor has executed this Guaranty where provided below effective as of the date first above written

**GUARANTOR**


**Address of Guarantor**

**Allegiance Telecom, Inc**  
**4 Westbrook Corporate Center**  
**Suite 400**  
**Westchester, IL 60154**  
**Attn Mr. Ken Close**  
**Vice President, Real Estate and**  
**Facilities**

**ALLEGIANCE TELECOM, INC**  
**a Delaware corporation**

By   
Name                       
Kenneth C. Close  
Vice President  
Real Estate & Facilities

Its                     

By   
Name                       
Mark B. Tresnowski  
Senior Vice President General  
Counsel and Secretary

Its                     

KC  
11-16-00

## **EXHIBIT B**

**EXHIBIT B TO PROOF OF CLAIM**  
**OF KM COMPLEX, L P**

Part I Prepetition Arrearages

See Schedule 1 attached hereto

<u>Total Prepetition Arrearages (Part I)</u>	<u>\$89,279 41</u>
--	--------------------

Part II Termination/Rejection Damages

See Schedule 2 attached hereto

<u>Total Termination/Rejection Damages (Part II)</u>	<u>\$700,492 85</u>
--	---------------------

Part III Total Claim

<u>Total Prepetition Arrearages (Part I)</u>	\$89,279 41
<u>Total Termination/Rejection Damages (Part II)</u>	\$700,492 82
<b>TOTAL CLAIM AMOUNT</b>	<b><u>\$789,772 26</u></b>

KM Complex L P files this claim with the assumption that the Debtors will pay all obligations arising under the lease from the date this Proof of Claim is filed with the court up to and including the rejection date of September 30, 2004 KM Complex, L P reserves the right to amend this Proof of Claim should the Debtors fail to pay its obligations arising under the lease or upon the discovery of additional claims

# **SCHEDULE 1**



# Unpaid Charges

CTS Network Services/Allegiance Telecom, (cts8913b)

KMC Partners, L P

Date	Description	Charges	Payments	Balance
	Balance Forward			0
10/1/2002	Install Roof 8913 Complex Dr	72,622 54		72,622 54
4/17/2003	Copy Club Inv 127291- 2/25/03	12 93		72,635 47
5/19/2003	Russell Plumbing Inv 182462	250		72,885 47
5/19/2003	Russell Plumbing Inv 182693	75		72,960 47
6/17/2003	Russell Plumbing # 9503 - 4/22/03	1,350 00		74,310 47
6/17/2003	Yale Inv -Review 8971 T I Drawings-3/17	24		74,334 47
7/22/2003	Luce Forward Inv 5815319 - 4/30/03	1,960 00		76,294 47
7/22/2003	Yale Inv 3/24-3/28/03-8971 Flr Drawings	48		76,342 47
7/22/2003	Yale Inv 3/24-3/28/03-8971 Plumbing	72		76,414 47
7/22/2003	Yale Inv 3/31-4/4/03- 8971 Plumbing Rep	24		76,438 47
7/22/2003	Yale Inv -3/31-4/4/03-8971 Plumbing Rep	12		76 450 47
7/22/2003	Yale Inv 4/7-4/11/03-Plumbing Rep 8971	24		76 474 47
7/22/2003	Yale Inv -4/14-4/18/03-Sewerline Repair	24		76,498 47
7/22/2003	Yale Inv 4/14-4/18/03-Alteration Reques	72		76 570 47
8/1/2003	Security Deposit Increase (08/03)	1,534 63		78,105 10
8/13/2003	Luce Forward Inv 5827561-5/29/03	190 85		78 295 95
8/13/2003	Sherrin & Lodge Inv 128899-7/7/03	335 25		78,631 20
8/13/2003	Yale Inv 4/21-4/25/03	24		78,655 20
8/13/2003	Yale Inv 05/12-05/16/03	24		78 679 20
9/1/2003	(cts8971) CAM (09/03)	0 48		78,679 68
9/18/2003	(cts8977a) Correct 2002 CAM Rec	-2,268 25		76,411 43
9/18/2003	(cts8913i) Correct 2002 CAM Rec	-6 49		76,404 94
9/18/2003	(cts8913g) Correct 2002 CAM Rec	6 82		76,411 76
9/18/2003	(cts8913f) Correct 2002 CAM Rec	-0 13		76 411 63
9/18/2003	Correct 2002 CAM Rec	-758 35		75,653 28
9/18/2003	(cts8911h) Correct 2002 CAM Rec	-9 21		75 644 07
9/18/2003	(cts8909d) Correct 2002 CAM Rec	-805 51		74,838 56
9/18/2003	(cts8909c) Correct 2002 CAM Rec	2 64		74,841 20
9/18/2003	(cts8909a) Correct 2002 CAM Rec	5 74		74,846 94
9/18/2003	(cts8971) Correct 2002 CAM Rec	-8 65		74,838 29
9/18/2003	(cts8967) Correct 2002 CAM Charge	0 89		74,839 18
9/18/2003	(cts8977a) CAM Rec 1/03-7/03	-594 68		74,244 50
9/18/2003	(cts8977a) Correct 8/03-9/03 CAM	0 48		74,244 98
9/18/2003	(cts8913i) Correct CAM Rec 1/03-7/03	51 94		74 296 92
9/18/2003	(cts8913i) Correct 8/03-9/03 CAM	0 7		74 297 62
9/18/2003	(cts8913g) Correct CAM Rec 1/03-7/03	142 5		74,440 12
9/18/2003	(cts8913g) Correct 8/03-9/03 CAM	1 62		74,441 74
9/18/2003	(cts8913f) Correct 1/03-7/03 CAM Rec	162 1		74,603 84
9/18/2003	(cts8913f) Correct 8/03-9/03 CAM	1 94		74 605 78
9/18/2003	Correct 1/03-7/03 CAM Rec	247 05		74 852 83
9/18/2003	Correct 8/03-9/03 CAM	4 66		74 857 49
9/18/2003	(cts8911h) Correct 1/03-7/03 CAM Rec	54 31		74,911 80
9/18/2003	(cts8911h) Correct 8/03-9/03 CAM	0 76		74,912 56
9/18/2003	(cts8909d) Correct 1/03-7/03 CAM Rec	56 04		74,968 60
9/18/2003	(cts8909d) Correct 8/03-9/03 CAM	0 76		74 969 36
9/18/2003	(cts8909c) Correct 1/03-7/03 CAM Rec	65 73		75 035 09
9/18/2003	(cts8909c) Correct 8/03-9/03 CAM	0 74		75,035 83

