B10 (Official Form 10) (12/12)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM
Name of Debtor: Conexant Systems, Inc.	Case Number: 13-10367 (MFW)	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*		
Name of Creditor (the person or other entity to whom the debtor owes money or property): **PRES-4340 VON KARMAN, LP**		COURT USE ONLY
Name and address where notices should be sent: **Mark Minuti** **SAUL EWING LLP** **222 Delaware Avenue, Suite 1200** **P. O. Box 1266** **Wilmington, DE 19899** RECEIVED MAY 15 2013 BMC GROUP		☐ Check this box if this claim amends a previously filed claim. **Court Claim Number** _____ *(If known)* Filed on: _____
Telephone number: (302) 421-6840 email: mminuti@saul.com		
Name and address where payment should be sent (if different from above): Telephone number: email:		☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $4,500,000 + (See Attached)

If all or part of your claim is secured, complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach a statement that itemizes of interest or charges.

2. Basis for Claim: Nonresidential Lease (See Attached) (See instruction #2)

3. Last four digits of any number by which creditor identifies debtor: ____

3a. Debtor may have scheduled account as: _____ (See instruction #3a)

3b Uniform Claim Identifier (optional); _____ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe: _____

Value of Property: $_____

Annual Interest Rate _____% ☐ Fixed or ☐ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $_____

Basis for perfection: _____

Amount of Secured Claim: $_____

Amount Unsecured: $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of your claim falls in one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the Debtor's business ceased, whichever is earlier – 11 U.S.C. §507(a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507(a)(5).

Amount entitled to priority:

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for person, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507(a)(__).

$_____

Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of a

Conexant Systems
00091

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instructi

7. **Documents.** Attach are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (*See instruction #7, and the definition of "**redacted**".*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. **Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☐ I am the creditor's authorized agent. ☒ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005).)

I declare under penalty of perjury that the information provided in this case is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Mark Minuti

Title: Partner

Company: Saul Ewing LLP

Address and telephone number (if different from notice address above):

(Signature) 5-14-13 (Date)

Telephone number: email:

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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
CONEXANT SYSTEMS, INC., *et al.*,	:	**Case No. 13-10367 (BLS)**
Debtors.	:	**Jointly Administered**

PRES-4340 VON KARMAN LP'S DESCRIPTION OF CLAIMS

PRES-4340 Von Karman, LP ("PRES") hereby describes its claims against debtor Conexant Systems, Inc. (the "Debtor"), as follows:

BACKGROUND

1. On February 28, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. As of the Petition Date, PRES, as landlord, and the Debtor as tenant were parties to a written lease dated December, 2001, as amended (the "Lease"), pursuant to which the Debtor leased certain non-residential real property located at 4340 Von Karman Avenue, Newport Beach, California 92660 (the "Premises"). A copy of the Lease is attached hereto as **Exhibit A** and incorporated by reference herein.

3. The Premises consists of an office building containing approximately 64,849 rentable square feet of floor area.

4. On or about February 28, 2013, the *Debtors' Motion for Entry of an Order Authorizing the Rejection of Certain Unexpired Leases, Effective Nunc Pro Tunc to the Petition Date* [Docket No. 18] (the "Lease-Rejection Motion") was filed.

5. On or about April 5, 2013, PRES filed an objection [Docket No. 138] (the "Objection") to the Lease Rejection Motion.

6. At a hearing on April 19, 2013, the Parties informed the Court that they reached a settlement of the Lease Rejection Motion and the Objection. The settlement is to be embodied in an order (the "Proposed Order") to be submitted to the Court and includes the following terms, which were put on the record:

A. The Lease shall not be rejected, but rather the Lease shall be terminated.

B. All of the Debtors' subleases for space on the Premises shall be rejected.

C. PRES shall have an allowed non-priority general unsecured claim of $4.5 million against debtor Conexant Systems, Inc. that is not subject to objection, disallowance, reduction or setoff by any party.

D. The Debtors shall pay PRES in cash by wire transfer (i) $300,000 in resolution for all post-petition obligations under the Lease through the date of its termination, and (ii) all post-petition rent and other funds that the Debtors have received from the subtenants for the period from the Petition Date through and including the date of rejection of the subleases.

E. The Debtors shall assign to PRES all of the Debtors' rights to pursue the subtenants for all unpaid post-petition obligations accrued or due under the subleases.

F. No party shall challenge PRES's pre-petition draw on a letter of credit securing obligations due under the Lease, and the proceeds of that letter of credit shall not reduce the amount of PRES's allowed general unsecured claim, the cash paid to PRES, or any other consideration received by PRES pursuant to the settlement.

G. PRES shall retain any property tax refund(s) for the Premises that PRES is holding or receives in the future; and the Debtors shall assign to PRES free and clear of any claims or interests any and all rights they may have to receive any such tax refunds for or relating to the Premises.

H. PRES' agreement to accept $300,000 and other consideration in satisfaction of all obligations arising or accruing under the Lease from the Petition Date through the date of termination of the Lease is contingent on the Plan going effective. If the Plan does not go effective, PRES shall retain its rights to seek additional post-petition obligations due under the

Lease from the Petition Date through the date of termination of the Lease, less the cash it received under the settlement and all of the Debtors' rights are equally reserved.

I. The Debtors and PRES shall mutually release each other for all other matters related to the Lease, the subleases and the Premises and the Debtors shall have no go-forward obligations with respect thereto, except as otherwise provided in the Proposed Order.

J. The Debtors are to deliver to PRES all security deposits for the Premises provided by an subtenants.

7. It is anticipated that the Proposed Order embodying the above terms will be submitted to the Court shortly.

8. In the unlikely event that the Proposed Order is not submitted, or the Court does not approve the Proposed Order, PRES will assert all of its rights and claims, including, but not limited to (a) all claims under Bankruptcy Code Sections 365(d)(3) and/or 503(b) from the Petition Date through the date of rejection of the Lease and surrender of the Premises; (b) unsecured claims for all damages resulting from the rejection or termination of the Lease, including but not limited to, any damages incurred as a result of the Debtor's failure to maintain the Premises and the failure to cause the subtenants to vacate the Premises. PRES reserves its right to amend this proof of claim for any reason.

Exhibit A

Exhibit A

OFFICE BUILDING LEASE

Single Tenant - Triple Net

BETWEEN

LNR VON KARMAN, LLC, a California limited liability company

LANDLORD

AND

CONEXANT SYSTEMS, INC.,
a Delaware corporation

TENANT

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EXHIBITS:

RIDERS:

OFFICE BUILDING LEASE
Single Tenant - Triple Net

This STANDARD OFFICE BUILDING LEASE ("Lease") is entered into as of the _____ day of December, 2001, by and between LNR VON KARMAN, LLC, a California limited liability company ("Landlord"), and CONEXANT SYSTEMS, INC., a Delaware corporation ("Tenant").

1. **BASIC LEASE TERMS.** For purposes of this Lease, the following terms have the following definitions and meanings:

(a) **Landlord's Address** (For Notices):

LNR Von Karman, LLC

c/o Lennar Partners

18401 Von Karman Avenue, Suite 540
Irvine, California 92612
Attention: Asset Manager

or such other place as Landlord may from time to time designate by notice to Tenant.

(b) **Tenant's Address:**

4311 Jamboree Road
Newport Beach, California 92660
Mail Station M1S704-339
Attention: Director of Facilities

with a copy to:

Croudace & Dietrich
5 Park Plaza, Suite 1150
Irvine, California 92614
Attention: Virginia P. Croudace, Esq.

or such other place as Tenant may from time to time designate by notice to Landlord.

(c) **Development:** All that certain real property commonly known as Koll Center Newport consisting of approximately 11 parcels of real property, various office buildings located thereon (including the Building as defined below) and common areas consisting of common driveways and drive aisles, parking areas, loading areas, sidewalks, landscaped areas and the like which are not intended or designated for the exclusive use of any occupant(s) of the Development (collectively, Development Common Areas"), as such Development Common Areas are more particularly described in that certain Declaration of Covenants, Conditions and Restrictions of Koll Center Newport recorded July 20, 1973, in Book 10811, Page 643 of the Official Records of Orange County, California (as amended, the "Declaration"). The use and enjoyment of the Development Common Areas is governed by the Declaration.

(d) **Premises, Building and Premises Land:** That certain building and all improvements appurtenant thereto located at 4340 Von Karman Avenue (the "Building" or the "Premises") as shown on the Site Plan attached hereto as Exhibit "A-I" (the "Site Plan"). The Building is situated upon that certain parcel of real property located in the City of Newport Beach (the "City"), County of Orange (the "County"), State of California ("State") described on Exhibit "A-II" attached hereto (the "Premises Land"). The Building contains approximately 64,849 Rentable Square Feet of floor area.

(e) **Tenant's Percentage:** That percentage, as applicable, which is assigned to the Premises pursuant to the Declaration representing the Premises' share, as applicable, of various Development Common Area Expenses as provided in Paragraph 6 below.

(f) **Term:** Fifteen (15) Lease Years and no (0) Months.

(g) **Estimated Commencement Date:** December 15, 2001.

(h) **Estimated Expiration Date:** December 14, 2016.

(i) **Commencement Date:** The date on which Landlord purchases the Building from Tenant.

(j) **Initial Monthly Base Rent:** $113,485.75, per month subject to adjustment as provided in Exhibit "B" and as otherwise provided in this Lease.

(k) **Collateral:** $1,000,000 in the form of a cash security deposit as provided in Paragraph 7 below, or $1,362,000 in the form of a letter of credit as provided in Paragraph 40 below.

(l) **Tenant Improvements:** None; Premises to be accepted "AS-IS".

(m) **Permitted Use:** General office, electronics labs and/or any other lawful use that does not create a nuisance or hazard for other tenants and occupants of the Development and is permitted under the Declaration and applicable laws and for no other use without the express written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. By its signature hereto, Landlord acknowledges and agrees that Tenant's use of the Premises prior to the date of this Lease is within the permitted use.

(n) **Broker(s):** The Staubach Company, representing Tenant, provided such Broker is not entitled to any such commission in connection with this Lease.

(o) **Guarantor(s):** N/A.

(p) **Interest Rate:** shall mean the greater of ten percent (10%) per annum or two percent (2%) in excess of the prime lending or reference rate of Wells Fargo Bank N.A. or any successor bank in effect on the twenty-fifth (25th) day of the calendar month immediately prior to the event giving rise to the Interest Rate imposition; provided, however, the Interest Rate will in no event exceed the maximum interest rate permitted to be charged by applicable law.

(q) **Exhibits:** A-1 through G, inclusive, which Exhibits are attached to this Lease and incorporated herein by this reference.

(r) **Riders:** 1 and 2, inclusive, which Riders are attached to this Lease and incorporated herein by this reference.

This Paragraph 1 represents a summary of the basic terms and definitions of this Lease. In the event of any inconsistency between the terms contained in this Paragraph 1 and any specific provision of this Lease, the terms of the more specific provision shall prevail.

2. **PREMISES AND COMMON AREAS.**

(a) **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises in their present "AS-IS" condition, without any representation or warranty of Landlord of any kind, express or implied, except as may be expressly provided herein.

(b) **Mutual Covenants.** Landlord and Tenant agree that the letting and hiring of the Premises is upon and subject to the terms, covenants and conditions contained in this Lease.

(c) **Tenant's Use of Development Common Areas.** In addition to the Premises, Landlord hereby grants to Tenant during the Term of this Lease, the nonexclusive right to use in common with Landlord and all persons, firms and corporations conducting business in the Development and their respective customers, guests, licensees, invitees, subtenants, employees and agents (collectively, "Development Occupants"), subject to the terms of this Lease and all covenants, conditions and restrictions now or hereafter affecting the Development, including without limitation, the Declaration, all rights of Landlord under and pursuant to the Declaration to use Development Common Areas; provided, however, that, except as otherwise provided herein, Landlord reserves to itself all voting and consent rights arising under the Declaration relative to the Premises.

3. **TERM.** The term of this Lease ("Term") will be for the period designated in Subparagraph 1(g), commencing on the Commencement Date, and ending on the day before the fifteenth (15th) anniversary thereof, including any extensions of the Term pursuant to any provision of this Lease or written agreement of the parties. Each consecutive twelve (12) month period of the Term of this Lease, commencing on the Commencement Date, will be referred to herein as a "Lease Year".

4. **POSSESSION.**

(a) **Delivery of Possession.** Tenant is currently in possession of the Premises and will continue to have the right to possession of the Premises from and after the Commencement Date through the remainder of the Term as extended. Notwithstanding the foregoing, on or before the Commencement Date, Tenant shall deliver to Landlord all of the following: (i) a copy of this Lease fully executed by Tenant; (ii) the Security Deposit or Letter of Credit as provided in this Lease and the first installment of Monthly Base Rent; (iii) executed copies of policies of insurance or certificates thereof as required under Paragraph 19 of this Lease; and (iv) such evidence of authority as Landlord may reasonably require, which may include, without limitation, a certificate of secretary or other similar documentation.

(b) **Condition of Premises.** By remaining in possession of the Premises upon the Commencement Date, Tenant will be deemed to have accepted the Premises in its "AS-IS" condition on the Commencement Date, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use and occupancy of the Premises and to have acknowledged that there are no items needing work or repair by Landlord. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Development or any portions thereof or with respect to the suitability of same for the conduct of Tenant's business.

5. **RENT.**

(a) **Monthly Base Rent.** Tenant agrees to pay Landlord the Monthly Base Rent for the Premises (subject to adjustment as hereinafter provided) in advance on the first day of each calendar month during the Term without prior notice or demand, except that Tenant agrees to pay the Monthly Base Rent for the first month of the Term directly to Landlord in accordance with Paragraph 4(a)(ii) above. If the Term of this Lease commences or ends on a day other than the first day of a calendar month, then the rent for such period will be prorated in the proportion that the number of days this Lease is in effect during such period bears to the number of days in such month. All rent must be paid to Landlord, without any deduction or offset, in lawful money of the United States of America, at the address designated by Landlord or to such other person or at such other place as Landlord may from time to time designate in writing. Monthly Base Rent will be adjusted annually during the Term of this Lease as provided in Exhibit "B".

