

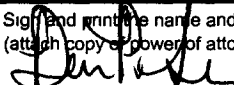
UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor ALLEGIANCE TELECOM, INC , ET AL		Case Number 03-13057
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative 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) The Irvine Company		<div style="position: relative;"> <div style="position: absolute; top: 0; right: 0;">REC'D OCT 18 2004</div> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%);"> FILED U.S. DISTRICT COURT OF NEW YORK SOUTHERN DISTRICT ALLEGIANCE TELECOM, INC 03-13057 (PRD) 2026 </div> </div>
Name and address where notices should be sent The Irvine Company c/o Law Office of Dean P Sperling 201 E Sandpointe, Suite 220 Santa Ana, California 92707 Telephone number (714) 438-8090		
<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim for this claim. Attach a copy of state or federal court judgment. <input type="checkbox"/> Check box if you have never received any notice from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.		
Account or other number by which creditor identifies debtor		Check here <input type="checkbox"/> replaces a previously filed claim dated 11/24/03 if this claim <input checked="" type="checkbox"/> amends
1 Basis for Claim <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>Rental 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 _____ (date) to _____ (date)		
2 Date debt was incurred August 19, 1999		3 If court judgment, date obtained
4 Total Amount of Claim at Time Case Filed \$ <u>291,488.00</u> <u>0.00</u> <u>0.00</u> <u>291,488.00</u> (unsecured) (secured) (Exhibit "B") (Total) If all or part of your claim is secured or entitled to priority also complete Item 5 or 7 below. <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.		
5 Secured Claim <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 \$ <u>0.00</u> Amount of arrearage and other charges at time case filed included in secured claim if any \$ <u>0.00</u>		7 Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ <u>0.00</u> Specify the priority of the claim: <input type="checkbox"/> Wages salaries or commissions (up to \$4,925) * 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 \$2,225* 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 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
6 Unsecured Nonpriority Claim \$ 0.00 <input 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.		THIS SPACE IS FOR COURT USE ONLY <div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> RECEIVED OCT - 3 2004 CLAIMS PROCESSING CENT U.S. DISTRICT COURT </div>
8 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim (Exhibit "B") 9 Supporting Documents Attach copies of supporting documents such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available explain. If the documents are voluminous attach a summary. 10 Date-Stamped Copy To receive an acknowledgment of the filing of your claim enclose a stamped self-addressed envelope and copy of this proof of claim.		
Date 10/7/2004	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)  Dean P Sperling	



EXHIBIT "A"

Exhibit "A"
THE IRVINE COMPANY'S AMENDED PROOF OF CLAIM

Post- Petition					
1 year unmitigated from July 1, 2004 through June 30, 2005					
	July 1, 2004 thru October 31, 2004				\$95,829 36
	November 1, 2005 thru June 30, 2005				<u>\$195,658 72</u>
	Total Claim				\$291,488 08

EXHIBIT "B"

ORIGINAL

INDUSTRIAL LEASE
(Multi-Tenant, Net)

BETWEEN

THE IRVINE COMPANY

AND

| ALLEGIANCE TELECOM, INC

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INDUSTRIAL LEASE
(Multi Tenant, Net)

THIS LEASE is made as of the 19th day of August 19 99, by and between THE IRVINE COMPANY, hereafter called "Landlord" and ALLEGIANCE TELECOM INC a Delaware corporation hereinafter called "Tenant."

ARTICLE I BASIC LEASE PROVISIONS

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

- 1 Premises: 677 Palomar Avenue Sunnyvale CA 94086
Address of Building 675-677 Palomar Avenue Sunnyvale CA 94086
- 2 Project Description (if applicable) 675-677 Palomar Avenue
- 3 Use of Premises Telecommunication switch center and other related uses
- 4 Outside Commencement Date. Sixty (60) days following delivery of possession of the Premises to Tenant
- 5 Lease Term One hundred twenty (120) months plus such additional days as may be required to cause this Lease to terminate on the final day of the calendar month and subject to extension in accordance with Section 3.3
- 6 Basic Rent. Eighteen Thousand Five Hundred Dollars (\$18,500.00) per month based on \$1.85 per rentable square foot.

Basic Rent is subject to adjustment as follows

Commencing twelve (12) months following the Commencement Date the Basic Rent shall be Nineteen Thousand Dollars (\$19,000.00) per month based on \$1.90 per rentable square foot.

- * Commencing twenty-four (24) months following the Commencement Date the Basic Rent shall be Nineteen Thousand Five Hundred Dollars (\$19,500.00) per month, based on \$1.95 per rentable square foot.

Commencing thirty-six (36) months following the Commencement Date the Basic Rent shall be Twenty Thousand Dollars (\$20,000.00) per month based on \$2.00 per rentable square foot.

Commencing forty-eight (48) months following the Commencement Date the Basic Rent shall be Twenty Thousand Five Hundred Dollars (\$20,500.00) per month based on \$2.05 per rentable square foot.

Commencing sixty (60) months following the Commencement Date the Basic Rent shall be Twenty One Thousand Dollars (\$21,000.00) per month based on \$2.10 per rentable square foot.

Commencing seventy-two (72) months following the Commencement Date the Basic Rent shall be Twenty One Thousand Five Hundred Dollars (\$21,500.00) per month based on \$2.15 per rentable square foot.

Commencing eighty-four (84) months following the Commencement Date the Basic Rent shall be Twenty Two Thousand Dollars (\$22,000.00) per month based on \$2.20 per rentable square foot.

Commencing ninety-six (96) months following the Commencement Date the Basic Rent shall be Twenty Two Thousand Five Hundred Dollars (\$22,500.00) per month based on \$2.25 per rentable square foot.

Commencing one hundred eight (108) months following the Commencement Date the Basic Rent shall be Twenty Three Thousand Dollars (\$23,000.00) per month based on \$2.30 per rentable square foot.

- 7 Guarantor(s) None
- 8 Floor Area of Premises Approximately 10,000 rentable square feet
- 9 Security Deposit \$23,000.00

- 10 Broker(s) CPS
- 11 Additional Insureds Insignia\ESG of California Inc
↑
- 12 Address for Payments and Notices:
- | LANDLORD | TENANT |
|--|---|
| INSIGNIA\ESG OF CALIFORNIA INC
1 Ada, Suite 270
Irvine CA 92618 | ALLEGIANCE TELECOM, INC
Four Westbrook Center
Suite 400
Westchester IL 60154
Attn Patricia E. Koide |
| with a copy of notices to
IRVINE INDUSTRIAL COMPANY
P O Box 6370
Newport Beach CA 92658-6370
Attn Vice President Industrial Operations | with a copy of notices to
Partners National Real Estate Group Inc
c/o Bianca Laughlin
3838 Oak Lawn Ave Ste 850
Dallas TX 75219 |
- 13 Tenant's Liability Insurance Requirement \$2 000 000 00
- 14 Vehicle Parking Spaces See Section 6.4
- 15 Plan Approval Date Not applicable

ARTICLE II PREMISES

SECTION 2.1 LEASED PREMISES Landlord leases to Tenant and Tenant leases from Landlord the premises shown in Exhibit A (the "Premises") containing approximately the floor area set forth in Item 8 of the Basic Lease Provisions and known by the address identified in Item 1 of the Basic Lease Provisions. The Premises are located in the building identified in Item 1 of the Basic Lease Provisions (which together with the underlying real property is called the "Building") and is a portion of the project shown in Exhibit Y (the "Project"). Tenant understands that the floor area set forth in Item 8 of the Basic Lease Provisions may include at Landlord's option a factor approximating the total square footage of any common lobby or internal common features of the Building times the ratio of the actual square footage of the Premises to the total square footage of the Building.

SECTION 2.2 ACCEPTANCE OF PREMISES Tenant acknowledges that, except as expressly set forth herein, neither Landlord nor any representative of Landlord has made any representation or warranty with respect to the Premises or the Building or the suitability or fitness of either for any purpose, including without limitation any representations or warranties regarding zoning or other land use matters, and that neither Landlord nor any representative of Landlord has made any representations or warranties regarding (i) what other tenants or uses may be permitted or intended in the Building and the Project or (ii) any exclusivity of use by Tenant with respect to its permitted use of the Premises as set forth in Item 3 of the Basic Lease Provisions. Tenant further acknowledges that neither Landlord nor any representative of Landlord has agreed to undertake any alterations or additions or construct any improvements to the Premises except as expressly provided in this Lease. The taking of possession or use of the Premises by Tenant for any purpose other than construction shall conclusively establish that the Premises and the Building were in satisfactory condition and in conformity with the provisions of this Lease in all respects except for any latent defects in the Premises (but not the Tenant Improvements) which Tenant shall have brought to Landlord's attention on a written list delivered to Landlord within ninety (90) days after the term ("Term") of this Lease commences as provided in Article III below. If no items are required of Landlord under the Work Letter attached as Exhibit X by taking possession of the Premises, Tenant accepts the improvements in their existing condition and waives any right or claim against Landlord arising out of the condition of the Premises other than latent defects which it is notified of within such ninety (90) day period. Nothing contained in this Section shall affect the commencement of the Term or the obligation of Tenant to pay rent. Landlord shall diligently repair any latent defects in the Premises (but not the Tenant Improvements) of which it is notified by Tenant within such ninety (90) day period as provided above.

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

ARTICLE III TERM

SECTION 3.1 GENERAL The Term shall be for the period shown in Item 5 of the Basic Lease Provisions. Subject to the provisions of Section 3.2 below, the Term shall commence ("Commencement Date") on the earlier of (a) the date upon which all relevant governmental authorities have approved the Tenant Improvements in accordance with applicable building codes, as evidenced by written approval thereof in accordance with the building permits issued for the Tenant Improvements or issuance of a temporary or final certificate of occupancy for the Premises; (b) the date Tenant acquires possession or commences use of the Premises for any purpose other than construction of Tenant Improvements by Tenant under the Work Letter; or (c) the date that is sixty (60) days following Landlord's delivery of possession of the Premises to Tenant. Within ten (10) days after the occurrence of the Commencement Date, the parties shall memorialize on a form provided by Landlord the actual Commencement Date and the expiration date ("Expiration Date") of this Lease. Tenant's failure to execute that form shall not affect the validity of Landlord's determination of those dates.

SECTION 3.2 DELAY IN POSSESSION Landlord agrees to deliver possession of the Premises to Tenant promptly following the full execution of this Lease, provided however, if Landlord for any reason whatsoever cannot deliver possession of the Premises to Tenant on or before any particular date, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any resulting loss or damage.

Notwithstanding anything contained in this Lease to the contrary, if Landlord cannot deliver possession of the Premises to Tenant on or before the date ("Outside Commencement Date") that is sixty (60) days following the full execution of this Lease, Tenant shall have the right, as its sole and exclusive remedy, to terminate this Lease by providing Landlord with written notice thereof within five (5) days following the Outside Commencement Date (provided however, in the event that Landlord's failure to deliver possession of the Premises to Tenant on or before the Outside Commencement Date is attributable in whole or in part to any action or inaction by reason of any causes beyond the reasonable control of Landlord ("Force Majeure Delay"), the Outside Commencement Date shall be extended for the period of delay attributable to the Force Majeure Delay in question, as applicable). In the event Tenant fails to provide Landlord with written notice of termination within such five (5) day period, this Lease shall

[continue in full force and effect.

SECTION 3.3 RIGHT TO EXTEND THIS LEASE Provided that Tenant is not in default under any provision of this Lease beyond any applicable cure period either at the time of exercise of the extension right granted herein or at the time of the commencement of such extension and provided further that Tenant is occupying the entire Premises and has not assigned or sublet any of its interest in this Lease (other than an assignment or subletting permitted without Landlord's consent pursuant to Section 9.4 below) Tenant may extend the Term of this Lease for two (2) successive periods of sixty (60) months each. Tenant shall exercise its right to extend the Term by and only by delivering to Landlord not less than six (6) months or more than nine (9) months prior to the expiration date of the Term, Tenant's irrevocable written notice of its commitment to extend (the "Commitment Notice"). The Basic Rent payable under the Lease during any extension of the Term shall be determined as provided in the following provisions:

If Landlord and Tenant have not by then been able to agree upon the Basic Rent for the extension of the Term then between one hundred twenty (120) and ninety (90) days prior to the expiration date of the Term or the first renewal thereof as the case may be, Landlord shall notify Tenant in writing of the Basic Rent that would reflect the prevailing market rental rate for a 60-month renewal of comparable space in the Project (together with any increases thereof during the extension period) as of the commencement of the extension period ("Landlord's Determination"). Should Tenant disagree with the Landlord's Determination, then Tenant shall not later than twenty (20) days thereafter notify Landlord in writing of Tenant's determination of those rental terms ("Tenant's Determination"). In no event, however, shall Landlord's Determination or Tenant's Determination be less than the Basic Rent payable by Tenant during the final month of the initial Term. Within ten (10) days following delivery of the Tenant's Determination, the parties shall attempt to agree on an independent appraiser to determine the fair market rental. If the parties are unable to agree in that time, then each party shall designate an independent appraiser within ten (10) days thereafter. Should either party fail to so designate an independent appraiser within that time, then the independent appraiser designated by the other party shall determine the fair market rental. Should each of the parties timely designate an independent appraiser, then the two appraisers so designated shall appoint a third independent appraiser who shall, acting alone, determine the fair market rental for the Premises. Any appraiser designated hereunder shall have an MAI certification with not less than five (5) years experience in the valuation of commercial industrial buildings in Santa Clara County, California.

Within thirty (30) days following the selection of the appraiser and such appraiser's receipt of the Landlord's Determination and the Tenant's Determination, the appraiser shall determine whether the rental rate determined by Landlord or by Tenant more accurately reflects the fair market rental rate for the 60 month renewal of the Lease for the Premises as reasonably extrapolated to the commencement of the extension period. Accordingly, either the Landlord's Determination or the Tenant's Determination shall be selected by the appraiser as the fair market rental rate for the extension period. In making such determination, the appraiser shall consider rental comparables for the Project (provided that if there are an insufficient number of comparables within the Project, the appraiser shall consider rental comparables for similarly improved space within the San Francisco/Oakland area with appropriate adjustment for location and quality of project) taking into account market tenant improvement allowances or brokerage commissions in making its determination of the fair market rental rate. At any time before the decision of the appraiser is rendered, either party may, by written notice to the other party, accept the rental terms submitted by the other party, in which event such terms shall be deemed adopted as the agreed fair market rental. The fees of the appraiser(s) shall be borne entirely by the party whose determination of the fair market rental rate was not accepted by the appraiser.

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

If Tenant fails to timely comply with any of the provisions of this paragraph, Tenant's right to extend the Term shall be extinguished and the Lease shall automatically terminate as of the expiration date of the Term or the first extension term, as the case may be, without any extension and without any liability to Landlord. Any attempt to assign or transfer any right or interest created by this paragraph shall be void from its inception. Tenant shall have no other right to extend the Term beyond the two (2) successive sixty (60) month extension periods created by this paragraph. Unless agreed to in a writing signed by Landlord and Tenant, any extension of the Term, whether created by an amendment to this Lease or by a holdover of the Premises by Tenant, or otherwise, shall be deemed a part of and not in addition to any duly exercised extension period permitted by this paragraph.

ARTICLE IV RENT AND OPERATING EXPENSES

SECTION 4.1 BASIC RENT From and after the Commencement Date, Tenant shall pay to Landlord without deduction or offset (except as may be expressly provided herein) Basic Rent for the Premises in the

total amount shown (including subsequent adjustments if any) in Item 6 of the Basic Lease Provisions. Any rental adjustment shown in Item 6 shall be deemed to occur on the specified monthly anniversary of the Commencement Date whether or not that date occurs at the end of a calendar month. Subject to the last sentence of this Section 4.1 the rent shall be due and payable in advance commencing on the Commencement Date (as prorated for any partial month) and continuing thereafter on the first day of each successive calendar month of the Term. No demand notice or invoice shall be required for the payment of Basic Rent. An installment of rent in the amount of one (1) full month's Basic Rent at the initial rate specified in Item 6 of the Basic Lease Provisions shall be delivered to Landlord concurrently with Tenant's execution of this Lease and shall be applied against the Basic Rent first due hereunder.

SECTION 4.2 OPERATING EXPENSES

(a) Tenant shall pay to Landlord as additional rent Tenant's Share of "Operating Expenses", as defined below, incurred by Landlord in the operation of the Building and Project. The term "Tenant's Share" means that portion of an Operating Expense determined by multiplying the cost of such item by a fraction, the numerator of which is the floor area of the Premises and the denominator of which is the total square footage of the floor area of the Building.

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

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

Provided Tenant is not then in default under this Lease beyond any applicable notice and cure periods Tenant shall have the right to have an independent certified public accountant audit Landlord's Operating Expenses subject to the terms and conditions hereof. In no event, however, shall such auditor be compensated by Tenant on a "contingency" basis or on any other basis tied to the results of said audit. Tenant shall give written notice to Landlord of Tenant's intent to audit Operating Expenses if at all within one hundred twenty (120) days following delivery of Landlord's expense statement for the Expense Recovery Period in question. Following at least ten (10) business days notice to Landlord such audit shall be conducted at a mutually agreeable time during normal business hours at the office of Landlord or its management agent where records are maintained in Santa Clara County, California. Landlord shall in good faith cooperate with Tenant during any such audit. If Tenant's audit reveals that actual Operating Expenses have been overstated by five percent (5%) or more then subject to Landlord's right to review and/or contest the results of the audit (as provided below) Landlord shall reimburse Tenant within thirty (30) days after Tenant's demand therefor for Tenant's reasonable actual out-of-pocket costs of such audit supported by bona fide paid invoices therefor. All information obtained by Tenant and/or its auditor in connection with any audit, as well as any compromise, settlement or adjustment reached between Landlord and Tenant as a result thereof shall be held in strict confidence by Tenant and its auditor and except as may be required pursuant to any litigation or as may otherwise be required by law shall not be disclosed to any third party directly or indirectly by Tenant or its auditor or any of their respective officers, agents or employees. Landlord may require Tenant's auditor to execute a separate confidentiality agreement affirming the foregoing as a condition precedent to any audit. If following Landlord's review of Tenant's audit Landlord disputes the same Landlord shall have the right upon written notice to Tenant within a reasonable time following its receipt of the audit to contest such audit by demanding binding arbitration with JAMS Endispute in Santa Clara County, California ("JAMS"). Tenant agrees to submit to such arbitration upon such written notice from Landlord. Within ten (10) business days following submission of the dispute by Landlord to JAMS JAMS shall designate three (3) arbitrators and each party may within five (5) business days thereafter veto one (1) of the three (3) persons so designated. If two (2) different designated arbitrators have been vetoed, the third arbitrator shall hear and decide the matter. Any arbitration pursuant to this paragraph shall be decided within thirty (30) days of submission to JAMS. The decision of the arbitrator shall be final and binding on

the parties. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration under this paragraph shall include by consolidation, joinder or in any other manner any person or entity not a party to this Lease unless (i) such person or entity is substantially involved in a common question of fact or law, (ii) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, or (iii) the interest or responsibility of such person or entity in the matter is not insubstantial. All costs associated with the arbitration (excluding the cost of the audit) shall be awarded to the prevailing party as determined by the arbitrator. The foregoing agreement to arbitrate shall be specifically enforceable under prevailing law.

(d) Even though the Lease has terminated and the Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Operating Expenses for the Expense Recovery Period in which the Lease terminates, Tenant shall upon notice pay the entire increase due over the estimated expenses paid. Conversely any overpayment made in the event expenses decrease shall be rebated by Landlord to Tenant. The obligations under this subsection (d) shall survive the expiration or sooner termination of this Lease.

(e) If at any time during any Expense Recovery Period, any one or more of the Operating Expenses are increased to a rate(s) or amount(s) in excess of the rate(s) or amount(s) used in calculating the estimated expenses for the year, then the estimate of Tenant's Share of Operating Expenses shall be increased for the month in which such rate(s) or amount(s) becomes effective and for all succeeding months by an amount equal to Tenant's Share of the increase. Landlord shall give Tenant written notice of the amount or estimated amount of the increase, the month in which the increase will become effective, Tenant's Share thereof and the month for which the payments are due. Tenant shall pay the increase to Landlord as a part of Tenant's monthly payments of estimated expenses as provided in paragraph (b) above, commencing with the month in which effective.

(f) The term "Operating Expenses" shall mean and include all "Project Costs" (as hereafter defined) and "Property Taxes" (as hereafter defined).

(g) The term "Project Costs" shall include, without duplication, all expenses of operation and maintenance of the Building and the Project, together with all appurtenant Common Areas (as defined in Section 6.2), and shall include the following charges by way of illustration but not limitation: water and sewer charges relating to the Common Areas; insurance premiums or reasonable premium equivalents should Landlord elect to self insure any risk that Landlord is authorized to insure hereunder; license, permit and inspection fees; heat, light and power furnished to the Common Areas; janitorial services to any interior Common Areas; air conditioning furnished to the Common Areas; supplies, materials, equipment, tools; the cost of any environmental insurance tax or other consultant utilized by Landlord in connection with the Building and/or Project; establishment of reasonable reserves for replacements and/or repair of the roof of the Building; costs incurred in connection with compliance of any laws (or changes therein) enacted subsequent to the date of this Lease or changes in any existing laws applicable to the Building or the Project; the cost of any capital investments (i) incurred in connection with compliance of any laws (or changes therein) enacted subsequent to the date of this Lease or changes in any existing laws applicable to the Building or the Project, (ii) reasonably intended to produce a reduction in Project Costs or energy conservation and/or (iii) incurred in connection with replacement of the roof of the Building (after application of any reserves held by Landlord therefor) to the extent, in each instance, of the amortized amount thereof over the useful life of such capital investments calculated at a market cost of funds, all as determined by Landlord for each such year of useful life during the Term; costs associated with the procurement and maintenance of an air conditioning heating and ventilation service agreement as reasonably allocated to the Common Areas; labor reasonably allocated wages and salaries, fringe benefits and payroll taxes for administrative and other personnel directly applicable to the Building and/or Project, including both Landlord's personnel and outside personnel; any expense incurred pursuant to Sections 6.1, 6.2, 6.4, 7.2 and 10.2 and a reasonable overhead/management fee for the professional operation of the Project. Notwithstanding anything to the contrary herein, Tenant's Share of any such property management fees shall be determined by multiplying the actual property management fee charged (which from time to time may be with respect to the Building only, a portion of the Project only, the entire Project or the Project together with other properties owned by Landlord and/or its affiliates) by a fraction, the numerator of which is the floor area of the Premises (as set forth in Item 8 of the Basic Lease Provisions contained in the Lease) and the denominator of which is the total square footage of space charged with such management fee actually leased to tenants (including Tenant). It is understood that Project Costs shall include competitive charges for direct services provided by any subsidiary or division of Landlord.

Notwithstanding the foregoing, "Project Costs" shall not include any capital expense or improvement except as expressly permitted above; depreciation and amortization except as expressly permitted above; any costs or expenses to the extent reimbursed by any insurer, warrantor or condemning authority; ground rent; interest or penalties resulting from any late payments by Landlord except to the extent proximately caused by Tenant's default under this Lease; the cost of any artwork; the wages of any management personnel located outside of the Project (except that the cost of senior manager may be allocated based on his portfolio responsibilities); salaries, wages and other compensation paid to officers or directors of Landlord in their capacity as officers or directors; the cost of operating any retail space contained in the Building to the extent such costs are paid by such retail tenant or are for services provided exclusively thereto; costs incurred by Landlord in connection with the operation of the business entity which constitutes Landlord (as opposed to the operation of the Building and the Project); any fines or penalties

incurred due to violations by Landlord of any applicable legal requirement provided that such violation is not attributable to any act or omission of Tenant or any of its employees agents contractors or invitees costs incurred in the consummation of any sale or change of ownership of the Building including without limitation brokerage commissions attorneys and accountants fees closing costs title insurance premiums transfers taxes and debt losses rent losses and reserves for such losses amounts paid to any person firm or other entity related to or otherwise affiliated with Landlord which are in excess of arm s length competitive prices in the Sunnyvale/Mountain View/Palo Alto area for such services or goods provided costs arising from the removal or abatement of Hazardous Materials (but subject to Tenant s obligations under Section 5.3 below) costs arising from conditions which on the date of this Lease violate the Americans With Disabilities Act or any other applicable law any tenant improvements marketing advertising and promotional costs and expenditures leasing commissions the initial construction costs of the Building and the Project legal expenses incurred in enforcing any leases debt service on any financing and other fees costs and expenses incurred in connection with any financing specific costs and expenses separately billed to and paid for by other tenants any costs or expenses reimbursed by any third party or through the payment of insurance proceeds or condemnation awards costs incurred by Landlord on account of Landlord s default under any lease, any bad debt loss rent loss or reserves for bad debts or rent loss or reserves for equipment or capital replacement except as expressly permitted above and political or charitable contributions

(h) The term "Property Taxes" as used herein shall include the following (i) all real estate taxes or personal property taxes as such property taxes may be reassessed from time to time and (ii) other taxes charges and assessments which are levied with respect to this Lease or to the Building and/or the Project and any improvements fixtures and equipment and other property of Landlord located in the Building and/or the Project except that general net income and franchise gift estate inheritance mortgage or deed recordation and transfer taxes imposed against Landlord shall be excluded together with any penalties or interest incurred by Landlord by reason of the late payment of Property Taxes (unless the same are incurred by Landlord by reason of Tenant s failure to timely pay Tenant s Share of Operating Expenses as provided herein in which event Tenant shall be solely responsible for the payment of any such penalties or interest so incurred) and (iii) all assessments and fees for public improvements services and facilities and impacts thereon including without limitation arising out of any Community Facilities Districts "Mello Roos" districts similar assessment districts and any traffic impact mitigation assessments or fees (iv) any tax surcharge or assessment which shall be levied in addition to or in lieu of real estate or personal property taxes other than taxes covered by Article VIII, and (v) costs and expenses incurred in contesting in good faith the amount or validity of any Property Tax by appropriate proceedings

SECTION 4.3 SECURITY DEPOSIT Concurrently with Tenant s delivery of this Lease Tenant shall deposit with Landlord the sum if any stated in Item 9 of the Basic Lease Provisions to be held by Landlord as security for the full and faithful performance of Tenant s obligations under this Lease (the "Security Deposit") Subject to the last sentence of this Section the Security Deposit shall be understood and agreed to be the property of Landlord upon Landlord s receipt thereof and may be utilized by Landlord in its discretion towards the payment of all prepaid expenses by Landlord for which Tenant would be required to reimburse Landlord under this Lease Upon any default by Tenant which continues beyond any applicable cure period including specifically Tenant s failure to pay rent or to abide by its obligations under Sections 7.1 and 15.3 below whether or not Landlord is informed of or has knowledge of the default the Security Deposit shall at Landlord s election be applied without waiver of any rights Landlord may have under this Lease or at law or in equity as a result of the default as a setoff for full or partial compensation for that default. If any portion of the Security Deposit is applied after a default by Tenant Tenant shall within ten (10) days after written demand by Landlord deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount Landlord shall not be required to keep this Security Deposit separate from its general funds and Tenant shall not be entitled to interest on the Security Deposit If Tenant fully performs its obligations under this Lease the Security Deposit shall be returned to Tenant (or at Landlord s option to the last assignee of Tenant s interest in this Lease) after the expiration of the Term provided that Landlord may retain the Security Deposit to the extent and until such time as all amounts due from Tenant in accordance with this Lease have been determined and paid in full

ARTICLE V USES

SECTION 5.1 USE Tenant shall use the Premises only for the purposes stated in Item 3 of the Basic Lease Provisions all in accordance with applicable laws and restrictions and pursuant to approvals to be obtained by Tenant from all relevant and required governmental agencies and authorities The parties agree that any contrary use shall be deemed to cause material and irreparable harm to Landlord and shall entitle Landlord to injunctive relief in addition to any other available remedy Tenant at its expense, shall procure maintain and make available for Landlord s inspection throughout the Term all governmental approvals licenses and permits required for the proper and lawful conduct of Tenant s permitted use of the Premises Tenant shall not do or permit anything to be done in or about the Premises which will in any way interfere with the rights of other occupants of the Building or the Project, or use or allow the Premises to be used for any unlawful purpose nor shall Tenant permit any nuisance or commit any waste in the Premises or the Project Except as otherwise expressly provided herein Tenant shall not perform any work or conduct any business whatsoever in the Project other than inside the Premises Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any insurance policy(ies) covering the Building the Project and/or their contents (unless with respect to any such increase in such

[cost. Tenant shall promptly upon demand reimburse Landlord for the increased cost) and shall comply with all applicable insurance underwriters rules and the requirements of the Pacific Fire Rating Bureau or any other organization performing a similar function. Tenant shall comply at its expense with all present and future laws ordinances restrictions regulations orders rules and requirements of all governmental authorities that pertain to Tenant or its use of the Premises including without limitation all federal and state occupational health and safety requirements whether or not Tenant's compliance will necessitate expenditures or interfere with its use and enjoyment of the Premises. Tenant shall comply at its expense with all present and future covenants conditions easements or restrictions now or hereafter affecting or encumbering the Building and/or Project and any amendments or modifications thereto including without limitation the payment by Tenant of any periodic or special dues or assessments charged against the Premises or Tenant which may be allocated to the Premises or Tenant in accordance with the provisions thereof to the extent that any of the same do not materially interfere with or materially affect the rights of Tenant under this Lease or materially increase Tenant's obligations hereunder. Tenant shall promptly upon demand reimburse Landlord for any additional insurance premium charged by reason of Tenant's failure to comply with the provisions of this Section and shall indemnify Landlord from any liability and/or expense resulting from Tenant's noncompliance.

SECTION 5.2 SIGNS Except as approved in writing by Landlord in its sole discretion Tenant shall have no right to maintain identification signs in any location in on or about the Premises the Building or the Project and shall not place or erect any signs displays or other advertising materials that are visible from the exterior of the Building other than one (1) identification signage on the entry door to the Premises. The size design graphics material style color and other physical aspects of any permitted sign shall be subject to Landlord's written approval prior to installation (which approval may be withheld in Landlord's reasonable discretion) any covenants conditions or restrictions encumbering the Premises Landlord's signage program for the Project as in effect from time to time and approved by the City in which the Premises are located ("Signage Criteria") and any applicable municipal or other governmental permits and approvals. Tenant acknowledges having received and reviewed a copy of the current Signage Criteria for the Project. Tenant shall be responsible for the cost of any permitted sign including the fabrication installation maintenance and removal thereof. If Tenant fails to maintain its sign or if Tenant fails to remove same upon termination of this Lease and repair any damage caused by such removal Landlord may do so at Tenant's expense.

SECTION 5.3 HAZARDOUS MATERIALS

(a) For purposes of this Lease the term "Hazardous Materials" includes (i) any "hazardous materials" as defined in Section 25501(n) of the California Health and Safety Code (ii) any other substance or matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory and (iii) any substance or matter which is in excess of permitted levels set forth in any federal California or local law or regulation pertaining to any hazardous or toxic substance material or waste.

(b) Tenant shall not cause or permit any Hazardous Materials to be brought upon stored used generated released or disposed of on under from or about the Premises (including without limitation the soil and groundwater thereunder) without the prior written consent of Landlord. Notwithstanding the foregoing Tenant shall have the right without obtaining prior written consent of Landlord to utilize within the Premises (i) batteries and diesel fuel utilized in connection with Tenant's back up generator (but only in such quantities as are reasonably necessary for the normal use of such generator) and (ii) standard office products that may contain Hazardous Materials (such as photocopy toner "White Out" and the like) provided however that with respect to the batteries fuel and products described in subsections (i) and (ii) above (collectively "Permitted Materials") (A) Tenant shall to the extent applicable maintain such Permitted Materials in their original packaging shall follow all instructions on such packaging with respect to the storage use and disposal of such Permitted Materials and shall otherwise comply with all applicable laws with respect to such Permitted Materials and (B) all of the other terms and provisions of this Section 5.3 shall apply with respect to Tenant's storage use and disposal of all such Permitted Materials. With respect to any other Hazardous Materials not contemplated by the immediately preceding sentence Landlord may in its sole discretion place such conditions as Landlord deems appropriate with respect to any such Hazardous Materials and may further require that Tenant demonstrate that any such Hazardous Materials are necessary or useful to Tenant's business and will be generated stored used and disposed of in a manner that complies with all applicable laws and regulations pertaining thereto and with good business practices. Tenant understands that Landlord may utilize an environmental consultant to assist in determining conditions of approval in connection with the storage generation release disposal or use of any such other Hazardous Materials by Tenant on or about the Premises and/or to conduct periodic inspections of the storage generation use release and/or disposal with respect to any Hazardous Materials by Tenant on and from the Premises and Tenant agrees that any costs incurred by Landlord in connection therewith shall be reimbursed by Tenant to Landlord as additional rent hereunder upon demand.

(c) Prior to the execution of this Lease Tenant shall complete execute and deliver to Landlord an Environmental Questionnaire and Disclosure Statement (the "Environmental Questionnaire") in the form of Exhibit B attached hereto. The completed Environmental Questionnaire shall be deemed incorporated into this Lease for all purposes and Landlord shall be entitled to rely fully on the information contained therein. On each anniversary of the Commencement Date until the expiration or sooner termination of this Lease Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Materials which were stored generated used released and/or disposed of on under or about the Premises for the twelve month period prior thereto and which

Tenant desires to store generate use release and/or dispose of on under or about the Premises for the succeeding twelve month period In addition to the extent Tenant is permitted to utilize Hazardous Materials upon the Premises Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental documents relating thereto reports filed pursuant to any self reporting requirements permit applications permits monitoring reports workplace exposure and community exposure warnings or notices and all other reports disclosures plans or documents (even those which may be characterized as confidential) relating to water discharges air pollution waste generation or disposal and underground storage tanks for Hazardous Materials orders reports notices listings and correspondence (even those which may be considered confidential) of or concerning the release investigation of compliance cleanup remedial and corrective actions and abatement of Hazardous Materials and all complaints pleadings and other legal documents filed by or against Tenant related to Tenant's use handling storage release and/or disposal of Hazardous Materials

(d) Subject to the limitations on access set forth in this Lease Landlord and its agents shall have the right but not the obligation to inspect, sample and/or monitor the Premises and/or the soil or groundwater thereunder at any time to determine whether Tenant is complying with the terms of this Section 5.3 and in connection therewith Tenant shall provide Landlord with full access to all relevant facilities records and personnel If Tenant is not in compliance with any of the provisions of this Section 5.3 or in the event of a release of any Hazardous Material on under or about the Premises caused or knowingly permitted by Tenant its agents employees contractors licensees or invitees Landlord and its agents shall have the right, but not the obligation without limitation upon any of Landlord's other rights and remedies under this Lease to immediately enter upon the Premises without notice and to discharge Tenant's obligations under this Section 5.3 at Tenant's expense including without limitation the taking of emergency or long-term remedial action (except that other than with respect to emergency situations (in which case Landlord may act immediately) such entry and discharge rights may be exercised by Landlord only if Tenant fails to remedy the non-compliance or release in question with reasonable promptness) Landlord and its agents shall endeavor to minimize interference with Tenant's business in connection therewith but shall not be liable for any such interference In addition Landlord at Tenant's expense, shall have the right but not the obligation to join and participate in any legal proceedings or actions initiated in connection with any claims arising out of the storage generation use release and/or disposal by Tenant or its agents employees contractors licensees or invitees of Hazardous Materials on under from or about the Premises

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

(f) Landlord hereby discloses to Tenant and Tenant hereby acknowledges certain facts relating to Hazardous Materials at the Project known by Landlord to exist as of the date of this Lease as more particularly described in Exhibit C attached hereto. Notwithstanding anything contained herein to the contrary, Tenant shall have no liability or responsibility with respect to the Hazardous Materials facts described in Exhibit C, nor with respect to any other Hazardous Materials which were located on, in, under or affecting the Premises or the Building as of the date of this Lease or which were not caused or knowingly permitted by Tenant, its agents, employees, contractors, licensees or invitees. Notwithstanding the preceding two sentences, Tenant agrees to notify its agents, employees, contractors, licensees and invitees of any exposure or potential exposure to Hazardous Materials at the Premises that Landlord brings to Tenant's attention.

(g) For purposes of this Section 5.3 and Exhibit C, "knowingly permit" and "knowingly permitted" shall not include (i) the underground migration or presence of Hazardous Materials beneath the Project to the extent the same is not caused by Tenant, its agents, employees, contractors, licensees or invitees or (ii) the activities of parties other than Tenant, its agents, employees, contractors, licensees or invitees in, on or about the Common Areas (except that Tenant agrees to promptly notify Landlord of any activities of any such parties involving Hazardous Materials that Tenant becomes aware of that may result in injury to person or property or contamination of the Project or any part thereof).

ARTICLE VI COMMON AREAS, SERVICES

SECTION 6.1 UTILITIES AND SERVICES Tenant shall be responsible for and shall pay promptly directly to the appropriate supplier all charges for water, gas, electricity, sewer, heat, light, power, telephone, refuse pickup, janitorial service, interior landscape maintenance and all other utilities, materials and services furnished directly to Tenant or the Premises or used by Tenant in, on or about the Premises during the Term together with any taxes thereon. If any utilities or services are not separately metered (or sub-metered) or assessed to Tenant, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such amount to Landlord as an item of additional rent, within ten (10) days after receipt of Landlord's statement or invoice therefor. Landlord shall not be liable for damages or otherwise for any failure or interruption of any utility or other service furnished to the Premises and no such failure or interruption shall be deemed an eviction or entitle Tenant to terminate this Lease or withhold or abate any rent due hereunder. Landlord shall at all reasonable times have free access to all electrical and mechanical installations of Landlord located within the Premises.

SECTION 6.2 OPERATION AND MAINTENANCE OF COMMON AREAS During the Term, Landlord shall operate and maintain all Common Areas within the Building and the Project. The term "Common Areas" shall mean all areas within the exterior boundaries of the Building and other buildings in the Project which are not held for exclusive use by persons entitled to occupy space and all other appurtenant areas and improvements provided by Landlord for the common use of Landlord and tenants and their respective employees and invitees, including without limitation parking areas and structures, driveways, sidewalks, landscaped and planted areas, hallways and interior stairwells not located within the premises of any tenant, common electrical rooms and roof access entries, common entrances and lobbies, elevators and restrooms not located within the premises of any tenant.

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

SECTION 6.4 PARKING Tenant shall be entitled to unreserved and unassigned vehicle parking spaces without the imposition of any direct parking charges for the use thereof on those portions of the Common Areas designated by Landlord for parking up to, but not exceeding, a total thirty (30) parking spaces. Tenant shall not use more parking spaces than such number. All parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles, vans or pickup trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or

allows any of the prohibited activities described above then Landlord shall have the right, without notice in addition to such other rights and remedies that Landlord may have to remove or tow away the vehicle involved and charge the costs to Tenant. Parking within the Common Areas shall be limited to striped parking stalls and no parking shall be permitted in any driveways access ways or in any area which would prohibit or impede the free flow of traffic within the Common Areas. There shall be no overnight parking of any vehicles of any kind unless otherwise authorized by Landlord and vehicles which have been abandoned or parked in violation of the terms hereof may be towed away at the owners expense. Nothing contained in this Lease shall be deemed to create liability upon Landlord for any damage to motor vehicles of visitors or employees for any loss of property from within those motor vehicles or for any injury to Tenant its visitors or employees unless ultimately determined to be caused by the sole active negligence or willful misconduct of Landlord. Landlord shall have the right to establish and from time to time amend and to enforce against all users all reasonable non-discriminatory rules and regulations (including the designation of areas for employee parking) that Landlord may deem necessary and advisable for the proper and efficient operation and maintenance of parking within the Common Areas. Landlord shall have the right to construct, maintain and operate lighting facilities within the parking areas to change the area level location and arrangement of the parking areas and improvements therein to restrict parking by tenants their officers agents and employees to employee parking areas, and to do and perform such other acts in and to the parking areas and improvements therein as in the use of good business judgment Landlord shall determine to be advisable. Any person using the parking area shall observe all directional signs and arrows and any posted speed limits. In no event shall Tenant interfere with the use and enjoyment of the parking area by other tenants of the Building or their employees or invitees. Parking areas shall be used only for parking vehicles. Washing waxing cleaning or servicing of vehicles or the storage of vehicles for 24-hour periods (other than Tenant's service vans) is prohibited unless otherwise authorized by Landlord. Tenant shall be liable for any damage to the parking areas caused by Tenant or Tenant's employees suppliers, shippers customers or invitees including without limitation damage from excess oil leakage. Tenant shall have no right to install any fixtures equipment or personal property in the parking areas.

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

ARTICLE VII MAINTAINING THE PREMISES

SECTION 7.1 TENANT'S MAINTENANCE AND REPAIR Tenant at its sole expense shall comply with all applicable laws and governmental regulations governing the Premises and make all repairs necessary to keep the Premises in the condition as existed on the Commencement Date (or on any later date that the improvements may have been installed) excepting ordinary wear and tear including without limitation the electrical and mechanical systems serving the Premises (including without limitation the heating ventilating and air conditioning system serving the Premises) all glass windows doors door closures hardware fixtures electrical plumbing fire extinguisher equipment and other equipment. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Tenant. As part of its maintenance obligations hereunder Tenant shall at Landlord's request provide Landlord with copies of all maintenance schedules, reports and notices prepared by or for on behalf of Tenant and Landlord reserves the right to enter the Premises to inspect the same (including electrical and mechanical systems) to verify that the same are being properly repaired by Tenant subject to the limitations on access set forth in this Lease. All repairs shall be at least equal in quality to the original work, shall be made only by a licensed contractor approved in writing in advance by Landlord (which approval shall not be unreasonably withheld) and shall be made only at reasonable times. Any contractor utilized by Tenant shall be subject to Landlord's standard requirements for contractors as modified from time to time. Landlord may impose reasonable restrictions and requirements with respect to repairs as provided in Section 7.3, and the provisions of Section 7.4 shall apply to all repairs. Should Tenant fail to undertake any repair with reasonable promptness Landlord may elect to make any such repair on behalf of Tenant and at Tenant's expense and Tenant shall promptly reimburse Landlord for all reasonable costs incurred upon submission of an invoice.

SECTION 7.2 LANDLORD'S MAINTENANCE AND REPAIR Subject to Section 7.1 and Article XI Landlord shall provide service maintenance and repair with respect to the roof foundations and footings of the Building all landscaping walkways parking areas Common Areas exterior lighting the air conditioning ventilating or heating equipment servicing the Common Areas and all other systems serving the Common Areas and the exterior surfaces of the exterior walls of the Building except that Tenant at its expense shall make all repairs which Landlord deems reasonably necessary as a result of the act or negligence of Tenant its agents employees invitees subtenants or contractors. Landlord shall have the right to employ or designate any reputable person or firm including any employee or agent of Landlord or any of Landlord's affiliates or divisions to perform any service repair or maintenance function. Landlord need not make any other improvements or repairs except as specifically required under this Lease and nothing contained in this Section shall limit Landlord's right to

reimbursement from Tenant for maintenance repair costs and replacement costs as provided elsewhere in this Lease. Tenant understands that it shall not make repairs at Landlord's expense or by rental offset. Tenant further understands that Landlord shall not be required to make any repairs to the roof foundations footings structural electrical or mechanical systems unless and until Tenant or any other tenant or governmental official has notified Landlord in writing of the need for such repair and Landlord shall have a reasonable period of time thereafter to commence and complete said repair if warranted. All costs of any maintenance and repairs on the part of Landlord provided hereunder shall be considered part of Project Costs.

SECTION 7.3 ALTERATIONS Except as otherwise permitted pursuant to the Work Letter attached hereto as Exhibit X, Tenant shall make no alterations additions or improvements to the Premises without the prior written consent of Landlord which consent may be given or withheld in Landlord's sole discretion. Notwithstanding the foregoing Landlord shall not unreasonably withhold condition or delay its consent to any alterations additions or improvements to the Premises which do not (i) affect the exterior of the Building or outside areas (or be visible from adjoining sites) or (ii) affect or penetrate any of the structural portions of the Building including but not limited to the roof or (iii) require any change to the basic floor plan of the Premises any change to any structural or mechanical systems of the Premises or any governmental permit as a prerequisite to the construction thereof or (iv) interfere in any manner with the proper functioning of or Landlord's access to any mechanical electrical plumbing or HVAC systems facilities or equipment located in or serving the Building or (v) diminish the value of the Premises. Landlord may impose as a condition to its consent any requirements that Landlord in its discretion may deem reasonable or desirable including but not limited to a requirement that all work be covered by a lien and completion bond satisfactory to Landlord and requirements as to the manner time and contractor for performance of the work. Tenant shall obtain all required permits for the work and shall perform the work in compliance with all applicable laws regulations and ordinances all covenants conditions and restrictions affecting the Project and the Rules and Regulations (hereafter defined). Tenant understands and agrees that Landlord shall be entitled to a supervision fee in the amount of five percent (5%) of the cost of the work. If any governmental entity requires as a condition to any proposed alterations additions or improvements to the Premises by Tenant that improvements be made to the Common Areas and if Landlord consents to such improvements to the Common Areas then Tenant shall at Tenant's sole expense make such required improvements to the Common Areas in such manner utilizing such materials and with such contractors (including if required by Landlord Landlord's contractors) as Landlord may require in its sole discretion. Except as otherwise expressly permitted pursuant to Section 5.3(b) above under no circumstances shall Tenant make any improvement which incorporates any Hazardous Materials, including without limitation asbestos-containing construction materials into the Premises. Any request for Landlord's consent shall be made in writing and shall contain architectural plans describing the work in detail reasonably satisfactory to Landlord. Unless Landlord otherwise agrees in writing all alterations additions or improvements affixed to the Premises (excluding moveable trade fixtures equipment and furniture) shall become the property of Landlord and shall be surrendered with the Premises at the end of the Term except that Landlord may by written notice to Tenant, require Tenant to remove by the Expiration Date or sooner termination date of this Lease all or any alterations decorations fixtures additions improvements and the like installed either by Tenant or by Landlord at Tenant's request and to repair any damage to the Premises arising from that removal (which notice may be given by Landlord at any time except that, if at the time Tenant requests Landlord's consent to the alterations decorations fixtures additions or improvements in question Tenant specifically requests in writing that Landlord make such election concurrently with its consent (with specific reference in Tenant's written request to the requirements of this sentence) then Landlord shall provide such notice if at all concurrently with its consent to the alterations decorations fixtures additions or improvements in question). Except as otherwise provided in this Lease or in any Exhibit to this Lease should Landlord make any alteration or improvement to the Premises for Tenant Landlord shall be entitled to prompt reimbursement from Tenant for all actual costs incurred.

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

SECTION 7.5 ENTRY AND INSPECTION Landlord shall at all reasonable times upon reasonable prior written or oral notice (except in emergencies when no notice shall be required) have the right to enter the Premises to inspect them to supply services in accordance with this Lease to protect the interests of Landlord in the Premises and to submit the Premises to prospective or actual purchasers or encumbrance holders (or during the last one hundred and eighty (180) days of the Term or when an uncured Tenant default exists to prospective tenants) all without being deemed to have caused an eviction of Tenant and without abatement of rent except as provided elsewhere in this Lease. Landlord shall have the right if desired, to retain a key which unlocks all of the doors in the Premises excluding Tenant's vaults and safes and Landlord shall have the right to use any and all

means which Landlord may deem proper to open the doors in an emergency in order to obtain entry to the Premises and any entry to the Premises obtained by Landlord shall not under any circumstances be deemed to be a forcible or unlawful entry into or a detainer of the Premises or any eviction of Tenant from the Premises. Notwithstanding the foregoing or anything to the contrary contained in this Lease in the event that Landlord desires to enter the Premises to make any permitted repairs or for any other reason permitted by the terms of this Lease Tenant shall be permitted except with respect to entries made in emergencies) to have an employee of Tenant accompany Landlord during any such entries (provided however that such entries of Landlord shall not be conditioned upon any such employee of Tenant in fact being available for such accompaniment at the time of Landlord's intended entry nor shall Landlord be obligated to schedule or delay its entries based on the availability or unavailability of any such employee of Tenant). Landlord acknowledges that the equipment to be installed by Tenant in the Premises may include sophisticated electronic equipment which is integral to Tenant's business. Landlord agrees to take commercially reasonable precautions to avoid damage to any such equipment during any entries made by Landlord hereunder.

SECTION 7.6 [Intentionally deleted]

ARTICLE VIII TAXES AND ASSESSMENTS ON TENANT'S PROPERTY

Tenant shall be liable for and shall pay at least ten (10) days before delinquency all taxes and assessments levied against all personal property of Tenant located in the Premises against all improvements to the Premises made by Landlord or Tenant which are above Landlord's Project standard in quality and/or quantity for comparable space within the Project ("Above Standard Improvements") and against any alterations, additions or like improvements made to the Premises by or on behalf of Tenant. When possible Tenant shall cause its personal property Above Standard Improvements and alterations to be assessed and billed separately from the real property of which the Premises form a part. If any taxes on Tenant's personal property Above Standard Improvements and/or alterations are levied against Landlord or Landlord's property and if Landlord pays the same or if the assessed value of Landlord's property is increased by the inclusion of a value placed upon the personal property Above Standard Improvements and/or alterations of Tenant and if Landlord pays the taxes based upon the increased assessment Tenant shall pay to Landlord the taxes so levied against Landlord or the proportion of the taxes resulting from the increase in the assessment. In calculating what portion of any tax bill which is assessed against Landlord separately or Landlord and Tenant jointly is attributable to Tenant's Above Standard Improvements, alterations and personal property Landlord's reasonable determination shall be conclusive.

ARTICLE IX ASSIGNMENT AND SUBLETTING

SECTION 9.1 RIGHTS OF PARTIES

(a) Notwithstanding any provision of this Lease to the contrary (and except as otherwise provided in Section 9.4 below) Tenant will not either voluntarily or by operation of law assign, sublet, encumber or otherwise transfer all or any part of Tenant's interest in this lease or permit the Premises to be occupied by anyone other than Tenant without Landlord's prior written consent, which consent shall not unreasonably be withheld in accordance with the provisions of Section 9.1(b). Except as otherwise provided in Section 9.4 below, no assignment (whether voluntary, involuntary or by operation of law) and no subletting shall be valid or effective without Landlord's prior written consent and at Landlord's election any such assignment or subletting or attempted assignment or subletting shall constitute a material default of this Lease. Landlord shall not be deemed to have given its consent to any assignment or subletting by any other course of action including its acceptance of any name for listing in the Building directory. To the extent not prohibited by provisions of the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code") including Section 365(f)(1), Tenant on behalf of itself and its creditors, administrators and assigns waives the applicability of Section 365(e) of the Bankruptcy Code unless the proposed assignee of the Trustee for the estate of the bankrupt meets Landlord's standard for consent as set forth in Section 9.1(b) of this Lease. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations to be delivered in connection with the assignment shall be delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed to have assumed all of the obligations arising under this Lease on and after the date of the assignment, and shall upon demand execute and deliver to Landlord an instrument confirming that assumption.

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

Landlord shall not unreasonably withhold its consent provided (1) the use of the Premises will be consistent with the provisions of this Lease and with Landlord's commitment to other tenants of the Building and Project (2) the proposed assignee or subtenant has not been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Materials contaminating a property arising out of the proposed assignee's or subtenant's actions or use of the property in question and is not subject to any enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material (3) at Landlord's election, insurance requirements shall be brought into conformity with Landlord's then current leasing practice (4) any proposed subtenant or assignee demonstrates that it is financially responsible by submission to Landlord of all reasonable information as Landlord may request concerning the proposed subtenant or assignee including, but not limited to, a balance sheet of the proposed subtenant or assignee as of a date within ninety (90) days of the request for Landlord's consent, statements of income or profit and loss of the proposed subtenant or assignee for the two-year period preceding the request for Landlord's consent (or, if the assignee or subtenant has not been in existence during such two-year period, for such shorter period as may be available) and/or a certification signed by the proposed subtenant or assignee that it has not been evicted or been in arrears in rent at any other leased premises for the 3 year period preceding the request for Landlord's consent (5) [intentionally deleted] (6) the proposed assignee or subtenant is not an existing tenant of the Building or Project or a prospect with whom Landlord is then actively negotiating to become a tenant at the Building or Project, and (7) the proposed transfer will not impose additional burdens or adverse tax effects on Landlord. If Tenant has any exterior sign rights under this Lease, such rights are personal to Tenant and may not be assigned or transferred to any assignee of this Lease or subtenant of the Premises without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.

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

(c) Notwithstanding the provisions of Subsection (b) above, in lieu of consenting to a proposed assignment or subletting which requires Landlord's consent, Landlord may elect to (i) sublease the Premises (or the portion proposed to be subleased) or take an assignment of Tenant's interest in this Lease upon the same terms as offered to the proposed subtenant or assignee (excluding terms relating to the purchase of personal property, the use of Tenant's name or the continuation of Tenant's business) or (ii) terminate this Lease as to the portion of the Premises proposed to be subleased or assigned with a proportionate abatement in the rent payable under this Lease effective on the date that the proposed sublease or assignment would have become effective. Landlord may thereafter at its option, assign or re-let any space so recaptured to any third party, including, without limitation, the proposed transferee of Tenant.

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

(e) Tenant shall pay to Landlord a fee of Five Hundred Dollars (\$500.00) if and when any transfer hereunder is requested by Tenant. Such fee is hereby acknowledged as a reasonable amount to reimburse Landlord for its costs of review and evaluation of a proposed assignee/sublessee, and Landlord shall not be obligated to commence such review and evaluation unless and until such fee is paid.

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

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

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

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

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

SECTION 9.4 CERTAIN TRANSFERS The sale of all or substantially all of Tenant's assets (other than bulk sales in the ordinary course of business) or if Tenant is a corporation an unincorporated association or a partnership the transfer assignment or hypothecation of any stock or interest in such corporation association or partnership in the aggregate of twenty-five percent (25%) (except for publicly traded shares of stock constituting a transfer assignment or hypothecation of twenty five percent (25%) or more in the aggregate) shall be deemed an assignment within the meaning and provisions of this Article Notwithstanding the foregoing Landlord's consent shall not be required for the assignment of this Lease for any of the following transfers (each of which shall be a Permitted Transfer") (a) to any entity which controls, is controlled by or is under common control with Tenant, (b) to any successor entity resulting from the merger or consolidation with Tenant or (c) to any entity which acquires all or substantially all of the assets or stock of Tenant, so long as in each instance (i) with respect to a Permitted Transfer described in subsections (b) and/or (c) above the net worth of the assignee immediately following such assignment is at least equal to the greater of the net worth of Tenant as of the execution of this Lease by Landlord or the net worth of Tenant immediately prior to the date of such assignment evidence of which reasonably satisfactory to Landlord shall be presented to Landlord prior to such assignment, (ii) Tenant shall provide to Landlord prior to such assignment written notice of such assignment and such assignment documentation and other information as Landlord may reasonably request in connection therewith and (iii) all of the other terms and requirements of this Article shall apply with respect to such assignment In addition Landlord's consent shall not be required for the sublease of all or any portion of the Premises to any entity which controls is controlled by or is under common control with Tenant so long as (i) Tenant shall provide to Landlord prior to such sublease written notice of such sublease and such sublease documentation and other information as Landlord may reasonably request in connection therewith and (ii) all of the other terms and requirements of this Article shall apply with respect to such sublease For purposes of this Section 9.4 the term "control" means possession directly or indirectly of the power to direct or cause the direction of the management affairs and policies of the entity in question whether through the ownership of voting securities by contract or otherwise

Landlord acknowledges that Tenant's business to be conducted within the Premises requires the installation within the Premises of certain communications equipment by telecommunications customers of Tenant (collectively "Customers") in order for such Customers to interconnect with Tenant's terminal facilities and that Tenant would not be entering into this Lease in the absence of the following provisions of this paragraph Tenant hereby notifies Landlord that such arrangements will require access by each such Customer to the Premises on an infrequent basis during the Term Tenant agrees that each such Customer shall at all time, be accompanied by an employee or representative of Tenant while on the Premises Notwithstanding anything contained in this Article IX to the contrary any license arrangement co location agreement or similar agreement, howsoever denominated between Tenant and any such Customer for the limited purposes of permitting such an arrangement as described in this paragraph (collectively the Co Location Agreement(s)) shall not require the prior written consent of Landlord provided (i) Tenant provides Landlord with written notice of each such arrangement and furnishes Landlord with a copy of each such Co Location Agreement both within ten (10) business days following execution of each such Co Location Agreement (ii) any such arrangement is not a subterfuge by Tenant to avoid the provisions of this Lease relating to assignments and sublettings generally and (iii) each Co Location Agreement shall be made expressly subject and subordinate to this Lease and shall provide for automatic termination upon the expiration or sooner

termination of this Lease. Tenant shall be liable to Landlord for any acts or omissions by its Customers (and their employees, contractors and agents) and for purposes of this Lease (a) such Customers (and their employees, contractors and agents) shall be deemed to be invitees of Tenant and (ii) Landlord shall have no liability whatsoever for any damage to any Customer's communications equipment installed in the Premises and Tenant agrees to indemnify, defend and hold Landlord harmless from any and against any claims or liabilities arising with respect to any damage or injury to any such communications equipment. The installation of any such communications equipment shall be subject to and made in accordance with all the terms and conditions of this Lease (including without limitation the terms and conditions of Section 7.3 above to the extent the installation constitutes an alteration, addition and/or improvement to the Premises) as if such installations were being made by or for the benefit of Tenant hereunder.

ARTICLE X INSURANCE AND INDEMNITY

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

SECTION 10.2 LANDLORD'S INSURANCE Landlord shall provide the following types of insurance with or without deductible and in amounts and coverages as may be reasonably determined by Landlord in its discretion: "all risk" property insurance, subject to standard exclusions (such as but not limited to earthquake and flood exclusions) covering the full replacement cost of the Building (the "All Risk Policy"). In addition, Landlord may at its election obtain insurance for such other risks as Landlord or its mortgagees may from time to time deem appropriate, including without limitation coverage for earthquake, flood and commercial general liability. Landlord shall not be required to carry insurance of any kind on Tenant's property, including leasehold improvements, trade fixtures, furnishings, equipment, plate glass, signs and all other items of personal property and shall not be obligated to repair or replace that property should damage occur. All proceeds of insurance maintained by Landlord upon the Building and Project shall be the property of Landlord, whether or not Landlord is obligated to or elects to make any repairs. At Landlord's option, Landlord may self insure all or any portion of the risks for which Landlord elects or is required to provide insurance hereunder.

SECTION 10.3 TENANT'S INDEMNITY To the fullest extent permitted by law, Tenant shall defend, indemnify, protect, save and hold harmless Landlord, its agents and any and all affiliates of Landlord, including without limitation any corporations or other entities controlling, controlled by or under common control with Landlord, from and against any and all claims, liabilities, costs or expenses arising either before or after the Commencement Date from Tenant's use or occupancy of the Premises, the Building or the Common Areas or from the conduct of its business or from any activity, work or thing done, permitted or suffered by Tenant or its agents, employees, invitees or licensees in or about the Premises, the Building or the Common Areas or from any default in the performance of any obligation on Tenant's part to be performed under this Lease or from any act or negligence of Tenant or its agents, employees, visitors, patrons, guests, invitees or licensees. Landlord may at its option require Tenant to assume Landlord's defense in any action covered by this Section through counsel satisfactory to Landlord. The provisions of this Section shall expressly survive the expiration or sooner termination of this Lease.

SECTION 10.4 LANDLORD'S NONLIABILITY Landlord shall not be liable to Tenant, its employees, agents and invitees, and Tenant hereby waives all claims against Landlord for loss of or damage to any property or loss or interruption of business or income or any other loss, cost, damage, injury or liability whatsoever (including without limitation any consequential damages and lost profit or opportunity costs) resulting from but not limited to Acts of God, acts of civil disobedience or insurrection, acts or omissions of other tenants within the Project or their agents, employees, contractors, guests or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Building, whether the damage or injury results from conditions arising in the Premises or in other portions of the Building. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Building. Except as provided in Sections 11.1 and 12.1 below, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business (including without limitation consequential damages and lost profit or opportunity costs) arising from the making of any repairs, alterations or improvements to any portion of the Building, including repairs to the Premises, nor shall any related activity by Landlord constitute an actual or constructive eviction, provided however that in making repairs, alterations or improvements, Landlord shall interfere as little as reasonably practicable with the conduct of Tenant's business in the Premises and shall comply with other applicable provisions of this Lease relating to access to the Premises. Neither Landlord nor its agents shall be liable for interference with light or other similar intangible interests. Tenant shall immediately notify Landlord in case of fire or accident in the Premises, the Building or the Project and of defects in any improvements or equipment.

SECTION 10.5 WAIVER OF SUBROGATION Landlord and Tenant each hereby waives all rights of recovery against the other and the other's agents on account of loss and damage occasioned to the property of such waiving party to the extent only that such loss or damage is required to be insured against under any all

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

ARTICLE XI DAMAGE OR DESTRUCTION

SECTION 11.1 RESTORATION

(a) If the Building of which the Premises are a part is damaged Landlord shall repair that damage as soon as reasonably possible at its expense unless (i) Landlord reasonably determines that the cost of repair is not covered by Landlord's fire and extended coverage insurance (or if Landlord is self insuring would not be covered by a standard "all-risk" policy subject to standard exclusions) plus such additional amounts Tenant elects at its option to contribute excluding however the deductible (for which Tenant shall be responsible for Tenant's Share) (ii) Landlord reasonably determines that the Premises and any other damaged portion of the Building necessary for Tenant's use of the Premises for its permitted use cannot with reasonable diligence be fully repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors including without limitation Hazardous Materials earthquake faults and other similar dangers) within two hundred ten (210) days after the date of the damage (iii) an event of default by Tenant has occurred and is continuing at the time of such damage or (iv) the damage occurs during the final twelve (12) months of the Term (unless Tenant elects to exercise any then applicable renewal option then available for exercise subject to and in accordance with the terms and conditions of Section 3.3 above) Should Landlord elect not to repair the damage for one of the preceding reasons Landlord shall so notify Tenant in writing within forty-five (45) days after the damage occurs and this Lease shall terminate as of the date of that notice

(b) Unless Landlord elects to terminate this Lease in accordance with subsection (a) above this Lease shall continue in effect for the remainder of the Term provided that so long as Tenant is not in default under this Lease if the damage is so extensive that Landlord reasonably determines that the Premises cannot with reasonable diligence be repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors earthquake faults and other similar dangers) so as to allow Tenant's substantial use and enjoyment of the Premises within two hundred ten (210) days after the date of damage then Tenant may elect to terminate this Lease by written notice to Landlord within the forty-five (45) day period stated in subsection (a)

(c) Unless this Lease is otherwise terminated as provided in this Article XI Landlord agrees to diligently prosecute the repair and restoration of the Premises to completion subject to the terms and conditions of this Article XI Commencing on the date of any damage to the Building and ending on the sooner of the date the damage is repaired or the date this Lease is terminated the rental to be paid under this Lease shall be abated in the same proportion that the floor area of the Premises that is rendered unusable by the damage from time to time bears to the total floor area of the Premises Any such abatement shall be conditioned upon Tenant's then carrying the required business interruption insurance as described in Exhibit D attached hereto

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

(e) Tenant shall fully cooperate with Landlord in removing Tenant's personal property and any debris from the Premises to facilitate all inspections of the Premises and the making of any repairs Notwithstanding anything to the contrary contained in this Lease if Landlord in good faith believes there is a risk of injury to persons or damage to property from entry into the Building or Premises following any damage or destruction thereto Landlord may restrict entry into the Building or the Premises by Tenant its employees agents and contractors in a non-discriminatory manner without being deemed to have violated Tenant's rights of quiet enjoyment to or made an unlawful detainer of or evicted Tenant from the Premises Upon request Landlord shall consult with Tenant to determine if there are safe methods of entry into the Building or the Premises solely in order to allow Tenant to retrieve files data in computers and necessary inventory subject however to all indemnities and waivers of liability from Tenant to Landlord contained in this Lease and any additional indemnities and waivers of liability which Landlord may require

SECTION 11.2 LEASE GOVERNS Tenant agrees that the provisions of this Lease including

without limitation Section 11.1 shall govern any damage or destruction and shall accordingly supersede any contrary statute or rule of law

ARTICLE XII EMINENT DOMAIN

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

SECTION 12.2 TEMPORARY TAKING No temporary taking of the Premises shall terminate this Lease or give Tenant any right to abatement of rent and any award specifically attributable to a temporary taking of the Premises shall belong entirely to Tenant. A temporary taking shall be deemed to be a taking of the use or occupancy of the Premises for a period of not to exceed one hundred eighty (180) days.

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

ARTICLE XIII SUBORDINATION, ESTOPPEL CERTIFICATE, FINANCIALS

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

SECTION 13.2 ESTOPPEL CERTIFICATE

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

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

SECTION 13.3 FINANCIALS

(a) Tenant shall deliver to Landlord prior to the execution of this Lease and thereafter at any time upon Landlord's request, Tenant's current tax returns and financial statements certified true, accurate and complete by the chief financial officer of Tenant, including a balance sheet and profit and loss statement for the most recent prior year (collectively the "Statements") which Statements shall accurately and completely reflect the financial condition of Tenant as of the date thereof. Landlord agrees that it will keep the Statements confidential except that Landlord shall have the right to deliver the same to any proposed purchaser of the Building or Project, and to any encumbrancer of all or any portion of the Building or Project.

(b) Tenant acknowledges that Landlord is relying on the Statements in its determination to enter into this Lease and Tenant represents to Landlord which representation shall be deemed made on the date of this Lease and again on the Commencement Date that no material adverse change in the financial condition of Tenant as reflected in the Statements has occurred since the date Tenant delivered the Statements to Landlord. The Statements are represented and warranted by Tenant to be correct in all material respects and to accurately and fully reflect Tenant's true financial condition as of the date of such Statements.

ARTICLE XIV DEFAULTS AND REMEDIES

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

(a) The failure by Tenant to make any payment of rent or additional rent required to be made by Tenant, as and when due, where the failure continues for a period of five (5) days after written notice from Landlord to Tenant, provided, however, that any such notice shall be in lieu of and not in addition to any notice required under California Code of Civil Procedure Section 1161 and 1161(a) as amended. For purposes of these default and remedies provisions, the term "additional rent" shall be deemed to include all amounts of any type whatsoever other than Basic Rent to be paid by Tenant pursuant to the terms of this Lease.

(b) Assignment, sublease, encumbrance or other transfer of the Lease by Tenant, either voluntarily or by operation of law, whether by judgment, execution, transfer by intestacy or testacy, or other means, without the prior written consent of Landlord (other than an assignment or subletting permitted to be made without Landlord's consent pursuant to Section 9.4 above).

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

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

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

(f) (i) The making by Tenant of any general assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a Chapter 7 debtor under the Bankruptcy Code or to have debts discharged or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, if possession is not restored to Tenant within thirty (30) days; (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where the seizure is not discharged within thirty (30) days; or (v) Tenant's convening of a meeting of its creditors for the purpose of effecting a moratorium upon or composition of its debts. Landlord shall not be deemed to have knowledge of any event described in this subsection unless notification in writing is received by Landlord, nor shall there be any presumption attributable to Landlord of Tenant's insolvency. In the event that any provision of this subsection is contrary to applicable law, the provision shall be of no force or effect.

SECTION 14.2 LANDLORD'S REMEDIES

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

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

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

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

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

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

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

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

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

(c) No delay or omission of Landlord to exercise any right or remedy shall be construed as a waiver of the right or remedy or of any default by Tenant. The acceptance by Landlord of rent shall not be a (i) waiver of any preceding breach or default by Tenant of any provision of this Lease other than the failure of Tenant to pay the particular rent accepted, regardless of Landlord's knowledge of the preceding breach or default at the time of acceptance of rent, or (ii) a waiver of Landlord's right to exercise any remedy available to Landlord by virtue of the breach or default. The acceptance of any payment from a debtor in possession, a trustee, a receiver or any other person acting on behalf of Tenant or Tenant's estate shall not waive or cure a default under Section 14.1. No payment by Tenant or receipt by Landlord of a lesser amount than the rent required by this Lease shall be deemed to be other than a partial payment on account of the earliest due stipulated rent, nor shall any endorsement or statement on any check or

letter be deemed an accord and satisfaction and Landlord shall accept the check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy available to it. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises and no agreement to accept a surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys to the Premises prior to the termination of this Lease and the delivery of the keys to any employee shall not operate as a termination of the Lease or a surrender of the Premises

SECTION 14.3 LATE PAYMENTS

(a) Any rent due under this Lease that is not received by Landlord within five (5) days of the date when due shall bear interest at the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate permitted by law which interest shall accrue from the date due until fully paid. The payment of interest shall not cure any default by Tenant under this Lease. In addition, Tenant acknowledges that the late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Those costs may include, but are not limited to, administrative processing and accounting charges and late charges which may be imposed on Landlord by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any rent due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after the date due, then Tenant shall pay to Landlord, in addition to the interest provided above, a late charge in a sum equal to the greater of five percent (5%) of the amount overdue or Two Hundred Fifty Dollars (\$250.00) for each delinquent payment. Acceptance of a late charge by Landlord shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor shall it prevent Landlord from exercising any of its other rights and remedies.

(b) Following each second consecutive installment of rent that is not paid within five (5) days following notice of nonpayment from Landlord, Landlord shall have the option (i) to require that beginning with the first payment of rent next due, rent shall no longer be paid in monthly installments but shall be payable quarterly, three (3) months in advance and/or (ii) to require that Tenant increase the amount, if any, of the Security Deposit by one hundred percent (100%). Should Tenant deliver to Landlord at any time during the Term two (2) or more insufficient checks, the Landlord may require that all monies then and thereafter due from Tenant be paid to Landlord by cashier's check.

SECTION 14.4. RIGHT OF LANDLORD TO PERFORM. All covenants and agreements to be performed by Tenant under this Lease shall, except as otherwise expressly provided herein, be performed at Tenant's sole cost and expense and without any abatement of rent or right of set-off. If Tenant fails to pay any sum of money other than rent or fails to perform any other act on its part to be performed under this Lease and the failure continues beyond any applicable grace period set forth in Section 14.1, then, in addition to any other available remedies, Landlord may, at its election, make the payment or perform the other act on Tenant's part. Landlord's election to make the payment or perform the act on Tenant's part shall not give rise to any responsibility of Landlord to continue making the same or similar payments or performing the same or similar acts. Tenant shall promptly upon demand by Landlord reimburse Landlord for all sums paid by Landlord and all necessary incidental costs together with interest at the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate permitted by law which interest shall accrue from the date of the payment by Landlord until fully paid. Landlord shall have the same rights and remedies if Tenant fails to pay those amounts as Landlord would have in the event of a default by Tenant in the payment of rent.

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

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

SECTION 14.7. WAIVER OF JURY TRIAL. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER.

(AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE

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SECTION 14.8 SATISFACTION OF JUDGMENT The respective obligations of Landlord and Tenant do not constitute the personal obligations of the individual partners, trustees, directors, officers or shareholders of Landlord or Tenant, as the case may be, or any constituent partners. Should Tenant recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right title and interest of Landlord in the Project and out of the rent or other income from such property receivable by Landlord or out of consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right title or interest in the Project and no action for any deficiency may be sought or obtained by Tenant.

SECTION 14.9 LIMITATION OF ACTIONS AGAINST LANDLORD Any claim demand or right of any kind by Tenant which is based upon or arises in connection with this Lease shall be barred unless Tenant commences an action thereon within nine (9) months after the date that the act, omission, event or default upon which the claim demand or right arises has occurred.

ARTICLE XV END OF TERM

SECTION 15.1 HOLDING OVER This Lease shall terminate without further notice upon the expiration of the Term and any holding over by Tenant after the expiration shall not constitute a renewal or extension of this Lease or give Tenant any rights under this Lease except when in writing signed by both parties. If Tenant holds over for any period after the expiration (or earlier termination) of the Term without the prior written consent of Landlord, such possession shall constitute a tenancy at sufferance only; such holding over with the prior written consent of Landlord shall constitute a month to month tenancy commencing on the first (1st) day following the termination of this Lease. In either of such events, possession shall be subject to all of the terms of this Lease except that the monthly Basic Rent shall be the greater of (a) one hundred fifty percent (150%) of the Basic Rent for the month immediately preceding the date of termination or (b) the then currently scheduled Basic Rent for comparable space in the Building. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claims made by any succeeding tenant relating to such failure to surrender. Acceptance by Landlord of rent after the termination shall not constitute a consent to a holdover or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and do not affect Landlord's right of re-entry or any other rights of Landlord under this Lease or at law.

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

SECTION 15.3 SURRENDER OF PREMISES, REMOVAL OF PROPERTY Upon the Expiration Date or upon any earlier termination of this Lease, Tenant shall quit and surrender possession of the Premises to Landlord in as good order, condition and repair as when received or as hereafter may be improved by Landlord or Tenant, reasonable wear and tear and repairs which are Landlord's obligation excepted, and shall without expense to Landlord remove or cause to be removed from the Premises all personal property and debris except for any items that Landlord may by written authorization allow to remain. Tenant shall repair all damage to the Premises resulting from the removal, which repair shall include the patching and filling of holes and repair of structural damage, provided that Landlord may instead elect to repair any structural damage at Tenant's expense. If Tenant shall fail to comply with the provisions of this Section, Landlord may effect the removal and/or make any repairs, and the cost to Landlord shall be additional rent payable by Tenant upon demand. If Tenant fails to remove Tenant's personal property from the Premises upon the expiration of the Term, Landlord may remove, store, dispose of and/or retain such personal property at Landlord's option in accordance with then applicable laws, all at the expense of Tenant. If requested by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an instrument in writing releasing and quitclaiming to Landlord all right title and interest of Tenant in the Premises.

ARTICLE XVI PAYMENTS AND NOTICES

All sums payable by Tenant to Landlord shall be paid without deduction or offset in lawful money of the United States to Landlord at its address set forth in Item 12 of the Basic Lease Provisions or at any other place as Landlord may designate in writing. Unless this Lease expressly provides otherwise, as for example in the payment of rent pursuant to Section 4.1, all payments shall be due and payable within five (5) days after written demand. All payments requiring proration shall be prorated on the basis of a thirty (30) day month and a three hundred sixty (360)

day year Any notice election demand consent approval or other communication to be given or other document to be delivered by either party to the other may be delivered in person or by courier or overnight delivery service to the other party, or may be deposited in the United States mail duly registered or certified, postage prepaid return receipt requested and addressed to the other party at the address set forth in Item 12 of the Basic Lease Provisions or may be delivered by telegram telex or telecopy provided that receipt thereof is telephonically confirmed Either party may by written notice to the other served in the manner provided in this Article designate a different address If any notice or other document is sent by mail it shall be deemed served or delivered two (2) business days after mailing If more than one person or entity is named as Tenant under this Lease service of any notice upon any one of them shall be deemed as service upon all of them

ARTICLE XVII RULES AND REGULATIONS

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

ARTICLE XVIII BROKER'S COMMISSION

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

ARTICLE XIX TRANSFER OF LANDLORD'S INTEREST

In the event of any transfer of Landlord's interest in the Premises the transferor shall be automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the transfer provided that any funds held by the transferor in which Tenant has an interest shall be turned over subject to that interest to the transferee and Tenant is notified of the transfer as required by law No holder of a mortgage and/or deed of trust to which this Lease is or may be subordinate and no landlord under a so-called sale leaseback shall be responsible in connection with the Security Deposit unless the mortgagee or holder of the deed of trust or the landlord actually receives the Security Deposit It is intended that the covenants and obligations contained in this Lease on the part of Landlord shall subject to the foregoing be binding on Landlord its successors and assigns only during and in respect to their respective successive periods of ownership

ARTICLE XX INTERPRETATION

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

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

SECTION 20.3 JOINT AND SEVERAL LIABILITY If more than one person or entity is named as Tenant, the obligations imposed upon each shall be joint and several and the act of or notice from or

notice or refund to or the signature of any one or more of them shall be binding on all of them with respect to the tenancy of this Lease including but not limited to any renewal extension termination or modification of this Lease

† SECTION 20 4 SUCCESSORS Subject to Articles IX and XIX all rights and liabilities given to or imposed upon Landlord and Tenant shall extend to and bind their respective heirs executors administrators successors and assigns Nothing contained in this Section is intended or shall be construed to grant to any person other than Landlord and Tenant and their successors and assigns any rights or remedies under this Lease

SECTION 20 5 TIME OF ESSENCE Time is of the essence with respect to the performance of every provision of this Lease

SECTION 20 6 CONTROLLING LAW This Lease shall be governed by and interpreted in accordance with the laws of the State of California

SECTION 20 7 SEVERABILITY If any term or provision of this Lease the deletion of which would not adversely affect the receipt of any material benefit by either party or the deletion of which is consented to by the party adversely affected shall be held invalid or unenforceable to any extent, the remainder of this Lease shall not be affected and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law

SECTION 20 8 WAIVER AND CUMULATIVE REMEDIES One or more waivers by Landlord or Tenant of any breach of any term covenant or condition contained in this Lease shall not be a waiver of any subsequent breach of the same or any other term covenant or condition Consent to any act by one of the parties shall not be deemed to render unnecessary the obtaining of that party's consent to any subsequent act No breach by Tenant of this Lease shall be deemed to have been waived by Landlord unless the waiver is in a writing signed by Landlord The rights and remedies of Landlord under this Lease shall be cumulative and in addition to any and all other rights and remedies which Landlord may have

SECTION 20 9 INABILITY TO PERFORM In the event that either party shall be delayed or hindered in or prevented from the performance of any work or in performing any act required under this Lease by reason of any cause beyond the reasonable control of that party then the performance of the work or the doing of the act shall be excused for the period of the delay and the time for performance shall be extended for a period equivalent to the period of the delay The provisions of this Section shall not operate to excuse Tenant from the prompt payment of rent or from the timely performance of any other obligation under this Lease within Tenant's reasonable control

SECTION 20 10 ENTIRE AGREEMENT This Lease and its exhibits and other attachments cover in full each and every agreement of every kind between the parties concerning the Premises the Building and the Project and all preliminary negotiations oral agreements understandings and/or practices except those contained in this Lease are superseded and of no further effect. Tenant waives its rights to rely on any representations or promises made by Landlord or others which are not contained in this Lease No verbal agreement or implied covenant shall be held to modify the provisions of this Lease any statute law or custom to the contrary notwithstanding

SECTION 20 11 QUIET ENJOYMENT Upon the observance and performance of all the covenants terms and conditions on Tenant's part to be observed and performed and subject to the other provisions of this Lease Tenant shall peaceably and quietly hold and enjoy the Premises and the other rights granted to Tenant hereunder for the Term without hindrance or interruption by Landlord or any other person claiming by or through Landlord.

SECTION 20 12 SURVIVAL All covenants of Landlord or Tenant which reasonably would be intended to survive the expiration or sooner termination of this Lease including without limitation any warranty or indemnity hereunder shall so survive and continue to be binding upon and inure to the benefit of the respective parties and their successors and assigns

ARTICLE XXI EXECUTION AND RECORDING

SECTION 21 1 COUNTERPARTS This Lease may be executed in one or more counterparts each of which shall constitute an original and all of which shall be one and the same agreement

SECTION 21 2 CORPORATE AND PARTNERSHIP AUTHORITY If Tenant is a corporation or partnership each individual executing this Lease on behalf of the corporation or partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation or partnership and that this Lease is binding upon the corporation or partnership in accordance with its terms Tenant shall at Landlord's request, deliver a certified copy of its board of directors resolution or partnership agreement or certificate

authorizing or evidencing the execution of this Lease

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

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

SECTION 21.5 AMENDMENTS No amendment or termination of this Lease shall be effective unless in writing signed by authorized signatories of Tenant and Landlord or by their respective successors in interest. No actions, policies, oral or informal arrangements, business dealings or other course of conduct by or between the parties shall be deemed to modify this Lease in any respect.

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

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

ARTICLE XXII MISCELLANEOUS

SECTION 22.1 NONDISCLOSURE OF LEASE TERMS Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its partners, officers, directors, employees and attorneys, shall not intentionally and voluntarily disclose the terms and conditions of this Lease to any other tenant or apparent prospective tenant of the Building or Project without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

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

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

SECTION 22.4 MORTGAGEE PROTECTION No act or failure to act on the part of Landlord which would otherwise entitle Tenant to be relieved of its obligations hereunder or to terminate this Lease shall result in such a release or termination unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Building whose address has been furnished to Tenant in writing and (b) such beneficiary is afforded a reasonable opportunity to cure the default by Landlord (which in no event shall be less than thirty (30) days) including, if necessary to effect the cure, time to obtain possession of the Building by power of sale or judicial foreclosure provided that such foreclosure remedy is diligently pursued. Tenant agrees that each beneficiary of a deed of trust or mortgage covering the Building is an express third party beneficiary hereof. Tenant shall have no right or claim for the collection of any deposit from such beneficiary or from any purchaser at a foreclosure sale unless such beneficiary or purchaser shall have actually received and not refunded the deposit, and Tenant shall comply with any written directions by any beneficiary to pay rent due hereunder directly to such beneficiary without determining whether an event of default exists under such beneficiary's deed of trust.

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

SECTION 22.6 SECURITY MEASURES Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project. Tenant assumes all responsibility for the protection of Tenant, its agents, invitees and property from acts of third parties. Nothing herein contained shall prevent Landlord, at its sole option, from providing security protection for the Project or any part thereof in which event the cost thereof shall be included within the definition of Project.

Costs

SECTION 22.7 COMMUNICATIONS EQUIPMENT Landlord hereby grants to Tenant a license (the "License") to install, maintain and operate on the roof of the Building at a location designated by Landlord and reasonably acceptable to Tenant ("Licensed Area") not more than one (1) "global positioning satellite" antenna ("Antenna") in accordance with and subject to the following terms and conditions:

(1) Tenant shall not be obligated to pay any license fee for the use of the Licensed Area pursuant to this Section 22.7 during the Term of this Lease.

(2) Landlord reserves the right upon reasonable prior written notice to Tenant to require either (a) the relocation of all equipment installed by Tenant to another location on the roof of the Building reasonably designated by Landlord, or (b) the removal of any and all of such equipment should Landlord reasonably determine that its presence results in material damage to the Building unless Tenant makes satisfactory arrangements to protect Landlord therefrom.

(3) The term of the License shall be coterminous with this Lease.

(4) Tenant shall use the Licensed Area for the installation, operation, repair, replacement and maintenance of the Antenna (of which the height, appearance and installation procedures must be approved in writing by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned) and the necessary mechanical and electrical equipment to service said Antenna. Tenant may have access to the Licensed Area for such uses twenty-four (24) hours per day, seven (7) days per week and shall reimburse Landlord for any reasonable out-of-pocket expenses incurred by Landlord in connection therewith.

(5) During the term of the License, the Licensed Area and all equipment placed and maintained thereon shall be used by Tenant for the use specified and for no other use or purpose. Tenant shall not use or permit any other person to use the Licensed Area or any part thereof for any purposes tending to injure the reputation thereof or for any improper or offensive use or to constitute a nuisance and Tenant shall at all times conform to and cause all persons using any part of the Licensed Area to comply with all public laws, ordinances and regulations from time to time applicable thereto and to all operations thereon.

(6) Tenant shall require its employees, when using the Licensed Area, to stay within the immediate vicinity thereof. In addition, in the event a cable television system is operating in the area, Tenant shall at all times during the term of the License conduct its operations so as to ensure that the cable television system shall not be subjected to harmful interference as a result of such operations by Tenant. Upon notification from Landlord of any such interference, Tenant agrees to immediately take the necessary steps to correct such situation and Tenant's failure to do so shall be deemed a default under the terms of this Lease.

(7) During the term of the License, Tenant shall comply with any standards promulgated by applicable governmental authorities or otherwise reasonably established by Landlord regarding the generation of electromagnetic fields. Should Landlord determine in good faith at any time that the Antenna poses a health or safety hazard to occupants of the Building, Landlord may, require Tenant to make arrangements satisfactory to Landlord to mitigate such hazard or, if Tenant either fails or is unable to make such satisfactory arrangements, to remove the Antenna. Any claim or liability resulting from the use of the Antenna shall be subject to the indemnification obligation as set forth in subsection (9) below.

(8) Upon the expiration or sooner termination of the Lease, Tenant shall remove the Antenna and all other equipment installed by it and shall restore the Licensed Area and all other areas affected by such removal to its original condition, reasonable wear and tear excepted, all at its sole cost and expense.

(9) Without limiting the scope of such provisions, the provisions of Sections 10.3 (Tenant's Indemnity) and 10.4 (Landlord's Nonliability) shall apply to Tenant's use of the Licensed Area, including any property placed and/or used by Tenant thereon. In addition, Tenant agrees to reimburse Landlord for the cost of repairing any damage to the Building caused by the exercise of Tenant's rights under this Section 22.7.

(10) Tenant shall not permit to be enforced against the Licensed Area any mechanics' liens, materialmen's contractors' or other liens arising from, or any claims for damage growing out of, any work of installation, repair or alteration as authorized in this Section 22.7 or otherwise arising (except from the actions of Landlord) and Tenant shall pay or cause to be paid (or post proper bond for defense and removal thereof) all of said liens and claims before any action is brought to enforce the same against Landlord or the Licensed Area, and Tenant agrees to indemnify and hold Landlord and the Licensed Area free and harmless from all liability for any and all such liens and claims and all costs and expenses in connection therewith.

(11) During the term of the License, Landlord shall pay all taxes attributable to the Building of which the Licensed Area is a part, and Tenant shall pay all taxes attributable to the Antenna and other equipment owned and installed by Tenant.

(12) The License shall not be assignable in whole or in part and any other attempted assignment thereof without the consent of Landlord shall immediately terminate the License. Notwithstanding the foregoing Landlord's consent shall not be required with respect to an assignment of the License made in connection with an assignment of this Lease permitted to be made without Landlord's consent pursuant to Section 9.4 above.

(13) During the term of the License Tenant shall cause the commercial general liability insurance to be maintained by Tenant pursuant to Exhibit D attached to this Lease to include coverage with respect to the operations of or on behalf of Tenant in connection with this Section 22.7. A certificate of the insurer certifying that such policy has been issued and that such coverage is in place shall be delivered to Landlord prior to the date that Tenant is provided with access to the Licensed Area and upon renewals not less than thirty (30) days prior to the expiration of such coverage. In the event that Tenant fails at any time to procure, maintain and/or pay for such coverage or any other insurance required under said Exhibit D and such failure continues for a period of ten (10) days following written notice from Landlord then in addition to any other rights and/or remedies Landlord may terminate the License by written notice to Tenant. In addition should the exercise of Tenant's rights under this Section 22.7 result in any increase in Landlord's insurance rates on the Building Tenant shall promptly following demand reimburse Landlord for such additional expenses incurred by Landlord.

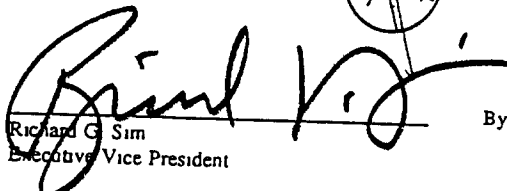
(14) Should Tenant default in the performance of or breach any covenant or condition on Tenant's part to be kept and performed under this Lease beyond any applicable notice and cure period including without limitation this Section 22.7 then in any such event Landlord may at its option without prejudice to any other rights and/or remedies it may have likewise terminate the License by giving Tenant written notice of such termination and upon such termination all rights of Tenant under this Section 22.7 shall cease and end and

(15) In connection with Tenant's use of the License Area as permitted pursuant to this Section 22.7 Tenant shall be permitted to install a conduit from the Premises to the Antenna the location, size and manner of installation shall be subject to Landlord's prior written approval which approval shall not be unreasonably withheld, conditioned or delayed. Upon the expiration or sooner termination of the Lease Tenant shall remove such conduit and shall restore the Licensed Area and all other areas affected by such removal to its original condition, reasonable wear and tear excepted, all at its sole cost and expense.

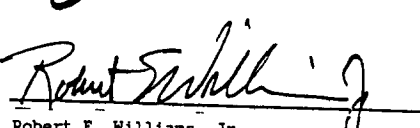
LANDLORD

THE IRVINE COMPANY

By


Richard G. Sim
Executive Vice President

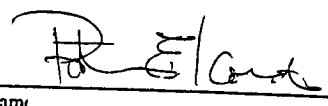
By


Robert E. Williams, Jr.,
President, Irvine Industrial Company,
a Division of The Irvine Company

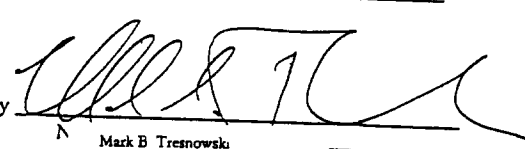
TENANT

ALLEGIANCE TELECOM, INC.,
a Delaware corporation

By


Name: Patricia E. Kode
Title: Senior Vice President

By


Mark B. Tresnowski
Senior Vice President
& Corporate General Counsel

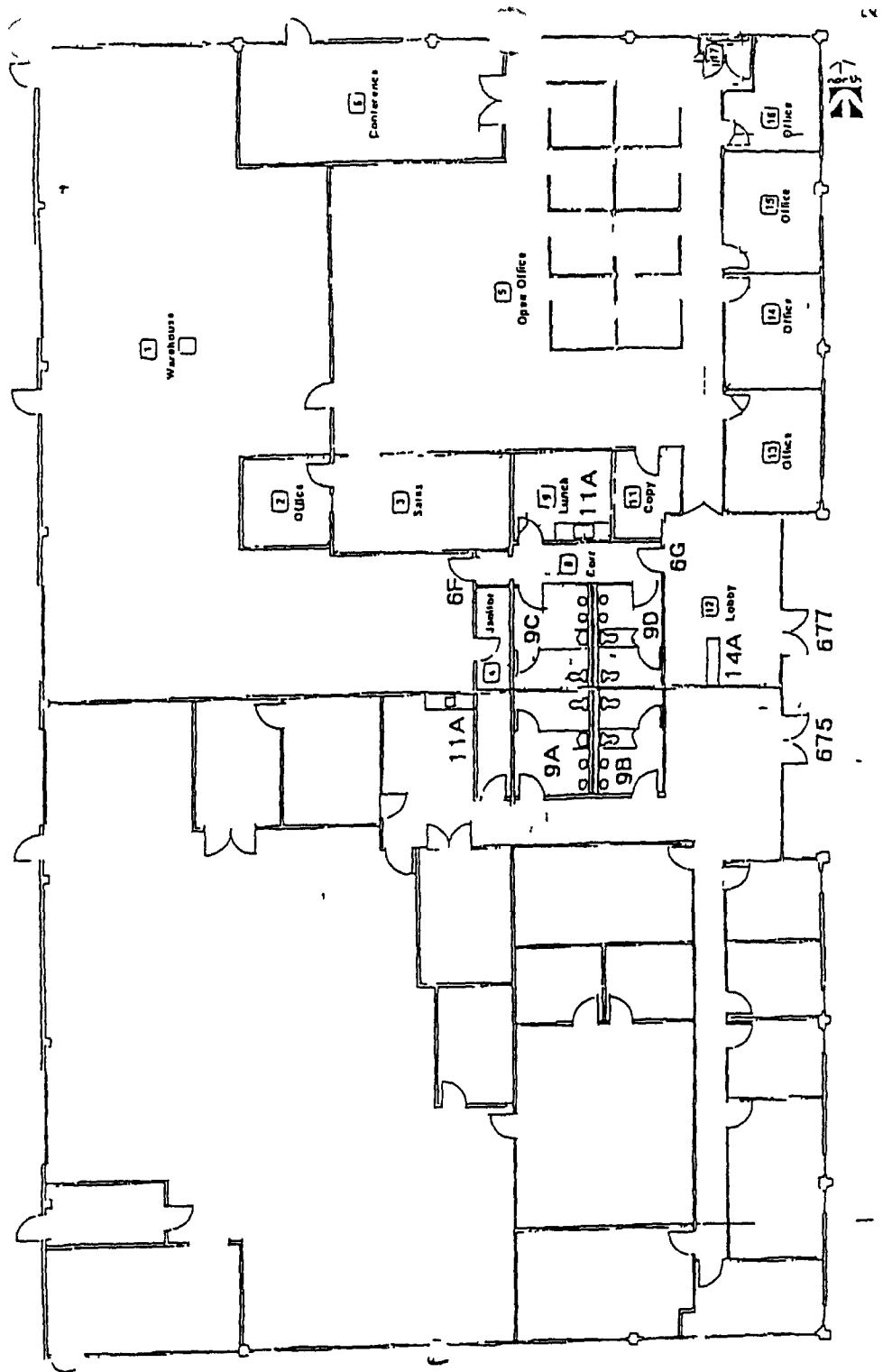


EXHIBIT A

EXHIBIT B

THE IRVINE COMPANY INVESTMENT PROPERTIES GROUP

HAZARDOUS MATERIAL SURVEY FORM

The purpose of this form is to obtain information regarding the use of hazardous substances on Investment Properties Group ("IPG") property. Prospective tenants and contractors should answer the questions in light of their proposed activities on the premises. Existing tenants and contractors should answer the questions as they relate to ongoing activities on the premises and should update any information previously submitted.

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

INSIGNIA COMMERCIAL GROUP INC
1 Ada Suite 270
Irvine CA 92618

Your cooperation in this matter is appreciated. If you have any questions, please call your property manager at (714) 753-4744 for assistance.

1 GENERAL INFORMATION

Name of Responding Company _____
Check all that apply: Tenant () Contractor ()
 Prospective () Existing ()

Mailing Address _____
Contact Person & Title _____
Telephone Number () _____

Current TIC Tenant(s)

Address of Lease Premises _____
Length of Lease or Contract Term _____

Prospective TIC Tenant(s)

Address of Proposed Lease Premises _____

Address of Current Operations _____

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

2 HAZARDOUS MATERIALS For the purposes of this Survey Form, the term "hazardous material" means any raw material, product or agent considered hazardous under any state or federal law. The term does not include wastes which are intended to be discarded.

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

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

2.2 List any hazardous materials to be used or stored, the quantities that will be on site at any given

time and the location and method of storage (e.g. bottles in storage closet on the premises)

<u>Hazardous Materials</u>	<u>Location and Method of Storage</u>	<u>Quantity</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

- 3 **HAZARDOUS WASTE** For the purposes of this Survey Form, the term "hazardous waste" means any waste (including biological, infectious or radioactive waste) considered hazardous under any state or federal law and which is intended to be discarded.

- 3.1 List any hazardous waste generated or to be generated on the premises and indicate the quantity generated on a monthly basis.

<u>Hazardous Waste</u>	<u>Location and Method of Storage Prior to Disposal</u>	<u>Quantity</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 3.2 Describe the method(s) of disposal (including recycling) for each waste. Indicate where and how often disposal will take place.

<u>Hazardous Materials</u>	<u>Location of Disposal Site</u>	<u>Disposal Method</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 3.3 Is any treatment or processing of hazardous, infectious or radioactive wastes currently conducted or proposed to be conducted on the premise? Yes () No ()

If yes, please describe any existing or proposed treatment methods _____

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

4 **SPILLS**

- 4.1 During the past year, have any spills or releases of hazardous materials occurred on the premises?
Yes () No ()

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

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

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

- 4.3 Were any clean up actions undertaken in connection with the spills?
Yes () No ()

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

5 WASTEWATER TREATMENT/DISCHARGE

- 5.1 Do you discharge industrial wastewater to

_____ storm drain? _____ sewer?
_____ surface water? _____ no industrial discharge

- 5.2 Is your industrial wastewater treated before discharge? Yes () No ()

If yes, describe the type of treatment conducted _____

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

6 AIR DISCHARGES

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

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

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

7 HAZARDOUS MATERIALS DISCLOSURES

- 7.1 Does your company handle an aggregate of at least 500 pounds, 55 gallons or 200 cubic feet of hazardous material at any given time? Yes () No ()

- 7.2 Has your company prepared a Hazardous Materials Disclosure, Chemical Inventory and Business Emergency Plan or similar disclosure document pursuant to state or county requirements? Yes () No ()

If so, attach a copy

- 7.3 Are any of the chemicals used in your operations regulated under Proposition 65?

If so, describe the procedures followed to comply with these requirements _____

- 7.4 Is your company subject to OSHA Hazard Communication Standard Requirements?
Yes () No ()

If so, describe the procedures followed to comply with these requirements _____

8 ANIMAL TESTING

- 8.1 Does your company bring or intend to bring live animals onto the premises for research or development purposes? Yes () No ()

If so describe the activity _____

- 8.2 Does your company bring or intend to bring animal body parts or bodily fluids onto the premises for research or development purposes? Yes () No ()

If so describe the activity _____

9 ENFORCEMENT ACTIONS, COMPLAINTS

- 9.1 Has your company ever been subject to any agency enforcement actions administrative orders lawsuits or consent orders/decrees regarding environmental compliance or health and safety? Yes () No ()

If so describe the actions and any continuing obligations imposed as a result of these actions

- 9.2 Has your company ever received any request for information notice of violation or demand letter complaint or inquiry regarding environmental compliance or health and safety? Yes () No ()

- 9.3 Has an environmental audit ever been conducted which concerned operations or activities on premises occupied by you? Yes () No ()

- 9.4 If you answered "yes" to any questions in this section describe the environmental action or complaint and any continuing compliance obligation imposed as a result of the same

By _____
Name _____
Title _____
Date _____

EXHIBIT C

Tenant acknowledges the following disclosures by Landlord with respect to Hazardous Materials at the Premises
 Tenant agrees to comply with the precautionary requirements and other provisions set forth below that are associated with these Hazardous Materials

- (1) Portions of the structures on the Premises may contain asbestos-containing materials. Accordingly, Tenant agrees that it will not make any repairs or alterations to the structures on the Premises (a) without inquiring from Landlord whether Tenant's planned repairs or alterations are likely to disturb asbestos-containing materials in the structures, and (b) if in Landlord's judgment the planned repairs or alterations will disturb the asbestos-containing materials, the planned repairs or alterations will disturb the asbestos-containing materials without securing Landlord's prior consent to the repairs or alterations.

- (2) Portions of the groundwater in the City of Sunnyvale contain volatile organic compounds and/or solvents. These substances may be present in the groundwater beneath the Premises.

Landlord is unaware of any practical impediment to the use or occupancy of the Premises as a result of the presence of these substances in the groundwater

- (3) Tenant agrees that its exemption in Section 5.3(f) of the Lease from liability or responsibility with respect to the Hazardous Materials described in this Exhibit C shall not extend to any such Hazardous Materials whose presence was caused or knowingly permitted by Tenant, its agents employees contractors licensees or invitees

January 15 1997

EXHIBIT D

TENANT'S INSURANCE

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

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

2 In the event Landlord consents to Tenant's use generation or storage of Hazardous Materials on under or about the Premises pursuant to Section 5.3 of this Lease Landlord shall have the continuing right as a condition to granting such consent to require Tenant at Tenant's sole cost and expense to maintain such insurance relating to the use generation or storage of such Hazardous Materials as Landlord may reasonably require provided that the same is customary based on the nature of such use generation or storage.

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

4 All policies of insurance required to be carried by Tenant pursuant to this Exhibit D shall be written by responsible insurance companies authorized to do business in the State of California and with a Best's rating of not less than "A" subject to final acceptance and approval by Landlord. Any insurance required of Tenant may be furnished by Tenant under any blanket policy carried by it or under a separate policy so long as (i) the Premises are specifically covered (by rider endorsement or otherwise) (ii) the limits of the policy are applicable on a "per location" basis to the Premises and provide for restoration of the aggregate limits and (iii) the policy otherwise complies with the provisions of this Exhibit D. A true and exact copy of each paid up policy evidencing the insurance (appropriately authenticated by the insurer) or a certificate of insurance certifying that the policy has been issued, provides the coverage required by this Exhibit D and contains the required provisions shall be delivered to Landlord prior to the date Tenant is given the right of possession of the Premises. Proper evidence of the renewal of any insurance coverage shall also be delivered to Landlord not less than thirty (30) days prior to the expiration of the coverage. Landlord may at any time and from time to time inspect and/or copy any and all insurance policies required by this Lease.

5 Each policy evidencing insurance required to be carried by Tenant pursuant to this Exhibit D shall contain the following provisions and/or clauses satisfactory to Landlord: (i) a provision that the policy and the coverage provided shall be primary and that any coverage carried by Landlord shall be noncontributory with respect to any policies carried by Tenant except as to workers compensation insurance; (ii) a provision including Landlord, the Additional Insureds identified in Item 11 of the Basic Lease Provisions and any other parties in interest designated by Landlord as an additional insured except as to workers compensation insurance; (iii) a waiver by the insurer of any right to subrogation against Landlord, its agents employees contractors and representatives which arises or might arise by reason of any payment under the policy or by reason of any act or omission of Landlord its agents employees contractors or representatives; and (iv) a provision that the insurer will not cancel or materially adversely change the coverage provided by the policy without first giving Landlord thirty (30) days prior written notice.

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

EXHIBIT E

RULES AND REGULATIONS

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

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

2 The walls, walkways, sidewalks, entrance passages, courts and vestibules shall not be obstructed or used for any purpose other than ingress and egress of pedestrian travel to and from the Premises, and shall not be used for loitering or gathering, or to display, store or place any merchandise, equipment or devices, or for any other purpose. The walkways, entrance passageways, courts, vestibules and roof are not for the use of the general public, and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business, unless such persons are engaged in illegal activities. No tenant or employee or invitee of any tenant shall be permitted upon the roof of the Building.

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

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

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

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

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

8 Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, noise or otherwise. Tenant shall not use, keep or permit to be used, or kept, any foul or obnoxious gas or substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of this or neighboring buildings or premises by reason of any odors, fumes or gases.

9 No animals (other than guide-dogs) shall be permitted at any time within the Premises.

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

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

12 No equipment of any type shall be placed on the Premises which in Landlord's opinion exceeds the load limits of the floor or otherwise threatens the soundness of the structure or improvements of the Building unless appropriate reinforcement (as approved in writing by Landlord) is added by Tenant at its sole costs and expense and otherwise subject to and in accordance with the terms of the Lease

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

14 Except as otherwise expressly permitted pursuant to Section 22.7 of the Lease, no aerial antenna shall be erected on the roof or exterior walls of the Premises or on the grounds without in each instance the prior written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal by Landlord at any time without prior notice at the expense of the Tenant, and Tenant shall upon Landlord's demand pay a removal fee to Landlord of not less than \$200.00.

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

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

17 All keys for the Premises shall be provided to Tenant by Landlord, and Tenant shall return to Landlord any of such keys so provided upon the termination of the Lease. Tenant shall not change locks or install other locks on doors of the Premises without the prior written consent of Landlord. In the event of loss of any keys furnished by Landlord for Tenant, Tenant shall pay to Landlord the costs thereof.

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

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

EXHIBIT X

WORK LETTER

(Tenant Buildout with Landlord's Contribution)

I TENANT IMPROVEMENTS

The tenant improvement work ("Tenant Improvements") shall consist of the work required to complete certain improvements to the Premises pursuant to approved "Working Drawings and Specifications" (as defined below). Tenant shall employ a licensed architect (the "Architect") for preparation of the Preliminary Plan and Working Drawings and Specifications (as hereinafter defined) and shall cause the Architect to inspect the Premises to become acquainted with all existing conditions. Tenant shall contract with a general contractor reasonably acceptable to Landlord to construct the Tenant Improvements. The Tenant Improvements work shall be undertaken and prosecuted in accordance with the following requirements:

A. Tenant shall submit the following to Landlord: (i) a detailed preliminary space plan for the Tenant Improvements prepared by the Architect which shall include interior partitions, ceilings, interior finishes, interior doors, suite entrance, floor coverings, window coverings, lighting, electrical and telephone outlets, plumbing connections, heavy floor loads and other special requirements, including without limitations, the Special Improvements (as defined below) ("Preliminary Plan"); (ii) working drawings and specifications prepared by the Architect based on the approved Preliminary Plan (the "Working Drawings and Specifications"); and (iii) any change proposed by Tenant to the approved Working Drawings and Specifications ("Change"). Within five (5) business days following its submission to Landlord, Landlord shall reasonably approve (by signing a copy thereof) or shall reasonably disapprove the Preliminary Plan, the Working Drawings and Specifications and/or the Change. If Landlord disapproves the Preliminary Plan, Working Drawings and Specifications or Change, Landlord shall specify in detail the reasons for disapproval and Tenant shall cause the Architect to modify the Preliminary Plan, Working Drawings and Specifications or Change to incorporate Landlord's suggested revisions in a mutually satisfactory manner. Tenant agrees and acknowledges that Landlord will not check the Preliminary Plan, the Working Drawings and Specifications and/or any Change for building code compliance (or other federal, state or local law, ordinance or regulations compliance) and that Tenant and its Architect shall be solely responsible for such matters.

B. It is understood that except as provided below, the Tenant Improvements shall only include actual improvements to the Premises approved by Landlord as provided above and shall exclude Tenant's signage improvements, if any.

C. All contractors and subcontractors to be utilized in connection with the construction and installation of the Tenant Improvements shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld. Upon selection and approval of the general contractor (the "TI Contractor"), Tenant shall enter into a "lump sum" construction contract (the "TI Contract") with the TI Contractor for construction of the Tenant Improvements. If requested by Landlord, Tenant shall deliver a copy of the TI Contract to Landlord. Tenant shall cause the Tenant Improvements work to be constructed in a good and workmanlike manner in accordance with the approved Working Drawings and Specifications.

D. If required by Landlord prior to commencement of construction of the Tenant Improvements, Tenant shall require the TI Contractor to provide a payment and performance bond in an amount and issued by a licensed surety acceptable to Landlord to insure the faithful performance of the Tenant Improvements work in accordance with the approved Working Drawings and Specifications.

E. Prior to the commencement of the Tenant Improvements work, Tenant shall deliver to Landlord a copy of the final application for permit and issued permit for the work.

F. The TI Contractor and each of its subcontractors shall comply with Landlord's reasonable requirements as generally imposed on third party contractors, including without limitation all insurance coverage requirements and the obligation to furnish appropriate certificates of insurance to Landlord prior to commencement of construction or the Tenant Improvements work.

G. A construction schedule shall be provided to Landlord prior to commencement of the construction of the Tenant Improvements work, and weekly updates shall be supplied during the progress of the work.

H. Tenant shall give Landlord ten (10) days prior written notice of the commencement of construction of the Tenant Improvements work so that Landlord may cause an appropriate notice of non-responsibility to be posted.

I. The Tenant Improvements work shall be subject to inspection at all reasonable times by Landlord and its construction manager (except in the case of an emergency in which case the inspection can be made at any time) and Tenant and the TI Contractor shall attend weekly job meetings with Landlord's construction manager for the Project.

J. Tenant shall apply and pay for all utility services required for the Tenant Improvements work.

K. Upon completion of the work, Tenant shall cause to be provided to Landlord (i) as-built drawings of the Tenant Improvements work signed by the Architect, (ii) CADD tapes of the improved space compatible with Landlord's CADD system, (iii) a final punch list signed by Tenant, (iv) final and unconditional lien waivers from the TI Contractor and all subcontractors, (v) a duly recorded notice of completion of the improvement work, and (vi) a certificate of occupancy for the Premises (collectively the "Close Out Package").

L. The Tenant Improvements work shall be prosecuted at all times in accordance with all state, federal, and local laws, regulations, and ordinances, including without limitation all OSHA and other safety laws, the Americans with Disabilities Act ("ADA"), and all applicable governmental permit and code requirements.

M. All of the provisions of this Lease (including without limitation the provisions of Sections 7.4, 10.1, and 10.3) shall apply to and shall be binding on Tenant with respect to the construction of the Tenant Improvements, except for the obligation of Tenant to pay rent (which obligation shall commence on the Commencement Date as defined in the Lease).

II. COST OF THE TENANT IMPROVEMENTS WORK

A. Landlord shall provide to Tenant a tenant improvement allowance in the amount of Forty Thousand Dollars (\$40,000.00) (the "Landlord's Contribution") with any excess cost of the Tenant Improvements to be borne solely by Tenant. The Landlord's Contribution shall be utilized solely to fund the following costs: (i) fees paid to the Architect for preparation of the Preliminary Plan and Working Drawings and Specifications in the aggregate, (ii) cost of labor and materials towards the construction of the Tenant Improvements in accordance with the approved Working Drawings and Specifications, and (iii) plan check and permit fees paid for the Tenant Improvements work. It is further understood and agreed that Landlord's construction manager shall be entitled to a supervision/administrative fee equal to five percent (5%) of the cost of the Tenant Improvements work (up to but not exceeding a fee of Five Thousand Dollars (\$5,000.00)), which fee shall be paid from the Landlord's Contribution. If the actual cost of completion of the Tenant Improvements is less than the maximum amount provided for the Landlord's Contribution, such savings shall inure to the benefit of Landlord and Tenant shall not be entitled to any credit or payment.

B. The Landlord's Contribution shall be paid to Tenant within thirty (30) days following substantial completion of the Tenant Improvements in accordance with this Work Letter and submission of the Close-Out Package to Landlord. Tenant shall utilize the Landlord's Contribution prior to the date that is ninety (90) days following the Commencement Date, and unless such substantial completion is so achieved by Tenant and the Close-Out Package is so submitted to Landlord both within such ninety (90) day period, Landlord shall have no further obligation to fund the Landlord's Contribution.

III. SPECIAL IMPROVEMENTS

Landlord acknowledges that Tenant has advised Landlord that the Tenant Improvements will include, among other improvements, the following special improvements and installations (collectively the "Special Improvements"):

- (1) HVAC system with related mechanical equipment together with related condensers, wiring, piping, conduits, vents, and equipment to and from the Premises (such equipment to be located on that portion of the roof located above the Premises), including capping of existing ventilation fans.
- (2) One (1) 750 kw/480 volt diesel generator to be located in the rear loading area of the Building together with related wiring, piping, conduits, vents, and equipment, including three 4 inch and two 2 inch conduits, and one (1) fuel tank (up to 3,000 gallons) in connection with such generator.
- (3) Temporary generator to be operated by Tenant until the generator described in subsection (2) above is installed.
- (4) An electrical grounding system for the proper grounding of Tenant's telecommunications equipment.
- (5) One (1) transformer and associated equipment to serve Tenant's requirements for 277/480 volt three-phase power for a maximum of 1,200 amps of power.
- (6) Conduits to construct Tenant's fiber optic backbone, consisting of two (2) diverse paths for up to two (2) 4 inch conduits from the Premises to two separate penetrations in the foundation of the Building to a box at the property line, and
- (7) Fire suppression system (or similar system that may be appropriate) independent of the

Building's existing systems (including modifications to any existing sprinkler systems to a dry pipe pre action system)

Tenant shall cause the location, means of construction and installation materials and equipment to be used and all other physical characteristics of the Special Improvements to be reflected in the Preliminary Plan and Working Drawings and Specifications to be submitted to Landlord for review and approval pursuant to Section I A above. As part of the Tenant Improvements, the planning, installation and construction of such Special Improvements by Tenant shall be subject to and made in accordance with the terms and conditions of this Exhibit X. Notwithstanding anything contained in the Lease to the contrary, the repair, maintenance and replacement of the Special Improvements during the Term shall be the sole responsibility of Tenant at its sole cost and expense, without contribution or reimbursement of any kind from Landlord, and Tenant shall have reasonable access to the Special Improvements during the Term for such purposes, subject to the terms and conditions of the Lease. Landlord agrees that the Special Improvements are for Tenant's exclusive use and not for use by any other tenants of the Building.

IV REMOVAL OF TENANT IMPROVEMENTS

All Tenant Improvements (excluding moveable trade fixtures, equipment and furniture) shall become the property of Landlord and shall be surrendered with the Premises at the end of the Term, except that Landlord may, by written notice to Tenant given at any time, require Tenant to remove by the Expiration Date or sooner termination date of this Lease, all or any portion of the Tenant Improvements and to repair any damage to the Premises arising from that removal and to otherwise cause the affected portions of the Premises to be restored to the condition existing immediately prior to the installation of the Tenant Improvements in question, all at Tenant's sole cost and expense.

1 **SHORT TITLE: In re: Allegiance Telecom**
2 **CASE NO.: 03-13057(RDD)**

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

5 I am employed in the City of Santa Ana, County of Orange, State of California I am over
6 the age of 18 years and not a party to the within action My business address is 201 East
Sandpointe, Suite 220, Santa Ana, CA 92707-5742 On October 7, 2004, I served the
documents named below on the parties in this action as follows

7 **DOCUMENTS(S) SERVED AMENDED PROOF OF CLAIM**

8 **SERVED UPON "SEE ATTACHED SERVICE LIST"**

9 XX (BY MAIL) By placing a true copy in a separate envelope for each addressee named
10 above, with the name and address of each person served shown on the envelope as set
11 forth above, and by causing each such envelope, with postage thereon fully prepaid,
12 to be placed in the United States mail at Santa Ana, California I am readily familiar
13 with the practice of the Law Office of Dean P Spering for collection and processing
of correspondence for mailing with the United States Postal Service, said practice
being that in the ordinary course of business, mail is deposited in the United States
Postal Service the same day as it is placed for collection

14 _____ (BY FACSIMILE) My business address is located in the county where the facsimile
15 machine transmission described below took place On the above date, I caused a
16 facsimile machine transmission from facsimile machine telephone number (714)
438-8088 of the above documents to be sent to the parties whose facsimile numbers
are listed (below/on the attached service list) Upon completion of the said facsimile
machine transmission(s), the transmitting machine issued a transmission report
showing the transmission(s) was/were complete and without error

17 XX (FEDERAL) I declare that I am employed in the office of a member of the bar of this
18 court, at whose direction this service was made

19 Executed on October 7, 2004, at Santa Ana, California

20 
21 _____
22 Lori Ruiz
23
24
25
26
27
28

SERVICE LIST

Allegiance Telecom, Inc
9201 N Central Expressway
Dallas, TX 75231
(Debtor)

Matthew A Cantor
Jonathan S Henes
KIRKLAND & ELLIS LLP
Citigroup Center
153 E 53rd St
New York, NY 10022
(Attorney for Debtor)

Albert Togut
Togut, Segal & Segal LLP
One Penn Plaza
Suite 3335
New York, New York 10119
(Attorney for Debtor)

Ira S Dizengoff, Esq
Phillip C Dublin
Colin M Adams
Jeffrey M Anapolsky
Akin Gump Strauss Hauer & Field LLP
590 Madison Avenue
New York, New York, 10022
(Attorney for Allegiance Telecom Liquidating Trust and
Official Committee of Unsecured Creditors)

Pamela J Lustrin
Office of the United States Trustee
33 Whitehall St , 21st Floor
New York, NY 10004
(Trustee)

LAW OFFICE

DEAN P SPERLING

201 EAST SANDPOINTE SUITE 220
SANTA ANA CALIFORNIA 92707-5742

TELEPHONE 714 438 8090
FACSIMILE 714 438 8088

October 7, 2004

United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, NY 10004
ATTN CLERK OF COURT

VIA FEDERAL EXPRESS

**Re: In re: Allegiance Telecom
Case No. 03-13057(RDD)**

Dear Sir/Madam

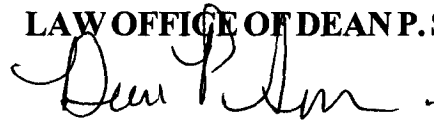
Enclosed you will find an original, a face sheet, and a copy of the Amended Proof of Claim in the above-entitled matter

Please file the Amended Proof of Claim, and return a conformed copy to this office in the self-addressed stamped envelope provided

If you should have any questions or comments, please do not hesitate to contact my office. Thank you for your courtesy and cooperation in connection with this matter

Yours very truly,

LAW OFFICE OF DEAN P. SPERLING



Dean P Sperling

DPS/ck
Enclosure

emp 464389 150CT04

TRK# 8412 0237 3600 FORM 0200

Deliver By
180CT04

A1

90245 -CA-US

LAX
XH AVXA**FedEx** USA Airbill
ExpressFedEx
Tracking
Number

841202373600

1 From

Date

10/15/04

Sender's
Name

USBC, SDNY

Phone

310 321-5545

Company

ALLEGIANCE TELECOM #38

Address

1330 E FRANKLIN AVE

City

EL SEGUNDO

State

CA

ZIP

90245

2 Your Internal Billing Reference

ALLEGIANCE TELECOM #386

3 To

Recipient's
Name

LISA RUPPNER

Phone

310 321-5545

Company

BMC Corp

Address

1330 E. Franklin Ave

To: HOLD at FedEx location print FedEx address

We cannot deliver to P.O. boxes or P.O. ZIP codes

Address

EL SEGUNDO

CA

90245

City

State

ZIP



4a Express Package Service

☒ FedEx Priority Overnight
Next business morning☐ FedEx Standard Overnight
Next business afternoonPackages up to 150 lbs.
Delivery commitment may be later in some areas.
☐ FedEx First Overnight
Earliest next business morning
delivery to select locations☐ FedEx 2Day
Second business day
FedEx Envelope rate not available Minimum charge One pound rate☐ FedEx Express Saver
Third business day

4b Express Freight Service

☐ FedEx 1Day Freight*
Next business day☐ FedEx 2Day Freight
Second business dayPackages over 150 lbs.
Delivery commitment may be later in some areas.
☐ FedEx 3Day Freight
Third business day

Call for Confirmation:

Declared value limit \$500

5 Packaging

☒ FedEx Envelope*☐ FedEx Pak*
Includes FedEx Small Pak, FedEx
Large Pak, and FedEx Sturdy Pak☐ Other

Special Handling

☐ SATURDAY Delivery
Available only for FedEx Priority
Overnight and FedEx 2Day
to select ZIP codes☐ HOLD Weekday
at FedEx Location
Not available for
FedEx Priority Overnight
and FedEx 2Day to
select locations☐ HOLD Saturday
at FedEx Location
Available only for
FedEx Priority Overnight
and FedEx 2Day to
select locationsDoes this shipment contain dangerous goods?
One box must be checked☒ No☐ Yes
As per attached
Shipper's Declaration☐ Yes
Shipper's Declaration
not required☐ Dry Ice
Dry Ice 9, UN 1845

x kg

Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging.

☐ Cargo Aircraft Only

7 Payment Bill to:

☐ Sender
Acct. No. in Section
1 will be billed☒ Recipient
Enter FedEx Acct. No. or Credit Card No. below☐ Third Party☐ Credit Card☐ Obtain Recip.
Acct. No.☐ Cash/Check

27

Total Packages

Total Weight

Total Declared Value*

Total Charges

\$ 00

Credit Card Auth.

*Our liability is limited to \$100 unless you declare a higher value. See back for details.

8 Release Signature

Sign to authorize delivery without obtaining signature

By signing you authorize us to deliver this shipment without obtaining a signature
and agree to indemnify and hold us harmless from any resulting claims
Questions? Visit our Web site at fedex.com
or call 1 800 Go FedEx 800 463 3339
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446

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airbill
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November 16, 2004

Via Registered Mail
Return Receipt Requested

The Irvine Company
Law Office Of Dean P Sperling
201 E Sandpointe #220
Santa Ana, CA 92707

Re Allegiance Telecom, Inc ,
Case No (03-13057 RDD) (Southern District of New York)

Dear Mr Sperling,

BMC is the claims agent in the above-referenced case

Our records indicate that on September 2, 2004, your firm was served with notice of October 13 hearing on objections to claim nos 2113 and 2224 Absent timely response to the claims objections, those claims have been expunged¹

Please be advised that we have received two amended Proofs of Claim (Claim Nos 2991 and 2992), signed and dated 10/7/2004 We have designated these claims as inactive on the claims register as a result of the disallowance of the original underlying claims (Claim Nos 2113 and 2224)

Please feel free to contact me in our New York office at (212) 837 7925

Regards,

Rich Reilly

cc Jeffrey M Anapolsky
Attorney At Law
Akin Gump Strauss Hauer & Feld LLP
1111 Louisiana Street
44th Floor
Houston, TX 77002-5200

Seattle

Pacific Building 23rd Floor
720 Third Avenue
Seattle WA 98104
(206) 725 5405
(206) 374 2727 fax

Los Angeles

1330 E Franklin Ave
El Segundo CA 90245
(310) 321 5555
(310) 640 8071 fax

New York

80 Broad Street
New York NY 10004
(212) 344 0444
(888) 316 2354 fax

Kansas City

712 Broadway Suite 100
Kansas City MO 64105
(816) 472 4262
(816) 472 4321 fax

San Francisco

564 Market Street Suite 602A
San Francisco CA 94104
(415) 834 9942

(800) 655 1129

www.bmcgroup.com

¹ Bankruptcy Court Order dated October 13, 2004, docket No 1829

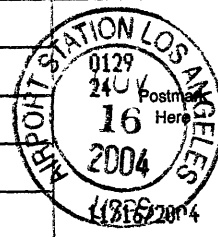
7003 3110 0000 4538 6612

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Return Receipt Fee (Endorsement Required)	\$1 75
Restricted Delivery Fee (Endorsement Required)	\$0 00
Total Postage & Fees	\$ 44.42



Sent To Jeffrey M Anapolsky
 Attorney At Law
Street Apt No Akin Gump Strauss Hauer & Feld LLP
 or **PO Box No** 1111 Louisiana Street
City State ZIP+4 44th Floor
 Houston TX 77002 5200

PS Form 3800, June 2002 See Reverse for Instructions

7003 3110 0000 4539 0008

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SANTA ANA CA 92707

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Certified Fee	\$2 30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 44.42



Sent To The Irvine Company
 Law Office Of Dean P Sperling
Street Apt No 201 E Sandpointe #220
 or **PO Box No** Santa Ana CA 92707
City State ZIP+4

PS Form 3800, June 2002 See Reverse for Instructions

**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 October 26, 2005 document(s) were appended to Claim Number **2224, 2113, 2629, 2632, 2992 and 2991** for the following reason(s)

- ☒ Stipulation and Agreed Order
- ☐ New Supporting Documents
- ☐ Change of Address
- ☐ Notice of Withdrawal
- ☒ Other Docket Number 2302 EOD 10/24/05

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X

In re

Allegiance Telecom, Inc , et al.,

Chapter 11 Case No
03-13057 (RDD)

Debtors

Jointly Administered

_____ X

**STIPULATION AND AGREED ORDER RESOLVING CLAIMS OF
THE IRVINE COMPANY**

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 the Irvine Company (“Claimant”) The parties hereby stipulate and agree as follows

WHEREAS, on or about February 25, 1999, Claimant, as landlord, and Allegiance Telecom, Inc (“ATP”), as tenant, entered into a lease for office space located at 4675 MacArthur Court, Newport Beach, CA (the “Newport Lease”), and

WHEREAS, on or about August 19, 1999, Claimant, as landlord, and ATI, as tenant, entered into a lease for office space located at 677 Palomar Avenue, Sunnyvale, CA (the “Sunnyvale Lease”), and

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

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 (the “Bankruptcy Rules”), and

WHEREAS, on or about September 23, 2003, the Bankruptcy Court entered an order, pursuant to Bankruptcy Rule 3003(c)(3), establishing, among other things, November 26, 2003 (the “Bar Date”) as the last date for all persons and entities holding or wishing to assert pre-petition and certain other “Claims” (as such term is defined in 11 U S C § 101(5)) against the Debtors to file a proof of claim form with respect to each such Claim, and

WHEREAS, on or about November 25, 2003, Claimant filed a proof of claim numbered 2224 (the “First Newport Proof of Claim”) against ATI in the amount of \$1,106,839.43 with respect to claims relating to the Newport Lease (the “Newport Claims”), and

WHEREAS, on or about November 25, 2003, Claimant filed a proof of claim numbered 2113 (the “First Sunnyvale Proof of Claim”) against ATI in the amount of \$1,841,394.00 with respect to claims relating the Sunnyvale Lease (the “Sunnyvale Claims”), and

WHEREAS, on or about December 17, 2003, the First Sunnyvale Proof of Claim was assigned a duplicative claim number 2629 (the “Second Sunnyvale Proof of Claim”), and the First Newport Proof of Claim was assigned a duplicative claim number 2632 (the “Second Newport Proof of 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, pursuant to section 6.1 of the Plan, the Debtors rejected the Newport Lease and the Sunnyvale Lease, and

WHEREAS, in accordance with the terms of the Plan, on the Initial Effective Date (as defined in the Plan), 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 have 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, on or about June 23, 2004, the Bankruptcy Court entered an order that, among other things, disallowed and expunged the Second Newport Proof of Claim and the Second Sunnyvale Proof of Claim pursuant to the Debtors’ First Omnibus Objection to Certain Proofs of Claims (the “First Omnibus Objection”) filed on or about April 6, 2004, and

WHEREAS, on or about September 2, 2004, the ATLT filed the Eleventh Omnibus Objection to Certain Lease Rejection Damages Claims (the “Eleventh Omnibus Objection”), seeking,

among other things, to disallow and expunge the First Newport Proof of Claim and the First Sunnyvale Proof of Claim, and

WHEREAS, on or about October 8, 2004, Claimant filed a proof of claim numbered 2992 (the “Third Newport Proof of Claim”) against ATI in the amount of \$619,608 78 to amend the First Newport Proof of Claim, and

WHEREAS, on or about October 8, 2004, Claimant filed a proof of claim numbered 2991 (the “Third Sunnyvale Proof of Claim,” and, collectively with the First Newport Proof of Claim, the Second Newport Proof of Claim, the Third Newport Proof of Claim, the First Sunnyvale Proof of Claim and the Second Sunnyvale Proof of Claim, the “Irvine Proofs of Claim”) against ATI in the amount of \$291,488 00 to amend the First Sunnyvale Proof of Claim, and

WHEREAS, Claimant did not respond to the Eleventh Omnibus Objection, and

WHEREAS, on or about October 13, 2004, the Bankruptcy Court entered an order (the “Eleventh Omnibus Order”) that, among other things, expunged the First Newport Proof of Claim and the First Sunnyvale Proof of Claim pursuant to the Eleventh Omnibus Objection, and

WHEREAS, on or about March 28, 2005, the ATLT filed its Nineteenth Omnibus Objection to Certain Proofs of Claim (the “Nineteenth Omnibus Objection”), seeking to, among other things, expunge the Third Newport Proof of Claim and the Third Sunnyvale Proof of Claim on the grounds that such claims were filed after the Bar Date, and

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

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

Claim, and

WHEREAS, on or about April 26, 2005, Claimant filed its Opposition to the Nineteenth Omnibus Objection to Certain Proofs of Claim and Cross Motion to Vacate the Order Disallowing Claims 2113 and [2224] and Permitting Amendments Thereto (the "Irvine Pleading"), seeking to (i) vacate the Eleventh Omnibus Order with respect to the First Newport Proof of Claim and the First Sunnyvale Proof of Claim and (ii) effectively object to the Nineteenth Omnibus Objection by seeking authority to file the Third Newport Proof of Claim and the Third Sunnyvale Proof of Claim as amendments to the First Newport Proof of Claim and the First Sunnyvale Proof of Claim, respectively, and

WHEREAS, on or about May 16, 2005, the ATLT filed its reservation of rights with respect to the Irvine Pleading, 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 Irvine Proofs of Claim, the First Omnibus Objection, the Eleventh Omnibus Objection, the Nineteenth Omnibus Objection and the Irvine Pleading 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 For the purposes of this Stipulation and Agreed Order, the term "Final Order" shall mean an order approving this Stipulation and Agreed Order 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

2 Within fifteen (15) business days of the entry of a Final Order, the ATLT is hereby authorized and directed to pay to Claimant \$50,000.00 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 Newport Claims and the Sunnyvale Claims

3 Upon the entry of a Final Order, the ATLT is hereby authorized and directed to expunge from the ATLT's claims register all proofs of claims, including the Irvine Proofs of Claim, filed by Claimant and/or related to the (i) Newport Claims and/or (ii) Sunnyvale Claims

4 Upon entry of a Final Order, Claimant hereby irrevocably, unconditionally and without reservation of any kind waives, releases and forever discharges the ATLT, Debtors, and the Debtors' estates, and their respective parent firms, predecessors and affiliates, and their officers, directors, employees, attorneys, professionals, and agents (collectively, the "Estate Parties") from and against any and all past, present and future actions, causes of action, Claims, liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether matured or unmatured, at law or in equity, known or unknown, liquidated or unliquidated, foreseen or unforeseen, discoverable or undiscoverable, contingent or non-contingent, which Claimant has, had, or may have in the future against the Estate Parties, including, but not limited to, the Newport Claims and the Sunnyvale Claims

5 Upon entry of a Final Order, the Estate Parties hereby irrevocably, unconditionally and without reservation of any kind waive, release and forever discharge the Claimant and its officers, directors, employees, attorneys, professionals, and agents (collectively, the "Claimant

Parties”) from and against any and all past, present and future actions, causes of action, Claims, liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether matured or unmatured, at law or in equity, 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, including, but not limited to, the Newport Claims and the Sunnyvale Claims

6 Claimant agrees not to 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

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

8 The undersigned on behalf of the ATLT and Claimant each represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation and Agreed Order on behalf of such party. Claimant represents and warrants to the ATLT that, as of the date hereof, it is the sole holder of all Claims against the Debtors, the Debtors’ estates and the ATLT related to the Newport Claims and/or the Sunnyvale Claims and Claimant has not assigned, sold, or otherwise transferred any Claims against the Debtors, the Debtors’ estates or the ATLT. Claimant represents and warrants that it has had an opportunity to consult with its own attorney and fully understands the meaning of the provisions in this Stipulation and Agreed Order, including, but not limited to, the releases included herein

9 This Stipulation and Agreed Order is subject to approval by the Bankruptcy Court and the entry of a Final Order by the Bankruptcy Court, provided, however, that the parties shall support such Bankruptcy Court approval and comply with this Stipulation and Agreed Order pending the Bankruptcy Court's entry of a Final Order approving or disapproving this Stipulation and Agreed Order

10 Nothing in this Stipulation and Agreed Order or any negotiations or proceedings in connection herewith shall constitute or be deemed to be evidence of an admission by any party 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 and Agreed Order 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 and Agreed Order

11 This Stipulation and Agreed Order 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 and Agreed Order The parties understand and agree that this Stipulation and Agreed Order may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by both parties The parties agree and acknowledge that they will make no claim at any time or place that this Stipulation and Agreed Order has been orally altered or modified or otherwise changed by oral communication of any kind or character Each party 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 and Agreed Order

12 This Stipulation and Agreed Order 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.

13 This Stipulation and Agreed Order shall be binding upon (i) the ATLT, as successor to the Debtors, (ii) Claimant and (iii) their respective predecessors, successors, heirs, subsidiaries, affiliates, assignees, agents, directors, officers, employees, the Plan Administrator, and any trustee appointed under Chapter 7 of the Bankruptcy Code.

Dated New York, New York
October 6, 2005

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Liquidating Trust

SO ORDERED, this 24th day of October 2005

/s/Robert D Dram

UNITED STATES BANKRUPTCY JUDGE