9/18/2003 (cts8909a) Correct 1/03-7/03 CAM Rec	163 82	75,199 65
9/18/2003 (cts8909a) Correct 8/03-9/03 CAM	1 88	75,201 53
9/18/2003 (cts8971) Correct 1/03-7/03 CAM Rec	196 41	75,397 94
9/18/2003 (cts8971) Correct 8/03-9/03 CAM	2 44	75,400 38
9/18/2003 (cts8967) Correct 1/03-7/03 CAM Rec	268 38	75,668 76
9/18/2003 (cts8967) Correct 8/03-9/03 CAM	-494 18	75 174 58
10/14/2003 Yale Inv 6/2-6/6/03	24	75,198 58
10/14/2003 Sherin & Lodgen Inv 129767- 8/14/03	157 97	75,356 55
10/14/2003 Sherin & Lodgen Inv 130508 - 9/18/03	7,744 78	83,101 33
11/18/2003 California Commercial Inv 75002 - 10/2/	177 91	83,279 24
11/19/2003 (cts8909a) Correct 10/03-11/03 CAM	1 88	83,281 12
12/22/2003 Sherin and Lodgen Inv 131861-11/12/03	570 25	83,851 37
12/22/2003 Yale Inv Dated 7/25-8/1/03	72	83,923 37
1/19/2004 Wilentz Goldman Inv 40190155-10/30/03	910	84,833 37
1/19/2004 Sherin and Lodgen Inv 131861-11/12/03	478	85,311 37
1/19/2004 Sherin and Lodgen Inv 132220-12/03/03	944 1	86 255 47
3/1/2004 CAM (03/04)	32 03	86,287 50
4/1/2004 2003 CAM Reconciliation	-1,494 99	84,792 51
4/1/2004 2004 CAM Reconciliation - Jan-Mar	139 81	84,932 32
4/1/2004 (cts8977a) 2003 CAM Reconciliation	-548 46	84,383 86
4/1/2004 (cts8977a) 2004 CAM Reconciliation-Jan-Mar	57 82	84,441 68
4/1/2004 CAM (04/04)	286 19	84,727 87
4/1/2004 (cts8977a) CAM (04/04)	19 03	84,746 90
5/1/2004 CAM (05/04)	305 22	85,052 12
6/1/2004 CAM (06/04)	286 19	85,338 31
6/1/2004 Security Deposit Increase (06/04)	3,616 85	88,955 16
6/1/2004 (cts8977a) CAM (06/04)	19 03	88,974 19
7/1/2004 CAM (07/2004)	286 19	89 260 38
7/1/2004 (cts8977a) CAM (07/2004)	19 03	89,279 41