(b) **Additional Rent.** All amounts and charges to be paid by Tenant hereunder, including, without limitation, payments for Operating Expenses (as defined in Paragraph 6 below), real property taxes, insurance and repairs, will be considered additional rent for purposes of this Lease, and the word "rent" as used in this Lease will include all such additional rent unless the context specifically or clearly implies that only Monthly Base Rent is intended.

(c) **Late Payments.** Late payments of Monthly Base Rent and/or any item of additional rent will be subject to interest and a late charge as provided in Subparagraph 22(f) below.

(d) **Triple Net Lease.** It is intended that this Lease be an absolute bondable, "triple net lease," and that the Rent will be paid hereunder by Tenant on account of any period within the Term without any deduction or offset whatsoever by Tenant, foreseeable or unforeseeable. Except as expressly provided to the contrary in this Lease, Landlord shall not be required to make any expenditure, incur any

obligation, or incur any liability of any kind whatsoever in connection with this Lease or the ownership, construction, maintenance, operation or repair of the Premises.

6. **OPERATING EXPENSES.**

(a) **Operating Expenses.** In addition to Monthly Base Rent, throughout the Term of this Lease, Tenant agrees to pay directly to the property manager for the Development (the "Property Manager"), as and when due, as additional rent in accordance with the terms of this Paragraph 6, Tenant's Percentage of all costs of maintenance and repair (including management and administrative fees), insurance, taxes and utilities attributable to the Development Common Areas which are now or hereafter assessed by the Property Manager against the Premises pursuant to the Declaration during the Term of this Lease (collectively, the "Development Operating Expenses").

(b) **Operating Expense Statements.** Landlord will exercise all of its rights under the Declaration to cause the Property Manager to deliver to Tenant all estimate and actual statements of the Development Operating Expenses and Tenant's Percentage thereof as and when the same shall be due under the Declaration. For the Term of this Lease, Landlord hereby assigns to Tenant all rights and obligations of Landlord arising under the Declaration with respect to the payment of Operating Expenses, including any right to protest the payment of Operating Expenses to the extent permitted under the terms of the Declaration, and Tenant hereby accepts such assignment and agrees to perform all of Landlord's obligations under the Declaration with respect to the payment of Operating Expenses.

7. **SECURITY DEPOSIT.** Concurrently with Tenant's execution of this Lease, Tenant will deposit with Landlord the Security Deposit designated in Subparagraph 1(k). The Security Deposit will be held by Landlord as security for the full and faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. Landlord shall maintain the Security Deposit in an interest bearing account and all interest accruing thereon at a rate not less than the average one year Treasury Bill yield shall be payable to Tenant annually in arrears. If Tenant fully and faithfully performs its obligations under this Lease, including, without limitation, surrendering the Premises upon the expiration or sooner termination of this Lease in compliance with Subparagraph 11(a) below, the Security Deposit or any balance thereof will be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days following the expiration of the Lease Term or as required under applicable law, provided that Landlord may retain the Security Deposit until such time as any then outstanding rent or additional rent amount has been paid in full. The Security Deposit is not, and may not be construed by Tenant to constitute, rent for the last month or any portion thereof. If Tenant defaults with respect to any provisions of this Lease including, but not limited to, the provisions relating to the payment of rent or additional rent, Landlord may (but will not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant agrees, within thirty (30) days after Landlord's written demand therefor, to deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall constitute a default under this Lease. Should Landlord sell its interest in the Premises during the Term hereof and deposit with the purchaser thereof the then unappropriated Security Deposit funds, Landlord will be discharged from any further liability with respect to such Security Deposit. In lieu of the Security Deposit, at Landlord's election, Tenant may elect to provide Landlord with a letter of credit as provided in Paragraph 40 below. Notwithstanding anything to the contrary contained in this Paragraph 7, provided Tenant is not then in default (i.e., after notice and expiration of any applicable cure period) and has not previously been in default under this Lease, the Security Deposit shall be reduced annually by an amount equal to one-twelfth (1/12) of the original Security Deposit amount on each anniversary of the Commencement Date, and the amount by which the Security Deposit is reduced shall be delivered to Tenant by Landlord within thirty (30) days after each such anniversary. Additionally, the Security Deposit shall decrease to an amount equal to the then current Monthly Base Rent amount if Tenant achieves either a Standard & Poor's rating of "BB" or better or a Moody's rating of "Ba2" or better at any time following the third (3rd) anniversary of the Commencement Date.

8. **USE.**

(a) **Tenant's Use of the Premises.** The Premises may be used for the use or uses set forth in Subparagraph 1(m) only, and Tenant will not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion.

(b) **Compliance.** At Tenant's sole cost and expense, Tenant agrees to procure and maintain all governmental licenses and permits required for the proper and lawful conduct of Tenant's business from the Premises, if any. Tenant agrees not to use the Premises in violation of: (i) any and all laws, statutes, zoning restrictions, ordinances, rules, regulations, orders and rulings now or hereafter in force and any requirements of any insurer, insurance authority or duly constituted public authority having jurisdiction over the Premises now or hereafter in force, (ii) the requirements of the Board of Fire Underwriters and any other similar body, (iii) the Certificate of Occupancy issued for the Building, and (iv) any recorded covenants, conditions and restrictions and similar regulatory agreements, if any, which affect the use, occupation or alteration of the Premises, including without limitation, the Declaration. Tenant agrees not to do or permit any Tenant Parties (as defined in subparagraph (c) below) to do

anything in or about the Premises which will violate the Declaration or any applicable laws. Tenant agrees not to cause, maintain or permit any Tenant Parties to cause or maintain any nuisance or waste in, on, under or about the Premises. Notwithstanding anything contained in this Lease to the contrary, all transferable development rights related in any way to the Building are and will remain vested in Landlord, and Tenant hereby waives any rights thereto.

(c) **Hazardous Materials.** During the Term of this Lease, except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials (some or all of which may constitute "Hazardous Materials" as defined in this Lease), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, newly introduced or disposed of on, in, under or about the Premises or the Building by Tenant, its agents, employees, subtenants, assignees, licensees or contractors (collectively, "Tenant's Parties"), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion (taking into consideration, however, the nature of Tenant's business). Notwithstanding the foregoing, Tenant may maintain in and about the Premises, those substances which are listed on Schedule 8(c) hereto, provided all such substances are used, stored, handled and disposed of in compliance with all applicable laws. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building, the Development or any portion thereof by Tenant or any of Tenant's Parties during the Term of this Lease in violation of this subparagraph (c), it being expressly agreed that Landlord and Tenant have entered into a separate Environmental Remediation, Indemnity and Access Agreement (Indemnity Agreement) to address their respective rights and obligations with respect to Hazardous Materials present at the Premises prior to the Commencement Date and, in the event of any conflict between this Lease and the Indemnity Agreement with respect to any such pre-existing Hazardous Materials, the terms of the Indemnity Agreement shall prevail. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's partners, officers, directors, employees, agents, successors and assigns (collectively, "Landlord Indemnified Parties") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Development and which are caused by Tenant or any of Tenant's Parties during the Term of this Lease (only) in violation of this subparagraph (c). Tenant agrees to promptly notify Landlord of any release of Hazardous Materials at the Premises of which Tenant becomes aware during the Term of this Lease, whether caused by Tenant or any other persons or entities. In the event of any release of Hazardous Materials caused by Tenant or any of Tenant's Parties during the Term of this Lease (only) in violation of this subparagraph (c), Landlord shall have the right, but not the obligation, to cause Tenant to immediately take all steps Landlord deems necessary or appropriate to remediate such release and prevent any similar future release to the satisfaction of Landlord and Landlord's mortgagee(s). As used in this Lease, the term "Hazardous Materials" shall mean and include any hazardous or toxic materials, substances or wastes as now or hereafter designated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of the State, the United States Government or any local governmental authority, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), and freon and other chlorofluorocarbons. The provisions of this Subparagraph 8(c) will survive the expiration or earlier termination of this Lease.

(d) **Tenant's Operations at the Development.** In no event shall the foregoing provisions of this Paragraph 8 give Landlord any contractual cause of action for indemnity, contribution or breach of contract with respect to Tenant's actions or omissions on or about portions of the Development other than the Premises, or on or about the Premises Land or with respect to materials included in the Building (such as PCBs and asbestos) prior to the date hereof, it being understood and agreed by and between Landlord and Tenant that any operations conducted by Tenant outside the Premises or on or about the Premises Land or with respect to materials included in the Building (such as PCBs and asbestos) prior to the date hereof, are outside the scope of this Lease except only insofar as the same relate to Tenant's use of the Development Common Areas as an appurtenance to its use of the Premises.

9. **NOTICES.** Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by overnight courier or an express mailing service) or by mail, if sent by registered or certified mail. Notices to Tenant shall be delivered to Tenant at the address designated in Subparagraph 1(a) and notices to Landlord shall be delivered to Landlord at the address designated in Subparagraph 1(a). Either party may specify a different address for notice purposes by written notice to the other.

10. **BROKERS.** The parties acknowledge that the only broker(s) who negotiated this Lease are stated in Subparagraph 1(o) and that such Broker is not entitled to any commission in connection with this Lease. Each party represents and warrants to the other, that, to its knowledge, no other broker, agent or finder (a) negotiated or was instrumental in negotiating or consummating this Lease on its behalf, and (b) is or might be entitled to a commission or compensation in connection with this Lease. Landlord and Tenant each agree to promptly indemnify, protect, defend and hold harmless the other from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including attorneys' fees and court costs) resulting from any breach by the

indemnifying party of the foregoing representation, including, without limitation, any claims that may be asserted by any broker, agent or finder undisclosed by the indemnifying party and Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including attorneys' fees and court costs) arising out of any alleged claims by Broker in connection with this Lease. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

11. **SURRENDER; HOLDING OVER.**

(a) **Surrender.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not constitute a merger, and shall, at the option of Landlord, operate as an assignment to Landlord of any or all subleases or subtenancies. Upon the expiration or earlier termination of this Lease, Tenant agrees to peaceably surrender the Premises to Landlord broom clean and in a state of good order, repair and condition, ordinary wear and tear and casualty damage (if this Lease is terminated as a result thereof pursuant to Paragraph 20) excepted, but in any event with the plumbing, heating, ventilation and air conditioning systems in good working order and with all of Tenant's personal property and Alterations (as defined in Paragraph 13) removed from the Premises to the extent required under Paragraph 13 and all damage caused by such removal repaired as required by Paragraph 13. Prior to the date Tenant is to actually surrender the Premises to Landlord, Landlord may schedule a walk-through of the Premises with Tenant in accordance with Paragraph 16 below. If Landlord reasonably determines that any deficiencies in the condition of the Premises exist in breach of this subparagraph (a), Tenant will promptly cause the same to be corrected in a good and workmanlike manner at Tenant's sole cost and expense prior to the surrender date. The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof alone will not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

(b) **Holding Over.** Tenant will not be permitted to hold over possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. If Tenant holds over after the expiration or earlier termination of the Term, Landlord may, at its option, treat Tenant as a tenant at sufferance only, and such continued occupancy by Tenant shall be subject to all of the terms, covenants and conditions of this Lease, so far as applicable, except that the Monthly Base Rent for any such holdover period shall be equal to one hundred fifty percent (150%) of the Monthly Base Rent in effect under this Lease immediately prior to such holdover, prorated on a daily basis. Acceptance by Landlord of rent after such expiration or earlier termination will not result in a renewal of this Lease. The foregoing provisions of this Paragraph 11 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord under this Lease or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease in accordance with the terms of this Paragraph 11 despite demand to do so by Landlord, Tenant agrees to promptly indemnify, protect, defend and hold Landlord harmless from all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including attorneys' fees and costs), including, without limitation, costs and expenses incurred by Landlord in returning the Premises to the condition in which Tenant was to surrender it and claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender the Premises. The provisions of this Subparagraph 11(b) will survive the expiration or earlier termination of this Lease.

12. **TAXES.**

(a) **Payment of Taxes.** Tenant agrees to pay, prior to delinquency, all real property taxes, as defined in Paragraph 12(b) below, applicable to the Premises during the Term of this Lease directly to the taxing authority(ies) and Tenant shall also pay prior to delinquency, directly to the Project Manager, Tenant's Percentage of all taxes attributable to the Development Common Areas as and when such taxes become due under the Declaration. All such payments shall be made at least ten (10) days prior to the delinquency date of such payment, provided that Landlord arranges for such tax statements to be delivered to Tenant if received by Landlord. Upon request of Landlord, Tenant agrees to furnish Landlord with satisfactory evidence that such real property taxes have been paid. If any such real property taxes paid by Tenant shall cover any period of time prior to or after the expiration of the Term thereof, Tenant's share of such real property taxes shall be prorated to cover only the period of time within the tax fiscal year during which this Lease is in effect, and Landlord shall be responsible for the portion thereof which is outside the Term of this Lease. If Tenant fails to pay any such real property taxes, Landlord will have the right to pay the same, in which case Tenant will repay such amount to Landlord with Tenant's next rent installment together with interest at the Interest Rate.

(b) **Definition of "Real Property Taxes".** As used herein, the term "real property taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, rental tax, parking surcharge, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on or with respect to the Premises Land and improvements thereon (including, without limitation the Building) by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Premises. The term "real property taxes" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge herein above included within the definition of

"real property tax," or (ii) the nature of which was hereinabove included within the definition of "real property tax," or (iii) which is imposed on the cost or value of Tenant's equipment, fixtures or other property located on the Premises or Tenant's leasehold improvements made in or to the Premises, regardless of whether title to such improvements shall be in Landlord or Tenant; provided, however, notwithstanding any of the foregoing to the contrary, real property taxes shall not include any federal or state income tax, or any franchise, capital stock, estate, inheritance, succession, transfer and excess profit taxes imposed upon Landlord nor shall Tenant be liable for, and Landlord shall pay directly to the taxing authority, any increase in real property taxes during the initial Term which is attributable to any transfer, sale, refinance or other "change in ownership" of the Premises by Landlord only (Note, initial sale to Landlord shall not be protected from any tax increase].

(c) **Personal Property Taxes.** Tenant agrees to pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises. When possible, Tenant will cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's personal property is assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

(d) **Common Area Taxes.** Tenant shall pay Tenant's Percentage of Taxes for the Common Areas of the Development, if any, as part of Operating Expenses as provided in Paragraph 6.

(e) **Protest of Taxes.** Tenant shall have the right, at Tenant's sole cost and expense, to protest or to seek a reduction of any real property taxes imposed on the Premises which are payable by Tenant pursuant to this Lease, and shall be entitled to retain any refund in any such real property taxes, if and to the extent attributable to any period within the Term.

13. **ALTERATIONS.** Tenant may, at its sole cost and expense, make alterations, additions, improvements, "Utility Installations" and decorations to the Premises (collectively, "Alterations") subject to and only upon the following terms and conditions:

(a) **Prohibited Alterations.** Without the express, prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, Tenant shall not make any Alterations: (i) to any area of the outside of the Premises (including, without limitation, exterior walls, windows, doors, elevations and exterior finishes); (ii) which affect the Building's structure, roof, mechanical or electrical equipment or systems, or the proper functioning thereof, or the Building's stairs or elevator systems; or (iii) will violate or require a change in any occupancy certificate applicable to the Premises. As used in this Paragraph 13, the term "Utility Installations" means carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, heating, ventilation and air conditioning systems, plumbing systems, fencing, landscaping, signage, telephone, cable or other communication systems of any kind, satellite or other radio or television reception or transmitting devices, or gas lines.

(b) **Landlord's Approval.** Before proceeding with any Alterations which require Landlord's consent as provided in Subparagraph 13(a) above, Tenant shall provide Landlord with plans, specifications and working drawings for such Alterations for Landlord's review and approval and, if such Alterations are approved by Landlord, then, in making such Alterations, Tenant shall conform to the other conditions of this Paragraph 13, including, without limitation, conforming to insurance requirements which govern contractors. Tenant may undertake any Alterations which do not require Landlord's approval provided (i) Tenant delivers to Landlord notice and reasonable detail regarding such Alterations at least ten (10) days prior to commencement of the work thereof, and (ii) the other conditions of this Paragraph 13 are satisfied, including, without limitation, conforming to insurance requirements which govern contractors. Landlord's approval of plans, specifications and/or working drawings for Alterations will not create any responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with applicable permits, laws, rules and regulations of governmental agencies or authorities.

(c) **Contractors.** Before proceeding with any Alterations, Tenant agrees to provide Landlord with ten (10) days' prior written notice and Tenant's contractors must obtain and maintain, on behalf of Tenant and at Tenant's sole cost and expense, all necessary governmental permits and approvals for the commencement and completion of such Alterations. Throughout the performance of any Alterations, Tenant agrees to obtain, or cause its contractors to obtain, workers compensation insurance and general liability insurance in compliance with the provisions of Paragraph 19 of this Lease and to cause Landlord to be named as an additional insured on all such policies.

(d) **Manner of Performance.** All Alterations must be performed: (i) in accordance with the approved plans, specifications and working drawings to the extent Landlord's approval of plans and specifications is required; (ii) in a lien-free and good and workmanlike manner; (iii) in compliance with the Declaration; (iv) in compliance with, at Tenant's sole cost and expense, any and all applicable permits, laws, statutes, zoning restrictions, ordinances, rules, regulations, orders and rulings now or hereafter in force including, without limitation, the requirements of the Americans with Disabilities Act of 1990 as amended (the "ADA") and any requirements of any insurer, insurance authority or duly constituted public authority having jurisdiction over the Premises now or hereafter in force, (ii) the requirements of the Board of Fire Underwriters and any other similar body, (iii) the Certificate of Occupancy issued for the Building.

(e) **Ownership.** All existing tenant improvements in the Premises and all Alterations hereafter installed by Tenant at the Premises will become the property of Landlord and will remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided, however, Landlord may, with respect to any Alterations which require Landlord's consent hereunder, by written notice delivered to Tenant concurrently with Landlord's approval of the final working drawings for such Alterations, identify those Alterations which Landlord will require Tenant to remove at the expiration or earlier termination of this Lease. If Landlord requires Tenant to remove any Alterations in accordance with this subparagraph (e), Tenant, at its sole cost and expense, agrees to remove the identified Alterations on or before the expiration or earlier termination of this Lease and repair any damage to the Premises caused by such removal.

(f) **Personal Property.** All articles of personal property owned by Tenant or installed by Tenant at its expense in the Premises (including Tenant's business and trade fixtures, furniture, movable partitions and equipment [such as telephones, copy machines, computer terminals, refrigerators and facsimile machines]) will be and remain the property of Tenant, and must be removed by Tenant from the Premises, at Tenant's sole cost and expense, on or before the expiration or earlier termination of this Lease. Tenant agrees to repair any damage caused by such removal at its cost on or before the expiration or earlier termination of this Lease.

(g) **Removal of Alterations.** If Tenant fails to remove by the expiration or earlier termination of this Lease all of its personal property, or any Alterations identified by Landlord for removal in accordance with subparagraph (e) above, Landlord may (without liability to Tenant for loss thereof) treat such personal property and/or Alterations as abandoned and, at Tenant's sole cost and expense, and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (i) remove and store such items; and/or (ii) upon ten (10) days' prior notice to Tenant, sell, discard or otherwise dispose of all or any such items at private or public sale for such price as Landlord may obtain or by other commercially reasonable means. Tenant shall be liable for all costs of disposition of Tenant's abandoned property and Landlord shall have no liability to Tenant with respect to any such abandoned property. Landlord agrees to apply the proceeds of any sale of any such property to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

(h) **Roof Rights.** Notwithstanding anything to the contrary herein, Tenant shall have the right, at its sole cost and expense and subject to the City of Newport Beach's approval, to place heating, ventilating and air conditioning equipment, satellite dish(es) and antenna(e) together with all wiring or other connections therefor (collectively, the "Roof Items"), on the roof of the Building. If any such installation interferes with the operations or installations of any other tenant or of Landlord, Tenant shall, at its sole cost and expense, at Landlord's request relocate or modify its installation to eliminate any such interference. If Landlord permits installation of a similar system on the roof of the Building or elsewhere in the Project by any person, Landlord shall impose on such other person covenants of non-interference comparable to Tenant's covenants herein with respect to the Roof Items. Landlord shall, at Tenant's cost, cooperate with Tenant in the procurement of necessary permits or zoning variances for the Roof Items and execute all documents required to obtain necessary permits or zoning variances. Tenant or its agents or representatives shall, at all times during business hours and with a representative of Landlord present, be permitted use of and access to the roof for purposes of examination and repair of the Roof Items. Upon termination of this Lease, Tenant shall disconnect and remove such Roof Items, and fully repair and restore the roof to the same condition than prior to installation of the Roof Items, normal wear and tear excepted. Tenant's obligations with respect to the Roof Items are identical to Tenant's obligations with respect to the Premises pursuant to the Lease, including without limitation maintenance, insurance and indemnification.

14. **REPAIRS.**

(a) **Tenant's Obligations.** Tenant agrees to maintain and repair the Premises and every part thereof, structural and non structural, consistent with the condition of the Premises as of the date hereof (whether or not such portion of the Premises requiring repair, or the means of repairing the same are reasonable or readily accessible to Tenant including, without limiting the generality of the foregoing, all plumbing, heating, ventilation, air conditioning equipment and systems, electrical, lighting facilities and equipment within the Premises, fixtures, walls, ceilings, roof and roof membrane, floors, windows, doors, plate glass and skylights located within the Premises, all Tenant signs located at or on the Premises. Tenant, at Tenant's sole cost and expense, shall procure and maintain service and maintenance contracts reasonably acceptable to Landlord for the roof, elevator and for the heating, ventilation and air conditioning system for the Building which shall include at a minimum, quarterly inspections of such improvements, equipment and systems and Tenant shall provide Landlord with copies of all inspection, maintenance and repair reports for all such improvements, equipment and systems upon receipt. Tenant's obligations under this Paragraph 14(a) shall include the obligation to replace at Tenant's cost all elements of the Premises when and as repair of such elements is no longer reasonably feasible or appropriate or as otherwise reasonably required by Landlord. If and to the extent any Alterations of a capital nature (a "Capital Expenditure") are required to keep the Premises, the Building or the equipment serving the same in good order, condition and repair, Landlord and Tenant shall allocate the cost of such work as follows: (i) if such Alterations are required as a result of the specific and unique nature of the use of the Premises by Tenant, as compared with uses by office building tenants in general, Tenant shall be solely responsible for all costs associated with such Capital Expenditure; and (ii) if such Capital Expenditure is not required as a result of the specific and unique

nature of the use of the Premises by Tenant, as compared with uses by office building tenants in general, then provided Landlord has approved in advance such Capital Expenditure, such items shall be paid for by Tenant, and Landlord shall reimburse Tenant in one lump sum within thirty (30) days of invoice by Tenant for Landlord's pro rata share of such Capital Expenditure based on amortization of the Capital Expenditure over its useful life and the portion of the useful life of the capital item which is expected to extend beyond the remainder of the Term.

(b) **Tenant's Failure to Repair.** If Tenant refuses or neglects to repair and maintain the Premises as required hereunder to the economic detriment of Landlord, Landlord, at any time following thirty (30) days from the date on which Landlord makes a written demand on Tenant to effect such repair and maintenance, may enter upon the Premises and make such repairs and/or maintenance, and upon completion thereof, Tenant agrees to pay to Landlord as additional rent, Landlord's costs for making such repairs plus an amount not to exceed ten percent (10%) of such costs for overhead, within thirty (30) days of receipt from Landlord of a written itemized bill therefor. Any amounts not reimbursed by Tenant within such thirty (30) day period shall constitute a default by Tenant and will bear interest at the Interest Rate until paid by Tenant.

(c) **Landlord's Obligations.** It is intended by the parties that except as provided in Paragraph 20 with respect to repairs necessitated by condemnation or eminent domain, Landlord shall have no obligation of any kind whatsoever, (i) to repair or maintain the Premises or any portion thereof, or any equipment therein, all of which obligations are intended to be Tenant's obligations, or (ii) to pay any other cost or expense whatsoever directly or indirectly relating to the ownership, management, lease, operation or use of the Premises. Tenant waives the right to make repairs at Landlord's expense under any law, statute, ordinance, rule, regulation, order or ruling (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Sections 1941 and 1942 and any successor statutes or laws of a similar nature).

(d) **Landlord's Purchase of Premises and Premises Land.** Landlord acknowledges and agrees that, immediately prior to the execution and delivery of this Lease, Landlord purchased the Premises and the Premises Land and certain adjacent property commonly known as 4350 Von Karman, on an "AS-IS" basis, in its current condition, including without limitation with respect to physical or environmental condition, condition of title and the environmental, seismic and structural condition thereof, and nothing in this Lease is intended to vary the acceptance of the Premises and Premises Land by Landlord in such condition. In addition, Landlord's indemnity, protection and defense obligations with respect to any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys' fees, liens (including, without limitation, mechanics' liens), or expenses of any kind or nature whatsoever, pursuant to any other contract between Landlord and Tenant arising out of or resulting from any entry and/or activities upon the Premises or Premises Land by Landlord, Landlord's agents, contractors and/or subcontractors, and/or the contractors and subcontractors of such agents, prior to the commencement of the Term shall control over any contrary provision in this Lease.

15. **LIENS.** Tenant agrees not to permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or Tenant's agents, employees, contractors, licensees or invitees. At Landlord's request, Tenant agrees to provide Landlord with enforceable, conditional and final lien releases (or other evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials at the Premises. Landlord will have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant will, at its sole cost, promptly cause such liens to be released of record or bonded so that it no longer affects title to the Premises or the Development. If Tenant fails to cause any such liens to be so released or bonded within thirty (30) days after notice of the filing thereof from Landlord, such failure will be deemed a material breach by Tenant under this Lease, and Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claims giving rise to such liens. Tenant agrees to pay to Landlord within thirty (30) days after receipt of invoice from Landlord, any reasonable sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord.

16. **ENTRY BY LANDLORD.** Landlord and its employees and agents will at all times during reasonable hours have the right to enter the Premises to inspect the same, to show the Premises to prospective purchasers or, during the last nine (9) months of the Term, to tenants, to post notices of nonresponsibility, and/or to repair the Premises as permitted by this Lease. In exercising such entry rights, Landlord will minimize, as reasonably practicable, the interference with Tenant's business, and will provide Tenant with at least twenty-four (24) hours advance notice of any such entry (except in emergency situations), and Tenant shall have an opportunity to accompany Landlord at all times during such entry. Landlord may, in order to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord will at all times have and retain a key with which to unlock all doors in the Premises, excluding Tenant's vaults and safes. Landlord will have the right to use any and all means which Landlord may reasonably deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of said means, or otherwise, will not be construed or deemed to be

a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises. Landlord will not be liable to Tenant for any damages or losses for any entry by Landlord.

17. **UTILITIES AND SERVICES.** Tenant shall contract directly for, and pay directly to the providers of such services the costs of, all water, gas, heat, light, power, telephone, sewer and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to the Premises, either Landlord or Tenant shall have the right to meter the same separately, and the party initiating such metering shall pay the cost of installing such separate meter. Landlord will not be liable to Tenant for any failure to furnish any of the foregoing utilities and services if such failure is caused by all or any of the following: (i) accident, breakage or repairs; (ii) strikes, lockouts or other labor disturbance or labor dispute of any character; (iii) governmental regulation, moratorium or other governmental action or inaction; (iv) inability despite the exercise of reasonable diligence to obtain electricity, water or fuel; or (v) any other cause beyond Landlord's reasonable control; provided, however, any costs, expenses or other damages recoverable pursuant to the Declaration as a result of any such failure shall be payable to Tenant; and provided, further, that the foregoing shall not extend to any such failure if and to the extent that the same is caused by the negligence or willful misconduct of Landlord or any of Landlord's contractors, agents or employees ("Landlord's Parties"). In addition, in the event of any stoppage or interruption of services or utilities, Tenant shall not be entitled to any abatement or reduction of rent (except as expressly provided in Subparagraphs 20(f) or 21(b) if such failure results from a damage or taking described therein), no eviction of Tenant will result from such failure and Tenant will not be relieved from the performance of any covenant or agreement in this Lease because of such failure.

18. **ASSUMPTION OF RISK AND INDEMNIFICATION.**

(a) **Assumption of Risk.** Tenant, as a material part of the consideration to Landlord, hereby agrees that neither Landlord nor any Landlord Indemnified Parties (as defined in Subparagraph 8(c) above) will be liable to Tenant for, and Tenant expressly assumes the risk of and waives any and all claims it may have against Landlord or any Landlord Indemnified Parties with respect to, (i) any and all damage to property or injury to persons in, upon or about the Premises or the Development, (ii) any such damage caused by other tenants or persons in or about the Premises, or caused by quasi-public work, (iii) any damage to property entrusted to employees of the Premises or of the property management company, (iv) any loss of or damage to property by theft or otherwise, or (v) any injury or damage to persons or property resulting from any casualty, explosion, falling plaster or other masonry or glass, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place, or resulting from dampness. Notwithstanding anything to the contrary contained in this Lease, neither Landlord nor any Landlord Indemnified Parties will be liable for consequential damages arising out of any loss of the use of the Premises or any equipment or facilities therein by Tenant or any Tenant Parties or for interference with light or other incorporeal hereditaments. Tenant agrees to give prompt notice to Landlord in case of fire or accidents in the Premises, or of defects therein or in the fixtures or equipment. The foregoing shall not apply to any damage or loss if and to the extent that the same is caused by the negligence or willful misconduct of, or breach of this Lease by, Landlord or Landlord's Parties.

(b) **Tenant's Indemnification of Landlord.** Tenant will be liable for, and agrees, to the maximum extent permissible under applicable law, to promptly indemnify, protect, defend and hold harmless Landlord and Landlord Indemnified Parties, from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs, including attorneys' fees and court costs (collectively, "Indemnified Claims"), arising or resulting from (i) any act or omission of Tenant or any Tenant Parties (as defined in Subparagraph 8(c) above); (ii) the use of the Premises and Development Common Areas and conduct of Tenant's business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in or about the Premises or elsewhere within the Development; and/or (iii) any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, agrees to promptly defend the same at Tenant's sole cost and expense by counsel approved in writing by Landlord, which approval Landlord will not unreasonably withhold. The foregoing shall not apply to any damage or loss if and to the extent that the same is caused by the negligence or willful misconduct of, or breach of this Lease by, Landlord or Landlord's Parties.

(c) **Landlord's Indemnification of Tenant.** Landlord will be liable for, and agrees, to the maximum extent permissible under applicable law, to promptly indemnify, protect, defend and hold harmless Tenant and Tenant's Parties, from and against, any Indemnified Claims, arising from (i) the negligence or willful misconduct of Landlord or the Landlord Indemnified Parties; or (ii) any default of any obligations on Landlord's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Tenant or any of Tenant's Parties by reason of any such Indemnified Claims, Landlord, upon notice from Tenant, agrees to promptly defend the same at Landlord's sole cost and expense by counsel approved in writing by Tenant, which approval Tenant will not unreasonably withhold.

(d) **Survival; No Release of Insurers.** The indemnification obligations under Subparagraphs 18(b) and/or (c) above will survive the expiration or earlier termination of this Lease. The covenants, agreements and indemnification obligations set forth above in this Article 18, are not intended

to and will not relieve any insurance carrier of its obligations under policies required to be or otherwise carried by Landlord and Tenant pursuant to the provisions of this Lease.

19. **INSURANCE.**

(a) **Tenant's Insurance.** On or before the Commencement Date and continuing throughout the entire Term hereof and any other period of occupancy, Tenant agrees to keep in full force and effect, at its sole cost and expense, the following insurance:

(i) ISO "Special Forms" (formerly known as "All Risks") property insurance including at least the following perils: fire and extended coverage, smoke damage, vandalism, malicious mischief, sprinkler leakage (including earthquake sprinkler leakage). This insurance must be upon the Building and all improvements situated upon the Premises Land and all improvements and Alterations thereon including heating and cooling equipment and machinery and electrical equipment, at full replacement cost, as well as upon all property owned by Tenant, for which Tenant is legally liable, or which is installed at Tenant's expense, and which is located in the Premises including, without limitation, all furniture, fittings, installations, fixtures and any other personal property of Tenant. All such insurance shall be carried in an amount not less than the full replacement cost of the Building and such other improvements and Alterations. If there is a dispute as to full replacement cost, the decision of Landlord or any mortgagee of Landlord will be presumptive. Said insurance shall provide for payment of loss to Landlord or to the holders of mortgages or the beneficiaries under deeds of trust on the Premises.

(ii) Commercial General Liability insurance (on an occurrence form) insuring bodily injury, personal injury and property damage including the following divisions and extensions of coverage: Premises and Operations; Owners and Contractors protective; blanket contractual liability (including coverage for Tenant's indemnity obligations under this Lease); products and completed operations; liquor liability (if Tenant serves alcohol on the Premises); and fire and water damage legal liability in an amount sufficient to cover the replacement value of the Premises, including Tenant Improvements, that are rented under the terms of this Lease. Such insurance must have the following minimum limits of liability: bodily injury, personal injury and property damage - $5,000,000 each occurrence, provided that if liability coverage is provided by a Commercial General Liability policy the general aggregate limit shall apply separately and in total to this location only (per location general aggregate), and provided further, such minimum limits of liability may be adjusted from year to year to reflect increases in coverages as recommended by Landlord's insurance carrier as being prudent and commercially reasonable for tenants of first class office buildings comparable to the Building, rounded to the nearest five hundred thousand dollars.

(iii) Comprehensive Automobile Liability insuring bodily injury and property damage arising from all owned, non-owned and hired vehicles, if any, with minimum limits of liability of $1,000,000 per accident.

(iv) Worker's Compensation or similar insurance as required by the laws of the state in which the Premises are located, with at least the following minimum limits of liability: Coverage A - statutory benefits; Coverage B - $1,000,000 per accident and disease.

(v) Any other form or forms of insurance as any mortgagees of Landlord may reasonably require from time to time in form, in amounts, and for insurance risks against which, a prudent tenant would protect itself, but only to the extent coverage for such risks and amounts are available in the insurance market at commercially acceptable rates. Landlord makes no representation that the limits of liability required to be carried by Tenant under the terms of this Lease are adequate to protect Tenant's interests and Tenant should obtain such additional insurance or increased liability limits as Tenant deems appropriate.

(b) **Supplemental Tenant Insurance Requirements.** All policies must be in a form reasonably satisfactory to Landlord and issued by an insurer admitted to do business in the state in which the Premises are located. All policies must be issued by insurers with a policyholder rating of "A" and a financial rating of "X" in the most recent version of Best's Key Rating Guide. All policies must contain a requirement to notify Landlord (and Landlord's property manager and any mortgagees or ground lessors of Landlord who are named as additional insureds, if any) in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof. Tenant agrees to deliver to Landlord, as soon as practicable after placing the required insurance, but in any event within the time frame specified in Subparagraph 19(a) above, certificate(s) of insurance and/or if required by Landlord, certified copies of each policy evidencing the existence of such insurance and Tenant's compliance with the provisions of this Paragraph 19. Tenant agrees to cause replacement policies or certificates to be delivered to Landlord not less than thirty (30) days prior to the expiration of any such policy or policies. If any such initial or replacement policies or certificates are not furnished within the time(s) specified herein, or if Tenant does not procure insurance in required amounts and coverages, Landlord will have the right, but not the obligation, to procure such insurance as Landlord deems necessary to protect Landlord's interests at Tenant's expense. If Landlord obtains any insurance that is the responsibility of Tenant under this Paragraph 19, Landlord agrees to deliver to Tenant a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Tenant agrees to reimburse Landlord for such reasonable costs as additional rent within thirty (30) days of invoice by Landlord. General Liability and Automobile Liability policies under Subparagraphs 19(a)(iii) and (iv) must name Landlord and Landlord's property manager

(and at Landlord's request, Landlord's mortgagees and ground lessors of which Tenant has been informed in writing) as additional insureds and must also contain a provision that the insurance afforded by such policy is primary insurance and any insurance carried by Landlord and Landlord's property manager or Landlord's mortgagees or ground lessors, if any, will be excess over and non-contributing with Tenant's insurance.

(c) **Tenant's Use.** Tenant will not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any insurance policy periodically in force covering the Premises. If Tenant's occupancy or business in, or on, the Premises, whether or not Landlord has consented to the same, results in any increase in premiums for the insurance periodically carried by Landlord with respect to the Building or results in the need for Landlord to maintain special or additional insurance, Tenant agrees to pay Landlord the cost of any such increase in premiums or special or additional coverage as additional rent within thirty (30) days after being billed therefor by Landlord. In determining whether increased premiums are a result of Tenant's use of the Premises, a schedule issued by the organization computing the insurance rate on the Building showing the various components of such rate, will be conclusive evidence of the several items and charges which make up such rate. Tenant agrees to promptly comply with all reasonable requirements of the insurance authority or any present or future insurer relating to the Premises.

(d) **Cancellation of Landlord's Policies.** If any of Landlord's insurance policies are canceled or cancellation is threatened or the coverage reduced or threatened to be reduced in any way because of the use of the Premises or any part thereof by Tenant or any assignee or subtenant of Tenant or by anyone Tenant permits on the Premises and, if Tenant fails to commence to remedy the condition giving rise to such cancellation, threatened cancellation, reduction of coverage, threatened reduction of coverage, increase in premiums, or threatened increase in premiums, within forty-eight (48) hours after notice thereof and thereafter diligently prosecute the same to completion, Tenant will be deemed to be in material default of this Lease and Landlord may, at its option, enter upon the Premises and attempt to remedy such condition, and Tenant shall promptly pay Landlord the reasonable costs of such remedy as additional rent. If Landlord is unable, or elects not to remedy such condition, then Landlord will have all of the remedies provided for in this Lease in the event of a default by Tenant.

(e) **Waiver of Subrogation; Waiver of Claims.**

(i) **Mutual Waiver of Parties.** Landlord and Tenant hereby waive their rights against each other with respect to any claims or damages or losses which are caused by or result from (a) damage to property or loss of income insured against under any insurance policy carried by Landlord or Tenant (as the case may be) enforceable at the time of such damage or loss, or (b) damage to property or loss of income which would have been covered under any insurance required to be obtained and maintained by Landlord or Tenant (as the case may be) under this Lease (as applicable) had such insurance been obtained and maintained as required therein. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

(ii) **Waiver of Insurers.** Each party shall cause each property and loss of income insurance policy required to be obtained by it pursuant to this Lease to provide that the insurer waives all rights of recovery by way of subrogation against either Landlord or Tenant, as the case may be, in connection with any claims, losses and damages covered by such policy. If either party fails to maintain property or loss of income insurance required hereunder, such insurance shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

20. **DAMAGE OR DESTRUCTION.**

(a) **Restoration.** If the Building or any other improvements located upon the Premises Land (collectively, the "Improvements") should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice to Landlord. Tenant shall be obligated to repair all damage to the Improvements including damage to any Alterations made by Tenant existing as of the date of the damage (collectively, the "Existing Improvements") so as to restore the Premises to at least the condition they were in as of the date of this Lease, regardless of insurance coverage. Prior to commencing any such repairs, Tenant shall submit to Landlord, for Landlord's reasonable approval, any plans and specifications in connection with such repairs. In no event will Tenant be entitled to any abatement of Base Rent payable hereunder even if Tenant must vacate all or a portion of the Premises during such reconstruction of the Existing Improvements.

(b) **Waiver of Termination Right.** Landlord and Tenant agree that the foregoing provisions of this Paragraph 20 are to govern their respective rights and obligations in the event of any damage or destruction and supersede and are in lieu of the provisions of any applicable law, statute, ordinance, rule, regulation, order or ruling now or hereafter in force which provide remedies for damage or destruction of leased premises (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 and any successor statute or laws of a similar nature).

21. **EMINENT DOMAIN.**

(a) **Substantial Taking.** If the whole of the Premises or more than fifty percent (50%) of the floor area of the Building or fifty percent (50%) of the land area of the Premises Land which

is not occupied by the Building or such of the parking serving the Development as renders insufficient, in Tenant's reasonable discretion, the parking available for the Premises, is taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking ("substantial taking"), Tenant will have the right to terminate this Lease effective as of the date possession is required to be surrendered to such authority.

(b) **Partial Taking; Abatement of Rent.** In the event of a taking of a portion of the Premises which does not constitute a substantial taking, then, neither party will have the right to terminate this Lease and Landlord will thereafter proceed to make a functional unit of the remaining portion of the Premises, and rent will be abated in proportion to the floor area of the Building which Tenant is deprived of on account of such taking.

(c) **Condemnation Award.** In connection with any taking of all or any portion of the Premises, Landlord will be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, without deduction or apportionment for any estate or interest of Tenant, it being expressly understood and agreed by Tenant that no portion of any such award will be allowed or paid to Tenant for any so-called bonus or excess value of this Lease, and such bonus or excess value will be the sole property of Landlord. Tenant agrees not to assert any claim against Landlord or the taking authority for any compensation because of such taking (including any claim for bonus or excess value of this Lease); provided, however, if any portion of the Premises is taken, Tenant will have the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises, for Tenant's relocation expenses, and for any loss of goodwill or other damage to Tenant's business by reason of such taking.

(d) **Temporary Taking.** In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease will remain unaffected thereby and rent will not abate, and (ii) Tenant will be entitled to receive such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking remains in force at the expiration or earlier termination of this Lease, this Lease shall terminate without any further liability of the parties to each other except as otherwise expressly provided herein. For purpose of this Subparagraph 21(d), a temporary taking shall be defined as a taking for a period of ninety (90) days or less.

22. **DEFAULTS AND REMEDIES.**

(a) **Defaults.** The occurrence of any one or more of the following events will be deemed a default by Tenant:

(i) The failure by Tenant to make any payment of rent or additional rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure continues for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice will be in lieu of, and not in addition to, any notice required under applicable law (including, without limitation, to the extent the Premises are located in California, the provisions of California Code of Civil Procedure Section 1161 regarding unlawful detainer actions or any successor statute or law of a similar nature).

(ii) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Subparagraph 22(a)(i) or (ii) above, where such failure continues for a period of thirty (30) days after written notice thereof from Landlord to Tenant. The provisions of any such notice will be in lieu of, and not in addition to, any notice required under applicable law (including, without limitation, to the extent the Premises are located in California, California Code of Civil Procedure Section 1161 regarding unlawful detainer actions and any successor statute or similar law). If the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant, with Landlord's concurrence, commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(iii) (A) The making by Tenant of any general assignment for the benefit of creditors; (B) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt 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); (C) 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, where possession is not restored to Tenant within thirty (30) days; or (D) 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 such seizure is not discharged within thirty (30) days.

(b) **Landlord's Remedies; Termination.** In the event of any default by Tenant, in addition to any other remedies available to Landlord at law or in equity under applicable law (including, without limitation, to the extent the Premises are located in California, the remedies of Civil Code Section 1951.4 and any successor statute or similar law), Landlord will have the immediate right and option to terminate this Lease and all rights of Tenant hereunder. If Landlord elects to terminate this Lease then, to the extent permitted under applicable law, Landlord may recover from Tenant: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination

until the time of award exceeds the amount of such rent loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided; plus (iv) any other amount reasonably 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, results therefrom including, but not limited to: attorneys' fees and costs; the costs of refurbishment, alterations, renovation and repair of the Premises prorated for the balance of the Term, and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Alterations, the Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Subparagraphs 22(b)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate. As used in Subparagraph 22(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) **Landlord's Remedies; Re-Entry Rights.** In the event of any default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord will also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere and/or disposed of at the sole cost and expense of and for the account of Tenant in accordance with the provisions of Subparagraph 13(h) of this Lease or any other procedures permitted by applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Subparagraph 22(c) will be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.

(d) **Landlord's Remedies; Re-Letting.** In the event of the vacation or abandonment of the Premises by Tenant or in the event that Landlord elects to re-enter the Premises or takes possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease, Landlord may from time to time, without terminating this Lease, either recover all rent as it becomes due or relet the Premises or any part thereof on terms and conditions as Landlord in its sole and absolute discretion may deem advisable with the right to make alterations and repairs to the Premises in connection with such reletting. If Landlord elects to relet the Premises, then rents received by Landlord from such reletting will be applied: first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any cost of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises incurred in connection with such reletting; fourth, to the payment of rent due and unpaid hereunder and the residue, if any, will be held by Landlord and applied to payment of future rent as the same may become due and payable hereunder. Should that portion of such rents received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant agrees to pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency will be calculated and paid monthly.

(e) **Landlord's Remedies; Performance for Tenant.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease are to be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money owed to any party other than Landlord, for which it is liable under this Lease, or if Tenant fails to perform any other act on its part to be performed hereunder, and such failure continues for thirty (30) days after notice thereof by Landlord, Landlord may, without waiving or releasing Tenant from its obligations, but shall not be obligated to, make any such payment or perform any such other act to be made or performed by Tenant. Tenant agrees to reimburse Landlord upon demand for all sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the Interest Rate, from the date of such payment by Landlord until reimbursed by Tenant. This remedy shall be in addition to any other right or remedy of Landlord set forth in this Paragraph 22.

(f) **Late Payment.** If Tenant fails to pay any installment of rent within five (5) days of when due or if Tenant fails to make any other payment for which Tenant is obligated under this Lease within five (5) days of when due, such late amount will accrue interest at the Interest Rate and Tenant agrees to pay Landlord as additional rent such interest on such amount from the date such amount becomes due until such amount is paid. In addition, Tenant agrees to pay to Landlord upon demand, as additional rent, a late charge equal to five percent (5%) of the amount due to compensate Landlord for the extra costs Landlord will incur as a result of such late payment; provided, however, if Tenant has not been in default within the twelve (12) month period immediately preceding the default upon which such late payment penalty is based, Landlord will waive the late payment penalty for such late payment. The parties agree that (i) it would be impractical and extremely difficult to fix the actual damage Landlord will suffer in the event of Tenant's late payment, (ii) such interest and late charge represents a fair and reasonable estimate of the detriment that Landlord will suffer by reason of late payment by Tenant, and (iii) the payment of interest and late charges are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of any such interest and late charge will not

constitute a waiver of the Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

(g) **Rights and Remedies Cumulative.** All rights, options and remedies of Landlord contained in this Lease will be construed and held to be cumulative, and no one of them will be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Paragraph 22 will be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

23. **LANDLORD'S DEFAULT.** Landlord will not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord fails to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord will not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any default by Landlord, Tenant may exercise any of its rights provided at law or in equity, subject to the limitations on liability set forth in Paragraph 35 of this Lease.

24. **ASSIGNMENT AND SUBLETTING.**

(a) **Subletting Permitted; Restriction on Assignment.** Tenant may sublet all or any portion of the Premises at any time without the prior consent of Landlord, provided Tenant shall provide Landlord with written notice of any subletting of all or any portion of the Premises including in such notice the name, address (if other than the Premises) and business of the sublessee and the effective date and term of any such subletting. Except as expressly provided in this Paragraph 24, Tenant will not, either voluntarily or by operation of law, assign or encumber this Lease, without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold.

(b) **Permitted Controlled Transfers.** Notwithstanding the provisions of this Paragraph 24 to the contrary, Tenant may assign this Lease ("Permitted Assignment"), without Landlord's consent, in whole or in part, to any parent, subsidiary or affiliate of Tenant, or to any entity resulting from a merger or consolidation of Tenant into or with any other entity, to a person or entity that acquires all or substantially all of the assets or stock of Tenant or of any of the groups, divisions or sections (or the assets thereof) or product lines of Tenant, in connection with any financing arrangement such as, by way of example only, a synthetic lease and/or by operation of law, provided that: (i) the assignee assumes, in full, the obligations of Tenant under this Lease; (ii) Tenant remains fully liable under this Lease; and (iii) the use of the Premises under Paragraph 8 remains unchanged.

(c) **Assignment Notice.** If Tenant desires to effect an assignment of this Lease Transfer, then at least thirty (30) days prior to the date when Tenant desires the assignment to be effective (the "Transfer Date"), Tenant agrees to give Landlord a notice (the "Transfer Notice"), stating the name, address and business of the proposed assignee (sometimes referred to hereinafter as "Transferee"), reasonable information (including references) concerning the character, ownership, and financial condition of the proposed Transferee, the Transfer Date, any ownership or commercial relationship between Tenant and the proposed Transferee, and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord may reasonably require. If Landlord reasonably requests additional detail, the Transfer Notice will not be deemed to have been received until Landlord receives such additional detail, and Landlord may withhold consent to any Transfer until such information is provided to it.

(d) **Landlord's Options.** Within fifteen (15) days of Landlord's receipt of any Transfer Notice, and any additional information requested by Landlord concerning the proposed Transferee's financial responsibility, Landlord will either: (i) consent to the proposed Transfer; or (ii) refuse such consent, which refusal shall be on reasonable grounds including, without limitation, those set forth in Subparagraph 24(f) below.

(e) **Reasonable Disapproval.** Landlord and Tenant hereby acknowledge that Landlord's disapproval of any proposed Transfer pursuant to Subparagraph 24(e) will be deemed reasonably withheld if based upon any reasonable factor, including, without limitation, any or all of the following factors: (i) the proposed Transferee is a governmental entity; (ii) the use of the Premises by the Transferee (A) is not permitted by the use provisions in Paragraph 8 hereof, or (B) is reasonably deemed by Landlord to present a risk of increased liability to Landlord; or (iii) the Transferee does not have the financial capability to fulfill the obligations imposed by the Transfer and this Lease.

(f) **Additional Conditions.** A condition to Landlord's consent to any assignment of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment in form and substance reasonably satisfactory to Landlord, whereby the Transferee assumes and agrees to be bound by all of the terms and provisions of this Lease and to perform all of the obligations of Tenant hereunder. Any sublease of any portion of the Premises shall provide that it is subject and subordinate to this Lease and to all mortgages; that Landlord may enforce the provisions of the sublease, including collection of rent; that in the event of termination of this Lease for any reason, including without limitation a voluntary surrender by Tenant, or in the event of any reentry or repossession of the Premises by Landlord, Landlord may, at its option, either (i) terminate the sublease, or (ii) take over all of the right, title

and interest of Tenant, as sublessor, under such sublease, in which case such sublessee will attorn to Landlord, but that nevertheless Landlord will not (1) be liable for any previous act or omission of Tenant under such sublease, (2) be subject to any defense or offset previously accrued in favor of the sublessee against Tenant, or (3) be bound by any previous modification of any sublease made without Landlord's written consent, or by any previous prepayment by sublessee of more than one month's rent.

(g) **Excess Rent.** If Landlord consents to any assignment of this Lease, Tenant shall be entitled to retain any and all sums and other consideration payable to and for the benefit of Tenant by the assignee on account of the assignment whether or not in excess of the rent payable under this Lease.

(h) **No Release.** No assignment or subletting will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. Landlord may require that any assignee remit directly to Landlord on a monthly basis, all monies due as Monthly Base Rent under this Lease by said Transferee. However, the acceptance of rent by Landlord from any other person will not be deemed to be a waiver by Landlord of any provision hereof. Consent by Landlord to one assignment will not be deemed consent to any subsequent assignment. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor. Landlord may consent to subsequent assignments of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and any such actions will not relieve Tenant of liability under this Lease.

(i) **Administrative and Attorneys' Fees.** If Tenant effects an assignment or requests the consent of Landlord to any assignment (whether or not such assignment is consummated), then, upon demand, Tenant agrees to pay Landlord a non-refundable administrative fee of Five Hundred Dollars ($500.00), plus any reasonable attorneys' and paralegal fees incurred by Landlord in connection with such assignment or request for consent (whether attributable to Landlord's in-house attorneys or paralegals or otherwise). Acceptance of the Five Hundred Dollar ($500.00) administrative fee and/or reimbursement of Landlord's attorneys' and paralegal fees will in no event obligate Landlord to consent to any proposed assignment.

25. **SUBORDINATION.** At the election of Landlord or any mortgagee or beneficiary with a deed of trust encumbering the Premises, or any lessor of a ground or underlying lease with respect to the Premises, this Lease will be subject and subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises; and (ii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed for which the Premises, or Landlord's interest and estate in any of said items, is specified as security, provided Tenant receives from any such party with a superior interest to this Lease commercially reasonable non-disturbance agreement protection providing that Tenant's rights under this Lease will not be disturbed in the event of any foreclosure of such superior interest so long as Tenant is not in default under this Lease. Notwithstanding the foregoing, Landlord reserves the right to subordinate any such ground leases or underlying leases or any such liens to this Lease. If any such ground lease or underlying lease terminates for any reason or any such mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant agrees to attorn to and become the tenant of such successor, provided Tenant's right to possession of the Premises will not be disturbed as long as Tenant is not in default under this Lease. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form reasonably required by Landlord or Landlord's lender, any additional documents evidencing the priority or subordination of this Lease and Tenant's attornment agreement with respect to any such ground lease or underlying leases or the lien of any such mortgage or deed of trust upon the terms described herein. If Tenant fails to sign and return any such documents within fifteen (15) days of receipt, Tenant will be in default hereunder.

26. **ESTOPPEL CERTIFICATE.** Within fifteen (15) days following any written request which Landlord may make from time to time, Tenant agrees to execute and deliver to Landlord a statement, in a form substantially similar to the form of Exhibit "D" attached hereto or as may reasonably be required by Landlord's lender, certifying: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, and stating the date and nature of such modifications); (iii) the date to which the rent and other sums payable under this Lease have been paid; (iv) that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (v) such other matters reasonably requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 26 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein. Tenant's failure to deliver such statement within such time will be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance. Without limiting the foregoing, if Tenant fails to deliver any such statement within such fifteen (15) day period, Landlord may deliver to Tenant an additional request for such statement and Tenant's failure to deliver such statement to Landlord within fifteen (15) days after delivery of such additional request will constitute a default under this Lease.

27. **OMITTED.**

28. **DECLARATION.** Tenant agrees to faithfully observe and comply with the Declaration.

29. **NOTICE AND CURE RIGHTS FOR LANDLORD'S MORTGAGEES AND LESSORS.** In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises or ground lessor of Landlord whose address has been furnished to Tenant, and Tenant agrees to offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure).

30. **DEFINITION OF LANDLORD.** The term "Landlord," as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, means and includes only the owner or owners, at the time in question, of the fee title of the Premises or the lessees under any ground lease, if any. In the event of any transfer, assignment or other conveyance or transfers of any such title (other than a transfer for security purposes only), Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) will be automatically relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, so long as the transferee assumes in writing all such covenants and obligations of Landlord arising after the date of such transfer. Landlord and Landlord's transferees and assignees have the absolute right to transfer all or any portion of their respective title and interest in the Premises, the Building, the Development and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer will not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

31. **WAIVER.** The waiver by either party of any breach of any term, covenant or condition herein contained will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor will any custom or practice which may develop between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of either party to insist upon performance in strict accordance with said terms. The subsequent acceptance of rent or any other payment hereunder by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No acceptance by Landlord of a lesser sum than the basic rent and additional rent or other sum then due will be deemed to be other than on account of the earliest installment of such rent or other amount due, nor will any endorsement or statement on any check or any letter accompanying any check be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or other amount or pursue any other remedy provided in this Lease. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval will not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

32. **PARKING.** So long as this Lease is in effect and provided Tenant is not in default hereunder, Landlord grants and transfers to Tenant and Tenant's customers, suppliers, employees and invitees ("Tenant's Authorized Users") all rights of Landlord under the Declaration with respect to parking for the Premises in the Development Common Areas in accordance with and subject to the terms of the Declaration. Tenant shall arrange all such parking with, and shall pay for all parking to be provided under this Lease directly to, the parking operator for the Development. All visitor parking will be on a non-exclusive, in common basis with all other visitors and guests of the Development and at such locations and rates and upon such terms as may be authorized and implemented under the Declaration. Tenant will not use or allow any of Tenant's Authorized Users to use any parking spaces which have been specifically assigned by the parking operator of the parking areas located on the Development Common Areas to other tenants or occupants or for other uses such as visitor parking or which have been designated by any governmental entity as being restricted to certain uses.

33. **FORCE MAJEURE.** If either Landlord or Tenant is delayed, hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure standard materials, failure of power, restrictive governmental laws, regulations or orders or governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations which is not the result of the action or inaction of the party claiming such delay), riots, civil unrest or insurrection, war, fire, earthquake, flood or other natural disaster, unusual and unforeseeable delay which results from an interruption of any public utilities (e.g., electricity, gas, water, telephone) or other unusual and unforeseeable delay not within the reasonable control of the party delayed in performing work or doing acts required under the provisions of this Lease, then performance of such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. The provisions of this Paragraph 33 will not operate to excuse Tenant from prompt payment of rent or any other payments required under the provisions of this Lease.

34. **SIGNS.** Tenant, at its sole cost and expense, and subject to receipt of all required governmental approvals and permits, shall be entitled to any and all available building signage in such locations on the Building as Landlord and Tenant may mutually approve (the "Building Signs"), provided Landlord hereby approves of Tenant's Building Signs in their present location. Tenant's Building Signs may be lighted signs and be of up to the maximum size allowed by the local municipality governing signs. Tenant shall pay for all electricity to such signs, metered from the Premises. All of Tenant's Signs shall

be subject to the Declaration. Tenant shall be solely responsible for payment of all costs and expenses arising from Tenant's Building Signs, including, without limitation, all design, fabrication and permitting costs, license fees, installation, maintenance, repair and removal costs, and the costs of restoring the underlying surfaces to match the then existing condition of the Building. If Tenant fails to remove Tenant's sign(s) upon termination of this Lease and repair any damage caused by such removal, Landlord may do so at Tenant's sole cost and expense. Tenant agrees to reimburse Landlord for all costs incurred by Landlord to effect any installation, maintenance or removal on Tenant's account, which amount will be deemed additional rent, and may include, without limitation, all sums disbursed, incurred or deposited by Landlord including Landlord's costs, expenses and actual attorneys' fees with interest thereon at the interest Rate from the date of Landlord's demand until paid by Tenant.

35. **LIMITATION ON LIABILITY.** In consideration of the benefits accruing hereunder, Tenant on behalf of itself and all successors and assigns of Tenant covenants and agrees that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: (a) Tenant's recourse against Landlord for monetary damages will be limited to Landlord's interest in the Premises including, subject to the prior rights of any Mortgagee, Landlord's interest in the rents of the Premises and any insurance proceeds payable to Landlord; (b) except as may be necessary to secure jurisdiction of the partnership, no member, officer, director, shareholder or partner of Landlord shall be sued or named as a party in any suit or action and no service of process shall be made against any member, officer, director, shareholder or partner of Landlord; (c) no member, officer, director, shareholder or partner of Landlord shall be required to answer or otherwise plead to any service of process; (d) no judgment will be taken against any member, officer, director, shareholder or partner of Landlord and any judgment taken against any member, officer, director, shareholder or partner of Landlord may be vacated and set aside at any time after the fact; (e) no writ of execution will be levied against the assets of any member, officer, director, shareholder or partner of Landlord; (f) the obligations under this Lease do not constitute personal obligations of the individual members, partners, directors, officers or shareholders of Landlord, and Tenant shall not seek recourse against the individual members, partners, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease; and (g) these covenants and agreements are enforceable both by Landlord and also by any member, officer, director, shareholder or partner of Landlord.

36. **FINANCIAL STATEMENTS.** Prior to the execution of this Lease by Landlord and at any time during the Term of this Lease upon fifteen (15) days prior written notice from Landlord, Tenant agrees to provide Landlord with a current financial statement for Tenant and any guarantors of Tenant and financial statements for the two (2) years prior to the current financial statement year for Tenant and any guarantors of Tenant. Such statements are to be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, audited by an independent certified public accountant; provided, however, the foregoing shall not apply to the initial tenant hereunder or to any entity which is publicly traded, and any Tenant may require that the delivery of financial information pursuant to this Paragraph be subject to reasonable confidentiality requirements.

37. **QUIET ENJOYMENT.** Landlord covenants and agrees with Tenant that upon Tenant paying the rent required under this Lease and paying all other charges and performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease, Tenant may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease.

38. **AUCTIONS.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Landlord's prior written consent. Notwithstanding anything to the contrary in this Lease, Landlord shall not be bound by any standard of reasonableness in determining whether to grant such consent.

39. **MISCELLANEOUS.**

(a) **Conflict of Laws.** This Lease shall be governed by and construed solely pursuant to the laws of the State, without giving effect to choice of law principles thereunder.

(b) **Successors and Assigns.** Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(c) **Professional Fees and Costs.** If either Landlord or Tenant should bring suit against the other with respect to this Lease, then all costs and expenses, including without limitation, actual professional fees and costs such as appraisers', accountants' and attorneys' fees and costs, incurred by the party which prevails in such action, whether by final judgment or out of court settlement, shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment. As used herein, attorneys' fees and costs shall include, without limitation, attorneys' fees, costs and expenses incurred in connection with any (i) postjudgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation.

(d) **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The

paragraph headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(e) **Time.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

(f) **Prior Agreement; Amendments.** This Lease constitutes and is intended by the parties to be a final, complete and exclusive statement of their entire agreement with respect to the subject matter of this Lease. This Lease supersedes any and all prior and contemporaneous agreements and understandings of any kind relating to the subject matter of this Lease. There are no other agreements, understandings, representations, warranties, or statements, either oral or in written form, concerning the subject matter of this Lease. No alteration, modification, amendment or interpretation of this Lease shall be binding on the parties unless contained in a writing which is signed by both parties.

(g) **Separability.** The provisions of this Lease shall be considered separable such that if any provision or part of this Lease is ever held to be invalid, void or illegal under any law or ruling, all remaining provisions of this Lease shall remain in full force and effect to the maximum extent permitted by law.

(h) **Recording.** Concurrently with the execution and delivery hereof, Landlord and Tenant shall execute, have notarized and have recorded a short form memorandum of Lease in the form of Exhibit "F" hereto.

(i) **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.

(j) **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, agents and attorneys, shall not intentionally and voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building or other portion of the Development, or real estate agent, either directly or indirectly, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

(k) **Non-Discrimination.** Tenant acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, assignment, occupancy, tenure, use, or enjoyment of the Premises, or any portion thereof.

40. **LETTER OF CREDIT.**

(i) At Tenant's election (but in order to incentivize Tenant to do so Landlord shall, as a condition to issuance and/or renewal of the same, pay for the costs of obtaining same, up to two percent (2%) of the face value of the letter of credit per annum), in lieu of the Security Deposit described in Paragraph 7 above, concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant may deliver to Landlord, as collateral for all losses and damages Landlord may suffer as a result of any default by Tenant under Paragraphs 22(a)(i) or (iii) of this Lease, an irrevocable and unconditional negotiable standby letter of credit in the form of Exhibit "G" hereto (the "Letter of Credit"), running in favor of Landlord in the initial amount of One Million Three Hundred Sixty Two Thousand and No/100ths Dollars ($1,362,000.00) (as reduced pursuant to clause (vi) below, the "Letter of Credit Amount"). The Letter of Credit shall be for an original term of not less than one (1) year and shall permit Landlord to draw in full upon the Letter of Credit unless Tenant furnishes to Landlord, at least thirty (30) days prior to each annual expiration of the Letter of Credit, either a one (1) year extension of the Letter of Credit from the issuer or a replacement one year Letter of Credit consistent with the requirements of this Paragraph 40, in either case so that Landlord has in its possession at all times during the Term and any Option Terms, a valid Letter of Credit capable of being drawn upon in accordance with this Paragraph 40. Any draw by Landlord on the Letter of Credit shall be in accordance with and subject to the provisions of clause (iii) below. The Letter of Credit shall (A) be "callable" at sight, irrevocable and unconditional, (B) subject to clauses (iii) and (viii) below, be maintained in effect, whether through renewal or extension, for the period from the Commencement Date and continuing until the date (the "LC Expiration Date") which is thirty (30) days after the expiration of the Lease Term, and, subject to clauses (iii) and (viii) below, Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord at least thirty (30) days prior to the expiration of the Letter of Credit then held by Landlord, without any action whatsoever on the part of Landlord, (C) be subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev) International Chamber of Commerce Publication #500, (D) be fully assignable by Landlord in accordance with clause (ii) below, and (E) permit partial draws. In addition to the foregoing, but subject to clause (viii) below, the bank issuing the Letter of Credit (the "Bank") shall be acceptable to Landlord, in Landlord's reasonable discretion (and Landlord hereby agrees that Comerica Bank is an approved Bank for purposes of this Paragraph 40), and shall provide, among other things, in effect that: (I) Landlord, or its then duly authorized managing agent, shall have the right to draw down an amount up to the face amount of the Letter of Credit upon the presentation to the Bank of Landlord's (or Landlord's then duly authorized managing agent's) written statement that Tenant is in default under Paragraph 22(a)(i) or (iii)

of the Lease after the expiration of all applicable notice and cure periods and that such amount is due to Landlord under the terms and conditions of this Lease, it being understood that if Landlord or its duly authorized managing agent be a limited liability company, corporation, partnership or other entity, then such statement shall be signed by a managing member (if a limited liability company), an officer (if a corporation), a general partner (if a partnership), or any authorized party (if another entity) acceptable to the Bank and (ii) the Letter of Credit will be honored by the Bank without inquiry as to the accuracy thereof and regardless of whether the Tenant disputes the content of such statement.

(ii) In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the Letter of Credit to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor arising after the effective date of the transfer provided that the transferee assumes the obligations of Landlord hereunder, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall, at Landlord's sole cost and expense, execute and submit to the Bank such applications, documents and instruments as may be necessary to effectuate such transfer and Landlord shall be responsible for paying the Bank's transfer and processing fees in connection therewith.

(iii) If, as a result of any proper application or use by Landlord of all or any part of the Letter of Credit, the amount of the Letter of Credit shall be less than the Letter of Credit Amount (the "Deficiency"), Tenant shall, within ten (10) days after notice from Landlord to Tenant that Landlord has drawn on the Letter of Credit, provide Landlord with additional letter(s) of credit in an amount equal to the Deficiency, and any such additional letter of credit shall comply with all of the provisions of this Paragraph 40, and if Tenant fails to comply with the foregoing, notwithstanding anything to the contrary contained in this Lease, the same shall constitute an incurable default by Tenant unless Tenant provides Landlord with cash within such ten (10) day period such that Landlord holds cash in the amount of 73.42% of the amount of the Deficiency, which Landlord shall hold as a Security Deposit pursuant to Paragraph 7 above. Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof except in connection with any assignment by Tenant of this Lease permitted under Paragraph 24 of this Lease and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. If the Letter of Credit is not timely renewed, or if Tenant fails to maintain the Letter of Credit and/or Security Deposit in the amount(s) and in accordance with the terms set forth in this Paragraph 40, Landlord shall have the right to present the Letter of Credit to the Bank in accordance with the terms of this Paragraph 40, and the proceeds of the Letter of Credit may be applied by Landlord against any rent payable by Tenant under this Lease that is not paid when due and/or to pay for all losses and damages suffered by Landlord as a result of any default by Tenant under Paragraphs 22(a)(i) or (iii) of this Lease. If Landlord is entitled to and draws on the Letter of Credit for Tenant's failure to renew the same, Landlord shall hold that portion of the proceeds in the amount of the then-applicable Security Deposit in accordance with the terms of Paragraph 7 above as security for Tenant's performance of its obligations under this Lease and shall promptly return to Tenant any excess of such Letter of Credit proceeds over and above the amount of the Security Deposit which is to then be held by Landlord pursuant to Paragraph 7 above, except in the event of a default by Tenant under Paragraph 22(a)(iii) above, in which case all of the Letter of Credit proceeds shall be retained by Landlord as provided in clause (v) below and the provisions of clause (v) below shall control. Subject to the immediately preceding sentence and the following sentence herein, any unused proceeds of the Letter of Credit shall constitute the property of Landlord and need not be segregated from Landlord's other assets. Landlord agrees to pay to Tenant within thirty (30) days after the LC Expiration Date the amount of any proceeds of the Letter of Credit received by Landlord and not applied against any rent payable by Tenant under this Lease that was not paid when due or used to pay for any losses and/or damages suffered by Landlord (or, in the case of a default under Paragraph 22(a)(iii) of this Lease, reasonably estimated by Landlord that it will suffer) as a result of any default by Tenant under Paragraphs 22(a)(i) or (iii) of this Lease; provided, however, that if prior to the LC Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Federal Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused Letter of Credit proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed.

(iv) If and to the extent that the Letter of Credit is provided and maintained pursuant to this Paragraph 40, Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the Letter of Credit upon the occurrence of any default on the part of Tenant under Paragraphs 22(a)(i) or (iii) of this Lease. If there shall occur such a default under Paragraphs 22(a)(i) or (iii) of this Lease, Landlord may, but without obligation to do so, and without notice (except as expressly required in Paragraph 22 or this Paragraph 40), draw upon the Letter of Credit, in part or in whole, to cure any default of Tenant and/or to compensate Landlord for any and all damages of any kind or nature sustained by Landlord as a result of Tenant's default under Paragraphs 22(a)(i) or (iii) of this Lease. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a "draw" by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw from the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. Tenant agrees and acknowledges that Tenant has no property interest whatsoever in the Letter of Credit or (subject to clause (iii) above) the proceeds thereof and that, in the event Tenant becomes a debtor under any chapter of the

Federal Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b)(6) of the Federal Bankruptcy Code.

(v) Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or any proceeds thereof be (A) deemed to be an asset or property of the Tenant, (B) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (C) subject to the terms of such Section 1950.7, or (D) intended to serve as a "security deposit" within the meaning of such Section 1950.7. The parties hereto (I) recite that the Letter of Credit is not intended to serve as a security deposit and such Section 1950.7 and any and all other laws, rules and regulations applicable to security deposits in the commercial context ("Security Deposit Laws") shall have no applicability or relevancy thereto and (II) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws with respect to the Letter of Credit.

(vi) Notwithstanding anything to the contrary contained in this Paragraph 40, provided Tenant is not then in default and has not previously been in default under this Lease, the Letter of Credit shall be reduced annually by an amount equal to one-twelfth (1/12) of the original Letter of Credit amount on each anniversary of the Commencement Date. Additionally, the Letter of Credit shall decrease to an amount equal to the then current Monthly Base Rent amount if Tenant achieves either a Standard & Poor's rating of "BB" or better or a Moody's rating of "Ba2" or better at any time following the third (3rd) anniversary of the Commencement Date. Landlord agrees to comply with the Bank's requirements in order to effectuate the foregoing, including without limitation surrender to the Bank of the original Letter of Credit.

(vii) Within ten (10) business days after Landlord makes any draw upon the Letter of Credit, Landlord shall provide to Tenant a written accounting of the amount drawn, the amount applied to rent, the amount of any other Landlord's losses and damages to which proceeds are applied (together with reasonable back-up documentation therefor), and Landlord shall hold or apply any balance of proceeds in accordance with the provisions of Paragraph 7 above and clause (iii) above, except in the event of a default by Tenant under Paragraph 22(a)(iii) above, in which case the provisions of clause (v) above shall control.

(viii) Notwithstanding that the provision of the initial Letter of Credit and the replacement or renewal thereof annually pursuant to, respectively, clauses (ii) and (iii) above are within Tenant's sole discretion, Tenant agrees to exert commercially reasonable efforts with banks with whom Tenant has banking relationships to look into and, provided Tenant determines, in its sole and absolute discretion, that such issuance, replacement or renewal is on terms and conditions, and with a lender, acceptable to Tenant, obtain, renew or replace, as applicable, the Letter of Credit. Landlord agrees to comply with the Bank's requirements in order to effectuate a replacement or renewal of the Letter of Credit, including without limitation surrender to the Bank of the original Letter of Credit being renewed or replaced. Upon Landlord's request, prior to each anniversary of the Commencement Date, Tenant will advise Landlord whether Tenant intends to renew and/or replace any Letter of Credit then outstanding.

41. **EXECUTION OF LEASE.**

(a) **Tenant as Corporation.** Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that Tenant's corporate entity is duly qualified and in good standing to do business in California and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf, in accordance with a duly adopted resolution of the board of directors of Tenant, a copy of which is to be delivered to Landlord on execution hereof, if requested by Landlord, and in accordance with the by-laws of Tenant, and that this Lease is binding upon Tenant in accordance with its terms.

(b) **Examination of Lease.** Submission of this instrument by Landlord to Tenant for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed by their duly authorized representatives as of the date first above written.

TENANT:	LANDLORD:
CONEXANT SYSTEMS, INC., a Delaware corporation	LNR VON KARMAN, LLC, a California limited liability company
By: [signature]	By: LNR Von Karman Holdings, Inc., a California corporation, its sole member
Print Name: RICHARD DAVID BRUTH	By: [signature]
Title: EXECUTIVE VP CFO & TREASURER	Print Name: [illegible]
	Title: Vice President

EXHIBIT "A-I"

SITE PLAN

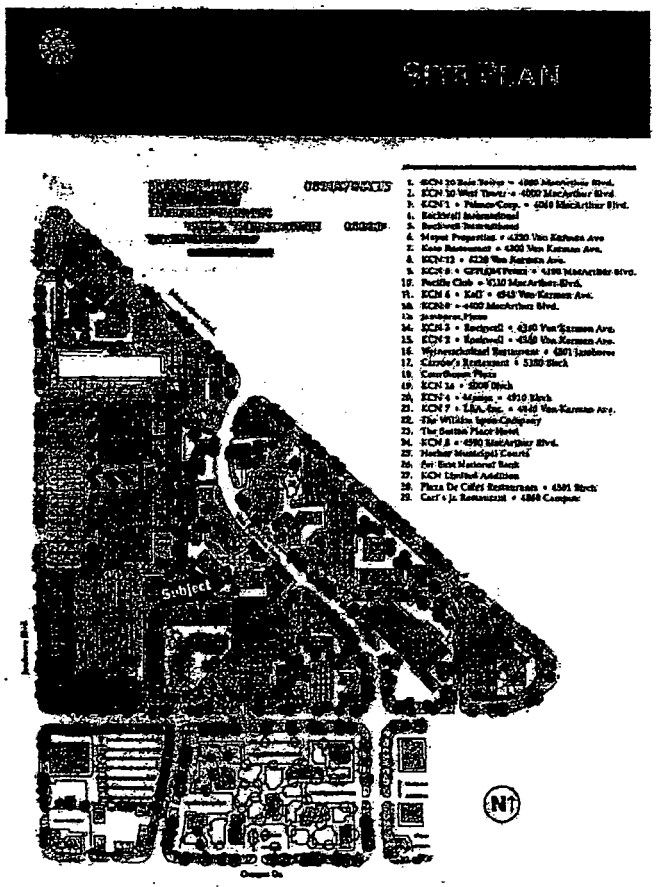

EXHIBIT "A-II"

LEGAL DESCRIPTION OF PREMISES LAND

4340 Von Karman Legal Description

Page 1
Order No. 13608294

DESCRIPTION

PARCEL 1:

LOT 3 OF TRACT NO. 8762, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN IN BOOK 350, PAGES 24, 25 AND 26 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS OF EVERY KIND AND NATURE BELOW A DEPTH OF 500 FEET BENEATH THE SURFACE OF SAID LOT 3, WITHOUT THE RIGHT OF ENTRY ON THE SURFACE OR WITHIN THE UPPER 500 FEET OF SAID LAND, AS RESERVED IN THE DEED FROM KOLL CENTER NEWPORT, A CALIFORNIA LIMITED PARTNERSHIP, RECORDED DECEMBER 1, 1975 IN BOOK 11581, PAGE 1382 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

PARCEL 2:

AN APPURTENANT NON-EXCLUSIVE EASEMENT IN PERPETUITY FOR INGRESS AND EGRESS FROM THE PUBLIC STREET ADJACENT TO TRACT NO. 8762, AS SHOWN ON A MAP RECORDED IN BOOK 350, PAGES 24, 25 AND 26 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TO PARCEL 1 OVER AND ACROSS ALL PRIVATE DRIVEWAYS AS MAY, FROM TIME TO TIME, BE ESTABLISHED OVER AND ON SAID TRACT NO. 8762, AND AN APPURTENANT NON-EXCLUSIVE EASEMENT IN PERPETUITY FOR AUTOMOBILE PARKING ON AND IN ALL COMMON PARKING AREAS, AS SET FORTH IN THE DEED FROM KOLL CENTER NEWPORT, A CALIFORNIA LIMITED PARTNERSHIP, RECORDED DECEMBER 1, 1975 IN BOOK 11581, PAGE 1382 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, FROM TIME TO TIME CONSTRUCTED WITHIN SAID TRACT NO. 8762.

EXHIBIT "B"

ADJUSTMENTS TO MONTHLY BASE RENT

Effective on each anniversary of the Commencement Date (each a "CPI Adjustment Date"), the Base Rent in effect immediately before each CPI Adjustment Date shall be increased by an amount equal to the lesser of (i) four percent (4%) or (ii) one hundred twenty five percent (125%) of the percentage increase, if any, in the Index (as hereinafter defined) over such immediately preceding twelve (12) month period. To determine the percentage adjustment under (ii) above, the Index for the fourth (4th) month immediately preceding the month in which the applicable CPI Adjustment Date occurs shall be compared to the Basic Index (as hereinafter defined) and the resultant product shall be multiplied by one hundred twenty five percent (125%). The parties intend that the foregoing equation result in a compounding of adjustments to Base Rent. The "Index" shall mean the Consumer Price Index, All Items, 1982-1984 = 100, All Urban Consumers, for the Los Angeles/Anaheim/Riverside, California Area, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, and the "Basic Index" shall mean for the first adjustment of Rent, the Index published for the fourth (4th) month preceding the month in which the Commencement Date occurs and for each subsequent annual rent adjustment shall mean the Index published for the fourth (4th) month preceding the month in which the immediately preceding CPI Adjustment Date occurs . In the event the compilation or publication of the Index shall be transferred to any other governmental department, bureau or agency or shall be discontinued, the index most nearly the same as the Index shall be used to make such calculation.

EXHIBIT "C"

OMITTED

EXHIBIT "D"

ESTOPPEL CERTIFICATE

The undersigned, _____ ("Landlord"), with a mailing address c/o _____ and _____ ("Tenant"), hereby certify to _____, as follows:

1. Attached hereto is a true, correct and complete copy of that certain lease dated _____, 19___, between Landlord and Tenant (the "Lease"), regarding the premises located at _____ (the "Premises"). The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in Paragraph 4 below.

2. The Term of the Lease commenced on _____, 19___.

3. The Term of the Lease shall expire on _____, 19___.

4. The Lease has: (Initial one)

(_____) not been amended, modified, supplemented, extended, renewed or assigned.

(_____) been amended, modified, supplemented, extended, renewed or assigned by the following described terms or agreements, copies of which are attached hereto:

_____

_____

5. Tenant has accepted and is now in possession of the Premises.

6. Tenant and Landlord acknowledge that Landlord's interest in the Lease will be assigned to _____ and that no modification, adjustment, revision or cancellation of the Lease or amendments thereto shall be effective unless written consent of _____ is obtained, and that until further notice, payments under the Lease may continue as heretofore.

7. The amount of Monthly Base Rent is $_____.

8. The amount of security deposits (if any) is $_____.

No other security deposits have been made except as follows: _____.

9. Tenant is paying the full lease rental which has been paid in full as of the date hereof. No rent or other charges under the Lease have been paid for more than thirty (30) days in advance of its due date except as follows: _____.

10. All work required to be performed by Landlord under the Lease has been completed except as follows: _____.

11. There are no defaults on the part of the Landlord or Tenant under the Lease except as follows: _____.

12. Neither Landlord nor Tenant has any defense as to its obligations under the Lease and claims no set-off or counterclaim against the other party except as follows: _____.

13. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies other than as provided in the Lease except as follows: _____.

All provisions of the Lease and the amendments thereto (if any) referred to above are hereby ratified.

The foregoing certification is made with the knowledge that _____ is about to fund a loan to Landlord or _____ is about to purchase the Building from Landlord and that _____ is relying upon the representations herein made in funding such loan or in purchasing the Building.

IN WITNESS WHEREOF, this certificate has been duly executed and delivered by the authorized officers of the undersigned as of _____, 19___.

TENANT:	LANDLORD:
_____	_____
a _____	a _____
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____

SAMPLE ONLY
[NOT FOR EXECUTION]

EXHIBIT "E"

OMITTED

EXHIBIT "F"

SHORT FORM MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Croudace & Dietrich
5 Park Plaza, Suite 1150
Irvine, California 92614
Attn: Virginia P. Croudace, Esq.

Space Above this Line Reserved for Use by Recorder

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is made as of december _, 2001, by and between LNR Von Karman, LLC, a California limited liability company ("Landlord"), whose address is c/o Lennar Partners, 18401 Von Karman Avenue, Suite 540, Irvine, California 92612, and Conexant Systems, Inc., a Delaware corporation ("Tenant") whose address is 4311 Jamboree Road, Mail Station MIS704-339, Newport Beach, California 92660, Attn: Director of Facilities, with reference to the following:

Landlord and Tenant have entered into that certain Office Building Lease dated of even date herewith (the "Lease"), whereby Landlord has agreed to rent and lease to Tenant, and tenant has agreed to take and hire from Landlord, that real property and the improvements thereon commonly known as 4340 Von Karman Avenue, Newport Beach, California 92660 (together with all alterations, improvements or additions thereon made by either Landlord or Tenant, the "Premises"), which Premises are more particularly described on Exhibit A hereto, and desire to enter into this Memorandum in accordance with the provisions of the Lease to provide record notice of the Lease.

NOW, THEREFORE, IN CONSIDERATION OF the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Agreement to Lease. Landlord hereby rents and leases to Tenant, and Tenant hereby takes and hires from Landlord, the Premises at the rental and upon all of the terms and conditions set forth in the Lease, which is hereby incorporated herein by reference as if set forth in full herein.

2. Term of Lease. Subject to the terms of the Lease, the Premises are leased for fifteen (15) lease years, subject to extension by Tenant for up to four (4) periods of five (5) years each, commencing as of the date of recordation of this Memorandum in the Official Records of the Office of the County Clerk/Recorder of Orange County, California (the "Commencement Date").

3. Purpose of Memorandum of Lease. This Memorandum is prepared for the purpose of recordation only, and in no way modifies the provisions of the Lease. In the event of any conflict between the terms of this Memorandum and the terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease as of

the dates set forth below their respective signatures.

"Tenant"

CONEXANT SYSTEMS, INC., a
Delaware corporation

By: _____
Richard Bluth, Director of Facilities

"Landlord"

LNR Von Karman, LLC, a
California limited liability company

By LNR Von Karman Holdings, Inc., a
California corporation, its sole member

By_____
Title_____

F:\USERS\VPC\CONEXANT\4340VONK\LENNAR\LSE-MEM.01A

STATE OF _____)
)SS.
COUNTY OF_____)

On this _____ day of _____, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public in and for said State

STATE OF _____)
)SS.
COUNTY OF_____)

On this _____ day of _____, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public in and for said State

EXHIBIT "A" TO MEMORANDUM OF LEASE

Legal Description of Premises

That certain land situated in the State of California, City of Newport Beach, County of Orange, and more particularly described as follows:

PARCEL 1:

LOT 3 OF TRACT NO. 8762, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN IN BOOK 350, PAGES 24, 25 AND 26 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS OF EVERY KIND AND NATURE BELOW A DEPTH OF 500 FEET BENEATH THE SURFACE OF SAID LOT 3, WITHOUT THE RIGHT OF ENTRY ON THE SURFACE OR WITHIN THE UPPER 500 FEET OF SAID LAND, AS RESERVED IN THE DEED FROM KOLL CENTER NEWPORT, A CALIFORNIA LIMITED PARTNERSHIP, RECORDED DECEMBER 1, 1995 IN BOOK 11581, PAGE 1322 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

PARCEL 2:

AN APPURTENANT NON EXCLUSIVE EASEMENT IN PERPETUITY FOR INGRESS AND EGRESS FROM THE PUBLIC STREET ADJACENT TO TRACT NO. 8762 AS SHOWN ON A MAP RECORDED IN BOOK 350, PAGES 24, 25 AND 26 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TO PARCEL 1 OVER AND ACROSS ALL PRIVATE DRIVEWAYS AS MAY, FROM TIME TO TIME, BE ESTABLISHED OVER AND IN SAID TRACT NO. 8762, AND AN APPURTENANT NON-EXCLUSIVE EASEMENT IN PERPETUITY FOR AUTOMOBILE PARKING ON AND IN ALL COMMON PARKING AREAS, AS SET FORTH IN THE DEED FROM KOLL CENTER NEWPORT, A CALIFORNIA LIMITED PARTNERSHIP, RECORDED DECEMBER 1, 1995 IN BOOK 11581, PAGE 1322 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, FROM TIME TO TIME CONSTRUCTED WITHIN SAID TRACT NO. 8762.

EXHIBIT "G"

LETTER OF CREDIT

AKMM

TELEX NO: 160455 CMACALLB
FAX NO: (310) 649-3407
SWIFT: MNBDUS6S LAX

COMERICA BANK-CALIFORNIA
INTERNATIONAL TRADE SERVICES
9920 S. LA CIENEGA BLVD, 11TH FL.
INGLEWOOD, CA. 90301

BENEFICIARY:

LNR VON KARMAN, LLC
18401 VON KARMAN AVE. #540
IRVINE, CA 92612

DATE OF ISSUE: DECEMBER 17, 2001

WE HEREBY OPEN OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 571155 -44 IN YOUR FAVOR, FOR ACCOUNT OF CONEXANT SYSTEMS, INC. , 4311 JAMBOREE ROAD , NEWPORT BEACH, CA 92660-3095 , FOR A SUM NOT EXCEEDING USD 1,362,000.00 (ONE MILLION THREE HUNDRED SIXTY TWO THOUSAND AND 00/100'S U.S. DOLLARS) AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON COMERICA BANK, WHEN ACCOMPANIED BY:

EITHER ONE OF THE FOLLOWING BENEFICIARY'S STATEMENTS ON YOUR LETTERHEAD PURPORTEDLY SIGNED BY THE VICE PRESIDENT OF THE BENEFICIARY READING AS FOLLOWS:

1. ''CONEXANT SYSTEMS, INC. IS IN DEFAULT UNDER THE STANDARD OFFICE BUILDING LEASE (THE ''LEASE'') AFTER THE EXPIRATION OF ALL APPLICABLE NOTICE AND CURE PERIODS AND CONEXANT SYSTEMS, INC. HAS FAILED TO PROVIDE AN AMENDMENT EXTENDING THE EXPIRATION DATE OF STANDBY LETTER OF CREDIT NO. 571155 UNDER THE LEASE DATED _____.''

OR

2. ''CONEXANT SYSTEMS, INC. IS IN DEFAULT UNDER THE STANDARD OFFICE BUILDING LEASE (THE ''LEASE'') AFTER THE EXPIRATION OF ALL APPLICABLE NOTICE AND CURE PERIODS AND CONEXANT SYSTEMS, INC. HAS FAILED TO PROVIDE A REPLACEMENT STANDBY LETTER OF CREDIT FOR STANDBY LETTER OF CREDIT NO. 571155 UNDER THE LEASE DATED _____.''

OR

3. ''CONEXANT SYSTEMS, INC. IS IN DEFAULT UNDER THE STANDARD OFFICE BUILDING LEASE (THE ''LEASE'') AFTER THE EXPIRATION OF ALL APPLICABLE NOTICE AND CURE PERIODS AND CONEXANT SYSTEMS, INC. HAS FAILED TO MAKE PAYMENT UNDER THE LEASE DATED _____ AS SET FORTH IN PARAGRAPH 22.(A)(I).''

OR

4. 'CONEXANT SYSTEMS, INC. IS IN DEFAULT UNDER THE STANDARD OFFICE BUILDING LEASE (THE ''LEASE'') AFTER THE EXPIRATION OF ALL APPLICABLE NOTICE AND CURE PERIODS UNDER THE LEASE DATED _____ AS SET FORTH IN PARAGRAPH 22.(A)(III).''

AND A COPY OF THE BENEFICIARY'S SIGNED CERTIFICATION STATING THAT THEY HAVE NOTIFIED THE APPLICANT OF THE FOLLOWING:
''WE HEREBY NOTIFY CONEXANT SYSTEMS, INC. THAT LNR CALIFORNIA INVESTMENTS, INC. INTENDS TO DEMAND PAYMENT IN THE AMOUNT OF USD _____ UNDER STANDBY LETTER OF CREDIT NO. 571155.''
SUCH NOTIFICATION MUST BE RECEIVED BY THE APPLICANT AT LEAST THREE (3) BUSINESS DAYS PRIOR TO THE DATE OF DRAWING UNDER THIS STANDBY LETTER OF CREDIT. A COPY OF THE COURIER RECEIPT MUST BE ATTACHED.

SPECIAL INSTRUCTIONS:
PARTIAL DRAWINGS ARE PERMITTED.

THIS STANDBY LETTER OF CREDIT COVERS THE PERFORMANCE BY CONEXANT SYSTEMS, INC. ON THE STANDARD OFFICE BUILDING LEASE (THE ''LEASE'') DATED COVERING PREMISES LOCATED AT 4340 VON KARMON, NEWPORT BEACH, CALIFORNIA (THE ''PREMISES'').

ALL DRAFTS DRAWN UNDER THIS CREDIT MUST BE MARKED "DRAWN UNDER COMERICA BANK'S LETTER OF CREDIT NO. 571155 -44 ".

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL CHAMBER OF COMMERCE, 1993 REVISION, PUBLICATION 500.

THIS ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS THERETO MUST BE SUBMITTED TO US TOGETHER WITH ANY DRAWINGS HEREUNDER FOR OUR ENDORSEMENT OF ANY PAYMENTS EFFECTED BY US AND/OR FOR CANCELLATION.

WE ENGAGE WITH YOU THAT EACH DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED ON DELIVERY OF THE DOCUMENTS AS SPECIFIED IF PRESENTED AT THIS OFFICE ON OR BEFORE DECEMBER 17, 2002.

YOURS VERY TRULY,

AUTHORIZED SIGNATURE

RIDER 1

EXTENSION OPTION RIDER

RIDER NO. 1 TO OFFICE LEASE

This Rider No. 1 is made and entered into by and between LNR VON KARMAN, LLC, a California limited liability company ("Landlord"), and CONEXANT SYSTEMS, INC., a Delaware corporation ("Tenant"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Subject to the terms of this Rider No. 1 and Rider No. 2, entitled "Fair Market Rental Rate Rider," Landlord hereby grants to Tenant four (4) options (the "Extension Option(s)") to extend the Term of the Lease with respect to the entire Premises and only the entire Premises, each for an additional period of five (5) years (the "Option Terms"), on the same terms, covenants and conditions as provided for in the Lease during the initial Term, except that the Monthly Basic Rent payable by Tenant during the Option Term shall be the "fair market rental rate" for the Premises for the Option Term as defined and determined in accordance with the provisions of Rider No. 2 below; and the Term as extended by each Option Term shall be five (5) years and Tenant shall have only the four (4) options to extend specified herein and no further options to extend unless otherwise agreed by Landlord in its sole and absolute discretion.

2. The Extension Options must be exercised, if at all, by written notice ("Extension Notice") delivered by Tenant to Landlord no sooner than that date which is three hundred sixty five (365) days and no later than that date which is two hundred seventy (270) days prior to the expiration of the then current Term of the Lease. The Extension Option shall, at Landlord's sole option, not be deemed to be properly exercised if, at the time the Extension Option is exercised or on the scheduled commencement date for the Option Term, Tenant has committed an uncured event of default whose cure period has expired pursuant to Paragraph 22 of the Lease. Provided Tenant has properly and timely exercised the applicable Extension Option, the then current Term of the Lease shall be extended by the applicable Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Monthly Basic Rent shall be as set forth above.

RIDER 2

FAIR MARKET RENTAL RATE RIDER

RIDER NO. 2 TO OFFICE LEASE

This Rider No. 2 is made and entered into by and between LNR VON KARMAN, LLC, a California limited liability company ("Landlord"), and CONEXANT SYSTEMS, INC., a Delaware corporation ("Tenant"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. The term "fair market rental rate" as used in the Lease and any Rider attached thereto shall mean the annual amount per square foot, projected during the applicable Option Term, that a willing, non-equity renewal tenant (excluding sublease and assignment transactions) would pay, and a willing, institutional landlord of a comparable quality office building located in the Newport Beach and Irvine John Wayne Airport area of California (the "Comparison Area") would accept, in an arm's length transaction, for space of comparable size, quality and floor height as the Premises, taking into account the age, quality and layout of the existing improvements in the Premises, and taking into account items that professional real estate brokers or professional real estate appraisers customarily consider, including, but not limited to, rental rates, free rent, space availability, tenant size, tenant improvement allowances, parking charges, brokers' commissions and any other lease considerations, if any, then being charged or granted by Landlord or the lessors of such similar office buildings. The fair market rental rate will be an effective rate, not specifically including, but accounting for, the appropriate economic considerations described above.

2. In the event where a determination of fair market rental rate is required under the Lease, Landlord shall provide written notice of Landlord's determination of the fair market rental rate not later than thirty (30) days after the last day upon which Tenant may timely exercise the right giving rise to the necessity for such fair market rental rate determination. Tenant shall have ten (10) days ("Tenant's Review Period") after receipt of Landlord's notice of the fair market rental rate within which to accept or reject such fair market rental rate or to reasonably object thereto in writing. Failure of Tenant to so object to the fair market rental rate submitted by Landlord in writing within Tenant's Review Period shall conclusively be deemed Tenant's approval and acceptance thereof. If within Tenant's Review Period Tenant objects to the fair market rental rate submitted by Landlord, Landlord and Tenant will meet together with their respective legal counsel and other real estate experts to present and discuss their individual determinations of the fair market rental rate for the Premises under the parameters set forth in Paragraph 1 above and shall diligently and in good faith attempt to negotiate a rental rate on the basis of such individual determinations. Such meeting shall occur no later than ten (10) days after the expiration of Tenant's Review Period. The parties shall each provide the other with such supporting information and documentation as they deem appropriate. At such meeting if Landlord and Tenant are unable to agree upon the fair market rental rate, they shall each submit to the other their respective best and final offer as to the fair market rental rate. If Landlord and Tenant fail to reach agreement on such fair market rental rate within five (5) business days following such a meeting (the "Outside Agreement Date"), each party's determination shall be submitted to appraisal in accordance with the provisions of Paragraph 3 below.

3. (a) If Landlord and Tenant have not reached agreement by the Outside Agreement Date, then, within five (5) business days thereafter, Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be an M.A.I. certified real estate appraiser or broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial (including office) properties in the Comparison Area. The determination of the appraisers shall be limited solely to the issue of whether Landlord's or Tenant's last proposed (as of the Outside Agreement Date) best and final fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking into account the requirements specified in Section 1 above. Each such appraiser shall be appointed within fifteen (15) days after the Outside Agreement Date.

(b) The two (2) appraisers so appointed shall within fifteen (15) days of the date of the appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) appraisers.

(c) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted best and final fair market rental rate, and shall notify Landlord and Tenant thereof. During such thirty (30) day period, Landlord and Tenant may submit to the appraisers such information and documentation to support their respective positions as they shall deem reasonably relevant and Landlord and Tenant may each appear before the appraisers jointly to question and respond to questions from the appraisers.

(d) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the applicable Option. If either Landlord or Tenant fails to appoint an appraiser within the time period specified in Section 3(a) hereinabove, the appraiser appointed by one of them shall within thirty (30) days following the date on which the party failing to appoint an appraiser could have last appointed such appraiser reach a decision based upon the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted best and final fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the applicable Option.

(e) If the two (2) appraisers fail to agree upon and appoint a third appraiser, both appraisers either party, upon ten (10) days written notice to the other party, can apply to the Presiding Judge of the Superior Court of Orange County to appoint a third appraiser meeting the qualifications set forth herein. The third appraiser, however, selected shall be a person who has not previously acted in any capacity for either party.

(f) The cost of each party's appraiser shall be the responsibility of the party selecting such appraiser, and the cost of the third appraiser (or arbitration, if necessary) shall be shared equally by Landlord and Tenant.

(g) If the process described hereinabove has not resulted in a selection of either Landlord's or Tenant's submitted best and final fair market rental rate by the commencement of the applicable lease term, then the fair market rental rate estimated by Landlord will be used until the appraiser(s) reach a decision, with an appropriate rental credit and other adjustments for any overpayments of Monthly Basic Rent or other amounts if the appraisers select Tenant's submitted best and final estimate of the fair market rental rate. The parties shall enter into an amendment to this Lease confirming the terms of the decision.

Saul Ewing LLP

MARK MINUTI
Phone: (302) 421-6840
Fax: (302) 421-5873
mminuti@saul.com
www.saul.com

May 14, 2013

VIA FEDERAL EXPRESS
Conexant Systems, Inc. Claims Processing Center
c/o BMC Group, Inc.
18675 Lake Drive East
Chanhassen, MN 55317

RE: In re: Conexant Systems, Inc.
Case No. 13-10367 (MFW)

Dear Friends:

Enclosed please find the original and two (2) copies of the Proof of Claim of PRES-4340 Von Karman, LP to be filed in the Conexant Systems, Inc. (Case No. 13-10367) case.

Please return two (2) clocked-in copies of the Proof of Claim to me in the enclosed self-addressed stamped envelope.

Thank you for your anticipated cooperation.

Very truly yours,

Mark Minuti /rew

Mark Minuti

/rew
Enclosures

From: (302) 421-6800
Mark Minuti
Saul Ewing LLP
222 Delaware Ave.
12th Floor
Wilmington, DE 19801

Origin ID: ZWIA

FedEx Express

J13111302120326

Ship Date: 14MAY13
ActWgt: 0.5 LB
CAD: 103592690/WSXI2750

Delivery Address Bar Code

SHIP TO: (888) 909-0100 BILL SENDER

Conexant Systems Claims Processing
GMC Group Inc.
18675 Lake Dr E

Chanhassen, MN 55317

Ref # 364667-00001
Invoice #
PO #
Dept #

RECEIVED
MAY 15 2013
BMC GROUP

RELEASE#: 3785346

WED - 15 MAY 10:30A
PRIORITY OVERNIGHT

TRK# 7997 6188 2843
0201

XH FBLA

55317
MN-US
MSP

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.