Current 30 Days  
305 22

60 Days 90 Days  
3,922 07 305 22 84,746 90

Amount Due 89,279 41
-------------------------

## **SCHEDULE 2**

Allegiance Telecom Rent/CAM Charges 10/04 10/05

Rent Charges

Dates	Amount	Totals
10/04	44 829 18	44 829 18
11/04 03/05	46 620 97	233 104 85
04/05 05/05	47 735 74	95 471 48
06/05 07/05	49 733 03	99 466 06
08/05 10/05	49 788 15	149 364 45
Total Rent		622 236 02

CAM Charges

10/04 10/05	7 082 29	Ste 8913 B	92 069 77
10/04 10/05	380 85	Ste 8977 A	4 951 05
Total CAM			97 020 82

Total Balance 10/31/05 719 256 84

	10/1/2004	11/1/2004	12/1/2004	1/1/2005	2/1/2005	3/1/2005	4/1/2005	5/1/2005	6/1/2005	7/1/2005	8/1/2005	9/1/2005	10/1/2005
Base Rent	44 829 18	46 620 97	46 620 97	46 620 97	46 620 97	46 620 97	47 735 74	47 735 74	49 733 03	49 733 03	49 788 15	49 788 15	49 788 15
CAMS & TAXES	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14	7 463 14
Total Amount Owed	52 292 32	54 084 11	54 084 11	54 084 11	54 084 11	54 084 11	55 198 88	55 198 88	57 196 17	57 196 17	57 251 29	57 251 29	57 251 29

Total Rent	719 256 84
Discount Rate	4 49 /
Net Present Value	\$700 492 85

10 Yr Treasury Rate 7/13/04

Justin S Belair  
Direct Dial 617 646 2196  
E-mail jsbelair@sherin.com  
25673 5

July 15, 2004

**BY OVERNIGHT DELIVERY**

United States Bankruptcy Court  
Southern District of New York  
Allegiance Claims Docketing Center  
One Bowling Green  
Room 534  
New York, New York 10004-1408

Re **Allegiance Telecom, Inc et al /KM Complex, L P**

Dear Sir or Madam


I enclose for filing the following

- 1 Proof of Claim with counterpart exhibits, and
- 2 Certificate of Service

At your earliest convenience, please time stamp the also enclosed copy of the Proof of Claim and return same to me in the enclosed self-addressed stamped envelope

Please call should you have any questions Thank you for your assistance with this matter

Sincerely,

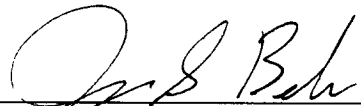
  
Justin S Belair

JSB jeb  
Enclosures

cc Jonathan S Henes, Esquire (w/ encl ) (by overnight delivery)  
Michael J Goldberg, Esquire (w/ encl )

**CERTIFICATE OF SERVICE**

I certify that on this date, I caused to be served the attached Proof of Claim on the Debtors, c/o their counsel, Kirkland & Ellis LLP, Citigroup Center, 153 East 53<sup>rd</sup> Street, New York, NY 10022-4675, ATTN Jonathan S Henes, Esquire, by sending a true copy by overnight mail

  
Justin S. Belair, Esquire  
Sherin and Lodgen LLP  
101 Federal Street  
Boston, MA 02110

Dated July 15, 2004

**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 May 25, 2005, document(s) were appended to Claim Number **1836, 2918 and 2923**  
for the following reason(s):

- ☐ Stipulation/Order
- ☐ New Supporting Documents
- ☐ Change of Address
- ☐ Stipulation and Order
- ☒ Other: Per Docket Number 2203 EOD 5/25/05

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re	:	
	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
_____	X	

**STIPULATION AND AGREED ORDER RESOLVING CLAIMS OF  
KM COMPLEX, L.P.**

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 KM Complex, L.P. (“Claimant”). The parties hereby stipulate and agree as follows:

WHEREAS, on or about October 4, 1995, a predecessor to Debtor CTSnet, Inc. entered into a lease with a predecessor to the Claimant for certain office space at Kearny Mesa Complex located at 8909, 8911, 8913, 8967, 8969, 8971 and 8977 Complex Drive, San Diego, California (as amended, the “Lease”); and

WHEREAS, the Lease, as amended, required the lessee to pay a security deposit in the amount of \$41,159.83 (the “Security Deposit”); and

WHEREAS, on May 14, 2003, Allegiance Telecom, Inc. (“ATT”) 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



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, on or about November 26, 2003, Claimant filed a proof of claim numbered 1836 (the “First Proof of Claim”) for Claims (as such term is defined in the Plan) against ATI in the amount of \$89,202.76 (the “Prepetition Claim”); 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 14, 2004, Claimant filed a proof of claim numbered 2918 (the “Second Proof of Claim”) for Claims (as such term is defined in the Plan) against ATI in the amount of \$789,772.26 (the “Rejection Claim”); and

WHEREAS, on or about July 14, 2004, the Second Proof of Claim was assigned a duplicate claim number of 2923 (the “Third Proof of Claim” and, collectively with the First Proof of Claim and the Second Proof of Claim, the “Proofs of Claim”); and

WHEREAS, Claimant and its predecessors have not filed any proofs of claim in the Chapter 11 Cases besides the Proofs of Claim; and

WHEREAS, the ATLT disputes the amounts sought by Claimant in the Proofs 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 Second Proof of

Claim and the Rejection Claim; and

WHEREAS, the ATLT and Claimant have negotiated in good faith at arm's length and have reached a consensual resolution, as set forth below, with respect to the Proofs of Claim to avoid incurring significant additional litigation expenses that would necessarily be incurred in litigating this matter to an uncertain conclusion.

**ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

1. 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 ATCW Unsecured Claim (as such term is defined in the Plan) of \$249,119.66 (the "Allowed Unsecured Claim") and an allowed Secured Claim (as such term is defined in the Plan) of \$41,159.83 (the "Paid Secured Claim") in full and complete satisfaction of all Claims held by Claimant with respect to the Debtors, the Debtors' estates, and/or the ATLT, including, but not limited to, the Prepetition Claim and the Rejection Claim.

2. 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 against the Paid Secured Claim.

3. 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.

4. Upon the entry of a Final Order approving this Stipulation, the ATLT is hereby authorized and directed to expunge from the ATLT's claims register all proofs of claim, including the Proofs of Claim, filed by Claimant and/or related to the Prepetition Claim and/or the Rejection Claim.

5. 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.

6. Upon entry of a Final Order approving this Stipulation and except for the Allowed Unsecured Claim and the Paid Secured Claim, 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, acting in such capacity (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 and/or its predecessors have, had, or may have in the future against the Estate Parties.

7. Upon entry of a Final Order approving this Stipulation, the Estate Parties hereby irrevocably, unconditionally and without reservation of any kind waive, release and forever discharge Claimant and its officers, directors, employees, attorneys, professionals, and agents, acting in such capacity (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 Estate Parties have, had, or may have in the future against the Claimant Parties.

8. This Stipulation shall be governed by the laws of the State of New York, 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.

9. The undersigned, on behalf of the ATLT and Claimant, respectively, 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.

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

11. 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.

12. 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 merit, 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.

13. 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.

14. 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.

15. 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  
May 23, 2005

**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/ Jeffrey M. Anapolsky  
Ira S. Dizengoff, Esq. (ID-9980)  
Phil C. Dublin, Esq. (PD-4919)  
Kenneth A. Davis, Esq. (KD-9070)  
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

**KM COMPLEX, L.P.,**

a California Limited Partnership

By: Kearny Mesa Complex, LLC,  
a California limited liability company,  
its general partner

By: /s/ Robert Mashaal  
Robert Mashaal, Manager

and

**COHN WHITESELL & GOLDBERG LLP**

By: /s/ Michael J. Goldberg  
Michael J. Goldberg, Esq.  
101 Arch Street  
Boston, Massachusetts 02110  
Telephone: (617) 951-2505

Counsel to KM Complex, L.P.

SO ORDERED, this 25<sup>th</sup> day of May 2005

/s/ Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE