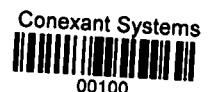


<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE</b>		<div style="text-align: center; font-weight: bold;">COURT USE ONLY</div> <div style="margin-top: 10px;"> <input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____  <i>(If known)</i>  <b>Filed on:</b> _____         </div> <div style="margin-top: 10px;"> <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.         </div>
<b>Name of Debtor:</b>  CONEXANT SYSTEMS, INC.	<b>Case Number:</b> 13-10367	
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.		
<b>Name of Creditor (the person or other entity to whom the debtor owes money or property):</b> UPTOWN NEWPORT LP		
<b>Name and address where notices should be sent:</b> UPTOWN NEWPORT LP c/o Adam Lewis Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482  <b>Telephone number:</b> (415) 268-7000 <b>email:</b> alewis@mofo.com		RECEIVED  MAY 16 2013  BMC GROUP
<b>Name and address where payment should be sent (if different from above):</b> UPTOWN NEWPORT LP c/o DRA Advisors LLC 220 East 42nd Street, 27th Floor New York, NY 10017  <b>Telephone number:</b> 212-697-4740 <b>email:</b> jchristian@draadvisors.com		
PROOF OF CLAIM		
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>See Attached Addendum</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> <u>See Attached Addendum</u> (See instruction #2)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b>  <u>N/A</u>	<b>3a. Debtor may have scheduled account as:</b>  (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b>  (See instruction #3b)
<b>4. Secured Claim (See instruction #4)</b> Check the appropriate box if the claim is secured by alien on property or a right of set off, attach required redacted documents, and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b> _____  <b>Value of Property:</b> \$ _____  <b>Annual Interest Rate</b> ____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		
<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____		
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).   <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).         </div> <div style="width: 30%;"> <input type="checkbox"/> 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).   <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).         </div> <div style="width: 30%;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).   <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a) _____.         </div> </div> <div style="text-align: right; margin-top: 10px;"> <b>Amount entitled to priority:</b>          \$ <u>N/A</u> </div>		

\*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 adj



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

**7. Documents:** Attached 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.  
(Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor,  
or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor.  
(See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

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

Print Name: [ Jean Marie Apruzzese ]

Title: [ Vice President ]

Company: UPTOWN NEWPORT LP

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

  
(Signature)

05/15/13  
(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.*

Conexant Systems, Inc.  
Case No. 13-10367

**ADDENDUM TO PROOF OF CLAIM**

**Name of Debtor:** Conexant Systems, Inc. (the "Debtor")

**Creditor:** Uptown Newport LP (the "Creditor")

**1. Amount of Claim as of Date Case Filed**

As of the petition date of February 28, 2013, the Debtor was indebted to the Creditor in an amount estimated to be no less than **\$5,855,562.50**.

The amount of the claim includes the following amounts:

**LEASE AMOUNTS: \$598,042.50**

\$57,772.50	owing under the Office Lease (defined below)
\$540,270.00	owing under the Data Lease (defined below)

**ENVIRONMENTAL REMEDIATION AMOUNT: \$5,257,520.00**

\$4,500,000.00	groundwater remediation
\$757,520.00	operation cost of soil vapor extraction system

All dollar amounts included herein are estimates, subject to further revision. At the time of filing this Proof of Claim, the Creditor is not aware of any defaults under the relevant agreements. Regardless, the Creditor hereby reserves its right to amend and/or supplement this proof of claim at any time for any reason whatsoever, in order to assert such other and additional amounts as it determines is owed to it, including to add additional amounts accruing or otherwise owing at any time. The Creditor further reserves the right to amend and/or supplement this proof of claim with respect to any additional documents or grounds of liability. The claims and amounts set forth herein are presently subject to investigation and liquidation through discovery in due course.

Although the Creditor is not aware of any liability owing by the Creditor to the Debtor, the Creditor hereby reserves any and all setoffs, which may be secured claims under 11 U.S.C. § 506(a), as well as all rights to recoupment.

The Creditor reserves its right to recover its attorneys' fees and costs that arise at any time from the enforcement of the Agreements and the recovery of the claims thereunder, to the maximum extent permitted by applicable law.

## 2. Nature of Claim

Creditor's claims stem from obligations of Debtor arising out of the following contracts:

(I) "Standard Industrial Lease" dated December 22, 2010 for data center located at 4311 Jamboree Road, Newport Beach, CA 92660 by and between Debtor and Creditor (the "Data Lease") [Exhibit A];

(II) "Standard Industrial Lease" dated December 22, 2010 for office space located at 4311 Jamboree Road, Newport Beach, CA 92660 by and between Debtor and Creditor (the "Office Lease") [Exhibit B]; and

(III) "Environmental Management Agreement" dated December 22, 2010 by and between Debtor and Creditor, providing for the Debtor's clean-up of hazardous conditions at the real property site described therein (the "EMA") [Exhibit C].

## 4. Secured Claim

Although the Creditor is not aware of any liability owing by the Creditor to the Debtor, the Creditor is entitled to set off any such obligations owing to the Debtor, and the extent of such setoffs are secured claims under 11 U.S.C. § 506(a).

## 7. Documents

Attached exhibits, including relevant agreements, supporting claim:

**EXHIBIT A:** Office Lease

**EXHIBIT B:** Data Lease

**EXHIBIT C:** Environmental Management Agreement

# STANDARD INDUSTRIAL LEASE-MULTI-TENANT

## 1. Basic Provisions (the "Basic Provisions").

1.1 **Parties:** This Lease (the "Lease"), dated for reference purposes only December 22, 2010, is made by and between UPTOWN NEWPORT, LP, a Delaware limited partnership ("Landlord"), and Conexant Systems, Inc., a Delaware corporation ("Tenant").

### 1.2 Premises:

(a) That certain real property, including all improvements therein or to be provided by Landlord under the terms of this Lease, consisting of approximately 7,703 square feet of rentable area located at 4311 Jamboree Road, Newport Beach, California, 92660 as depicted on Exhibit A-1 hereto (the "Premises"). (See Paragraph 2 for further provisions.) The Premises are a portion of a building (the "Building"). The Premises, the Building, the Common Areas (as defined in Paragraph 2.3 below), and the land upon which the same are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Center," as more particularly depicted on the site plan attached hereto as Exhibit B. As used herein, the term "Tenant's Share" means zero percent (0%), which is the quotient obtained by dividing the net rentable area of the Premises by the net rentable area of all tenant-area premises in the Center.

(b) Tenant shall have an option ("Option"), exercisable only on or before the sixtieth (60th) day after the Commencement Date ("Option Period"), to lease any remaining space in the Building (including without limitation any space surrendered by Newport Fab, LLC, a Delaware limited liability company doing business as Jazz Semiconductor ("Jazz")) on or after the Commencement Date (as applicable, the "Option Space"). The Option shall be exercisable by Tenant with respect to all or a portion of the Option Space from time to time during the Option Period for a term commencing on the later of the date specified by Tenant in the applicable Option Notice (as defined below) or the date Landlord tenders possession thereof to Tenant in broom clean condition, and otherwise on the same terms and conditions as are set forth in this Lease including a Base Rent rate of \$0.75 per rentable square foot per month. In order to validly exercise the Option with respect to a portion of the Option Space (including all), Tenant must notify Landlord in writing ("Option Notice") of such exercise prior to expiration of the Option Period, which Option Notice shall (i) specify the portion(s) of the Option Space that Tenant desires to lease ("Optioned Space"), (ii) specify the desired commencement date of the Lease with respect to the Optioned Space (which effective date shall not be later than the date which is thirty (30) days after the date of such Option Notice), and (iii) be accompanied by two (2) counterpart originals of an amendment to this Lease each duly executed by Tenant ("Lease Amendment") that modifies the definition of the Premises covered hereby to include the Optioned Space and provides for an effective Commencement Date with respect to such Optioned Space consistent (subject to the second sentence of this subparagraph (b)) with the effective date specified in such Option Notice. Provided that the Option has been timely and validly exercised and the form of the Lease Amendment is consistent with this subparagraph (a) and is otherwise in a commercially reasonable form, Landlord shall execute the Lease Amendment and return a signed counterpart original to Tenant within five (5) business days following Landlord's receipt of the Lease Amendment. In any event, Landlord shall not enter into any lease or other form of occupancy agreement respecting the Optioned Space (or any portion thereof) during the Option Period.

(c) In the event Tenant surrenders a portion of the premises demised pursuant to Paragraph 1.3(a) of that certain Lease between Landlord and Tenant dated of even date herewith covering the data center space in the Building (the "Data Center Lease") and Landlord thereafter enters into a lease or other form of occupancy agreement with a Future Data Space Tenant (as defined in Paragraph 7.6 of the Data Center Lease) for any remaining portion of such surrendered premises, the area identified on Exhibit A-2 hereto consisting of 586 rentable square feet (the "Generator Room") shall thereupon be considered Common Areas (as defined in Paragraph 2.3 below) and shall not thereafter constitute a part of the Premises, in which event Base Rent shall be reduced by \$439.50 per month effective upon the earlier of the commencement date of the lease between Landlord and the Future Data Space Tenant or the date such Future Data Center Space Tenant is given early occupancy of any portion of such surrendered premises.

### 1.3 Term:

(a) The term of this Lease (the "Term") shall be three (3) years, commencing on the "Commencement Date" determined pursuant to the immediately succeeding sentence and ending on the day before the third (3<sup>rd</sup>) anniversary of the Commencement Date (the "Expiration Date"). The Commencement Date of this Lease shall be the date of the "Close of Escrow" as defined in that certain Purchase and Sale Agreement and Joint Escrow Instructions dated December 9, 2010 (as amended, the "Agreement"), by and between Landlord, as "Buyer," and Tenant, as "Seller."

(b) Tenant shall have the option to extend the Term by two (2) additional periods of twelve (12) months each (each, an "Additional Term"); provided, however, that the second Additional Term shall expire March 24, 2015. Tenant's option for the first Additional Term (the "First Additional Term") shall be exercised, if at all, by written notice to Landlord given at least ninety (90) days prior to the Expiration Date determined pursuant to subparagraph (a) above. Tenant's option for the second Additional Term, if any (the "Second Additional Term"), shall be exercisable by Tenant only if Tenant has previously exercised the option for the First Additional Term and shall be exercised, if at all, no more than ninety (90) days prior to the expiration date of the First Additional Term. If Tenant is entitled to and gives notice in the manner and within the time set forth in this subparagraph (b), then the Term shall be extended by the applicable Additional Term, on all of the terms and conditions set forth in this Lease for the original Term, except that, in the case of the First Additional Term, there shall be one further option to extend the Term, and, in the case of the Second Additional Term, there shall be no further options to extend the Term.

(c) Notwithstanding anything to the contrary in this Lease, (i) Tenant shall have the right from time to time, upon at least ninety (90) days' prior notice to Landlord, to terminate the Lease with respect to all or any portion of the Premises and (ii) Landlord shall have the right, by notice delivered to Tenant (i) twelve (12) months in advance if notice (provided that Landlord shall not be entitled to deliver any such notice prior to the second (2<sup>nd</sup>) anniversary of the Commencement Date), to terminate the Lease with respect to all or any portion of the Premises. If either party elects to terminate the Lease with respect to only a portion of the Premises in accordance with this Paragraph 1.3(c), the Base Rent shall be adjusted accordingly. In the event of any reduction in the size of the Premises pursuant to a right granted herein or otherwise as agreed to by Landlord and Tenant (other than a termination of the Lease with respect to the entire Premises), the party initiating the reduction shall be responsible for demising the Premises if required (e.g., unless the released space is already demised from the balance of the Premises, such as surrender of one or more separate offices), including without limitation with respect to installing a controlled access system ("Demising Work"). Each party acknowledges and agrees that the Demising Work will be performed prior to the delivery of possession of the surrendered space to Landlord, notwithstanding that the Lease may have terminated with respect thereto pursuant to subclause (i) or (ii) above.

1.4 **Base Rent:** \$5,777.25 per month (the "Base Rent") (\$0.75 per rentable square foot per month), payable on the 1st day of each month commencing on the Commencement Date. (See Paragraph 4 for further provisions.)

1.5 **Base Rent Paid Upon Execution:** The product of \$5,777.25 and a fraction, the numerator of which is the number of days from and after the Commencement Date in the month in which the Commencement Date occurs and the denominator is the total number of days in the month in which the Commencement Date occurs, as Base Rent for the period from the Commencement Date to the last day of the month in which the Commencement Date occurs.

### 1.6 N/A

1.7 **Permitted Use:** General office, laboratory, housekeeping stock room, shipping and receiving, storage (including for Tenant's generator and hazardous waste), cafeteria and any other lawful use. (See Paragraph 6 for further provisions.)

1.8 **Real Estate Brokers:** Tenant represents and warrants that it has not been represented by any broker other than Jones Lang LaSalle in connection with the sale of the Building in which the Premises are located, whose commission shall be payable on and subject to the terms and conditions set forth and/or referred to in the Agreement. Tenant hereby agrees to indemnify, defend and hold harmless Landlord from the claims of any other broker claiming under or through it in connection with the transaction which is the subject of this Lease.

### 1.9 N/A

1.10 **Exhibits:** Attached hereto are Exhibits A through F, all of which constitute a part of this Lease and are incorporated herein by this reference as if set forth in full herein.

## 2. Premises, Parking and Common Areas.

2.1 **Premises.** Landlord hereby leases to Tenant and Tenant leases from Landlord the Premises for the term, at the rental, and upon all of the conditions set forth herein.

2.2 **Vehicle Parking.** Tenant shall be entitled to four (4) vehicle parking spaces per 1,000 rentable square feet in the Premises, unreserved and unassigned, free of charge for the entire Term, on those portions of the Common Areas designated by Landlord for parking. Tenant

shall not use more parking spaces than said number. Said parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."

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

2.2.2 If Tenant permits or allows any of the prohibited activities described in Paragraph 2.2 of this Lease, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

2.3 **Common Areas-Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Center that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and of other tenants of the Center and their respective employees, suppliers, shippers, customers and invitees, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas.

2.4 **Common Areas - Tenant's Rights.** Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, on a long-term basis, in the Common Areas. Any temporary storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

2.5 **Common Areas-Rules and Regulations.** Landlord or such other person(s) as Landlord may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by and conform to all such rules and regulations, and to cause its employees, suppliers, shippers, customers, and invitees to so abide and conform. Landlord shall not be responsible to Tenant for the non-compliance with said rules and regulations by other tenants of the Center.

2.6 **Common Areas-Changes.** Landlord shall have the right, in Landlord's reasonable discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways;

(b) To close temporarily any of the Common Areas for maintenance purposes, so long as reasonable access to the Premises remains available;

(c) To use the Common Areas while engaged in making routine repairs or alterations to the Center, or any portion thereof; and

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

Notwithstanding the foregoing, except in the event of an emergency (i.e., a situation involving an imminent risk of personal injury or material property damage), Landlord may not make any change to the Common Areas which would materially and adversely affect the operation by Tenant of its business in the Premises, including without limitation Tenant's ability to access the Premises.

### 3. Term.

3.1 **Term.** The term and Commencement Date of this Lease shall be as specified in Paragraph 1.3 of the Basic Lease Provisions.

3.2 **Intentionally Omitted.**

3.3 **Intentionally Omitted.**

### 4. Rent.

4.1 **Base Rent.** Commencing on the Commencement Date, Tenant shall pay to Landlord Base Rent for the Premises, in advance on the first day of each month during the Term, without any offset or deduction. Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the Base Rent. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing. Notwithstanding anything to the contrary in this Lease, in the event that, as a result of Landlord's negligence or willful misconduct or breach of this Lease, utility service to the Premises is interrupted for in excess of five (5) consecutive days, then Base Rent shall abate from and after such fifth (5th) day until service is restored.

4.2 **Operating Expenses.** Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share, as hereinafter defined, of all Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease.

(a) "Tenant's Share" is defined, for purposes of this Lease, in Paragraph 1.2 above.

(b) "Operating Expenses" shall mean the aggregate of all costs and expenses payable by Landlord in connection with the operation and maintenance of the Premises, Building, Center and Common Areas, including, but not limited to, (i) the cost of landscaping, repaving, resurfacing, repairing, replacing, painting, lighting, cleaning, removing trash, janitorial services, security services and other similar items; (ii) the total cost of compensation and benefits of personnel to implement the services referenced herein; (iii) cost of any insurance obtained by Landlord in connection with the Building and Center, including, but not limited to, the insurance required to be obtained by Landlord pursuant to this Lease; (iv) the cost of operating, repairing and maintaining life, safety and access systems, including, without limitation, sprinkler systems; (v) the cost of monitoring services, if provided by Landlord, including, without limitation, any monitoring or control devices used by Landlord in regulating the parking areas; (vi) the cost of water, electricity, gas and any other utilities; (vii) legal, accounting and consulting fees and expenses; (viii) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance and repair of the Premises, Center, Building or Common Areas; (ix) energy allocation, energy use surcharges or environmental charges; (x) expenditures, costs, fees, assessments and other charges paid by Landlord in connection with traffic or energy management programs applicable to the Center in connection with Landlord's compliance with laws or other governmental requirements; (xi) municipal inspection fees or charges; (xii) any other costs or expenses incurred by Landlord under this Lease which are not otherwise reimbursed directly by tenants; (xiii) the amount charged by any management firm (who may be an affiliate of Landlord) contracted by Landlord to provide any or all of the foregoing services; (xiv) costs and fees charged to Landlord in connection with membership in energy conservation associations; (xv) Real Property Taxes (as defined in Paragraph 14.2); and (xvi) cost of purchasing, installing and removing seasonal decorations at the Center. The computation of Operating Expenses shall be made in accordance with generally accepted accounting principles.

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

(d) Tenant's Share of Operating Expenses shall be payable by Tenant in advance monthly on the same day as the Base Rent is due hereunder.

4.3 **Additional Rent; Rent.** As used in this Lease, the term "rent" shall mean Base Rent, Tenant's Share of Operating Expenses and additional rent, and the term "additional rent" shall mean personal property taxes and all other amounts payable by Tenant to Landlord pursuant to this Lease other than Base Rent and Tenant's Share of Operating Expenses. Where no other time is stated herein for payment, payment of any amount due from Tenant to Landlord hereunder shall be made within thirty (30) days after Tenant's receipt of Landlord's invoice or statement therefor.

5. **Intentionally Omitted.**

6. **Use.**

6.1 **Use.** The Premises shall be used and occupied only for the purpose set forth in Paragraph 1.7 and for no other purpose. Tenant shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to, neighboring premises or properties.

## 6.2 Compliance with Covenants, Conditions and Building Restrictions.

(a) Tenant has been in possession of the Premises prior to the Commencement Date. As of the date hereof, Tenant has not received any notice that the improvements on the Premises do not comply with any applicable covenant or restriction of record or applicable building code, regulation or ordinance in effect on the Commencement Date. Notwithstanding the foregoing, if and to the extent that the improvements on the Premises do not comply with any applicable covenant or restriction of record or applicable building code, regulation or ordinance in effect on the Commencement Date (other than those which apply because of the nature of Tenant or the particular use to which Tenant will put the Premises during the Term or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made by Tenant during the Term) then Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify the same at Landlord's expense.

(b) Except as provided in Paragraph 6.2(a) Tenant shall, at Tenant's expense, as and when required by applicable governmental authorities, promptly comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the Term or any part of the Term hereof, relating in any manner to the Premises and the occupation and use by Tenant of the Premises. Tenant shall not use or permit the use of the Premises or the Common Areas in any manner that will create waste or a nuisance or shall disturb other occupants of the Center.

## 6.3 Condition of Premises.

(a) Tenant is in possession of the Premises as of the Commencement Date and, accordingly, nothing is required of Landlord in connection with the delivery of the Premises to Tenant. As of the date hereof, Tenant is not aware that the plumbing, fire sprinkler system, lighting, air conditioning, heating, or loading doors, if any, in the Premises as of the Commencement Date are not in good operating condition on the Commencement Date. Notwithstanding the foregoing, if the plumbing, fire sprinkler system, lighting, air conditioning, heating, or loading doors, if any, in the Premises as of the Commencement Date shall not be in good operating condition on the Commencement Date, Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify same at Landlord's expense.

(b) Except as otherwise provided in subparagraph (a) above, Tenant hereby accepts the Premises in their condition existing as of the Lease Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the condition of the Premises, or the present or future suitability of the Premises, the Building or the Center for the conduct of Tenant's business.

## 6.4 Hazardous Materials.

(a) Tenant covenants and agrees that it shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises by Tenant or Tenant's agents, employees, contractors, invitees or any other party for whom Tenant is responsible ("Tenant's Agents"). The foregoing covenant shall not extend to the materials described on Exhibit C to this Lease or to materials typically found or used in general office applications so long as (i) such materials and any equipment which generates such materials are maintained only in such quantities as are reasonably necessary for Tenant's operations in the Premises, (ii) such materials are used strictly in accordance with the manufacturers' instructions therefor, (iii) such materials are not disposed of in or about the Premises in a manner which would constitute a release or discharge thereof, and (iv) all such materials and any equipment which generates such materials are removed from the Premises by Tenant upon the expiration or earlier termination of this Lease. In addition, the foregoing shall not apply to such other Hazardous Materials as are reasonably necessary to enable Tenant to conduct its business on the Premises provided Tenant gives Landlord written notice of any new Hazardous Materials Tenant brings onto the Premises within thirty (30) days after commencing the use thereof. Any use, storage, generation, disposal, release or discharge by Tenant of Hazardous Materials in or about the Premises as is permitted hereunder shall be carried out in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Moreover, no hazardous waste resulting from any operations by Tenant shall be stored or maintained by Tenant in or about the Premises for more than ninety (90) days prior to removal by Tenant. Tenant shall, annually within thirty (30) days after Tenant's receipt of Landlord's written request therefor, provide to Landlord a written list identifying any Hazardous Materials then maintained by Tenant in the Premises, the use of each such Hazardous Material and the approximate quantity of each such Hazardous Material so maintained by Tenant, together with written certification by Tenant stating, in material, that neither Tenant nor any person for whom Tenant is responsible has released or discharged any Hazardous Materials in or about the Premises.

(b) In the event that Tenant proposes to conduct any use or to operate any equipment which will or may utilize or generate a Hazardous Material other than as specified in subparagraph (a) above, Tenant shall first in writing submit such use or equipment to Landlord for approval. No approval by Landlord shall relieve Tenant of any obligation of Tenant pursuant to this Paragraph 6.4, including the removal and clean-up and indemnification obligations imposed upon Tenant by this Paragraph 6.4. Tenant shall, within five (5) days after receipt thereof, furnish to Landlord copies of all notices or other communications received by Tenant with respect to any actual or alleged release or discharge of any Hazardous Material in or about the Premises and shall, whether or not Tenant receives any such notice or communication, notify Landlord in writing of any discharge or release of Hazardous Material by Tenant or anyone for whom Tenant is responsible in or about the Premises. In the event that Tenant is required to maintain any Hazardous Materials license or permit in connection with any use conducted by Tenant or any equipment operated by Tenant in the Premises, copies of each such license or permit, each renewal or revocation thereof and any communication relating to suspension, renewal or revocation thereof shall be furnished to Landlord within five (5) days after receipt thereof by Tenant. Compliance by Tenant with the two immediately preceding sentences shall not relieve Tenant of any other obligation of Tenant pursuant to this Paragraph 6.4.

(c) Upon any violation of the foregoing covenants during the Term, Tenant shall be obligated, at Tenant's sole cost, to clean-up and remove from the Premises all Hazardous Materials introduced into the Premises by Tenant or any person or entity for whom Tenant is responsible. Such clean-up and removal shall include all testing and investigation required by any governmental authorities having jurisdiction and preparation and implementation of any remedial action plan required by any governmental authorities having jurisdiction. All such clean-up and removal activities of Tenant shall, in each instance, be conducted to the satisfaction of all governmental authorities having jurisdiction. Landlord's right of entry pursuant to Paragraph 32 shall include the right to enter and inspect the Premises for violations of Tenant's covenants herein.

(d) Tenant shall indemnify, defend and hold harmless Landlord, its partners, and its and their successors, assigns, partners, officers, employees, agents, lenders and attorneys from and against any and all claims, liabilities, losses, actions, costs and expenses (including attorneys' fees and costs of defense) incurred by such indemnified persons, or any of them, as the result of (i) the introduction into or about the Premises by Tenant or anyone for whom Tenant is responsible during the Term of any Hazardous Materials, (ii) the usage, storage, maintenance, generation, disposition or disposal by Tenant or anyone for whom Tenant is responsible of Hazardous Materials in or about the Premises during the Term, (iii) the discharge or release in or about the Premises by Tenant or anyone for whom Tenant is responsible of any Hazardous Materials introduced during the Term, (iv) any injury to or death of persons or damage to or destruction of property resulting from the use, introduction, maintenance, storage, generation, disposal, disposition, release or discharge by Tenant or anyone for whom Tenant is responsible of Hazardous Materials in or about the Premises during the Term, and (v) any failure of Tenant or anyone for whom Tenant is responsible to observe the foregoing covenants of this Paragraph 6.4 during the Term.

(e) Upon any violation of the foregoing covenants, Landlord shall be entitled to exercise all remedies available to a landlord against a defaulting tenant, including, but not limited to, those set forth in Paragraph 13.2. Without limiting the generality of the foregoing, Tenant expressly agrees that upon any such violation Landlord may, at its option, (i) immediately terminate this Lease or (ii) continue this Lease in effect until compliance by Tenant with its clean-up and removal covenant notwithstanding any earlier expiration date of the Term. No action by Landlord hereunder shall impair the obligations of Tenant pursuant to this Paragraph 6.4.

(f) As used in this Paragraph 6.4, "Hazardous Materials" is used in its broadest sense and shall include any petroleum based products, pesticides, paints and solvents, polychlorinated biphenyl, lead, cyanide, mold, medical waste, DDT, acids, ammonium compounds and other chemical products and any material or material defined or designated as hazardous or toxic, or other similar term, by any federal, state or local environmental statute, regulation, or ordinance affecting the Premises presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, including, but not limited to, the following statutes: (i) Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sec. 6901 *et seq.*, (ii) Comprehensive Environmental Response, Compensation, and Liability Act

of 1980, 42 U.S.C. Sec. 9601 *et seq.*, (iii) Clean Air Act, 42 U.S.C. Sec. 7401-7626, (iv) Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. Sec. 1251 *et seq.*, (v) Insecticide, Fungicide, and Rodenticide Act (Pesticide Act of 1987), 7 U.S.C. Sec. 135 *et seq.*, (vi) Toxic Materials Control Act, 15 U.S.C. Sec. 2601 *et seq.*, (vii) Safe Drinking Water Act, 42 U.S.C. Sec. 300(f) *et seq.*, (viii) National Environmental Policy Act (NEPA) 42 U.S.C. Sec. 4321 *et seq.*, (ix) Refuse Act of 1899, 33 U.S.C. Sec. 407 *et seq.*, and (x) California Health and Safety Code Sec. 25316 *et seq.*

(g) By its signature to this Lease, Tenant confirms that it has conducted its own examination of the Premises and the Center with respect to Hazardous Materials and accepts the same "AS IS." Tenant acknowledges that incorporation of any material containing asbestos into the Premises during the Term is absolutely prohibited. Tenant agrees, represents and warrants that, during the Term, it shall not incorporate or permit or suffer to be incorporated, knowingly or unknowingly, any material containing asbestos into the Premises.

6.5 **Tenant's Compliance with Law.** During the Term, Tenant shall not use the Premises in any way (or permit or suffer anything to be done in or about the same) which will conflict with any law, statute, ordinance or governmental rule or regulation or any covenant, condition or restriction (whether or not of public record) affecting the Premises, now in force or which may hereafter be enacted or promulgated, including, the provisions of any city or county zoning codes regulating the use thereof. Tenant shall, at its sole cost and expense, as and when required by applicable governmental authorities or board, conduct its business in the Premises in compliance with (i) all laws, statutes, ordinances and governmental rules and regulations, now in force or which may hereafter be in force, applicable to Tenant or its use of or business or operations in the Premises, including without limitation Prop. 65, if applicable, (ii) all requirements, and other covenants, conditions and restrictions, now in force or which may hereafter be in force, which affect the Premises, and (iii) all requirements, now in force or which may hereafter be in force, of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises (collectively, "Applicable Laws"). The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, governmental rule or regulation or any requirement, covenant, condition or restriction in the conduct of its business in the Premises shall be conclusive of the fact as between Landlord and Tenant. It is expressly understood and agreed that Tenant is accepting the Premises "AS IS", in its present state and condition, without any representations or warranties from Landlord of any kind whatsoever, either express or implied, with respect to the Premises, including compliance of the Premises with The Americans With Disabilities Act, Title 24 and the rules and regulations promulgated thereunder, as amended from time to time (collectively, the "ADA"). If Tenant's use of the Premises or operations therein during the Term cause Landlord to incur any obligation under the ADA, as reasonably determined by Landlord, then Tenant shall reimburse Landlord for Landlord's costs and expenses in connection therewith. If Tenant's initial use of the Premises is not a "place of public accommodation" within the meaning of the ADA, then Tenant may not thereafter change the use of the Premises to cause the Premises to become a "place of public accommodation." In the event that Tenant desires or is required hereby to make alterations, improvements, additions or Utility Installations (as defined in Paragraph 7.3(a) below) to the Premises in order to satisfy its obligations under the ADA, then all such alterations, improvements, additions or Utility Installations shall be subject to Paragraph 7.3 below, and shall be performed at Tenant's sole cost and expense. Tenant shall be responsible for insuring that the Premises and Tenant's use thereof and operations therein during the Term fully and completely comply with the ADA.

6.6 **Inspection; Compliance.** Landlord and Landlord's lender(s) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Laws (as defined in Paragraph 6.5), and to employ experts and/or consultants in connection therewith and/or to advise Landlord with respect to Tenant's activities, including, but not limited to, the installation, operation, use, monitoring, maintenance or removal of any Hazardous Material or storage tank on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a breach of this Lease has occurred and has continued after notice and expiration of the applicable cure period, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination by Tenant, in which case Tenant shall upon request reimburse Landlord or Landlord's lender, as the case may be, for the costs and expenses of such inspections with interest at the rate set forth in Paragraph 13.5(a) below accruing from and after such cost or expense was incurred by Landlord or Landlord's lender through the date of payment in full thereof.

#### 7. **Maintenance, Repairs, Alterations and Common Area Services.**

7.1 **Landlord's Obligations.** Subject to the provisions of Paragraphs 4.2 (Operating Expenses), 6 (Use), 7.2 (Tenant's Obligations) and 9 (Damage or Destruction) and, subject to Paragraph 8.6 below, except for damage caused during the Term by any negligent or intentional act or omission of Tenant, Tenant's employees, suppliers, shippers, customers, or invitees, in which event (subject to Paragraph 8.6 below) Tenant shall repair the damage, and except for special or non standard systems and equipment installed for Tenant's exclusive use, Landlord shall keep in good condition and repair, at Landlord's cost and expense, heating, ventilating and air conditioning systems which service the Premises as well as other premises within a Building, plumbing, electrical and lighting facilities and equipment within the Premises, the foundations, exterior walls, structural condition of interior bearing walls and roof of the Premises and the Buildings, as well as the parking lots, walkways, driveways, landscaping, fences, signs, and utility installations of the Project, as well as providing the services for which there is an Operating Expense pursuant to Paragraph 4.2. Landlord shall not, however, be obligated to paint the interior surface of exterior walls. Janitorial services to the Premises shall initially be provided as described in Exhibit E, which specifications are subject to change from time to time in the reasonable discretion of Landlord. Landlord shall have no obligation to make repairs under this Paragraph 7.1 until a reasonable time after receipt of written notice from Tenant of the need for such repairs. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair. Landlord shall not be liable for damages or loss of any kind or nature by reason of Landlord's failure to furnish any Common Area services when such failure is caused by accident, breakage, repairs, strikes, lockout, other labor disturbances or disputes of any character, or any other cause beyond the reasonable control of Landlord.

#### 7.2 **Tenant's Obligations.**

(a) Subject to the provisions of Paragraphs 6 (Use), 7.1 (Landlord's Obligations), and 9 (Damage or Destruction), Tenant, at Tenant's expense, shall keep in good order, condition and repair the Premises and every part thereof (whether or not the damaged portion of the Premises or the means of repairing the same are reasonably or readily accessible to Tenant) including, without limiting the generality of the foregoing, fixtures, interior walls and interior surfaces of exterior walls, ceilings, windows, doors, plate glass and skylights located within the Premises.

(b) If Tenant fails to perform Tenant's obligations under this Paragraph 7.2 or under any other paragraph of this Lease, Landlord may enter upon the Premises after prior written notice to Tenant (except in the case of emergency (i.e., a situation involving a threat of property damage or personal injury), in which case no notice shall be required), perform such obligations on Tenant's behalf and put the Premises in good order, condition and repair, and the cost thereof together with interest thereon from and after Landlord incurs the same at the maximum rate then allowable by law shall be due and payable as additional rent to Landlord together with Tenant's next Base Rent installment.

(c) On the last day of the Term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Notwithstanding anything to the contrary otherwise stated in this Lease, subject to Landlord's right to require Tenant to remove the same pursuant to Paragraph 7.3(a) below, Tenant shall leave all "Utility Installations" (as defined in such Paragraph 7.3(a)) in the Premises.

(d) Notwithstanding anything to the contrary in this Lease, Tenant shall not have any obligation to make any repair or replacement in the Premises or the Center which is capital in nature and, if such repair or replacement is necessary to enable Tenant to conduct its business in the Premises and Tenant determines it would be burdensome on Tenant to make such repair or replacement, Tenant shall have the right to terminate this Lease upon at least thirty (30) days prior written notice to Landlord, which notice shall specify the desired termination date and the cost of performing the necessary repair or replacement, accompanied by reasonable documentary evidence as to the cost thereof. Landlord shall have the right, within ten (10) days after receipt of Tenant's notice, to agree to pay all or a portion of the cost of the repair or replacement and, if Landlord elects to pay all of the cost of the replacement or repair, the Lease shall not terminate and Landlord shall pay the actual cost of the repair or replacement, up to the amount specified in Tenant's notice. If Landlord does not elect to pay the entire cost of the repair or replacement, or makes no election with respect thereto within such ten (10) day period, then the Lease shall terminate in accordance with Tenant's notice. If Tenant does not elect to terminate the Lease as a result of any such capital repair or replacement, then, subject to the second sentence of this subparagraph 7.2(d), Tenant shall be required to make any such capital repair and/or replacement if and to the extent necessary to comply with Applicable Requirements



and/or with the requirements of any insurance company providing coverage to Tenant or Landlord and/or if the failure to make the same presents a situation involving a threat of property damage or personal injury.

#### 7.3 Alterations and Additions.

(a) Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, or the Center during the Term, except for interior, nonstructural alterations to the Premises, consistent in all respects with the initial tenant improvements made in the Premises, not exceeding \$200,000 in cumulative costs during the term of the Lease. In any event, whether or not in excess of \$200,000 in cumulative cost, Tenant shall make no change or alteration to the exterior (or visible from the exterior) of the Premises, the Building or the Center without Landlord's prior written consent. As used in this Paragraph 7.3, the term "Utility Installation" shall mean carpeting, window coverings, air lines, telephone, data and other cabling, power panels, electrical distribution systems, lighting fixtures, space heaters, air condition, plumbing and fencing. Should Tenant make any alterations, improvements, additions or Utility Installations without the prior approval of Landlord if the same is required hereunder, Landlord may, at the end of the Term, require that Tenant remove any or all of the same.

(b) Any alteration, improvement, addition or Utility Installations in or about the Premises or the Center that Tenant shall desire to make and which requires the consent of the Landlord shall be presented to Landlord in written form, with proposed detailed plans and the name of the contractor Tenant proposes to perform the same. If Landlord shall give its consent, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work and the compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished during the Term to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises, or the Center, or any interest therein. Tenant shall give Landlord not less than twenty (20) days' notice prior to the commencement of any work in the Premises, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Buildings as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Landlord or the Premises or the Center, upon the condition that Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to such contested lien, claim or demand indemnifying Landlord against liability for the same and holding the Premises and the Center free from the effect of such lien or claim. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in participating in such action if Landlord shall decide it is to Landlord's best interest to do so.

(d) All alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Tenant), which may be made on the Premises during the Term shall be the property of Landlord and shall remain upon and be surrendered with the Premises at the expiration of the Term, unless Landlord is permitted to and requires their removal pursuant to Paragraph 7.3(a). Notwithstanding the provisions of this Paragraph 7.3(d), Tenant's machinery and equipment, other than Utility Installations and other than that which is affixed to the Premises so that it cannot be removed without irreparable damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Paragraph 7.2.

(e) Tenant shall surrender the Premises by the end of the last day of the Term or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, ordinary wear and tear excepted. Except as otherwise agreed or specified in writing by Landlord, the Premises, as surrendered, shall include the Utility Installations installed during the Term. The obligation of Tenant shall include the repair of any damage occasioned by the installation, maintenance or removal during the Term of Tenant's trade fixtures, furnishings, equipment, and alterations and/or Utility Installations made during the Term, as well as the removal of any storage tank installed by or for Tenant during the Term, and the removal, replacement, or remediation of any soil, material or groundwater contaminated by Tenant during the Term, all as may then be required by Applicable Law and/or good practice. Tenant's trade fixtures shall remain the property of Tenant and shall be removed by Tenant subject to its obligation to repair and restore the Premises per this Lease.

(f) Notwithstanding anything to the contrary herein, Tenant shall have the right, at its sole cost and expense, to maintain any of Tenant's existing 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. In the event that, after the Commencement Date, Landlord permits installation of a similar system on the roof of a Building or elsewhere in the Center by any person, Landlord shall require such other person the obligation at no cost to Tenant to relocate or modify its installation to eliminate any interference with the Roof Items then located on the roof of the Building. Tenant will not install at any time during the Term any Roof Items which interfere in any way with any then-existing radio or other equipment which Landlord or any other user may have on the roof, and will comply with Landlord's reasonable direction for placement and installation of such equipment. In the event Landlord contemplates roof repair or requires access which requires temporary removal or relocation of the Roof Items, or which may result in an interruption in Tenant's telecommunication services, Landlord shall, if practicable, notify Tenant at least thirty (30) days prior to such contemplated work in order to allow Tenant to make other arrangements for such services. The cost or removal and re-installation of any Roof Items affected thereby shall be borne by Tenant. Tenant or its agents or representatives shall, at all times during business hours, be permitted use of and access to the roofs for purposes of examination and repair of the Roof Items.

7.4 Utility Additions. Landlord reserves the right to install new or additional utility facilities throughout the Building and the Common Areas for the benefit of Landlord or Tenant, or any other tenant of the Center, including, but not by way of limitation, such utilities as plumbing, electrical systems, security systems, communication systems, and fire protection and detection systems, so long as such installations do not unreasonably interfere with Tenant's use of the Premises.

#### 8. Insurance; Indemnity.

8.1 Liability Insurance-Tenant. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of combined single limit bodily injury and property damage insurance insuring Tenant and Landlord against any liability arising out of the use, occupancy or maintenance of the Premises and the Center. Such insurance shall be on an occurrence basis with single limit coverage in an amount not less than \$1,000,000.00 per occurrence. The policy shall insure performance by Tenant of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Tenant hereunder nor relieve Tenant of any obligation hereunder. Any insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be excess insurance only. Tenant shall carry workers' compensation insurance in the amount required by law (which Tenant may self-insure).

8.2 Property Insurance - Tenant. Subject to the requirements of Paragraph 8.5, Tenant at its cost shall either by separate policy or, with consent of Landlord, by endorsement to a policy already carried, maintain insurance coverage on all of Tenant's personal property, tenant owned alterations and Utility Installations in, on, or about the Premises with full replacement cost coverage. Tenant shall, from time to time upon Landlord's request, provide Landlord with written evidence that such insurance is in force.

8.3 Property Insurance. Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Center improvements, but not Tenant's personal property, fixtures, equipment or tenant improvements, in an amount not less than the full replacement value thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises), special extended perils ("all risk", as such term is used in the insurance industry), plate glass insurance and such other insurance as Landlord deems advisable.

#### 8.4 Intentionally Omitted.

8.5 Insurance Policies. Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least A- or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Tenant shall not do or permit to be done anything in the Premises which shall invalidate the insurance policies carried by Landlord. On or before the Commencement Date, Tenant shall deliver to Landlord certificates evidencing the existence and amounts of liability and property insurance policies required under Paragraphs 8.1 and 8.2, showing coverage effective as of the Commencement Date. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Landlord. Tenant shall, at least three (3) days prior to the expiration of such policies, and without the requirement of further notice, furnish Landlord with renewals or "binders" thereof.

8.6 Waiver of Subrogation. Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other, for loss or damage arising out of or incident to the perils insured against under policies of property insurance carried hereunder (or

required to be insured against under property insurance hereunder, whether or not such insurance required hereunder is actually obtained and/or maintained) which perils occur in, on or about the Premises, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors and/or invitees. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

**8.7 Indemnity.** Tenant shall indemnify and hold harmless Landlord and its agents, Landlord's master or ground lessor, partners and lenders from and against any and all claims, loss of rents and/or damages, losses, costs, liens, judgments, penalties, permits, causes of action, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or dealing with Tenant's use of the Premises or the Center during the Term, or from the conduct of Tenant's business during the Term or from any activity, work or things done or permitted by Tenant in or about the Premises or elsewhere during the Term and shall further indemnify and hold harmless such indemnified parties from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, employees or invitees, during the Term and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, and in case any action or proceeding be brought against any such indemnified party by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment, and whether well founded or not. In case any action or proceeding be brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property of Tenant or injury to persons, in, upon or about the Center arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

**8.8 Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises or the Center, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Center, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except if and to the extent the same is caused by a breach of this Lease by Landlord or by Landlord's or Landlord's agent's, employee's, contractor's or invitee's negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Center, nor from the failure of Landlord to enforce the provisions of any other lease of the Center. Notwithstanding Landlord's negligence, willful misconduct or breach of this Lease, Landlord shall under no circumstances be liable for consequential damages, or for injury to Tenant's business or for any loss of income or profit therefrom.

**8.9 Limitation of Liability.** Tenant agrees that, in the event Tenant shall have any claim against Landlord under this Lease arising out of the subject matter of this Lease, Tenant's sole recourse shall be against the Landlord's interest in the Center for the satisfaction of any claim, judgment or decree requiring the payment of money by Landlord as a result of a breach hereof or otherwise in connection with this Lease, and no other property or assets of Landlord, its successors or assigns, shall be subject to the levy, execution or other enforcement procedure for the satisfaction of any such claim, judgment, injunction or decree. In addition, in no event shall Landlord be liable for any consequential damages. Tenant further hereby waives any and all right to assert any claim against or obtain any damages from, for any reason whatsoever, the directors, officers and partners of Landlord, including all injuries, damages or losses to Tenant's property, real and personal, whether known, unknown, foreseen, unforeseen, patent or latent, which Tenant may have against Landlord or its directors, officers or partners. Tenant understands and acknowledges the significance and consequence of such specific waiver.

**9. Damage or Destruction.**

**9.1 Definitions.**

- (a) "Premises Partial Damage" shall mean if the Premises are damaged or destroyed to the extent that the cost of repair is less than fifty percent (50%) of the then replacement cost of the Premises.
- (b) "Premises Total Destruction" shall mean if the Premises are damaged or destroyed to the extent that the cost of repair is fifty percent (50%) or more of the then replacement cost of the Premises.
- (c) "Premises Building Partial Damage" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is less than fifty percent (50%) of the then replacement cost of the Building.
- (d) "Premises Building Total Destruction" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is fifty percent (50%) or more of the then replacement cost of the Building.
- (e) "Center Buildings" shall mean all of the buildings on the Center site depicted on Exhibit B hereto.
- (f) "Center Buildings Total Destruction" shall mean if the Center Buildings are damaged or destroyed to the extent that the cost of repair is fifty percent (50%) or more of the then replacement cost of the Center Buildings.
- (g) "Insured Loss" shall mean damage or destruction which was caused by an event required to be covered by the insurance described in Paragraph 8, or for which insurance coverage is otherwise available. The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss.
- (h) "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring excluding all improvements made by tenants.

**9.2 Premises Partial Damage; Premises Building Partial Damage.**

- (a) **Insured Loss:** Subject to the provisions of Paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of either Premises Partial Damage or Premises Building Partial Damage, then Landlord shall, at Landlord's expense, repair such damage to the Premises, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect.
- (b) **Uninsured Loss:** Subject to the provisions of Paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, which damage prevents Tenant from using the Premises, Landlord may at Landlord's option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such ten (10) day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

**9.3 Premises Total Destruction; Premises Building Total Destruction; Center Buildings Total Destruction.** Subject to the provisions of Paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage, whether or not it is an Insured Loss, and which falls into the classifications of either (i) Premises Total Destruction, or (ii) Premises Building Total Destruction, or (iii) Center Buildings Total Destruction, then Landlord may at Landlord's option either (i) repair such damage or destruction, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible at Landlord's expense, and this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which case this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

**9.4 Damage Near End of Term.**

- (b) Subject to Paragraph 9.4(b), if at any time during the last six (6) months of the term of this Lease there is substantial damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage or Premises Building Partial Damage,

Landlord may at Landlord's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within sixty (60) days after the date of occurrence of such damage.

(c) Notwithstanding Paragraph 9.4(a), in the event that Tenant has an option to extend or renew this Lease, and as of the occurrence of the damage the time within which said option may be exercised has not yet expired, Tenant shall exercise such option, if it is to be exercised at all, no later than twenty (20) days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage, during the last twelve (12) months of the term of this Lease. If Tenant duly exercises such option during said twenty (20) day period, Landlord shall, at Landlord's expense, repair such damage, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect. If Tenant fails to exercise such option during said twenty (20) day period, then Landlord may at Landlord's option terminate and cancel this Lease as of the expiration of said twenty (20) day period by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the expiration of said twenty (20) day period, notwithstanding any term or provision in the grant of option to the contrary.

9.5 **Abatement of Rent; Tenant's Remedies.** In the event Landlord repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the Base Rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. Except for abatement of Base Rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

9.6 **Termination-Advance Payments.** Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Tenant to Landlord.

9.7 **Waiver.** Landlord and Tenant waive the provisions of any statute which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10. **Real Property Taxes.**

10.1 Landlord shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises. Notwithstanding the foregoing, Tenant shall pay to Landlord upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Tenant or at Tenant's request during the Term.

10.2 **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, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Center by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, Landlord's right of rent or other income therefrom, and/or Landlord's business of leasing the Premises, or otherwise imposed on Landlord as an owner of real property in lieu of or in addition to real property taxes. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

10.3 **Intentionally Omitted.**

10.4 **Personal Property Taxes.**

(c) Tenant shall pay prior to delinquency all taxes assessed against and levied, with respect to any period of time during the Term, upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(d) If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant's personal property within thirty (30) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

11. **Utilities.** Landlord shall pay for all water, gas, heat, light, power and other utilities and services supplied to the Premises, together with any Taxes thereon, including hook-up charges and/or penalties (other than telephone service, which shall be paid for by Tenant).

12. **Assignment and Subletting.** Tenant may sublease all or any portion of the Premises to Jazz and/or the tenant under the lease whereby Jazz occupies a portion of the Center, without Landlord's prior consent. Subject to the immediately preceding sentence, Tenant shall not, directly or indirectly, voluntarily or by operation of law, sell, assign, sublet, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder, without Landlord's prior consent, which shall not be unreasonably delayed, withheld or conditioned. A transfer (other than on a public securities exchange) of forty-nine percent (49%) or more of the beneficial ownership interests in Tenant shall constitute an assignment within the meaning of this Lease.

13. **Default; Remedies.**

13.1 **Default.** The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

(a) The abandonment of the Premises by Tenant.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant.

(c) Except as otherwise provided in this Lease, the failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Tenant of any general arrangement or general assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. Sec.101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within sixty (60) days. In the event that any provision of this Paragraph 13.1 (d) is contrary to any Applicable Law, such provision shall be of no force or effect.

13.2 **Remedies.** In the event of any such material default by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, which amount the parties hereby agree shall include, without limitation, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises and reasonable attorneys' fees. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be 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%). Efforts by Landlord to mitigate damages caused by Tenant's default or breach of this Lease shall not waive Landlord's right to recover damages under this paragraph. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Landlord may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Tenant under any statute authorizing

the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Tenant to cure the default within the greater of the two such grace periods shall constitute both an unlawful detainer and a breach of this Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Landlord's interest under the Lease or Landlord's withholding of consent to an assignment or subletting where Landlord's consent is required pursuant to the terms and conditions of Paragraph 12 above, shall not constitute a termination of the Tenant's right to possession.

(c) The foregoing provisions of clause (2) shall apply even though Tenant has breached the Lease and abandoned the Premises, in which case Landlord shall have the right to re-enter the Premises with or without process of law, to eject therefrom all parties in possession thereof, and, without terminating this Lease, at any time and from time to time, but without obligation to do so, to relet the Premises and the improvements located therein or any part or parts of any thereof for the account of Tenant, or otherwise, on such conditions as Landlord in its discretion may deem proper, with the right to make alterations and repairs to the Premises in connection therewith, and to receive and collect the rents therefor, and apply the same (i) first to the payment of such costs and expenses as Landlord may have paid, assumed or incurred: (A) in recovering possession of the Premises and said improvements, including attorneys' fees, and costs; (B) expenses for placing the Premises and said improvements in good order and condition, for decorating and preparing the Premises for reletting; (C) for making any alterations, repairs, changes or additions to the Premises that may be necessary or convenient; and (D) all other costs and expenses, including leasing and subleasing commissions, and charges paid, assumed or incurred by Landlord in or upon reletting the Premises and said improvements, or in fulfillment of the covenants of Tenant under this Lease; (ii) then to the payment of Base Rent and other monetary obligations due and unpaid hereunder; and (iii) any balance shall be held by Landlord and applied in payment of future amounts as the same may become due and payable hereunder. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. Landlord may execute any lease or sublease made pursuant to the terms of this subparagraph either in its own name or in the name of Tenant as its agent, as Landlord may see fit. The tenant(s) or subtenant(s) thereunder shall be under no obligation whatsoever with regard to the application by Landlord of any rent collected by Landlord from such tenant or subtenant to any and all sums due and owing or which may become due and owing under the provisions of this Lease, nor shall Tenant have any right or authority whatever to collect any rent whatever from such tenant(s) or subtenant(s). If Tenant has been credited with any rent received by such reletting and such rent shall not be promptly paid to Landlord by the tenant(s) or subtenant(s), or if such rentals received from reletting during any month are less than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. For all purposes set forth in this subsection, Landlord is hereby irrevocably appointed as agent for Tenant. No taking of possession of the Premises by Landlord shall be construed as Landlord's acceptance of a surrender of the Premises by Tenant or an election of Landlord's part to terminate this Lease unless written notice of such intention is given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Election by Landlord to proceed pursuant to this clause (3) shall be made upon written notice to Tenant and shall be deemed an election of the remedy described in California Civil Code Section 1951.4 (providing that a lessor of real property may continue a lease in effect after a lessee's breach or abandonment and recover rent as it becomes due, if the lessee has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to pursue such remedy, unless Landlord relets the Premises, Tenant shall have the right to sublet the Premises and to assign its interest in this Lease, subject to all of the standards and conditions set forth in Paragraph 12. Landlord may elect to terminate the prosecution of such remedy at any time by written notice to Tenant, and the right of Tenant to sublet or assign shall terminate upon receipt by Tenant of such notice.

(d) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

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

### 13.3 Default by Landlord.

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

(b) Performance by Tenant on Behalf of Landlord. In the event that neither Landlord nor Tenant cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion (except in an emergency (i.e., a situation presenting a threat of personal injury or property damage), in which case Tenant may cure Landlord's breach immediately, then Tenant may elect to cure said breach at Tenant's expense. Tenant may offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to one month's Base Rent, reserving Tenant's right to seek reimbursement from Landlord for any such expense in excess of such offset. Tenant shall document the cost of said cure and supply said documentation to Landlord.

13.4 Late Charge. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by any Lender. Accordingly, if any Rent shall not be received by Landlord within 10 days after written notice from Landlord to Tenant that the same has not been paid when due hereunder, then upon Landlord's demand therefore Tenant shall immediately pay to Landlord a one-time late charge equal to 5% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.

13.5 Late Payments and Deliveries. Any amount due from Tenant to Landlord hereunder which is not paid to Landlord when due shall bear interest at the maximum rate of interest which Landlord is then permitted to charge by the applicable usury law, accruing from the date due until the same is fully paid. Payment of such interest shall not excuse or cure any default by Tenant pursuant to this Lease. Such rate shall remain in effect after the occurrence of any breach or default hereunder by Tenant to and until payment of the entire amount due.

14. Condemnation. If the Premises or any portion thereof or the Center are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty percent (20%) of the floor area of the Premises is taken by condemnation and such taking materially and adversely affects Tenant's ability to conduct business in the Premises, Tenant may, at Tenant's option, to be exercised in writing only within ten (10) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. No reduction of rent shall occur if the only area taken is that which does not have the Premises located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award it may obtain in separate proceedings with the condemnor for loss of or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of severance damages received by Landlord in connection with such

condemnation repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

15. **Intentionally Omitted.**

16. **Estoppel Certificate.** Tenant shall within twenty (20) days after written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by Landlord. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) that there are no uncured defaults in Landlord's performance, (c) that not more than one month's Base Rent has been paid in advance, and (d) that any other statements of fact regarding Tenant or this Lease included by Landlord in the statement are correct. Tenant shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in any Tenancy Statement supplied by Tenant.

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

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

19. **Headings.** The paragraph captions contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

20. **Time of Essence; Force Majeure.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Lease. Notwithstanding the foregoing, in the event that a party is delayed in performing any obligation of such party pursuant to this Lease by any cause beyond the reasonable control of such party, the time period for performing such obligation shall be extended by a period of time equal to the period of the delay. For the purpose of this paragraph, a cause shall be beyond the reasonable control of a party when such cause would affect any person similarly situated (such as a power outage, labor strike, governmental or other third party delay or truckers' strike) but shall not be beyond the reasonable control of a party when peculiar to such party (such as financial inability). This paragraph shall not apply to any obligation to pay money.

21. **Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

22. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

23. **Notices.**

23.1 Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

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

24. **Waivers.** No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, 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.

25. **No Recording.** Neither Landlord nor Tenant may, without the consent of the other party, record this Lease or any short form hereof.

26. **Holding Over.** If Tenant or anyone claiming under Tenant shall remain in possession of the Premises or any part thereof after expiration of the Lease term or earlier termination thereof without any agreement in writing between Landlord and Tenant with respect thereto, Tenant shall occupy upon all of the terms and conditions of this Lease except that the monthly Base Rent due from Tenant shall be equal to one hundred fifty percent (150%) for the first month of any such holding over and thereafter two hundred percent (200%), in each case of the monthly Base Rent in effect at the end of the Term. Landlord's acceptance of rent shall create only a month-to-month tenancy, in either case upon the terms set forth in this paragraph. Any such month-to-month tenancy shall be terminable at the end of any calendar month by either party by written notice to the other party given not less than ten (10) days prior to the end of such month. Nothing contained in this paragraph shall be deemed or construed to waive Landlord's right of reentry or any other right of Landlord hereunder or at law.

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

28. **Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

29. **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting Assignment or subletting by Tenant and subject to the provisions of Paragraph 18, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Center is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Center is located.

30. **Subordination; Attornment; Non-Disturbance.**

(a) This Lease, and any Option granted hereby, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Center and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant agrees that the lenders holding any such security device shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease, but that in the event of Landlord's default with respect to any such obligation, Tenant will give any lender whose name and address have been furnished Tenant in writing for such purpose notice of Landlord's default and allow such lender thirty (30) days following receipt of such notice for the cure of said default before invoking any remedies Tenant may have by reason thereof. If any mortgagee, trustee or ground lessor shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease and such Options shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Tenant agrees to attorn to a lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a security device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior landlord, or (iii) be bound by prepayment of more than one month's rent. Tenant agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be.

(c) Landlord shall obtain for the benefit of Tenant a non-disturbance agreement in form and substance acceptable to Tenant from Landlord's lender with respect to the Center, prior to or concurrently with the execution and delivery of this Lease, and from any future lender of Landlord with respect to the Center, which shall, in each case, provide that so long as no default hereunder has occurred and is continuing after notice and expiration of the applicable cure period, Tenant shall continue to enjoy all of Tenant's rights hereunder.

31. **Attorneys' Fees.** If any party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Landlord shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default or resulting breach.

32. **Access.** Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises or to the Center as Landlord may deem necessary or desirable. Landlord may at any time during the Term place on or about the Premises or the Building any ordinary "For Sale" signs and Landlord may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All activities of Landlord pursuant to this paragraph shall be without abatement of rent, nor shall Landlord have any liability to Tenant for the same. Tenant shall have access to the Premises 24 hours per day, 7 days per week, 365 days per year.

33. **Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises or the Common Areas without first having obtained Landlord's prior written consent. Notwithstanding anything to the contrary in this Lease, Landlord shall not be obligated

to exercise any standard of reasonableness in determining whether to grant such consent.

34. **Signs.** Tenant may install suite and directory board signage. Except as provided in the first sentence of this Paragraph 34, Tenant may place any sign upon the Premises or the Center only with Landlord's prior approval. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations).

35. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an Assignment to Landlord of any or all of such subtenancies.

36. **Consents.** Landlord's actual reasonable costs and expenses (including, but not limited to, architects', attorneys', engineers' or other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent pertaining to this Lease or the Premises, including, but not limited to, consents to an assignment, a subletting or the presence or use of Hazardous Material, practice or storage tank, shall be paid by Tenant to Landlord upon receipt of an invoice and supporting documentation therefor. Landlord may, as a condition to considering any such request by Tenant, require that Tenant deposit with Landlord an amount of money reasonably calculated by Landlord to represent the cost Landlord will incur in considering and responding to Tenant's request. Except as otherwise provided, any unused portion of said deposit shall be refunded to Tenant without interest. Landlord's consent to any act, assignment of this Lease or subletting of the Premises by Tenant shall not constitute an acknowledgment that no default or breach by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then existing default or breach, except as may be otherwise specifically stated in writing by Landlord at the time of such consent.

37. **Intentionally Omitted.**

38. **Quiet Possession.** Upon Tenant paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

39. **Furniture.** Tenant shall have the right to use the personal property described in Exhibit F attached hereto (collectively the "Inventory") in connection with its use of the Premises, at no additional cost to Tenant. Landlord acknowledges and agrees that the Inventory is Tenant's personal property, which Tenant may remove from the applicable Building at any time in Tenant's sole and absolute discretion; provided, however, that at any time when any Inventory is located within a Building, Tenant shall maintain the same in good condition and repair, reasonable wear and tear excepted, and shall insure and be liable for any damage thereto.

40. **Multiple Buildings.** If the Premises are part of a group of buildings controlled by Landlord, Tenant agrees that it will abide by, keep and observe all reasonable rules and regulations which Landlord may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of such other buildings and their invitees. The initial rules and regulations are as set forth in Exhibit D hereto.

41. **Security Measures.** Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Center. Tenant assumes all responsibility for the protection of Tenant, its agents, and invitees and the property of Tenant and of Tenant's agents and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Center or any part thereof, in which event the cost thereof shall be included within the definition of Operating Expenses, as set forth in Paragraph 4.2(b). Tenant acknowledges that Landlord has an existing security policy and security procedures, which are agreed to be solely for the protection of Landlord and its property, and Tenant shall have no right to rely thereon. Tenant shall, however, comply with Landlord's security policies and procedures when entering the Buildings, including without limitation completing a sign-in log (which is the property of Landlord) with the name, description and purpose for entry filled in. Landlord shall own and have the right to review said log and has Tenant no rights with respect thereto, including without limitation confidentiality.

42. **Easements.** Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents upon request of Landlord and failure to do so shall constitute a material default of this Lease by Tenant without the need for further notice to Tenant.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment, under protest, and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. **Authority.** If Tenant is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by Landlord or Landlord's agent and submission of same to Tenant shall not be deemed an offer to lease. This Lease shall become binding upon Landlord and Tenant only when fully executed by Landlord and Tenant.

47. **Amendments.** This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent, Tenant's Share or other rent payable under this Lease.

48. **Nondisclosure of Lease Terms.** Landlord and Tenant agree that the terms of this Lease are confidential and constitute proprietary information of the parties hereto. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants of the Center. Each of the parties hereto agrees that such party, and its respective partners, officers, directors, employees, agents and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of the other party hereto except pursuant to an order of a court of competent jurisdiction. Provided, however, that Landlord may disclose the terms hereof to any lender now or hereafter having a lien on Landlord's interest in the Center, or any portion thereof, and either party may disclose the terms hereof to its respective independent accountants who review its respective financial statements or prepare its respective tax returns, to any prospective transferee of all or any portions of

their respective interests hereunder (including a prospective sublessee or assignee of Tenant), to any lender or prospective lender to such party, to any governmental entity, agency or person to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Lease, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights and obligations of the parties hereunder.

49. Americans with Disabilities Act. Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that any change in Tenant's use of the Premises during the Term requires modifications or additions to the Premises in order to be in ADA compliance, Tenant agrees to make any such necessary modifications and/or additions required to be performed by applicable governmental authorities at Tenant's expense.

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

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY LANDLORD OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease as of the date last set forth below.

Landlord

Tenant

UPTOWN NEWPORT, LP, a Delaware limited partnership

CONEXANT SYSTEMS, INC., a Delaware corporation

By G&I Newport Corp., a Delaware corporation, General Partner

By: \_\_\_\_\_

By: Imman Ozy  
Name: Imman Ozy

Name: \_\_\_\_\_

Title: Vice President

Title: \_\_\_\_\_

Executed on \_\_\_\_\_, 2010

Executed on \_\_\_\_\_, 2010

ADDRESS FOR NOTICES

ADDRESS FOR NOTICES AND RENT

4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Director of Facilities

UPTOWN NEWPORT, LP  
c/o Shopoff Management  
8951 Research Drive  
Irvine, California 92618  
Attn: William A. Shopoff

With a copy to:

Conexant Systems, Inc.  
4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Mark Peterson, Esq., General Counsel



their respective interests hereunder (including a prospective sublessee or assignee of Tenant), to any lender or prospective lender to such party, to any governmental entity, agency or person to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Lease, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights and obligations of the parties hereunder.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that any change in Tenant's use of the Premises during the Term requires modifications or additions to the Premises in order to be in ADA compliance, Tenant agrees to make any such necessary modifications and/or additions required to be performed by applicable governmental authorities at Tenant's expense.

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

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The parties hereto have executed this Lease as of the date last set forth below.

Landlord

Tenant

UPTOWN NEWPORT, LP, a Delaware limited partnership

CONEXANT SYSTEMS, INC., a Delaware corporation

By G&I Newport Corp., a Delaware corporation, General Partner

By: 

By: \_\_\_\_\_

Name: Mark Peterson

Name: \_\_\_\_\_

Title: General Counsel

Title: \_\_\_\_\_

Executed on \_\_\_\_\_, 2010

Executed on \_\_\_\_\_, 2010

ADDRESS FOR NOTICES

ADDRESS FOR NOTICES AND RENT

4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Director of Facilities

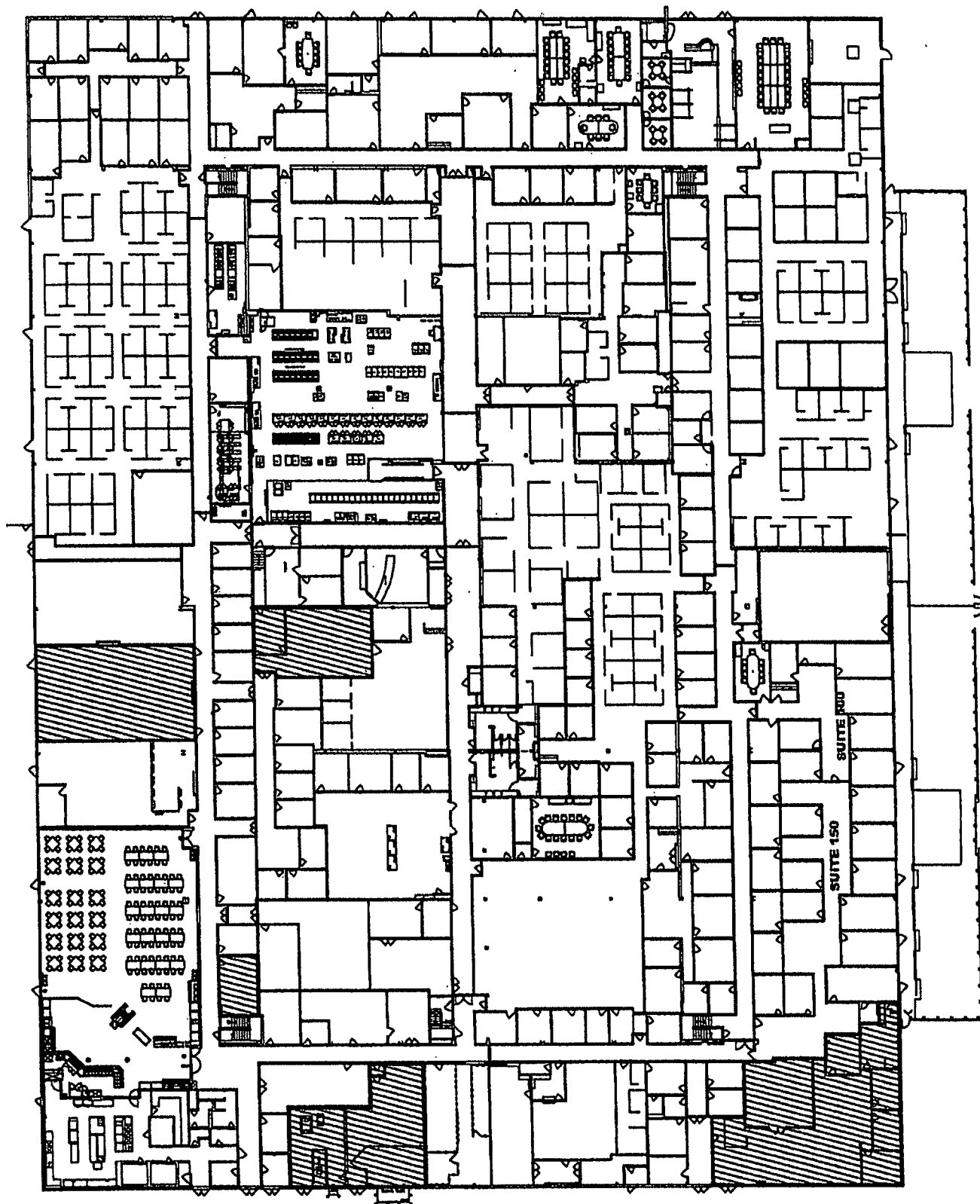
UPTOWN NEWPORT, LP  
c/o Shopoff Management  
8951 Research Drive  
Irvine, California 92618  
Attn: William A. Shopoff

With a copy to:  
Conexant Systems, Inc.  
4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Mark Peterson, Esq., General Counsel



EXHIBIT A-1  
DESIGNATION OF PREMISES

# AREAS TO LEASE AFTER CLOSE



**EXHIBIT A-2**  
**DEPICTION OF THE GENERATOR ROOM**

**EXHIBIT A**

01/06/10

1st FLOOR

Half Dome

Updated 01/06/10

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

EXHIBIT F

EXHIBIT G

EXHIBIT H

EXHIBIT I

EXHIBIT J

EXHIBIT K

EXHIBIT L

EXHIBIT M

EXHIBIT N

EXHIBIT O

EXHIBIT P

EXHIBIT Q

EXHIBIT R

EXHIBIT S

EXHIBIT T

EXHIBIT U

EXHIBIT V

EXHIBIT W

EXHIBIT X

EXHIBIT Y

EXHIBIT Z

JAZZ SEMI

IRON MOUNTAIN STORAGE 1445 SQ FT

SUITE 140

SUITE 141

SUITE 142

SUITE 143

SUITE 144

SUITE 145

SUITE 146

SUITE 147

SUITE 148

SUITE 149

SUITE 150

SUITE 151

SUITE 152

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SUITE 199

SUITE 200

ROOM 1410A

ROOM 1410B

ROOM 1410C

ROOM 1410D

ROOM 1410E

ROOM 1410F

ROOM 1410G

ROOM 1410H

ROOM 1410I

ROOM 1410J

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ROOM 1411A

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ROOM 1411E

ROOM 1411F

ROOM 1411G

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ROOM 1411J

ROOM 1411K

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ROOM 1411N

ROOM 1411O

ROOM 1411P

ROOM 1411Q

ROOM 1411R

ROOM 1411S

ROOM 1411T

ROOM 1411U

ROOM 1411V

ROOM 1411W

ROOM 1411X

ROOM 1411Y

ROOM 1411Z

ROOM 1412A

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ROOM 1412C

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ROOM 1412M

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ROOM 1412Q

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ROOM 1416B

ROOM 1416C

ROOM 1416D

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ROOM 1416F

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ROOM 1416I

ROOM 1416J

ROOM 1416K

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ROOM 1416M

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ROOM 1416O

ROOM 1416P

ROOM 1416Q

ROOM 14

**MATCHED YELLOW  
AREAS ARE  
JAZZ-SEMI**

(H01) 1st FLOOR  
HALF DOOR  
OPERATED 01/06/10

EXHIBIT B  
SITE PLAN OF THE CENTER

EXHIBIT B

# Exhibit A – Property & Hall-Dome

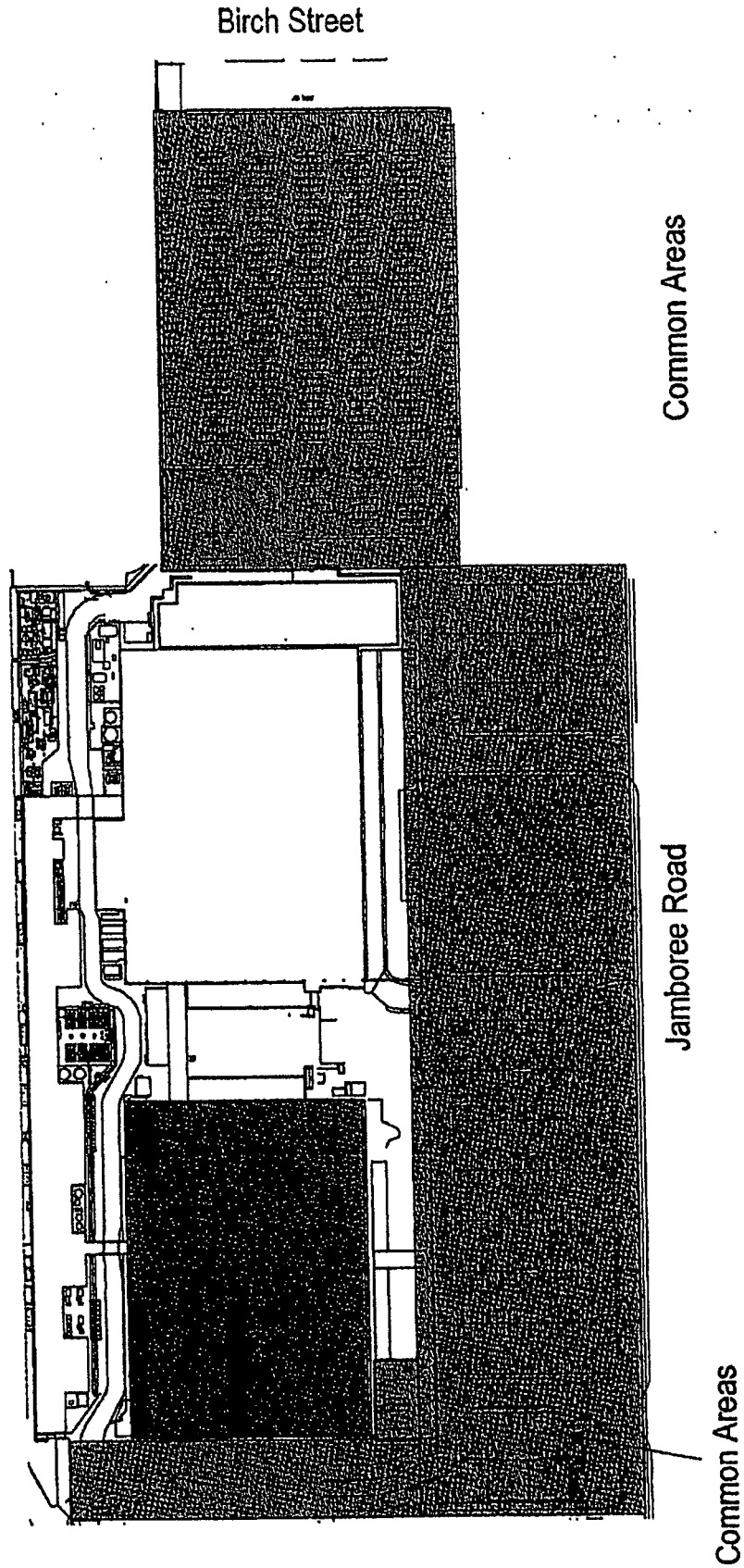


EXHIBIT C  
LIST OF HAZARDOUS MATERIALS

EXHIBIT C

## CONEXANT SYSTEMS INC

Haz Mat Storage

### DECSRIPTION

ALCOHOL - WIPES	/30 GAL DM
ALCOHOL - DIRTY	/5 GAL DF
FLUORESCENT LAMPS - STRAIGHT	/FT
FLUORESCENT LAMPS - U	/EA
BATTERIES - LEAD ACID	/LB
BATTERIES - NICAD	/LB
BATTERIES - LITHIUM	/LB
BATTERIES - ALKALINE	/LB
BALLASTS - NON PCB	/LB
SOLDER - W/ LEAD - E WASTE WIRES	/5 GAL DF
AEROSOLS - FLAMMABLE	/10 GAL DF
E-WASTE - COMPUTER/MONITOR	/pallet
GASOLINE/NEW	3 GAL
USED OIL	1 GAL
USED OIL FILTERS	2 EACH



## EXHIBIT D

### RULES AND REGULATIONS

The following Rules and Regulations shall be in effect for the Premises. Landlord reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between those regulations and the Lease, the Lease shall be controlling. Landlord shall have the right to waive one or more rules for the benefit of a particular tenant in Landlord's reasonable discretion.

1. Except with the prior written consent of Landlord, Tenant shall not conduct any retail sales in or from the Premises, or any business other than that specifically provided for in the Lease.
2. Landlord reserves the right to prohibit personal goods and services vendors from access to the Premises except upon such reasonable terms and conditions, including, but not limited to, the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Premises, the preservation of good order thereon, and the relief of any financial or other burden on Landlord occasioned by the presence of such vendors or the sale by them of personal goods or services to Tenant or its employees. If reasonably necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Premises. The term "personal goods or services vendors" means persons who periodically enter the Premises for the purpose of selling goods or services to Tenant other than goods or services which are used by Tenant only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services and shoeshining services.
3. The sidewalks, driveways and other areas of common access within the Premises shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. Neither Tenant nor its employees or contractors shall go upon the roof of the Premises without the prior written consent of Landlord.
4. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of these rules shall be borne by Tenant.
5. Intentionally Omitted.
6. In order to maintain the outward professional appearance of the Premises, all window coverings to be installed in the Premises during the Term shall be subject to Landlord's prior approval.
7. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Premises, or on the property kept therein, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Premises, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.
8. Tenant shall not sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any common areas, and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors and/or vibrations, nor shall any animals, birds or firearms be kept in or about the Premises.
9. No cooking shall be done or permitted by Tenant on the Premises, nor shall the Premises be used for lodging.
10. Tenant shall not use or keep in the Premises any kerosene, gasoline, or inflammable fluid or any other illuminating material, or use any method of heating other than that supplied by Landlord.
11. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys of offices, rooms and toilet rooms which shall have been furnished Tenant or which Tenant shall have had made.
12. Tenant shall see that the windows and doors of the Premises are closed and securely locked before leaving the Premises and shall exercise care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Premises, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Tenant shall make good all injuries sustained by Landlord.

EXHIBIT E  
JANITORIAL SPECIFICATIONS

## **Janitorial Duties**

### **Evening Janitors: Daily Mon thru Thurs, Sun**

**Daily:** Office areas, conference rooms, kitchen areas, restrooms and common areas

Cleaning and stocking restrooms

Removal of trash in the office area

Vacuuming of carpeted areas nightly

Sweep and mop floors nightly.

Coffee pots washed

Partition glass spot cleaned nightly.

**Dusting** is performed 3 times per week (crew only dusts around things on desks and furniture.

#### **Weekly:**

Detail one floor per building per week.

Pour water with disinfectant through the drains in the restrooms.

#### **Monthly:**

Shampooed carpeted areas

Strip and wax all floors

Partition glass washed monthly

Air diffusers

Clean baseboards

Note: Refrigerators cleaned upon request.

**Janitorial / Janitorial Supervisor.** Sunday XXXam to XXX am. Monday thru Thursday XXXpm to XXXpm.

**Waxer for Carpets & Flooring.** Sunday XXXam to XXXpm. Monday thru Thursday into Early Friday Morning XXXpm to XXXpm.

### **DAY PORTER: Daily Mon - Fri**

Sweep and clean around all ashtrays . Empty ashtrays and trash cans at the main entrances

Remove paper from recycle bins and the "to be shredded bins"

Check (3 times per day) restrooms. Clean and re-stock as needed

Empty recycle "bottle and can " bins

Sweep the park area and building entrances

Place flags in morning and remove in afternoon.

Sweep and mop laboratories

Dust and mop stairwells

Clean and wash trash cans at main entrance (once a week)

Clean and wipe down lobby chairs and desks and all windows (twice a day)

Clean and disinfect elevator controls, lobby and rest room door handles (three times a day).

Dust all lobby surfaces including wall lamps (twice a day)

**EXHIBIT F**

**LIST OF THE INVENTORY**

**EMERGENCY DIESEL GENERATOR (indoor generator room)**

**TRANSFER SWITCH (indoor generator room)**

**All furniture, fixtures and equipment in the Premises, including any Optioned Space**

# STANDARD INDUSTRIAL LEASE-MULTI-TENANT

## 1. Basic Provisions (the "Basic Provisions").

1.1 **Parties:** This Lease (the "Lease"), dated for reference purposes only December 22, 2010, is made by and between UPTOWN NEWPORT, LP, a Delaware limited partnership ("Landlord"), and Conexant Systems, Inc., a Delaware corporation ("Tenant").

### 1.2 Premises:

(a) That certain real property, including all improvements therein or to be provided by Landlord under the terms of this Lease, consisting of approximately 5,923 square feet of rentable area improved as a data center located at 4311 Jamboree Road, Newport Beach, California 92660 as depicted on Exhibit A-1 hereto (the "Premises"). (See Paragraph 2 for further provisions.) The Premises are a portion of a building (the "Building"). The Premises, the Building, the Common Areas (as defined in Paragraph 2.3 below), and the land upon which the same are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Center," as more particularly depicted on the site plan attached hereto as Exhibit B. As used herein, the term "Tenant's Share" means zero percent (0%), which amount is not subject to change.

(b) If and to the extent the same is not completed prior to the Commencement Date, Landlord and Tenant shall cooperate thereafter to obtain a signed amendment to the lease for a portion of the Premises entered into by Tenant and Newport Fab, LLC, a Delaware limited liability company ("Jazz") doing business as Jazz Semiconductor ("Jazz Half Dome Lease") and assigned by Tenant to Landlord as of the Commencement Date, which has the effect of removing from such Jazz Half Dome Lease the portion of the Premises covered thereby (consisting of approximately 748 square feet; herein, the "Jazz Data Center Space"), so that a separate sublease can be executed between Tenant and Jazz with respect to the Jazz Data Center Space. Pending execution of such amendment and new sublease and so long as this Lease remains in full force and effect, Tenant shall (i) lease the entire Premises subject to Jazz's rights under the Jazz Half Dome Lease, and (ii) observe and perform those obligations of Landlord under the Jazz Half Dome Lease (as successor landlord) arising from and after the Commencement Date which pertain directly and exclusively to the Jazz Data Center Space. For the avoidance of doubt, Tenant does not and shall not be deemed to have assumed any of Landlord's obligations under Jazz Half Dome Lease with respect to the balance of the premises covered thereby (i.e., excluding the Jazz Data Center Space) on account of Tenant's obligations pursuant to the immediately preceding sentence. All rent payable by Jazz on account of the Jazz Data Center Space is hereby assigned by Landlord to Tenant effective as of the Commencement Date; in connection therewith, (x) Landlord shall remit and pay over to Tenant any such rental received by Tenant promptly upon receipt by Landlord, and (y) at or promptly following the Commencement Date, Landlord shall notify Jazz in writing that such rental is to be paid directly to Tenant. Landlord acknowledges that the Excluded Property (as defined in that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of December 9, 2010, by and between Landlord, as "Buyer," and Tenant, as "Seller," herein, as amended, the "Agreement") is located in the Premises and shall remain the property of Tenant at all times.

(c) In the event Tenant surrenders a portion of the Premises pursuant to Paragraph 1.3(a) below and Landlord thereafter enters into a lease or other form of occupancy agreement with a Future Data Space Tenant (as defined in Paragraph 7.6 below) for any remaining portion of such surrendered premises, the areas identified on Exhibit A-2 hereto consisting in the aggregate of 767 rentable square feet (collectively, the "Support Rooms") shall thereupon be considered Common Areas (as defined in Paragraph 2.3 below) and shall not thereafter constitute a part of the Premises, in which event Base Rent shall be adjusted accordingly (at the applicable rate provided in Paragraph 1.4 below) to reflect the reduced rentable square footage of the Premises effective upon the earlier of the commencement date of the lease between Landlord and the Future Data Space Tenant or the date such Future Data Space Tenant is given early occupancy of any portion of such surrendered premises.

1.3 **Term:** The term of this Lease (the "Term") shall commence on the "Commencement Date" determined pursuant to the immediately succeeding sentence and ending on March 24, 2015 (the "Expiration Date"). The Commencement Date of this Lease shall be the date of the "Close of Escrow" as defined in the Agreement. Notwithstanding anything to the contrary in this Lease, (a) Tenant shall have the right from time to time, on at least thirty (30) days' notice to Landlord given within the six (6) month period commencing with the Commencement Date, to terminate the Lease with respect to portions of the Premises (provided that in no event shall Tenant have the right pursuant to this subparagraph (a) to terminate the Lease with respect to any space occupied by Jazz and by more than 2,423 square feet of rentable area, in the aggregate), which notice shall specify the portion of the Premises being surrendered by Tenant and the date of surrender (which must be within the six (6) month period specified above) and (b) each of Landlord and Tenant shall have the right, upon at least twelve (12) months notice delivered to the other on or after the day before the second (2<sup>nd</sup>) anniversary of the Commencement Date, to terminate the Lease with respect to the entire Premises (only). In the event of any reduction in the size of the Premises pursuant to a right granted herein or otherwise as agreed to by Landlord and Tenant (other than a termination of the Lease with respect to the entire Premises), the party initiating the reduction shall be responsible for demising the Premises, including without limitation with respect to installing a controlled access system ("Demising Work"). Each party acknowledges and agrees that the Demising Work will be performed prior to the delivery of possession of the surrendered space to Landlord, notwithstanding that the Lease may have terminated with respect thereto pursuant to subparagraph (a) above.

1.4 **Base Rent:** \$79,960.50 per month (the "Base Rent") (\$13.50 per rentable square foot per month), payable on the 1st day of each month commencing on the Commencement Date; provided, however, upon any surrender of a portion of the Premises pursuant to Paragraph 1.3(a) above, Base Rent thereafter shall be recalculated at \$14.50 per rentable square foot per month and shall be reduced, pro rata, pursuant to Paragraph 1.2(c) above and/or upon any further surrender of a portion of the Premises pursuant to such Paragraph 1.3(a). (See Paragraph 4 for further provisions.)

1.5 **Base Rent Paid Upon Execution:** The product of \$79,960.50 and a fraction, the numerator of which is the number of days from and after the Commencement Date in the month in which the Commencement Date occurs and the denominator is the total number of days in the month in which the Commencement Date occurs, as Base Rent for the period from the Commencement Date to the last day of the month in which the Commencement Date occurs.

1.6 N/A

1.7 **Permitted Use:** Data center and any other lawful use. (See Paragraph 6 for further provisions.)

1.8 **Real Estate Brokers:** Tenant represents and warrants that it has not been represented by any broker other than Jones Lang LaSalle in connection with the sale of the Building in which the Premises are located, whose commission shall be payable on and subject to the terms and conditions set forth and/or referred to in the Agreement. Tenant hereby agrees to indemnify, defend and hold harmless Landlord from the claims of any other broker claiming under or through it in connection with the transaction which is the subject of this Lease.

1.9 N/A

1.10 **Exhibits:** Attached hereto are Exhibits A through E, all of which constitute a part of this Lease and are incorporated herein by this reference as if set forth in full herein.

## 2. Premises, Parking and Common Areas.

2.1 **Premises.** Landlord hereby leases to Tenant and Tenant leases from Landlord the Premises for the term, at the rental, and upon all of the conditions set forth herein.

2.2 **Vehicle Parking.** Tenant shall be entitled to twelve (12) vehicle parking spaces, unreserved and unassigned, free of charge for the entire Term, on those portions of the Common Areas designated by Landlord for parking. Tenant shall not use more parking spaces than said number. Said parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."

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

2.2.2 If Tenant permits or allows any of the prohibited activities described in Paragraph 2.2 of this Lease, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

2.3 **Common Areas-Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Center that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and of other tenants of the Center and their respective employees, suppliers, shippers, customers and invitees, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas.

2.4 **Common Areas - Tenant's Rights.** Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, on a long-term basis, in the Common Areas. Any temporary storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

2.5 **Common Areas-Rules and Regulations.** Landlord or such other person(s) as Landlord may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by and conform to all such rules and regulations, and to cause its employees, suppliers, shippers, customers, and invitees to so abide and conform. Landlord shall not be responsible to Tenant for the non-compliance with said rules and regulations by other tenants of the Center.

2.6 **Common Areas-Changes.** Landlord shall have the right, in Landlord's reasonable discretion, from time to time:  
(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways;

(b) To close temporarily any of the Common Areas for maintenance purposes, so long as reasonable access to the Premises remains available;

(c) To use the Common Areas while engaged in making routine repairs or alterations to the Center, or any portion thereof; and

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

Notwithstanding the foregoing, except in the event of an emergency (i.e., a situation involving an imminent risk of personal injury or material property damage), Landlord may not make any change to the Common Areas which would materially and adversely affect the operation by Tenant of its business in the Premises, including without limitation Tenant's ability to access the Premises.

3. **Term.**

3.1 **Term.** The term and Commencement Date of this Lease shall be as specified in Paragraph 1.3 of the Basic Lease Provisions.

3.2 **Intentionally Omitted.**

3.3 **Intentionally Omitted.**

4. **Rent.**

4.1 **Base Rent.** Commencing on the Commencement Date, Tenant shall pay to Landlord Base Rent for the Premises, in advance on the first day of each month during the Term, without any offset or deduction. Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the Base Rent. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing. Notwithstanding anything to the contrary in this Lease, in the event that, as a result of Landlord's negligence or willful misconduct or breach of this Lease, utility service to the Premises is interrupted for in excess of five (5) consecutive days, then Base Rent shall abate from and after such fifth (5th) day until service is restored.

4.2 **Operating Expenses.** Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share, as hereinafter defined, of all Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease.

(a) "Tenant's Share" is defined, for purposes of this Lease, in Paragraph 1.2 above.

(b) "Operating Expenses" shall mean the aggregate of all costs and expenses payable by Landlord in connection with the operation and maintenance of the Premises, Building, Center and Common Areas, including, but not limited to, (i) the cost of landscaping, repaving, resurfacing, repairing, replacing, painting, lighting, cleaning, removing trash, janitorial services, security services and other similar items; (ii) the total cost of compensation and benefits of personnel to implement the services referenced herein; (iii) cost of any insurance obtained by Landlord in connection with the Building and Center, including, but not limited to, the insurance required to be obtained by Landlord pursuant to this Lease; (iv) the cost of operating, repairing and maintaining life, safety and access systems, including, without limitation, sprinkler systems; (v) the cost of monitoring services, if provided by Landlord, including, without limitation, any monitoring or control devices used by Landlord in regulating the parking areas; (vi) the cost of water, electricity, gas and any other utilities; (vii) legal, accounting and consulting fees and expenses; (viii) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance and repair of the Premises, Center, Building or Common Areas; (ix) energy allocation, energy use surcharges or environmental charges; (x) expenditures, costs, fees, assessments and other charges paid by Landlord in connection with traffic or energy management programs applicable to the Center in connection with Landlord's compliance with laws or other governmental requirements; (xi) municipal inspection fees or charges; (xii) any other costs or expenses incurred by Landlord under this Lease which are not otherwise reimbursed directly by tenants; (xiii) the amount charged by any management firm (who may be an affiliate of Landlord) contracted by Landlord to provide any or all of the foregoing services; (xiv) costs and fees charged to Landlord in connection with membership in energy conservation associations; (xv) Real Property Taxes (as defined in Paragraph 14.2); and (xvi) cost of purchasing, installing and removing seasonal decorations at the Center. The computation of Operating Expenses shall be made in accordance with generally accepted accounting principles.

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

(d) Tenant's Share of Operating Expenses shall be payable by Tenant in advance monthly on the same day as the Base Rent is due hereunder.

4.3 **Additional Rent; Rent.** As used in this Lease, the term "rent" shall mean Base Rent, Tenant's Share of Operating Expenses and additional rent, and the term "additional rent" shall mean personal property taxes and all other amounts payable by Tenant to Landlord pursuant to this Lease other than Base Rent and Tenant's Share of Operating Expenses. Where no other time is stated herein for payment, payment of any amount due from Tenant to Landlord hereunder shall be made within thirty (30) days after Tenant's receipt of Landlord's invoice or statement therefor.

5. **Intentionally Omitted.**

6. **Use.**

6.1 **Use.** The Premises shall be used and occupied only for the purpose set forth in Paragraph 1.7 and for no other purpose. Tenant shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to, neighboring premises or properties.

6.2 **Compliance with Covenants, Conditions and Building Restrictions.**

(a) Tenant has been in possession of the Premises prior to the Commencement Date. As of the date hereof, Tenant has not received any notice that the improvements on the Premises do not comply with any applicable covenant or restriction of record or applicable building code, regulation or ordinance in effect on the Commencement Date. Notwithstanding the foregoing, if and to the extent that the improvements on the Premises do not comply with any applicable covenant or restriction of record or applicable building code, regulation or ordinance in effect on the Commencement Date (other than those which apply because of the nature of Tenant or the particular use to which Tenant will put the Premises during the Term or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made by Tenant during the Term) then Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify the same at Landlord's expense.

(b) Except as provided in Paragraph 6.2(a) Tenant shall, at Tenant's expense, as and when required by applicable governmental authorities, promptly comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the Term or any part of the Term hereof, relating in any manner to the Premises and the

occupation and use by Tenant of the Premises. Tenant shall not use or permit the use of the Premises or the Common Areas in any manner that will create waste or a nuisance or shall disturb other occupants of the Center.

#### 6.3 Condition of Premises.

(a) Tenant is in possession of the Premises as of the Commencement Date and, accordingly, nothing is required of Landlord in connection with the delivery of the Premises to Tenant. As of the date hereof, Tenant is not aware that the plumbing, fire sprinkler system, lighting, air conditioning, heating, or loading doors, if any, in the Premises as of the Commencement Date are not in good operating condition on the Commencement Date. Notwithstanding the foregoing, if the plumbing, fire sprinkler system, lighting, air conditioning, heating, or loading doors, if any, in the Premises as of the Commencement Date shall not be in good operating condition on the Commencement Date, Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify same at Landlord's expense.

(b) Except as otherwise provided in subparagraph (a) above, Tenant hereby accepts the Premises in their condition existing as of the Lease Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the condition of the Premises, or the present or future suitability of the Premises, the Building or the Center for the conduct of Tenant's business.

#### 6.4 Hazardous Materials.

(a) Tenant covenants and agrees that it shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises by Tenant or Tenant's agents, employees, contractors, invitees or any other party for whom Tenant is responsible ("Tenant's Agents"). The foregoing covenant shall not extend to the materials described on Exhibit C to this Lease or to materials typically found or used in general office applications so long as (i) such materials and any equipment which generates such materials are maintained only in such quantities as are reasonably necessary for Tenant's operations in the Premises, (ii) such materials are used strictly in accordance with the manufacturers' instructions therefor, (iii) such materials are not disposed of in or about the Premises in a manner which would constitute a release or discharge thereof, and (iv) all such materials and any equipment which generates such materials are removed from the Premises by Tenant upon the expiration or earlier termination of this Lease. In addition, the foregoing shall not apply to such other Hazardous Materials as are reasonably necessary to enable Tenant to conduct its business on the Premises provided Tenant gives Landlord written notice of any new Hazardous Materials Tenant brings onto the Premises within thirty (30) days after commencing the use thereof. Any use, storage, generation, disposal, release or discharge by Tenant of Hazardous Materials in or about the Premises as is permitted hereunder shall be carried out in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Moreover, no hazardous waste resulting from any operations by Tenant shall be stored or maintained by Tenant in or about the Premises for more than ninety (90) days prior to removal by Tenant. Tenant shall, annually within thirty (30) days after Tenant's receipt of Landlord's written request therefor, provide to Landlord a written list identifying any Hazardous Materials then maintained by Tenant in the Premises, the use of each such Hazardous Material and the approximate quantity of each such Hazardous Material so maintained by Tenant, together with written certification by Tenant stating, in material, that neither Tenant nor any person for whom Tenant is responsible has released or discharged any Hazardous Materials in or about the Premises.

(b) In the event that Tenant proposes to conduct any use or to operate any equipment which will or may utilize or generate a Hazardous Material other than as specified in subparagraph (a) above, Tenant shall first in writing submit such use or equipment to Landlord for approval. No approval by Landlord shall relieve Tenant of any obligation of Tenant pursuant to this Paragraph 6.4, including the removal and clean-up and indemnification obligations imposed upon Tenant by this Paragraph 6.4. Tenant shall, within five (5) days after receipt thereof, furnish to Landlord copies of all notices or other communications received by Tenant with respect to any actual or alleged release or discharge of any Hazardous Material in or about the Premises and shall, whether or not Tenant receives any such notice or communication, notify Landlord in writing of any discharge or release of Hazardous Material by Tenant or anyone for whom Tenant is responsible in or about the Premises. In the event that Tenant is required to maintain any Hazardous Materials license or permit in connection with any use conducted by Tenant or any equipment operated by Tenant in the Premises, copies of each such license or permit, each renewal or revocation thereof and any communication relating to suspension, renewal or revocation thereof shall be furnished to Landlord within five (5) days after receipt thereof by Tenant. Compliance by Tenant with the two immediately preceding sentences shall not relieve Tenant of any other obligation of Tenant pursuant to this Paragraph 6.4.

(c) Upon any violation of the foregoing covenants during the Term, Tenant shall be obligated, at Tenant's sole cost, to clean-up and remove from the Premises all Hazardous Materials introduced into the Premises by Tenant or any person or entity for whom Tenant is responsible. Such clean-up and removal shall include all testing and investigation required by any governmental authorities having jurisdiction and preparation and implementation of any remedial action plan required by any governmental authorities having jurisdiction. All such clean-up and removal activities of Tenant shall, in each instance, be conducted to the satisfaction of all governmental authorities having jurisdiction. Landlord's right of entry pursuant to Paragraph 32 shall include the right to enter and inspect the Premises for violations of Tenant's covenants herein.

(d) Tenant shall indemnify, defend and hold harmless Landlord, its partners, and its and their successors, assigns, partners, officers, employees, agents, lenders and attorneys from and against any and all claims, liabilities, losses, actions, costs and expenses (including attorneys' fees and costs of defense) incurred by such indemnified persons, or any of them, as the result of (i) the introduction into or about the Premises by Tenant or anyone for whom Tenant is responsible during the Term of any Hazardous Materials, (ii) the usage, storage, maintenance, generation, disposition or disposal by Tenant or anyone for whom Tenant is responsible of Hazardous Materials in or about the Premises during the Term, (iii) the discharge or release in or about the Premises by Tenant or anyone for whom Tenant is responsible of any Hazardous Materials introduced during the Term, (iv) any injury to or death of persons or damage to or destruction of property resulting from the use, introduction, maintenance, storage, generation, disposal, disposition, release or discharge by Tenant or anyone for whom Tenant is responsible of Hazardous Materials in or about the Premises during the Term, and (v) any failure of Tenant or anyone for whom Tenant is responsible to observe the foregoing covenants of this Paragraph 6.4 during the Term.

(e) Upon any violation of the foregoing covenants, Landlord shall be entitled to exercise all remedies available to a landlord against a defaulting tenant, including, but not limited to, those set forth in Paragraph 13.2. Without limiting the generality of the foregoing, Tenant expressly agrees that upon any such violation Landlord may, at its option, (i) immediately terminate this Lease or (ii) continue this Lease in effect until compliance by Tenant with its clean-up and removal covenant notwithstanding any earlier expiration date of the Term. No action by Landlord hereunder shall impair the obligations of Tenant pursuant to this Paragraph 6.4.

(f) As used in this Paragraph 6.4, "Hazardous Materials" is used in its broadest sense and shall include any petroleum based products, pesticides, paints and solvents, polychlorinated biphenyl, lead, cyanide, mold, medical waste, DDT, acids, ammonium compounds and other chemical products and any material or material defined or designated as hazardous or toxic, or other similar term, by any federal, state or local environmental statute, regulation, or ordinance affecting the Premises presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, including, but not limited to, the following statutes: (i) Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sec. 6901 *et seq.*, (ii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9601 *et seq.*, (iii) Clean Air Act, 42 U.S.C. Sec. 7401-7626, (iv) Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. Sec. 1251 *et seq.*, (v) Insecticide, Fungicide, and Rodenticide Act (Pesticide Act of 1987), 7 U.S.C. Sec. 135 *et seq.*, (vi) Toxic Materials Control Act, 15 U.S.C. Sec. 2601 *et seq.*, (vii) Safe Drinking Water Act, 42 U.S.C. Sec. 300(f) *et seq.*, (viii) National Environmental Policy Act (NEPA) 42 U.S.C. Sec. 4321 *et seq.*, (ix) Refuse Act of 1899, 33 U.S.C. Sec. 407 *et seq.*, and (x) California Health and Safety Code Sec. 25316 *et seq.*

(g) By its signature to this Lease, Tenant confirms that it has conducted its own examination of the Premises and the Center with respect to Hazardous Materials and accepts the same "AS IS." Tenant acknowledges that incorporation of any material containing asbestos into the Premises during the Term is absolutely prohibited. Tenant agrees, represents and warrants that, during the Term, it shall not incorporate or permit or suffer to be incorporated, knowingly or unknowingly, any material containing asbestos into the Premises.

6.5 Tenant's Compliance with Law. During the Term, Tenant shall not use the Premises in any way (or permit or suffer anything to be done in or about the same) which will conflict with any law, statute, ordinance or governmental rule or regulation or any covenant, condition or restriction (whether or not of public record) affecting the Premises, now in force or which may hereafter be enacted or promulgated, including, the provisions of any city or county zoning codes regulating the use thereof. Tenant shall, at its sole cost and expense, as and when required by applicable governmental authorities or board, conduct its business in the Premises in compliance with (i) all laws, statutes, ordinances and governmental rules and regulations, now in force or which may hereafter be in force, applicable to Tenant or its use of or business or operations in the Premises, including without limitation Prop. 65, if applicable, (ii) all requirements, and other covenants, conditions and restrictions, now in force



or which may hereafter be in force, which affect the Premises, and (iii) all requirements, now in force or which may hereafter be in force, of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises (collectively, "Applicable Laws"). The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, governmental rule or regulation or any requirement, covenant, condition or restriction in the conduct of its business in the Premises shall be conclusive of the fact as between Landlord and Tenant. It is expressly understood and agreed that Tenant is accepting the Premises "AS IS", in its present state and condition, without any representations or warranties from Landlord of any kind whatsoever, either express or implied, with respect to the Premises, including compliance of the Premises with The Americans With Disabilities Act, Title 24 and the rules and regulations promulgated thereunder, as amended from time to time (collectively, the "ADA"). If Tenant's use of the Premises or operations therein during the Term cause Landlord to incur any obligation under the ADA, as reasonably determined by Landlord, then Tenant shall reimburse Landlord for Landlord's costs and expenses in connection therewith. If Tenant's initial use of the Premises is not a "place of public accommodation" within the meaning of the ADA, then Tenant may not thereafter change the use of the Premises to cause the Premises to become a "place of public accommodation." In the event that Tenant desires or is required hereby to make alterations, improvements, additions or Utility Installations (as defined in Paragraph 7.3(a) below) to the Premises in order to satisfy its obligations under the ADA, then all such alterations, improvements, additions or Utility Installations shall be subject to Paragraph 7.3 below, and shall be performed at Tenant's sole cost and expense. Tenant shall be responsible for insuring that the Premises and Tenant's use thereof and operations therein during the Term fully and completely comply with the ADA.

**6.6 Inspection; Compliance.** Landlord and Landlord's lender(s) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Laws (as defined in Paragraph 6.5), and to employ experts and/or consultants in connection therewith and/or to advise Landlord with respect to Tenant's activities, including, but not limited to, the installation, operation, use, monitoring, maintenance or removal of any Hazardous Material or storage tank on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a breach of this Lease has occurred and has continued after notice and expiration of the applicable cure period, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination by Tenant, in which case Tenant shall upon request reimburse Landlord or Landlord's lender, as the case may be, for the costs and expenses of such inspections with interest at the rate set forth in Paragraph 13.5(a) below accruing from and after such cost or expense was incurred by Landlord or Landlord's lender through the date of payment in full thereof.

**7. Maintenance, Repairs, Alterations and Common Area Services.**

**7.1 Landlord's Obligations.** Subject to the provisions of Paragraphs 4.2 (Operating Expenses), 6 (Use), 7.2 (Tenant's Obligations) and 9 (Damage or Destruction) and, subject to Paragraph 8.6 below, except for damage caused during the Term by any negligent or intentional act or omission of Tenant, Tenant's employees, suppliers, shippers, customers, or invitees, in which event (subject to Paragraph 8.6 below) Tenant shall repair the damage, Landlord, at Landlord's expense shall keep in good condition and repair the foundations, exterior walls, structural condition of interior bearing walls, the heating, ventilating and air conditioning system outside the Premises but serving the Premises in addition to other portions of the Building, the lighting, electrical and plumbing facilities outside the Premises serving the Premises (including, by way of example only and not of limitation, the central plant providing chilled water for Tenant's HVAC) and roof of the Premises, as well as the parking lots, walkways, driveways, landscaping, fences, signs and utility installations of the Common Areas and all parts thereof, as well as providing the services for which there is an Operating Expense pursuant to Paragraph 4.2. Landlord shall not, however, be obligated to paint the interior surface of exterior walls. Landlord shall have no obligation to make repairs under this Paragraph 7.1 until a reasonable time after receipt of written notice from Tenant of the need for such repairs. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair. Landlord shall not be liable for damages or loss of any kind or nature by reason of Landlord's failure to furnish any Common Area services when such failure is caused by accident, breakage, repairs, strikes, lockout, other labor disturbances or disputes of any character or any other cause beyond the reasonable control of Landlord.

**7.2 Tenant's Obligations.**

(a) Subject to the provisions of Paragraphs 6 (Use), 7.1 (Landlord's Obligations), 7.6 (Tenant's Data Center Equipment) and 9 (Damage or Destruction), Tenant, at Tenant's expense, shall keep in good order, condition and repair the Premises and every part thereof (whether or not the damaged portion of the Premises or the means of repairing the same are reasonably or readily accessible to Tenant) including, without limiting the generality of the foregoing, all plumbing, electrical and lighting facilities and equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, ceilings, windows, doors, plate glass and skylights located within the Premises.

(b) If Tenant fails to perform Tenant's obligations under this Paragraph 7.2 or under any other paragraph of this Lease, Landlord may enter upon the Premises after prior written notice to Tenant (except in the case of emergency (i.e., a situation involving a threat of property damage or personal injury), in which case no notice shall be required), perform such obligations on Tenant's behalf and put the Premises in good order, condition and repair, and the cost thereof together with interest thereon from and after Landlord incurs the same at the maximum rate then allowable by law shall be due and payable as additional rent to Landlord together with Tenant's next Base Rent installment.

(c) On the last day of the Term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Notwithstanding anything to the contrary otherwise stated in this Lease, subject to Landlord's right to require Tenant to remove the same pursuant to Paragraph 7.3(a) below, Tenant shall leave all "Utility Installations" (as defined in such Paragraph 7.3(a)) in the Premises.

(d) Notwithstanding anything to the contrary in this Lease, Tenant shall not have any obligation to make any repair or replacement in the Premises or the Center which is capital in nature and, if such repair or replacement is necessary to enable Tenant to conduct its business in the Premises and Tenant determines it would be burdensome on Tenant to make such repair or replacement, Tenant shall have the right to terminate this Lease upon at least thirty (30) days prior written notice to Landlord, which notice shall specify the desired termination date and the cost of performing the necessary repair or replacement, accompanied by reasonable documentary evidence as to the cost thereof. Landlord shall have the right, within ten (10) business days after receipt of Tenant's notice, to agree to pay all or a portion of the cost of the repair or replacement and, if Landlord elects to pay all of the cost of the replacement or repair, the Lease shall not terminate and Landlord shall pay the actual cost of the repair or replacement, up to the amount specified in Tenant's notice. If Landlord does not elect to pay the entire cost of the repair or replacement, or makes no election with respect thereto within such ten (10) business day period, then the Lease shall terminate in accordance with Tenant's notice. If Tenant does not elect to terminate the Lease as a result of any such capital repair or replacement, then, subject to the second sentence of this subparagraph 7.2(d), Tenant shall be required to make any such capital repair and/or replacement if and to the extent necessary to comply with Applicable Requirements and/or with the requirements of any insurance company providing coverage to Tenant or Landlord and/or if the failure to make the same presents a situation involving a threat of property damage or personal injury.

**7.3 Alterations and Additions.**

(a) Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, or the Center during the Term, except for interior, nonstructural alterations to the Premises, consistent in all respects with the initial tenant improvements made in the Premises, not exceeding \$200,000 in cumulative costs during the term of the Lease. In any event, whether or not in excess of \$200,000 in cumulative cost, Tenant shall make no change or alteration to the exterior (or visible from the exterior) of the Premises, the Building or the Center without Landlord's prior written consent. As used in this Paragraph 7.3, the term "Utility Installation" shall mean carpeting, window coverings, air lines, telephone, data and other cabling, power panels, electrical distribution systems, lighting fixtures, space heaters, air condition, plumbing and fencing. Should Tenant make any alterations, improvements, additions or Utility Installations without the prior approval of Landlord if the same is required hereunder, Landlord may, at the end of the Term, require that Tenant remove any or all of the same.

(b) Any alteration, improvement, addition or Utility Installations in or about the Premises or the Center that Tenant shall desire to make and which requires the consent of the Landlord shall be presented to Landlord in written form, with proposed detailed plans and the name of the contractor Tenant proposes to perform the same. If Landlord shall give its consent, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work and the compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished during the Term to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises, or the Center, or any interest therein. Tenant shall give Landlord not less than twenty (20) days' notice prior to the commencement of any work in the

Premises, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Building as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Landlord or the Premises or the Center, upon the condition that Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to such contested lien, claim or demand indemnifying Landlord against liability for the same and holding the Premises and the Center free from the effect of such lien or claim. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in participating in such action if Landlord shall decide it is to Landlord's best interest to do so.

(d) All alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Tenant), which may be made on the Premises during the Term shall be the property of Landlord and shall remain upon and be surrendered with the Premises at the expiration of the Term, unless Landlord is permitted to and requires their removal pursuant to Paragraph 7.3(a). Notwithstanding the provisions of this Paragraph 7.3(d), Tenant's machinery and equipment, other than Utility Installations and other than that which is affixed to the Premises so that it cannot be removed without irreparable damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Paragraph 7.2.

(e) Tenant shall surrender the Premises by the end of the last day of the Term or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, ordinary wear and tear excepted. Except as otherwise agreed or specified in writing by Landlord, the Premises, as surrendered, shall include the Utility Installations installed during the Term. The obligation of Tenant shall include the repair of any damage occasioned by the installation, maintenance or removal during the Term of Tenant's trade fixtures, furnishings, equipment, and alterations and/or Utility Installations made during the Term, as well as the removal of any storage tank installed by or for Tenant during the Term, and the removal, replacement, or remediation of any soil, material or groundwater contaminated by Tenant during the Term, all as may then be required by Applicable Law and/or good practice. Tenant's trade fixtures shall remain the property of Tenant and shall be removed by Tenant subject to its obligation to repair and restore the Premises per this Lease.

(f) Notwithstanding anything to the contrary herein, Tenant shall have the right, at its sole cost and expense, to maintain any of Tenant's existing heating, ventilating and air conditioning equipment, satellite dish(es) and antenna(e) together with all wiring or other connections thereof (collectively, the "Roof Items"), on the roof of the Building. In the event that, after the Commencement Date, Landlord permits installation of a similar system on the roof of a Building or elsewhere in the Center by any person, Landlord shall require such other person the obligation at no cost to Tenant to relocate or modify its installation to eliminate any interference with the Roof Items. In the event Landlord contemplates roof repair or requires access which requires temporary removal or relocation of the Roof Items, or which may result in an interruption in Tenant's telecommunication services, Landlord shall, if practicable, notify Tenant at least thirty (30) days prior to such contemplated work in order to allow Tenant to make other arrangements for such services. The cost or removal and re-installation of any Roof Items affected thereby shall be borne by Tenant. Tenant or its agents or representatives shall, at all times during business hours, be permitted use of and access to the roofs for purposes of examination and repair of the Roof Items.

7.4 **Utility Additions.** Landlord reserves the right to install new or additional utility facilities throughout the Building and the Common Areas for the benefit of Landlord or Tenant, or any other tenant of the Center, including, but not by way of limitation, such utilities as plumbing, electrical systems, security systems, communication systems, and fire protection and detection systems, so long as such installations do not unreasonably interfere with Tenant's use of the Premises.

7.5 **Interruption in Service.** Notwithstanding anything to the contrary in this Lease, (a) Landlord shall notify Tenant in writing of all planned building utility interruptions or shutdowns for maintenance or any other reason at least thirty (30) days in advance and (b) Landlord shall be responsible to compensate Tenant for all costs and expenses (including depreciation) incurred by Tenant for use of the emergency backup system and all required permits therefor during any period of interruption in service, whether planned by Landlord or involuntary or emergency in nature, and/or Tenant may offset such costs and expenses against Base Rent until Tenant is compensated in full therefor.

7.6 **Tenant's Data Center Equipment.** Tenant will permit a future tenant occupying a portion of the Premises surrendered by Tenant in accordance with Paragraph 1.3(a) above ("Future Data Space Tenant") to share in the use of Tenant's equipment located therein which is not dedicated exclusively to Tenant's and/or Jazz' use and/or to the extent the same will not interfere with the anticipated capacity and power allocation required by Tenant and/or Jazz (the "Data Center Equipment") so long as (a) both Data Tenant and such Future Data Space Tenant have entered into an agreement reasonably acceptable to Tenant which obligates such Future Data Space Tenant to reimburse Tenant for its prorata share of all maintenance and operating costs incurred by Tenant with respect to such Data Center Equipment, (b) Tenant has reasonably determined that the power requirements of such new Future Data Space Tenant do not exceed the then-anticipated capacity required by Tenant and Jazz for the use of the Premises for the Permitted Use and (c) the Future Data Space Tenant is not in breach under the agreement contemplated in subparagraph (a) above. Landlord hereby agrees that Tenant shall not be liable for injury to Landlord's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Landlord, Landlord's employees, invitees, customers, or any other person in or about the Premises or the Center, nor shall Tenant be liable for injury to the person of Landlord, Landlord's employees, invitees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Center, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Landlord, except if and to the extent the same is caused by a breach of this Lease by Tenant or by Tenant's or Tenant's agent's, employee's, contractor's or invitee's negligence or willful misconduct. Tenant shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Center. Notwithstanding Tenant's negligence, willful misconduct or breach of this Lease, Tenant shall under no circumstances be liable for consequential damages, or for injury to Landlord's business or for any loss of income or profit therefrom or the business or for any loss of income or profit therefrom of any Future Data Center Space Tenant.

## **8. Insurance; Indemnity.**

8.1 **Liability Insurance-Tenant.** Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of combined single limit bodily injury and property damage insurance insuring Tenant and Landlord against any liability arising out of the use, occupancy or maintenance of the Premises and the Center. Such insurance shall be on an occurrence basis with single limit coverage in an amount not less than \$1,000,000.00 per occurrence. The policy shall insure performance by Tenant of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Tenant hereunder nor relieve Tenant of any obligation hereunder. Any insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be excess insurance only. Tenant shall carry workers' compensation insurance in the amount required by law (which Tenant may self-insure).

8.2 **Property Insurance - Tenant.** Subject to the requirements of Paragraph 8.5, Tenant at its cost shall either by separate policy or, with consent of Landlord, by endorsement to a policy already carried, maintain insurance coverage on all of Tenant's personal property, tenant owned alterations and Utility Installations in, on, or about the Premises with full replacement cost coverage. Tenant shall, from time to time upon Landlord's request, provide Landlord with written evidence that such insurance is in force.

8.3 **Property Insurance.** Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Center improvements, but not Tenant's personal property, fixtures, equipment or tenant improvements, in an amount not less than the full replacement value thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises), special extended perils ("all risk", as such term is used in the insurance industry), plate glass insurance and such other insurance as Landlord deems advisable.

### **8.4 Intentionally Omitted.**

8.5 **Insurance Policies.** Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least A- or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Tenant shall not do or permit to be done anything in the Premises which shall invalidate the insurance policies carried by Landlord. On or before the Commencement Date, Tenant shall deliver to Landlord certificates evidencing the existence and amounts of liability and property insurance policies required under Paragraphs 8.1 and 8.2, showing coverage effective as of the Commencement Date. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Landlord. Tenant shall, at least three (3) days prior to the expiration of such policies, and without the requirement of further notice, furnish Landlord with renewals or "binders" thereof.

8.6 **Waiver of Subrogation.** Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other, for loss or damage arising out of or incident to the perils insured against under policies of property insurance carried hereunder (or required to be insured against under property insurance hereunder, whether or not such insurance required hereunder is actually obtained and/or maintained) which perils occur in, on or about the Premises, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors and/or invitees. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.7 **Indemnity.** Tenant shall indemnify and hold harmless Landlord and its agents, Landlord's master or ground lessor, partners and lenders from and against any and all claims, loss of rents and/or damages, losses, costs, liens, judgments, penalties, permits, causes of action, attorneys' fees, expenses and/or liabilities arising out of, involving, or dealing with Tenant's use of the Premises or the Center during the Term, or from the conduct of Tenant's business during the Term or from any activity, work or things done or permitted by Tenant in or about the Premises or elsewhere during the Term and shall further indemnify and hold harmless such indemnified parties from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, employees or invitees, during the Term and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, and in case any action or proceeding be brought against any such indemnified party by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment, and whether well founded or not. In case any action or proceeding be brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property of Tenant or injury to persons, in, upon or about the Center arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

8.8 **Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises or the Center, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Center, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except if and to the extent the same is caused by a breach of this Lease by Landlord or by Landlord's or Landlord's agent's, employee's, contractor's or invitee's negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Center, nor from the failure of Landlord to enforce the provisions of any other lease of the Center. Notwithstanding Landlord's negligence, willful misconduct or breach of this Lease, Landlord shall under no circumstances be liable for consequential damages, or for injury to Tenant's business or for any loss of income or profit therefrom.

8.9 **Limitation of Liability.** Tenant agrees that, in the event Tenant shall have any claim against Landlord under this Lease arising out of the subject matter of this Lease, Tenant's sole recourse shall be against the Landlord's interest in the Center for the satisfaction of any claim, judgment or decree requiring the payment of money by Landlord as a result of a breach hereof or otherwise in connection with this Lease, and no other property or assets of Landlord, its successors or assigns, shall be subject to the levy, execution or other enforcement procedure for the satisfaction of any such claim, judgment, injunction or decree. In addition, in no event shall Landlord be liable for any consequential damages. Tenant further hereby waives any and all right to assert any claim against or obtain any damages from, for any reason whatsoever, the directors, officers and partners of Landlord, including all injuries, damages or losses to Tenant's property, real and personal, whether known, unknown, foreseen, unforeseen, patent or latent, which Tenant may have against Landlord or its directors, officers or partners. Tenant understands and acknowledges the significance and consequence of such specific waiver.

## 9. **Damage or Destruction.**

### 9.1 **Definitions.**

- (a) "Premises Partial Damage" shall mean if the Premises are damaged or destroyed to the extent that the cost of repair is less than fifty percent (50%) of the then replacement cost of the Premises.
- (b) "Premises Total Destruction" shall mean if the Premises are damaged or destroyed to the extent that the cost of repair is fifty percent (50%) or more of the then replacement cost of the Premises.
- (c) "Premises Building Partial Damage" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is less than fifty percent (50%) of the then replacement cost of the Building.
- (d) "Premises Building Total Destruction" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is fifty percent (50%) or more of the then replacement cost of the Building.
- (e) "Center Buildings" shall mean all of the buildings on the Center site depicted on Exhibit B hereto.
- (f) "Center Buildings Total Destruction" shall mean if the Center Buildings are damaged or destroyed to the extent that the cost of repair is fifty percent (50%) or more of the then replacement cost of the Center Buildings.
- (g) "Insured Loss" shall mean damage or destruction which was caused by an event required to be covered by the insurance described in Paragraph 8, or for which insurance coverage is otherwise available. The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss.

(h) "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring excluding all improvements made by tenants.

### 9.2 **Premises Partial Damage; Premises Building Partial Damage.**

(a) **Insured Loss:** Subject to the provisions of Paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of either Premises Partial Damage or Premises Building Partial Damage, then Landlord shall, at Landlord's expense, repair such damage to the Premises, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect.

(b) **Uninsured Loss:** Subject to the provisions of Paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, which damage prevents Tenant from using the Premises, Landlord may at Landlord's option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such ten (10) day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.3 **Premises Total Destruction; Premises Building Total Destruction; Center Buildings Total Destruction.** Subject to the provisions of Paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage, whether or not it is an Insured Loss, and which falls into the classifications of either (i) Premises Total Destruction, or (ii) Premises Building Total Destruction, or (iii) Center Buildings Total Destruction, then Landlord may at Landlord's option either (i) repair such damage or destruction, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible at Landlord's expense, and this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which case this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

### 9.4 **Damage Near End of Term.**

(b) Subject to Paragraph 9.4(b), if at any time during the last six (6) months of the term of this Lease there is substantial damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, Landlord may at Landlord's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within sixty (60) days after the date of occurrence of such damage.

(c) Notwithstanding Paragraph 9.4(a), in the event that Tenant has an option to extend or renew this Lease, and as of the occurrence of the damage the time within which said option may be exercised has not yet expired, Tenant shall exercise such option, if it is to be exercised at all, no later than twenty (20) days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage, during the last twelve (12) months of the term of this Lease. If Tenant duly exercises such option during said twenty (20) day period, Landlord shall, at Landlord's expense, repair such damage, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect. If Tenant fails to exercise such option during said twenty (20) day period, then Landlord may at Landlord's option terminate and cancel this Lease as of the expiration of said twenty (20) day period by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the expiration of said twenty (20) day period, notwithstanding any term or provision in the grant of option to the contrary.

9.5 **Abatement of Rent; Tenant's Remedies.** In the event Landlord repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the Base Rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. Except for abatement of Base Rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

9.6 **Termination-Advance Payments.** Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Tenant to Landlord.

9.7 **Waiver.** Landlord and Tenant waive the provisions of any statute which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

#### 10. Real Property Taxes.

10.1 Landlord shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises. Notwithstanding the foregoing, Tenant shall pay to Landlord upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Tenant or at Tenant's request during the Term.

10.2 **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, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Center by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, Landlord's right of rent or other income therefrom, and/or Landlord's business of leasing the Premises, or otherwise imposed on Landlord as an owner of real property in lieu of or in addition to real property taxes. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

#### 10.3 Intentionally Omitted.

#### 10.4 Personal Property Taxes.

(c) Tenant shall pay prior to delinquency all taxes assessed against and levied, with respect to any period of time during the Term, upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(d) If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant's personal property within thirty (30) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

11. **Utilities.** Landlord shall pay for all water, gas, heat, light, power and other utilities and services supplied to the Premises, together with any Taxes thereon, including hook-up charges and/or penalties (other than telephone service, which shall be paid for by Tenant).

12. **Assignment and Subletting.** Tenant may sublease all or any portion of the Premises to Jazz and/or the tenant under the Jazz Half Dome Lease, without Landlord's prior consent. Subject to the immediately preceding sentence, Tenant shall not, directly or indirectly, voluntarily or by operation of law, sell, assign, sublet, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder, without Landlord's prior consent, which shall not be unreasonably delayed, withheld or conditioned. A transfer (other than on a public securities exchange) of forty-nine percent (49%) or more of the beneficial ownership interests in Tenant shall constitute an assignment within the meaning of this Lease.

#### 13. Default; Remedies.

13.1 **Default.** The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

(a) The abandonment of the Premises by Tenant.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant.

(c) Except as otherwise provided in this Lease, the failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Tenant of any general arrangement or general assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. Sec.101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within sixty (60) days. In the event that any provision of this Paragraph 13.1 (d) is contrary to any Applicable Law, such provision shall be of no force or effect.

13.2 **Remedies.** In the event of any such material default by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, which amount the parties hereby agree shall include, without limitation, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises and reasonable attorneys' fees. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be 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%). Efforts by Landlord to mitigate damages caused by Tenant's default or breach of this Lease shall not waive Landlord's right to recover damages under this paragraph. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Landlord may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Tenant under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Tenant to cure the default within the greater of the two such grace periods shall constitute both an unlawful detainer and a breach of this Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Landlord's interest under the Lease or Landlord's withholding of consent to an assignment or subletting where Landlord's consent is required pursuant to the terms and conditions of Paragraph 12 above, shall not constitute a termination of the Tenant's right to possession.

(c) The foregoing provisions of clause (2) shall apply even though Tenant has breached the Lease and abandoned the Premises, in which case Landlord shall have the right to re-enter the Premises with or without process of law, to eject therefrom all parties in possession thereof, and, without terminating this Lease, at any time and from time to time, but without obligation to do so, to relet the Premises and the improvements located therein or any part or parts of any thereof for the account of Tenant, or otherwise, on such conditions as Landlord in its discretion may deem proper, with the right to make alterations and repairs to the Premises in connection therewith, and to receive and collect the rents therefor, and apply the same (i) first to the payment of such costs and expenses as Landlord may have paid, assumed or incurred: (A) in recovering possession of the Premises and said improvements, including attorneys' fees, and costs; (B) expenses for placing the Premises and said improvements in good order and condition, for decorating and preparing the Premises for reletting; (C) for making any alterations, repairs, changes or additions to the Premises that may be necessary or convenient; and (D) all other costs and expenses, including leasing and subleasing commissions, and charges paid, assumed or incurred by Landlord in or upon reletting the Premises and said improvements, or in fulfillment of the covenants of Tenant under this Lease; (ii) then to the payment of Base Rent and other monetary obligations due and unpaid hereunder; and (iii) any balance shall be held by Landlord and applied in payment of future amounts as the same may become due and payable hereunder. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. Landlord may execute any lease or sublease made pursuant to the terms of this subparagraph either in its own name or in the name of Tenant as its agent, as Landlord may see fit. The tenant(s) or subtenant(s) thereunder shall be under no obligation whatsoever with regard to the application by Landlord of any rent collected by Landlord from such tenant or subtenant to any and all sums due and owing or which may become due and owing under the provisions of this Lease, nor shall Tenant have any right or authority whatever to collect any rent whatever from such tenant(s) or subtenant(s). If Tenant has been credited with any rent received by such reletting and such rent shall not be promptly paid to Landlord by the tenant(s) or subtenant(s), or if such rentals received from reletting during any month are less than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. For all purposes set forth in this subsection, Landlord is hereby irrevocably appointed as agent for Tenant. No taking of possession of the Premises by Landlord shall be construed as Landlord's acceptance of a surrender of the Premises by Tenant or an election of Landlord's part to terminate this Lease unless written notice of such intention is given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Election by Landlord to proceed pursuant to this clause (3) shall be made upon written notice to Tenant and shall be deemed an election of the remedy described in California Civil Code Section 1951.4 (providing that a lessor of real property may continue a lease in effect after a lessee's breach or abandonment and recover rent as it becomes due, if the lessee has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to pursue such remedy, unless Landlord relets the Premises, Tenant shall have the right to sublet the Premises and to assign its interest in this Lease, subject to all of the standards and conditions set forth in Paragraph 12. Landlord may elect to terminate the prosecution of such remedy at any time by written notice to Tenant, and the right of Tenant to sublet or assign shall terminate upon receipt by Tenant of such notice.

(d) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

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

### 13.3 Default by Landlord.

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

(b) Performance by Tenant on Behalf of Landlord. In the event that neither Landlord nor Tenant cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion (except in an emergency (i.e., a situation presenting a threat of personal injury or property damage), in which case Tenant may cure Landlord's breach immediately, then Tenant may elect to cure said breach at Tenant's expense. Tenant may offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to one month's Base Rent, reserving Tenant's right to seek reimbursement from Landlord for any such expense in excess of such offset. Tenant shall document the cost of said cure and supply said documentation to Landlord.

13.4 Late Charge. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by any Lender. Accordingly, if any Rent shall not be received by Landlord within 10 days after written notice from Landlord to Tenant that the same has not been paid when due hereunder, then upon Landlord's demand therefore Tenant shall immediately pay to Landlord a one-time late charge equal to 5% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.

13.5 Late Payments and Deliveries. Any amount due from Tenant to Landlord hereunder which is not paid to Landlord when due shall bear interest at the maximum rate of interest which Landlord is then permitted to charge by the applicable usury law, accruing from the date due until the same is fully paid. Payment of such interest shall not excuse or cure any default by Tenant pursuant to this Lease. Such rate shall remain in effect after the occurrence of any breach or default hereunder by Tenant to and until payment of the entire amount due.

14. Condemnation. If the Premises or any portion thereof or the Center are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty percent (20%) of the floor area of the Premises is taken by condemnation and such taking materially and adversely affects Tenant's ability to conduct business in the Premises, Tenant may, at Tenant's option, to be exercised in writing only within ten (10) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. No reduction of rent shall occur if the only area taken is that which does not have the Premises located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award it may obtain in separate proceedings with the condemnor for loss of or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of severance damages received by Landlord in connection with such condemnation repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

### 15. Intentionally Omitted.

16. Estoppel Certificate. Tenant shall within twenty (20) days after written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by Landlord. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (a) that this Lease is in full force and effect, without modification except as

may be represented by Landlord, (b) that there are no uncured defaults in Landlord's performance, (c) that not more than one month's Base Rent has been paid in advance, and (d) that any other statements of fact regarding Tenant or this Lease included by Landlord in the statement are correct. Tenant shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in any Tenancy Statement supplied by Tenant.

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

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

19. **Headings.** The paragraph captions contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

20. **Time of Essence; Force Majeure.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Lease. Notwithstanding the foregoing, in the event that a party is delayed in performing any obligation of such party pursuant to this Lease by any cause beyond the reasonable control of such party, the time period for performing such obligation shall be extended by a period of time equal to the period of the delay. For the purpose of this paragraph, a cause shall be beyond the reasonable control of a party when such cause would affect any person similarly situated (such as a power outage, labor strike, governmental or other third party delay or truckers' strike) but shall not be beyond the reasonable control of a party when peculiar to such party (such as financial inability). This paragraph shall not apply to any obligation to pay money.

21. **Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

22. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

23. **Notices.**

23.1 Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

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

24. **Waivers.** No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, 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.

25. **No Recording.** Neither Landlord nor Tenant may, without the consent of the other party, record this Lease or any short form hereof.

26. **Holding Over.** If Tenant or anyone claiming under Tenant shall remain in possession of the Premises or any part thereof after expiration of the Lease term or earlier termination thereof without any agreement in writing between Landlord and Tenant with respect thereto, Tenant shall occupy upon all of the terms and conditions of this Lease except that the monthly Base Rent due from Tenant shall be equal to one hundred fifty percent (150%) for the first month of any such holding over and thereafter two hundred percent (200%), in each case of the monthly Base Rent in effect at the end of the Term. Landlord's acceptance of rent shall create only a month-to-month tenancy, in either case upon the terms set forth in this paragraph. Any such month-to-month tenancy shall be terminable at the end of any calendar month by either party by written notice to the other party given not less than ten (10) days prior to the end of such month. Nothing contained in this paragraph shall be deemed or construed to waive Landlord's right of reentry or any other right of Landlord hereunder or at law.

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

28. **Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

29. **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting Assignment or subletting by Tenant and subject to the provisions of Paragraph 18, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Center is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Center is located.

30. **Subordination; Attornment; Non-Disturbance.**

(a) This Lease, and any Option granted hereby, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Center and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant agrees that the lenders holding any such security device shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease, but that in the event of Landlord's default with respect to any such obligation, Tenant will give any lender whose name and address have been furnished Tenant in writing for such purpose notice of Landlord's default and allow such lender thirty (30) days following receipt of such notice for the cure of said default before invoking any remedies Tenant may have by reason thereof. If any mortgagee, trustee or ground lessor shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease and such Options shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Tenant agrees to attorn to a lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a security device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior landlord, or (iii) be bound by prepayment of more than one month's rent. Tenant agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be.

(c) Landlord shall obtain for the benefit of Tenant a non-disturbance agreement in form and substance acceptable to Tenant from Landlord's lender with respect to the Center, prior to or concurrently with the execution and delivery of this Lease, and from any future lender of Landlord with respect to the Center, which shall, in each case, provide that so long as no default hereunder has occurred and is continuing after notice and expiration of the applicable cure period, Tenant shall continue to enjoy all of Tenant's rights hereunder.

31. **Attorneys' Fees.** If any party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Landlord shall be entitled to attorneys'



fees, costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default or resulting breach.

32. **Access.** Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises or to the Center as Landlord may deem necessary or desirable. Landlord may at any time during the Term place on or about the Premises or the Building any ordinary "For Sale" signs and Landlord may at any time during the last one hundred twenty (120) days of the Term hereof place on or about the Premises any ordinary "For Lease" signs. All activities of Landlord pursuant to this paragraph shall be without abatement of rent, nor shall Landlord have any liability to Tenant for the same. Tenant shall have access to the Premises 24 hours per day, 7 days per week, 365 days per year.

33. **Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises or the Common Areas without first having obtained Landlord's prior written consent. Notwithstanding anything to the contrary in this Lease, Landlord shall not be obligated

to exercise any standard of reasonableness in determining whether to grant such consent.

34. **Signs.** Tenant may install suite and directory board signage. Except as provided in the first sentence of this Paragraph 34, Tenant may place any sign upon the Premises or the Center only with Landlord's prior approval. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations).

35. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an Assignment to Landlord of any or all of such subtenancies.

36. **Consents.** Landlord's actual reasonable costs and expenses (including, but not limited to, architects', attorneys', engineers' or other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent pertaining to this Lease or the Premises, including, but not limited to, consents to an assignment or subletting or the presence or use of Hazardous Material, practice or storage tank, shall be paid by Tenant to Landlord upon receipt of an invoice and supporting documentation therefor. Landlord may, as a condition to considering any such request by Tenant, require that Tenant deposit with Landlord an amount of money reasonably calculated by Landlord to represent the cost Landlord will incur in considering and responding to Tenant's request. Except as otherwise provided, any unused portion of said deposit shall be refunded to Tenant without interest. Landlord's consent to any act or assignment of this Lease by Tenant shall not constitute an acknowledgment that no default or breach by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then existing default or breach, except as may be otherwise specifically stated in writing by Landlord at the time of such consent.

37. **Intentionally Omitted.**

38. **Quiet Possession.** Upon Tenant paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

39. **Furniture.** Tenant shall have the right to use the personal property described in **Exhibit E** attached hereto (collectively the "Inventory") in connection with its use of the Premises, at no additional cost to Tenant. Landlord acknowledges and agrees that the Inventory is Tenant's personal property, which Tenant may remove from the Building at any time in Tenant's sole and absolute discretion; provided, however, that at any time when any Inventory is located within the Building, Tenant shall maintain the same in good condition and repair, reasonable wear and tear excepted, and shall insure and be liable for any damage thereto.

40. **Multiple Buildings.** If the Premises are part of a group of buildings controlled by Landlord, Tenant agrees that it will abide by, keep and observe all reasonable rules and regulations which Landlord may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of such other buildings and their invitees. The initial rules and regulations are as set forth in **Exhibit D** hereto.

41. **Security Measures.** Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Center. Tenant assumes all responsibility for the protection of Tenant, its agents, and invitees and the property of Tenant and of Tenant's agents and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Center or any part thereof, in which event the cost thereof shall be included within the definition of Operating Expenses, as set forth in Paragraph 4.2(b). Tenant acknowledges that Landlord has an existing security policy and security procedures, which are agreed to be solely for the protection of Landlord and its property, and Tenant shall have no right to rely thereon. Tenant shall, however, comply with Landlord's security policies and procedures when entering the Building, including without limitation completing a sign-in log (which is the property of Landlord) with the name, description and purpose for entry filled in. Landlord shall own and have the right to review said log and has Tenant no rights with respect thereto, including without limitation confidentiality.

42. **Easements.** Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents upon request of Landlord and failure to do so shall constitute a material default of this Lease by Tenant without the need for further notice to Tenant.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment, under protest, and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. **Authority.** If Tenant is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by Landlord or Landlord's agent and submission of same to Tenant shall not be deemed an offer to lease. This Lease shall become binding upon Landlord and Tenant only when fully executed by Landlord and Tenant.

47. **Amendments.** This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent, Tenant's Share or other rent payable under this Lease.

48. **Nondisclosure of Lease Terms.** Landlord and Tenant agree that the terms of this Lease are confidential and constitute proprietary information of the parties hereto. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants of the Center. Each of the parties hereto agrees that such party, and its respective partners, officers, directors, employees, agents and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of the other party hereto except pursuant to an order of a court of competent jurisdiction. Provided, however, that Landlord may disclose the terms hereof to any lender now or hereafter having a lien on Landlord's interest in the Center, or any portion thereof, and either party may disclose the terms hereof to its respective independent accountants who review its respective financial statements or prepare its respective tax returns, to any prospective transferee of all or any portions of their respective interests hereunder (including a prospective sublessee or assignee of Tenant), to any lender or prospective lender to such party, to any governmental entity, agency or person to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Lease, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights and obligations of the parties hereunder.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that any change in Tenant's use of the Premises during the Term requires modifications or additions to the Premises in order to be in ADA compliance, Tenant agrees to make any such necessary modifications and/or additions required to be performed by applicable governmental authorities at Tenant's expense.

**LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE**

COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY LANDLORD OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease as of the date last set forth below.

Landlord

UPTOWN NEWPORT, LP, a Delaware limited partnership

By G&I Newport Corp., a Delaware corporation, General Partner

By: *Jean Marie Apicese*  
Name: Jean Marie Apicese  
Title: Vice President

Executed on \_\_\_\_\_, 2010

ADDRESS FOR NOTICES AND RENT

UPTOWN NEWPORT, LP  
c/o Shopoff Management  
8951 Research Drive  
Irvine, California 92618  
Attn: William A. Shopoff

Tenant

CONEXANT SYSTEMS, INC., a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Executed on \_\_\_\_\_, 2010

ADDRESS FOR NOTICES

4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Director of Facilities

With a copy to:

Conexant Systems, Inc.  
4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Mark Peterson, Esq., General Counsel



COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY LANDLORD OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease as of the date last set forth below.

Landlord

Tenant

UPTOWN NEWPORT, LP, a Delaware limited partnership

CONEXANT SYSTEMS, INC., a Delaware corporation

By G&I Newport Corp., a Delaware corporation, General Partner

By: 

By: \_\_\_\_\_

Name: Mark Peterson

Name: \_\_\_\_\_

Title: General Counsel

Title: \_\_\_\_\_

Executed on \_\_\_\_\_, 2010

Executed on \_\_\_\_\_, 2010

ADDRESS FOR NOTICES AND RENT

ADDRESS FOR NOTICES

UPTOWN NEWPORT, LP  
c/o Shopoff Management  
8951 Research Drive  
Irvine, California 92618  
Attn: William A. Shopoff

4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Director of Facilities

With a copy to:

Conexant Systems, Inc.  
4000 MacArthur Boulevard  
Newport Beach, California 92660  
Attn: Mark Peterson, Esq., General Counsel

EXHIBIT A-1  
DESIGNATION OF PREMISES



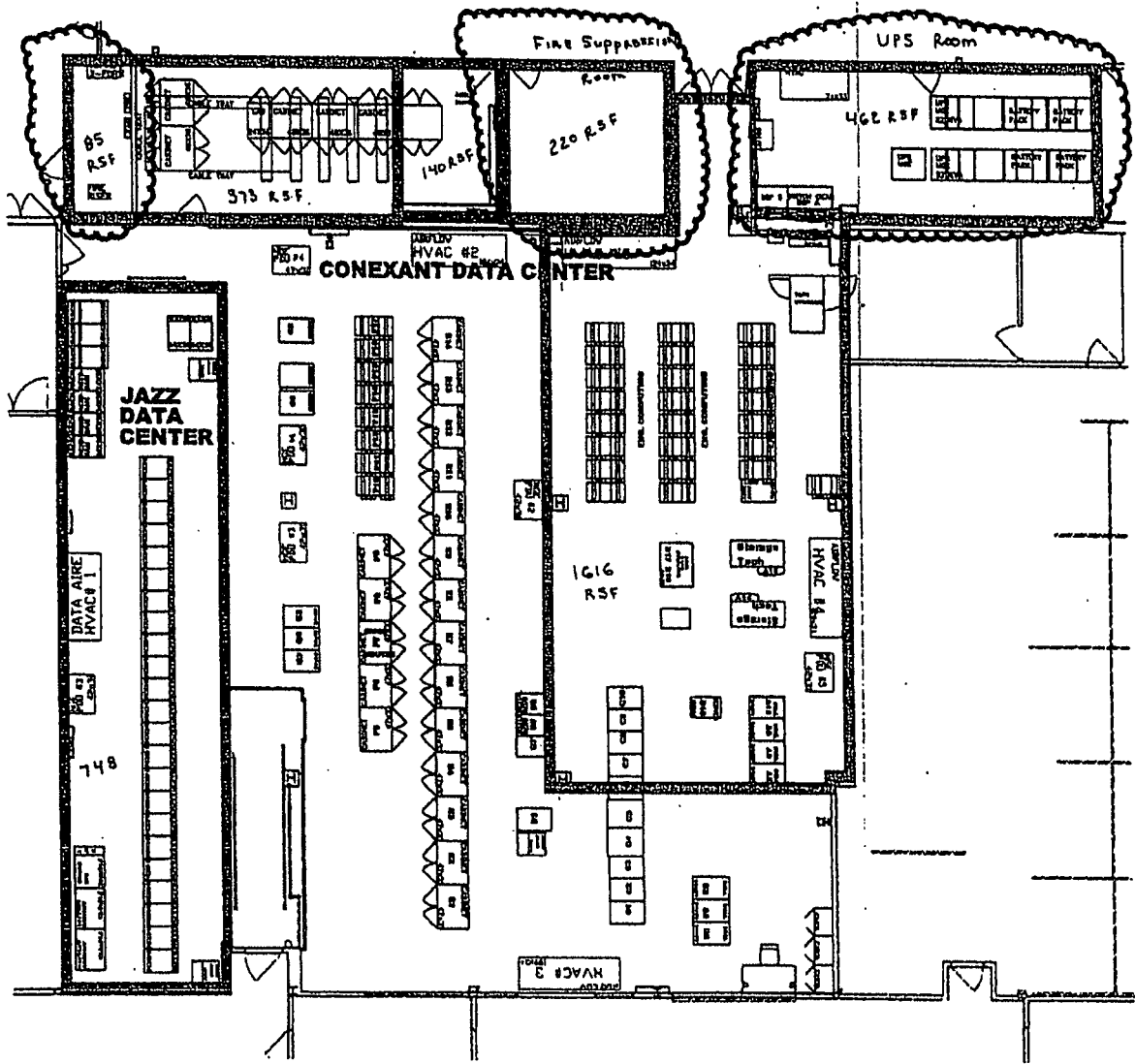
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**HATCHED YELLOW  
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(H01) 1st FLOOR  
HALF DORSE  
UPDATED 01/08/2010

**EXHIBIT A-2**  
**DEPICTION OF THE SUPPORT ROOMS**

**EXHIBIT B**



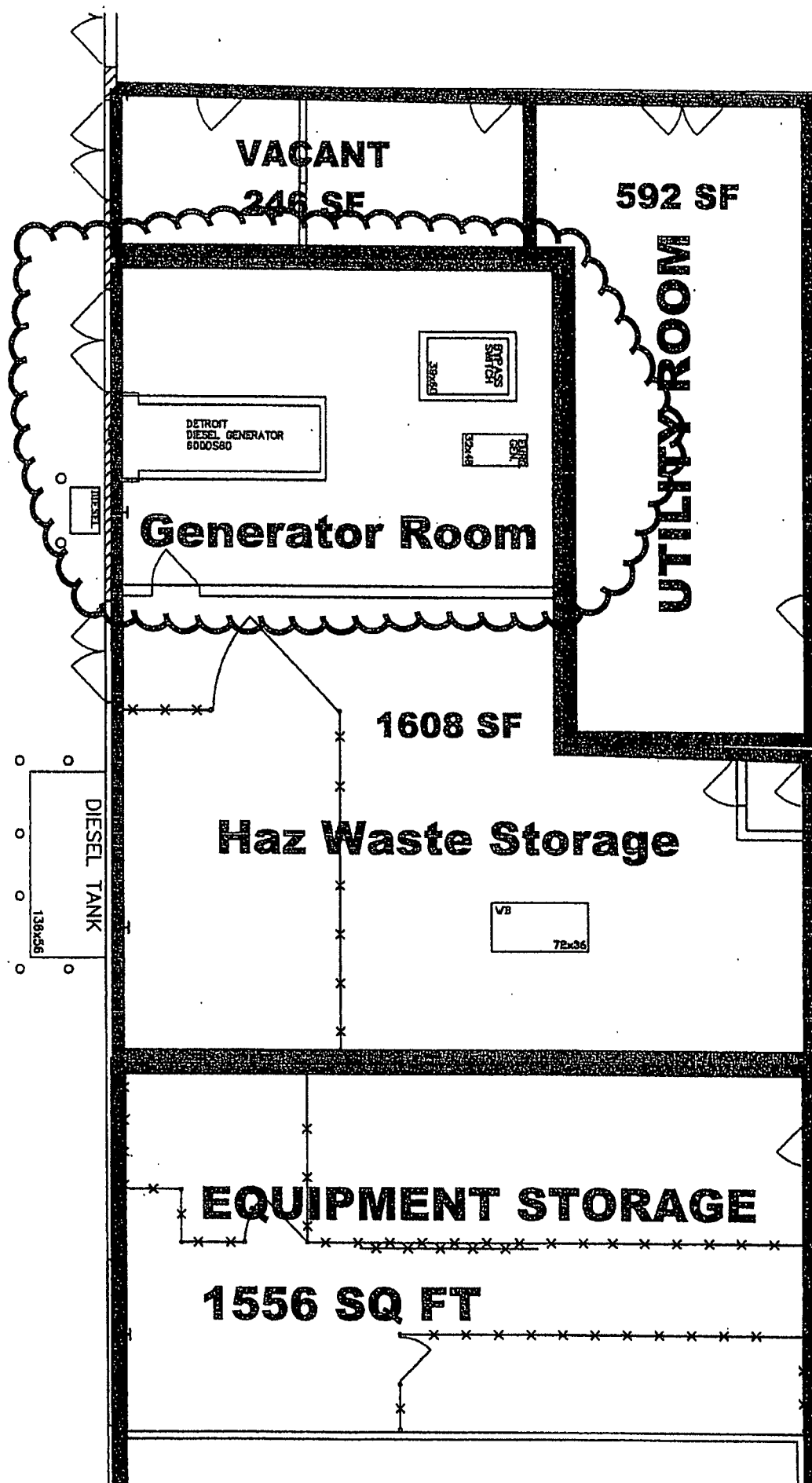
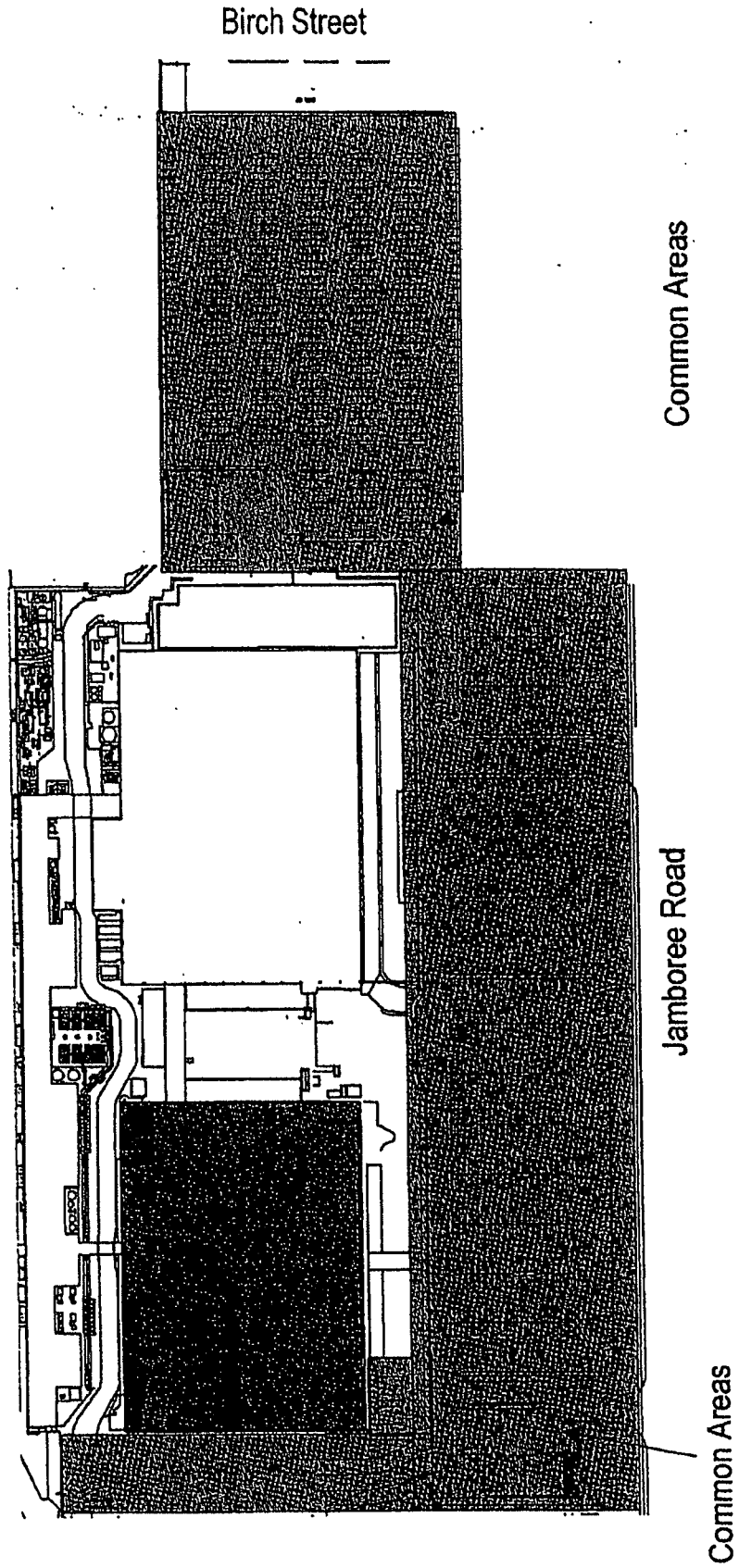


EXHIBIT B  
SITE PLAN OF THE CENTER

EXHIBIT B



# Exhibit A - Property & Half Dome



**EXHIBIT C**  
**LIST OF HAZARDOUS MATERIALS**

**EXHIBIT C**

## CONEXANT SYSTEMS INC

Haz Mat Storage

### DECSRIPTION

ALCOHOL - WIPES	/30 GAL DM
ALCOHOL - DIRTY	/5 GAL DF
FLUORESCENT LAMPS - STRAIGHT	/FT
FLUORESCENT LAMPS - U	/EA
BATTERIES - LEAD ACID	/LB
BATTERIES - NICAD	/LB
BATTERIES - LITHIUM	/LB
BATTERIES - ALKALINE	/LB
BALLASTS - NON PCB	/LB
SOLDER - W/ LEAD - E WASTE WIRES	/5 GAL DF
AEROSOLS - FLAMMABLE	/10 GAL DF
E-WASTE - COMPUTER/MONITOR	/pallet
GASOLINE/NEW	3 GAL
USED OIL	1 GAL
USED OIL FILTERS	2 EACH

## EXHIBIT D

### RULES AND REGULATIONS

The following Rules and Regulations shall be in effect for the Premises. Landlord reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between those regulations and the Lease, the Lease shall be controlling. Landlord shall have the right to waive one or more rules for the benefit of a particular tenant in Landlord's reasonable discretion.

1. Except with the prior written consent of Landlord, Tenant shall not conduct any retail sales in or from the Premises, or any business other than that specifically provided for in the Lease.
2. Landlord reserves the right to prohibit personal goods and services vendors from access to the Premises except upon such reasonable terms and conditions, including, but not limited to, the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Premises, the preservation of good order thereon, and the relief of any financial or other burden on Landlord occasioned by the presence of such vendors or the sale by them of personal goods or services to Tenant or its employees. If reasonably necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Premises. The term "personal goods or services vendors" means persons who periodically enter the Premises for the purpose of selling goods or services to Tenant other than goods or services which are used by Tenant only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services and shoeshining services.
3. The sidewalks, driveways and other areas of common access within the Premises shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. Neither Tenant nor its employees or contractors shall go upon the roof of the Premises without the prior written consent of Landlord.
4. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of these rules shall be borne by Tenant.
5. Intentionally Omitted.
6. In order to maintain the outward professional appearance of the Premises, all window coverings to be installed in the Premises during the Term shall be subject to Landlord's prior approval.
7. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Premises, or on the property kept therein, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Premises, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.
8. Tenant shall not sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any common areas, and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors and/or vibrations, nor shall any animals, birds or firearms be kept in or about the Premises.
9. No cooking shall be done or permitted by Tenant on the Premises, nor shall the Premises be used for lodging.
10. Tenant shall not use or keep in the Premises any kerosene, gasoline, or inflammable fluid or any other illuminating material, or use any method of heating other than that supplied by Landlord.
11. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys of offices, rooms and toilet rooms which shall have been furnished Tenant or which Tenant shall have had made.
12. Tenant shall see that the windows and doors of the Premises are closed and securely locked before leaving the Premises and shall exercise care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Premises, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Tenant shall make good all injuries sustained by Landlord.

EXHIBIT E

LIST OF THE INVENTORY

UPS: 1 (UPS room adjacent to data center)  
#1 MGE SYSTEMS EPS 6225/44.66F  
MODEL: 72-131101-01  
SERIAL# 84825-01

BATTERY CABINET  
MODEL: 72-131304-01  
SERIAL# 84828-02

BATTERY CABINET  
MODEL: 72-131304-01  
SERIAL# 84828-03

UPS: 2 (UPS room adjacent to data center)  
MGE SYSTEMS EAS600 EPS 6225/44.66F  
MODEL: 72-131101-01  
SERIAL # 242039-01

BATTERY CABINET  
MODEL: 72-131302-01  
SERIAL # 242039-03

BATTERY CABINET  
MODEL: 72-131302-01  
SERIAL # 242039-03

PDU'S (data center)

PDU 1  
MGE SYSTEMS- POWER MANAGEMENT SYSTEM DPS 2500  
MODEL: PD084V48A12-L25  
SERIAL# 84828-07

PDU 2  
MGE SYSTEMS-POWER MANAGEMENT SYSTEM DPS 2500  
MODEL: PD084V48A12-L25  
SERIAL # 84828-06

PDU 3  
MGE SYSTEMS- POWER MANAGEMENT SYSTEM DPS 2500  
MODEL# PD084V48A12-L25  
SERIAL# 88289-00

PDU 4  
MGE SYSTEMS- POWER MANAGEMENT MODULE-PMM  
MODEL: PM084-42-125  
SERIAL # 21315-00

PDU 5  
MGE SYSTEMS- POWER MANAGEMENT MODULE-PMM  
MODEL: PM126-42-125  
SERIAL # 242039-05

DETROIT DIESEL 600  
MODEL: 600DS60

DIESEL GENERATOR DAY TANK (outdoor)

CONVAULT

RUSSELECTRIC  
MODEL: 200

FIRE SUPPRESSION SYSTEM (FSS room adjacent to data center)

ANSUL  
MODEL: AUTOPULSE 1Q-396X

AIR HANDLING UNITS (data center)

UNIT 1  
DATA AIR

MODEL: 160-300-080

UNIT 2  
AIRFLOW COMPANY  
MODEL: CCT SERIES 4006 DATA GUARD 4.0

UNIT 3  
AIRFLOW COMPANY  
MODEL: CCT SERIES 4006 DATA GUARD 4.0

UNIT 4  
AIRFLOW COMPANY  
MODEL: CCT SERIES 4006 DATA GUARD 4.0

UNIT 7  
AIRFLOW COMPANY  
MODEL: CTT-DX DATA GUARD 5.0

AIR HANDLER UNIT (UPS room adjacent to data center)

UNIT 5  
AIRFLOW COMPANY  
MODEL: CCT SERIES 4006  
DATA GUARD 4.0

SECURITY CAMERAS (data center)  
PELCO  
MODEL: DOME CAMERA, WIDE ANGLE

SECURITY CAMERA HARD DRIVE (data center)  
PELCO  
MODEL: 7100 SERIES 8 CHANNEL

## ENVIRONMENTAL MANAGEMENT AGREEMENT

THIS ENVIRONMENTAL MANAGEMENT AGREEMENT (this "Agreement") is made and entered into as of December 22, 2010 ("Agreement Date"), by and between CONEXANT SYSTEMS, INC., a Delaware corporation ("Conexant"), and UPTOWN NEWPORT LP, a Delaware limited partnership ("Uptown"). Conexant and Uptown are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

A. Conexant is the current fee owner of certain real property located in the City of Newport Beach, County of Orange, State of California, more particularly described in Exhibit A attached hereto (the "Site").

B. Areas of the Site contain various Hazardous Materials, including without limitation volatile organic compounds and petroleum hydrocarbons. In addition, Hazardous Materials originating from the Site have migrated into groundwater aquifers both inside and outside of the horizontal boundaries of the Site ("On-Site" and "Offsite," respectively). Under the supervision of the California Regional Water Quality Control Board, Santa Ana Region (the "Water Board"), Conexant's predecessor-in-interest installed and Conexant continues to operate and maintain at the Site a certain high-vacuum soil vapor extraction system as described in the as-built plans attached hereto as Exhibit B (the "SVE System"). Conexant's predecessor-in-interest and Conexant also installed, and Conexant continues to operate, On-Site and Offsite groundwater monitoring wells. In furtherance of its remediation activities, Conexant is in the process of performing pilot tests for a new remediation technique involving chemical oxidation.

C. Substantially concurrently herewith, Uptown is purchasing the Site and the existing improvements at the Site (collectively, the "Property") from Conexant pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated December 9, 2010, by and between Uptown and Conexant (as amended, the "PSA"). A material inducement to Conexant's willingness to sell the Site to Uptown and Uptown's willingness to purchase the Site from Conexant is the execution and delivery of this Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the PSA.

### AGREEMENT

NOW, THEREFORE, taking the foregoing Recitals into account, and for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. Conexant Responsibilities.

(a) Conexant, at its sole expense except as otherwise provided below, shall be responsible for all On-Site and Offsite groundwater investigation and remediation (including without limitation periodic groundwater sampling and monitoring as may be required by the

Water Board) resulting from releases on the Property prior to the Agreement Date of those Hazardous Materials identified in the Property Documents ("Identified Hazardous Materials"), all in accordance with the requirements and under the supervision of the Water Board or other applicable agency having jurisdiction over remediation activities at the Site (as applicable, the "Responsible Agency"), until the Responsible Agency has confirmed in writing that no further action regarding such groundwater contamination is required and Conexant removes or otherwise decommissions the Groundwater System (as defined below) (the "Groundwater Treatment Termination Date"); provided, however, that in no event shall Conexant be obligated to remediate to a higher standard than that which would be imposed by the Responsible Agency for a high-density residential/mixed use retail and commercial development with subsurface parking (the "Remediation Standard") as contemplated under the draft Uptown Newport Village Specific Plan dated March, 2010, prepared by Johnson Fain. Conexant shall pursue such remediation obligations diligently and in good faith, subject to force majeure delays. Conexant shall have sole and exclusive decision making authority over the groundwater cleanup process and shall (except as otherwise provided below) be solely responsible for all costs and expenses in connection with such groundwater remediation (including without limitation the cost to prepare and obtain approval of a health risk assessment to the extent required by the Responsible Agency in order to issue a "no further action" letter or equivalent writing with respect to groundwater contamination, hereinafter referred to as a "Groundwater NFA"). To the extent a Responsible Agency withdraws, revokes or otherwise reopens the Groundwater NFA (each a "Reopener"), Conexant's obligations pursuant to this paragraph shall resume until a subsequent Groundwater NFA is issued; provided, however, that (i) Conexant's obligations with respect to a future Reopener shall be extinguished on the first anniversary of the date on which the Close of Escrow occurs unless the Reopener is issued by the Responsible Agency prior to such date; and (ii) in no event shall Conexant be responsible for the remediation of Hazardous Materials other than Identified Hazardous Materials released prior to the Agreement Date. In connection with Conexant's performance of its obligations under this subparagraph, Conexant shall continue to own, operate and maintain the existing On-Site and Offsite groundwater monitoring wells and other related equipment, as presently existing or as may hereafter be installed by Conexant (collectively, the "Groundwater System"). Except as otherwise provided in Paragraph 2 below, Conexant shall at its sole cost and expense undertake all groundwater well closures and abandonments in compliance with applicable laws and in accordance with any applicable permitting requirements.

(b) Conexant shall continue to own, operate and maintain the SVE System at the Property in the manner, at the locations and with the equipment existing at the Property on the Agreement Date, in accordance with the requirements of the Responsible Agency, until the SVE Termination Date (defined below). Except as otherwise provided below, Conexant shall be responsible for all costs to operate, maintain and (as needed) decommission the SVE System until the SVE Termination Date. After the SVE Termination Date, Conexant shall no longer have any liability or responsibility with respect to the existence of On-Site soil contamination. As used herein, the term "SVE Termination Date" means the date which is the earliest to occur of (i) issuance of a "no further action letter" or other determination by the Responsible Agency confirming that the SVE System as configured as of the Agreement Date is no longer required to be operational ("SVE-NFA"), (ii) the fifth anniversary of the Close of Escrow, (iii) commencement of Development Activities (defined below) at the Property that require that the SVE System or any portion thereof be dismantled, relocated or otherwise decommissioned as



determined by Uptown (the Parties agreeing that Conexant shall not be obligated to modify or relocate the SVE System to accommodate Uptown's Development Activities), so long as Uptown provides Conexant with at least ninety (90) days prior written notice of such commencement and receives all necessary agency approvals, or (iv) the date Uptown assumes control of the SVE System as provided in Paragraph 2(c) below. As used herein, the term "Development Activities" means any construction-related activity occurring at the Property (including without limitation grading or other site preparation work).

(c) If a SVE-NFA has not been issued by the Responsible Agency by the date which is ninety (90) days prior to the SVE Termination Date, Uptown shall on the SVE Termination Date and at its sole cost and expense either (i) purchase the entire SVE System from Conexant (such purchase to close on the SVE Termination Date or as soon thereafter as any required Responsible Agency approvals are obtained) and take an assignment of Conexant's equipment lease covering the portion of the SVE System commonly known as the "skid with high vacuum pump" (the "SVE Lease"), for a total amount equal to the "as is" market value of the remaining components of the SVE System not covered by the SVE Lease ("Conexant Owned SVE Equipment") as of the SVE Termination Date as reasonably estimated by Conexant based upon at least two (2) third party quotes from prospective purchasers of such Conexant Owned SVE Equipment or other reasonable means as agreed by the Parties, or (ii) replace the SVE System if approved by the Responsible Agency. In either such event, from and after the SVE Termination Date (and provided that an SVE-NFA has not been issued by the SVE Termination Date) Uptown shall be responsible for and shall diligently (subject to force majeure delays) and in good faith operate and maintain the SVE System in accordance with the requirements and under the supervision of the Responsible Agency until an SVE-NFA has been issued by the Responsible Agency. In the event Uptown cannot obtain any required approval from the equipment lessor in connection with a proposed assignment of the SVE Lease to Uptown or Uptown disapproves of the purchase price of the Conexant Owned SVE Equipment established by Conexant, Uptown shall be deemed to have elected to replace the SVE System in accordance with clause (ii) above as of the SVE Termination Date. Conexant shall cooperate with Uptown in connection with obtaining any such required equipment lessor consent or any required Responsible Agency approval in connection with a transfer of the SVE System to Uptown but under no circumstances shall Conexant be obligated to operate or maintain the SVE System from and after the SVE Termination Date. If Uptown elects or is deemed to have elected to replace the SVE System as provided above, Conexant shall promptly after the SVE Termination Date remove any remaining equipment comprising the SVE System from the Property and repair any damage to the Property resulting from such removal in a commercially reasonable manner.

(d) Conexant shall use good faith efforts to keep Uptown informed regarding Conexant's progress with groundwater remediation and operation of the SVE System. In connection therewith, Conexant shall, upon request of Uptown from time to time, (i) promptly provide Uptown with copies of any reports and the results of analytical testing submitted to the Responsible Agency, (ii) promptly provide Uptown with any communications sent to or received by Conexant from the Responsible Agency, (iii) promptly notify Uptown of any material modifications made to the Groundwater System or SVE System (including without limitation providing copies of updated maps showing the location of active groundwater monitoring wells), (iv) promptly notify Uptown of any Third Party Claim respecting Identified Hazardous Materials of which Conexant has actual knowledge, (v) provide Uptown with a schedule for its anticipated

SVE monitoring, maintenance and repair activities (excluding emergency repair and maintenance) and periodically update such schedule as needed, (vi) promptly deliver to Uptown a copy of any SVE-NFA obtained by Conexant and (vii) promptly provide to Uptown any additional documents reasonably requested by Uptown in connection with Conexant's remediation activities. As used in this Agreement, the phrase "actual knowledge" with respect to Conexant means the actual knowledge of the general counsel of Conexant, without any duty of inquiry or investigation.

(e) Conexant shall use good faith efforts to provide Uptown with copies of any proposed written submissions to the Responsible Agency for Uptown's review at least five (5) business days prior to delivery of same to the Responsible Agency; provided, however, that Uptown shall have no approval rights over such submissions and Conexant may elect to accept or reject any or all comments in the exercise of its sole and absolute discretion.

(f) In the event the Responsible Agency determines that Conexant has failed to perform its obligations under Paragraph 1(a) above and Conexant fails to remedy such non-compliance within ninety (90) days following receipt of notice thereof from the Responsible Agency (subject to extension for force majeure delays and any applicable appeals of the Responsible Agency determination so long as asserted in good faith and diligently pursued) or such longer period as may otherwise be directed or approved by the Responsible Agency, Uptown may (but shall not be obligated to) at any time thereafter elect (by delivery of at least ninety (90) days prior written notice to Conexant and provided that Uptown has first obtained any required Responsible Agency approvals) to cure such non-compliance. If Uptown makes such election, (i) Uptown shall diligently prosecute such cure until completion (subject to force majeure delays) and (ii) Conexant shall reimburse Uptown for any expenses reasonably incurred by Uptown to cure such non-compliance together with an administrative charge equal to ten percent (10%) of the total of such expenses. Such reimbursement shall be made to Uptown within thirty (30) days following written demand together with reasonable backup documentation supporting the sum so requested. Any reimbursement not received by Uptown by the expiration of such thirty (30) day period shall thereafter accrue interest at the rate of ten percent (10%) per annum until paid.

(g) In the event the Responsible Agency determines that Conexant has failed to perform its obligations under Paragraph 1(b) above and Conexant fails to remedy such non-compliance within thirty (30) days following receipt of notice thereof from the Responsible Agency (subject to extension for force majeure delays and any applicable appeals of the Responsible Agency determination so long as asserted in good faith and diligently pursued) or such longer period as may otherwise be directed or approved by the Responsible Agency, Uptown may (but shall not be obligated to) at any time thereafter elect (by delivery of at least thirty (30) days prior written notice to Conexant and provided that Uptown has first obtained any required Responsible Agency approvals) to cure such non-compliance. If Uptown makes such election, (i) Uptown shall assume control of the SVE System in accordance with Paragraph 2(c) below and shall diligently prosecute such cure until completion (subject to force majeure delays), and (ii) Conexant shall reimburse Uptown for any expenses reasonably incurred by Uptown to cure such non-compliance together with an administrative charge equal to ten percent (10%) of the total of such expenses. Such reimbursement shall be made to Uptown within thirty (30) days following written demand together with reasonable backup documentation supporting the sum so

requested. Any reimbursement not received by Uptown by the expiration of such thirty (30) day period shall thereafter accrue interest at the rate of ten percent (10%) per annum until paid.

2. Uptown Responsibilities.

(a) Except as otherwise provided in Paragraph 1 above, Uptown shall be responsible at its sole cost and expense for all On-Site soil characterization and remediation in accordance with the requirements of the Responsible Agency, including without limitation (i) any additional soil vapor extraction that may be required (in addition to the existing SVE System) by the Responsible Agency after the Agreement Date, including but not limited to the installation of and extraction from additional extraction well locations, extraction at alternative soil depths, or extraction of other Hazardous Materials imbedded within On-Site soils, (ii) any On-Site soil excavation, treatment and/or disposal, including without limitation treatment and/or removal and offsite disposal of any contamination discovered at the Site and identified after any existing buildings or infrastructure are removed, and (iii) all Development Costs (as defined below). For the avoidance of doubt, it is the intent of the Parties that Uptown shall also be responsible for completing any required remediation of the On-Site soil from and after the SVE Termination Date. Uptown shall diligently and in good faith observe all Responsible Agency directives and orders concerning the Property, except to the extent to be performed by Conexant pursuant to this Agreement. In connection therewith, Conexant shall have the right to periodically monitor Uptown's compliance with such directives and orders.

(b) Except as otherwise provided in Paragraph 1 above, Uptown shall be responsible for (i) all development costs attributable to the presence of Hazardous Materials on or under the Property (collectively referred to herein as "Development Costs"), including without limitation monitoring Hazardous Materials; soil testing, excavation and disposal costs; installation of engineering controls such as vapor barriers, sand or gravel layers, and venting; and dewatering (including without limitation related permitting, treatment of Hazardous Materials and testing), (ii) any costs incurred by Conexant to modify, reinstall and/or relocate the Groundwater System or SVE System or any component thereof (including without limitation well destruction and reinstallation and/or installation of new wells or other Groundwater System modifications) should Development Activities require such modifications, (iii) remediation of any Hazardous Materials released by Uptown or its employees, agents or contractors in connection with Development Activities, and (iv) any exacerbation of existing environmental conditions resulting from an act or omission of Uptown or its employees, agents or contractors; provided, however, that Uptown's failure to remove or remediate any contaminated On-Site soil underlying the existing Improvements shall not be deemed a breach of Uptown's obligations hereunder or otherwise an actionable omission by Uptown so long as such Improvements are still subject to one or more third party leases. In the event Development Activities necessitate the dismantling, modification, relocation or otherwise shutting down of the Groundwater System or SVE System, Responsible Agency approvals must first be received by Conexant and Uptown. In such event, the cost of obtaining Responsible Agency approvals to dismantle, modify, relocate or shut down the Groundwater System or SVE System shall be borne by Uptown.

(c) Notwithstanding anything to the contrary contained in Paragraph 1(b) above, Uptown may at any time prior to the SVE Termination Date elect to assume control of the SVE System (an "SVE Takeover Election") so long as (i) Uptown notifies Conexant of its SVE

Takeover Election at least ninety (90) days prior to the effective date of such change in control, and (ii) Uptown obtains the written consent of the Responsible Agency to such change in control (as well as any related permits) prior to such effective date and otherwise complies with all applicable requirements. Upon making any SVE Takeover Election, Uptown shall either purchase the SVE System or replace the SVE System in accordance with (and subject to the term and conditions contained in) Paragraph 1(c) above.

(d) In the event the Responsible Agency determines that Uptown has failed to perform any of its obligations under Paragraph 2(a) above and Uptown fails to remedy such non-compliance within thirty (30) days following receipt of notice thereof from the Responsible Agency (subject to extension for force majeure delays and any applicable appeals of the Responsible Agency determination so long as asserted in good faith and diligently pursued) or such longer period as may otherwise be directed or approved by the Responsible Agency, Conexant may (but shall not be obligated to) at any time thereafter elect (by delivery of at least thirty (30) days prior written notice to Uptown and provided that Conexant has first obtained any required Responsible Agency approvals) to cure such non-compliance. If Conexant makes such election, (i) Conexant may enter the Property to effectuate such cure and shall diligently prosecute such cure until completion, and (ii) Uptown shall reimburse Conexant for any expenses reasonably incurred by Conexant to cure such non-compliance together with an administrative charge equal to ten percent (10%) of the total of such expenses. Such reimbursement shall be made to Conexant within thirty (30) days following written demand together with reasonable backup documentation supporting the sum so requested. Any reimbursement not received by Conexant by the expiration of such thirty (30) day period shall thereafter accrue interest at the rate of ten percent (10%) per annum until paid.

(e) Uptown shall use good faith efforts to keep Conexant informed regarding Uptown's environmental investigations and/or remediation activities with respect to the Site. In connection therewith, Uptown shall, upon request of Conexant from time to time, (i) promptly provide Conexant with copies of any reports and the results of analytical testing submitted to the Responsible Agency, (ii) promptly provide Conexant with copies of any communications sent to or received by Uptown from the Responsible Agency, (iii) promptly provide Conexant with a copy of any "no further action" letter or equivalent writing with respect to soil contamination obtained by Uptown, (iv) promptly notify Conexant of any remedial measures (e.g., soil excavation) it has taken or intends to take (excluding installation of engineering controls as provided above) and (v) promptly notify Conexant of any Third Party Claim respecting Identified Hazardous Materials (written or verbal) of which it has actual knowledge.

(f) Uptown shall use good faith efforts to provide Conexant with copies of any proposed written submissions to the Responsible Agency for Conexant's review at least five (5) business days prior to delivery of same to the Responsible Agency; provided, however, that Conexant shall have no approval rights over such submissions and Uptown may elect to accept or reject any or all comments in the exercise of its sole and absolute discretion.

(g) Uptown shall be responsible for all environmental disclosures required under applicable law to be given on or after the Agreement Date to Occupants (including without limitation prospective tenants and purchasers) and successors in interest to all or any portion of

the Property, including without limitation disclosures mandated under the California Health and Safety Code.

3. Access.

(a) Uptown hereby grants to Conexant and its employees, agents and contractors (collectively, the "Licensed Parties") a license and right of access (collectively, the "License") to, from, through, over, under and about the Property (subject to the rights of tenants under existing leases) for the following purposes (collectively, the "Licensed Activities"): (i) accessing, operating, maintaining, repairing, replacing, decommissioning and removing the SVE System and the Groundwater System (collectively, the "Remediation Systems"), (ii) exercising the rights granted to Conexant under Paragraph 2 above and Paragraph 5 below, and (iii) confirming that Uptown has otherwise properly and timely performed its obligations under this Agreement. Except in cases of an emergency, access shall be available for the purpose of conducting the Licensed Activities during normal business hours or such other times as the Parties may approve, which approval shall not be unreasonably withheld, conditioned or delayed. There shall be no license fee or other charge payable by Conexant on account of the License.

(b) Prior to exercise of the License by any Licensed Party, Conexant shall deliver to Uptown a certificate of insurance demonstrating that Conexant or such other Licensed Party maintains (i) a policy of commercial general liability insurance in an amount not less than \$2,000,000 per occurrence, issued by an insurance company reasonably acceptable to Uptown and naming Uptown as an additional insured, and (ii) worker's compensation insurance as required under applicable law. Said insurance shall remain in place until the License has terminated and Conexant no longer has any obligations thereunder. Such liability insurance policy shall provide for advance notice of cancellation of any coverage under said policy of not less than thirty (30) days.

(c) Conexant shall keep the Property free and clear of mechanics' liens or any other liens in connection with any such Licensed Activities. In the event any lien is filed against the Property as a result of any Licensed Activities of a Licensed Party, Conexant shall cause such lien to be discharged or removed of record by either paying the amount thereof or posting a lien release bond in the statutorily-required amount, within thirty (30) days after Conexant obtains actual notice of such filing. In the event Conexant fails to perform its obligations under the immediately preceding sentence and such failure is not cured within ten (10) business days following receipt of notice from Uptown, Uptown shall have the right to settle the claim so as to cause the lien to be released, in which event Conexant shall be obligated to reimburse Uptown for the amount paid in settlement plus interest at the rate of ten percent per annum (10%) from the date of payment until the date of reimbursement.

(d) Conexant hereby agrees to indemnify, defend and hold harmless Uptown from and against any claims, liabilities, losses, costs and expenses, including without limitation reasonable attorneys fees and costs (collectively referred to herein as "Claims") arising out of the use of the License granted herein by the Licensed Parties; provided, however, that the foregoing indemnity shall not include Claims regarding the investigation or remediation of Hazardous Materials on, under or about the Property or otherwise subject to Conexant's or Uptown's indemnification obligations under Paragraph 4 below.

(e) Uptown agrees that the License is coupled with an interest and shall be irrevocable from and after the Agreement Date and until the date which is sixty (60) days after the date which is the latest to occur of (i) the Groundwater Treatment Termination Date, (ii) the SVE Termination Date, or (iii) the date of issuance of a SVE-NFA (as applicable, the "License Period").

(f) Uptown shall not disturb, and shall not permit any employee, agent, Occupant (defined below) or invitee of Uptown to disturb, the Remediation Systems or any constituent component constituting the Remediation Systems prior to expiration of the License Period.

(g) As used herein, the term "Occupant" means any tenant, subtenant, licensee (excluding Conexant) or other occupant of all or any portion of the Property, together with their respective employees, agents and invitees. The term "Occupant" shall specifically include, without limitation, purchasers of Residential Units. As used herein, the term "Residential Unit" means, collectively, (i) any single family attached or detached dwelling, including without limitation condominium units, and (ii) any multi-family residential dwellings.

4. Indemnity; Release. As used in this Agreement, (i) the term "Third Party Claim" means any claim, demand or lawsuit asserted by a third party for losses, damages, costs and expenses, including without limitation any claim asserted or fine levied by the Responsible Agency, and (ii) the term "Losses" means any liabilities, losses, damages (including fines and penalties), costs and expenses, including without limitation reasonable attorneys fees and costs, resulting from a Third Party Claim.

(a) Conexant shall indemnify, defend and hold harmless Uptown and its Permitted Successors (collectively, the "Uptown Indemnified Parties") from and against any and all Losses incurred by the Uptown Indemnified Parties as a result of (i) the existence of Identified Hazardous Materials in the On-Site and Offsite groundwater from releases to or on the Property prior to the Agreement Date, and (ii) Conexant's failure to perform its obligations under Paragraph 1 above. Notwithstanding the immediately preceding sentence, Conexant shall not be obligated to indemnify, defend or hold harmless Uptown or its Permitted Successors from any Losses from Third Party Claims (i) asserted by present or future Occupants, (ii) asserted by a Uptown Indemnified Party in the nature of damages for diminution in value of the Property or any portion thereof (which Losses have been waived by Uptown pursuant to the PSA), (iii) for which Uptown is responsible pursuant to Paragraph 2(a) and 2(b) above, or (iii) to the extent arising from Uptown's failure to perform its obligations under Paragraphs 1 or 2 above.

(b) Uptown shall indemnify, defend and hold harmless Conexant and its permitted successors and assigns (collectively, the "Conexant Indemnified Parties") from and against any and all Losses incurred by the Conexant Indemnified Parties as a result of (i) an act or omission of a Uptown Indemnified Party with respect to On-Site soil conditions (specifically excluding Losses to the extent resulting from a breach by Conexant of its obligations under Paragraph 1 above), including without limitation Uptown's failure to take commercially reasonable protective measures for future Occupants with regard to Identified Hazardous Materials in connection with its redevelopment of the Site (e.g., failure to design or install appropriate protective infrastructure such as vapor barriers), and (ii) Uptown's failure to perform any of its obligations under Paragraphs 1 or 2 above.

(c) Nothing contained in this Paragraph 4 shall operate to negate, waive or otherwise affect any rights which the Parties may have against one another or against third parties under statute or common law, except to the extent such rights have been modified, waived or released under the PSA.

(d) As set forth in Sections 8(f) and 8(g) of the PSA, which are hereby incorporated into this Agreement by this reference as though such Sections are set forth in full herein (the "Environmental Conditions Release"), Uptown has provided to Conexant a full release of all Claims arising out of or related to Environmental Conditions (except as to Non-Released Matters).

5. Cooperation; Confirmation Sampling.

(a) To the extent necessary, both Parties shall work together in good faith in connection with the performance of their respective responsibilities under this Agreement, including without limitation submittals to and negotiations with the Responsible Agency.

(b) Conexant shall have the right to monitor Uptown's grading operations and to take confirmation sampling of On-Site soils after any Improvements have been demolished and during such grading operations. Conexant shall provide reasonable prior notice of such activities, shall conduct such activities in a commercially reasonable manner and shall use commercially reasonable efforts to minimize any interference with Uptown's operations to the extent practicable. All such monitoring and confirmation sampling activities shall be at Conexant's sole cost and expense.

6. Environmental Insurance.

(a) Notwithstanding anything to the contrary contained in the Pollution Liability Policy (as defined in the Exclusivity Agreement), if the nature of a claim tendered to the Carrier (as defined in the Exclusivity Agreement) is such that a Party would be obligated to provide indemnification for such claim in accordance with Paragraph 4 above, then such indemnifying Party shall be responsible for payment of any deductible applicable to such tendered claim; otherwise, the deductible shall be shared equally by the Parties. The Pollution Liability Policy shall not be modified without the prior written consent of both Parties, which consent shall not be unreasonably withheld.

(b) Each Party hereby waives any and all Claims against the other Party to the extent covered by the proceeds of the Pollution Liability Policy. For the avoidance of doubt, each Party shall continue to be obligated to indemnify, defend and hold harmless the other Party from and against (in accordance with and subject to the limitation contained in Paragraph 4 above) (i) any Losses not covered by such insurance, (ii) any applicable deductible in connection with a covered Loss for which the indemnifying Party is responsible pursuant to Paragraph 6(a) above, and (ii) the amount of any such Loss in excess of the policy limits for such Loss. Any Party entitled to indemnification hereunder shall first tender any such Loss to the carrier and shall otherwise comply with all applicable claims procedures through conclusion of such submitted claim prior to seeking indemnification from the other Party for such Loss.

7. Memorandum of Agreement.

(a) Concurrently with the closing of the purchase and sale of the Property as provided in the PSA, the Parties shall execute, notarize and cause a memorandum of this Agreement in the form of Exhibit C attached hereto (the "Memorandum") to be recorded in the Official Records of Orange County, California ("Official Records"). Upon recordation of a lot line adjustment with respect to Lot 2 and provided that all of the Lot 2 Release Conditions (defined below) are satisfied, Conexant shall upon request of Uptown execute, notarize and deliver to Uptown a partial release of the Memorandum from title to Lot 2 in any commercially reasonable form which Uptown may record at its sole cost and expense. For the avoidance of doubt, Uptown shall not be entitled to relocate any equipment comprising the SVE System in order to satisfy the Lot 2 Release Conditions without obtaining Conexant's prior written consent, which consent may be granted or withheld in Conexant's sole and absolute discretion. If such consent is obtained, the cost of relocating and reinstalling such SVE System equipment shall be borne exclusively by Uptown. As used herein, the term "Lot 2 Release Conditions" means, collectively, the following conditions precedent: (i) the boundary of Lot 2 as adjusted by such lot line adjustment is substantially in the location shown on Schedule 7 attached hereto, (ii) the land area of Lot 2 (after giving effect to such lot line adjustment) does not exceed 50% of the total land area of the Property as of the Agreement Date, (iii) Conexant has confirmed that no equipment comprising the SVE System remains within Lot 2 following such lot line adjustment and (iv) Uptown and Conexant enter into and Uptown causes to be recorded in the Official Records against Lot 2 an access agreement granting Conexant access over Lot 2 which is consistent with the provisions of Paragraph 3 above and is otherwise in a commercially reasonable form.

(b) At such time as the Responsible Agency has issued a "no further action letter" or similar directive confirming that no further remediation of Identified Hazardous Materials is required at the Site ("Soil NFA"), Conexant shall upon request of Uptown execute, notarize and deliver to Uptown a partial release of the Memorandum from title to the remainder of the Property in a commercially reasonable form, which Uptown may thereafter record at Uptown's sole cost and expense. Notwithstanding the immediately preceding sentence, provided that Uptown records a copy of such Soil NFA in the Official Records, the Memorandum shall be deemed removed from title to the remainder of the Property without the necessity of any further act by the Parties.

(c) Nothing contained in this Paragraph 7 shall be construed to release any Party from its obligations under this Agreement.

8. Termination. This Agreement and the obligations of both Parties hereunder shall terminate automatically on the date which is the earlier to occur of (i) the date by which both Parties have fully performed their respective duties under Paragraphs 1 and 2 above or (ii) the date that the entirety of the Property is owned exclusively by Excluded Successors (defined below).

9. Successors. Notwithstanding anything to the contrary contained in this Agreement, (i) no present or future Occupant (excluding only a fee owner of the Property or any portion thereof who is not a Residential Unit owner) shall be a third party beneficiary of and shall otherwise



have no right to enforce performance of any of Conexant's obligations arising under this Agreement, and (ii) no owner's association comprised (in whole or in part) of Residential Unit owners shall be deemed a successor in interest to Uptown for purposes of succeeding to any of Uptown's rights or obligations under this Agreement (each an "Excluded Successor"), including without limitation any right which Uptown may have to enforce Conexant's obligations arising out of this Agreement. In addition, (i) Uptown may only assign this Agreement to a person or entity ("Person") acquiring fee title to that portion of the Property which as of the effective date of such assignment is still subject to the Memorandum (as provided in Paragraph 7 above) other than (x) a Person purchasing a Residential Unit and (y) an Excluded Successor (as applicable, a "Permitted Uptown Successor"), (ii) Conexant shall not have the right to assign this Agreement except to a successor by merger, consolidation, reorganization or sale of all or substantially all of its assets, and (iii) no such permitted assignment shall operate to release the assignor from its obligations under this Agreement. Except for Excluded Successors and subject to the transfer restrictions contained in this Paragraph 9, this Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. In connection with any conveyance of the Property or any portion thereof to a Permitted Uptown Successor, Uptown shall (i) provide such Permitted Uptown Successor with a copy of this Agreement and a copy of Sections 8(f) and 8(g) of the PSA, (ii) cause such Permitted Uptown Successor to assume in writing Uptown's obligations under this Agreement effective as of the closing date of such conveyance, and (iii) notify Conexant of such conveyance and assumption within ten (10) days following the occurrence thereof (which notice shall include an address, contact person and phone number of such assignee) and provide a copy of such assumption agreement to Conexant along with said notice.

**10. Notices.** All notices, requests and demands to be made hereunder to the Parties hereto shall be made in writing to the addresses set forth below and shall be given by any of the following means: (a) personal service; (b) electronic communication, including facsimile or e-mail transmission (provided, however, that notice is also given by one of the other means set forth in clauses (a), (c), or (d)); (c) certified or registered mail, postage prepaid, return receipt requested; or (d) courier or delivery service. Such addresses may be changed by notice to the other Party given in the same manner as provided above. Any notice, demand or request sent pursuant to either clauses (a), (b) or (d) hereof shall be deemed received upon the actual delivery thereof, and, if sent pursuant to clause (c) shall be deemed received five (5) days following deposit in the mail. Refusal to accept delivery of any notice, request or demand shall be deemed to be delivery thereof. If any Party hereto is not an individual, notice may be made on any officer, general partner or principal thereof. Notice to any one co-Party shall be deemed notice to all co-Parties.

To Conexant: Conexant Systems, Inc.  
4000 MacArthur Blvd.  
Newport Beach, California 92660  
Attention: Mark Peterson, Esq., General Counsel  
E-mail Address: Mark.Peterson@conexant.com  
Facsimile No: (949) 483-5536

With a copy to: Manatt, Phelps & Phillips, LLP  
695 Town Center Drive, 14th Floor  
Costa Mesa, California 92626  
Attention: Steven Edwards, Esq.  
E-mail Address: sedwards@manatt.com  
Facsimile No.: 714-371-2550

To Uptown: Shopoff Advisors, L.P.  
8951 Research Drive  
Irvine, California 92618  
Attention: William A. Shopoff, President, CEO and Chairman  
E-mail Address: bshopoff@shopoff.com  
Facsimile No: 949-417-1399  
And to:

Uptown Newport LP  
c/o DRA Advisors LLC  
90 New Montgomery, Suite 401  
San Francisco, CA 94105  
Facsimile: 415-243-8222  
Attention: Jim Christian

And to:

DRA Advisors LLC  
220 East 42nd Street, 27th Floor  
New York, NY 10017  
Facsimile: (212) 697-7403  
Attention: Daniel Goldman, Director, Acquisitions

With a copy to: Gromet & Associates  
114 Pacifica, Suite 250  
Irvine, CA 92618  
Attention: Stevan J. Gromet, Esq.  
E-mail Address: sjgromet@grometlaw.com  
Facsimile No: (949) 261-1818

And to:

Morrison & Foerster LLP

425 Market Street  
San Francisco, California 94105  
Attention: Craig B. Etlin, Esq.  
Reference: 23573 (222)  
Facsimile: (415) 268-7522

11. Miscellaneous.

a. Incorporation of Prior Agreements. This Agreement contains the entire understanding of Buyer and Seller with respect to the subject matter hereof, and supersedes all prior or contemporaneous written or oral agreements and understandings between the Parties hereto pertaining to any such matter (other than any surviving provisions of the PSA). In the event of any conflict between this Agreement and the PSA, this Agreement shall control. No provision of this Agreement may be amended, modified or supplemented or added to except by an agreement in writing, expressly stating that such agreement is an amendment of this Agreement, signed by the Parties to this Agreement or their respective successors in interest.

b. Attorneys' Fees. If either Party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other Party of any of the terms hereof, the losing Party shall pay to the prevailing Party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the Parties hereto, which may include in-house counsel and printing, photocopying and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The term "attorney" shall have the same meaning as the term "counsel."

c. Time is of the Essence. Time is of the essence of this Agreement and the performance of each term in which a time period is given for such performance.

d. California Law; Choice of Forum. This Agreement shall be construed in accordance with and governed by the internal laws of the State of California, without giving effect to any "conflict of law" rules of such state. Buyer and Seller each acknowledge and agree that the Superior Court of the State of California in and for the County and the associated federal and appellate courts shall have exclusive jurisdiction to hear and decide any dispute, controversy or litigation regarding the enforceability or validity of this Agreement or any portion thereof.

e. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

f. Interpretation. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement. Paragraph headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

g. Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly against the Party who drafted such language.

h. Exhibits. All Exhibits attached hereto are incorporated herein by reference and made a part hereof for all purposes.

i. Business Days. As used in this Agreement, a "business day" shall mean a day other than Saturday, Sunday or any day on which banking institutions in the City of Los Angeles are authorized by law or other governmental action to close. All other references to "days" in this Agreement shall refer to calendar days.

j. Calculation of Days. If the date for any approval or disapproval or other notice by either Party under this Agreement falls on a day other than a business day, then such date shall automatically be extended to the next succeeding business day.

k. Due Execution. Each person whose signature is affixed hereto in a representative capacity represents and warrants that he is authorized to execute the Agreement on behalf of and to bind the Party on whose behalf his signature is affixed.


l. Reimbursement. Except as otherwise provided in this Agreement, any reimbursement which one Party is obligated to make to the other Party pursuant to this Agreement shall be made within thirty (30) days following written demand, which demand shall be accompanied by reasonable backup documentation (if available) supporting the sum so requested. Any reimbursement not received by the expiration of such thirty (30) day period shall thereafter accrue interest at the rate of ten percent (10%) per annum until paid.

**[END OF AGREEMENT; SIGNATURES CONTAINED ON NEXT PAGE]**

IN WITNESS WHEREOF, Conexant and Uptown have executed this Agreement as of the date first above written.

**"CONEXANT"**

CONEXANT SYSTEMS, INC., a Delaware corporation

By: 

Mark Peterson, Senior Vice President  
General Counsel and Secretary

**"UPTOWN"**

UPTOWN NEWPORT LP, a Delaware limited partnership

By: G&I VI NEWPORT CORP., a Delaware corporation, its General Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Printed Name and Title]

IN WITNESS WHEREOF, Conexant and Uptown have executed this Agreement as of the date first above written.

**"CONEXANT"**

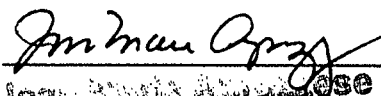
CONEXANT SYSTEMS, INC., a Delaware corporation

By: \_\_\_\_\_  
Mark Peterson, Senior Vice President  
General Counsel and Secretary

**"UPTOWN"**

UPTOWN NEWPORT LP, a Delaware limited partnership

By: G&I VI NEWPORT CORP., a Delaware corporation, its General Partner

By:   
Jean-Marie Apronese  
Its: Vice President  
[Printed Name and Title]

## EXHIBIT A

### LEGAL DESCRIPTION

All that real property situated in the City of Newport Beach, County of Orange, State of California and more particularly described as follows:

#### PARCEL A:

LOT 1 OF TRACT NO. 7953, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

#### PARCEL B-1:

LOT 2 OF TRACT NO. 7953, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

EXCEPT FROM LOT 2 ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS OF EVERY KIND AND NATURE BELOW A DEPTH OF FIVE HUNDRED (500) FEET BENEATH THE SURFACE OF THE ABOVE DESCRIBED PROPERTY, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008.

#### PARCEL B-2:

A NON-EXCLUSIVE EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS TO AND FROM LOT 2 OF TRACT NO. 7953 (PARCEL B-1) TO VON KARMAN AVENUE, WITHIN A STRIP OF LAND, 30.00 FEET IN WIDTH, LOCATED ON LOT 3 OF TRACT NO. 7953, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 10 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008 OF OFFICIAL RECORDS.

#### THE CENTERLINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THAT CERTAIN CURVE IN THE CENTERLINE OF VON KARMAN AVENUE SHOWN ON SAID MAP AS BEING CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 600.00 FEET WITH A CENTRAL ANGLE OF 89°59'50" AND AN ARC LENGTH OF 942.45 FEET, A RADIAL OF SAID CURVE FROM SAID POINT BEARS NORTH 25°54'08" WEST; THENCE ALONG THE SOUTHEASTERLY PROLONGATION OF SAID RADIAL, SOUTH 25°54'08" EAST, 95.33 FEET TO A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 200.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE 104.36 FEET THROUGH A CENTRAL ANGLE OF 29°54'08"; THENCE TANGENT TO SAID CURVE SOUTH 4°00'00"

WEST, 198.51 FEET TO A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHERLY AND SOUTHEASTERLY ALONG SAID CURVE 37.25 FEET THROUGH A CENTRAL ANGLE OF 53°21'34"; THENCE SOUTH 49°21'34" EAST, 38.49 FEET TO A LINE PARALLEL WITH AND 15.00 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF LOT 2 OF SAID TRACT NO. 7953; THENCE ALONG SAID PARALLEL LINE, NORTH 40°38'26" EAST, 90.00 FEET.

THE SIDE LINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO FORM A CONTINUOUS STRIP OF LAND.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN SAID VON KARMAN AVENUE.

PARCEL B-3:

AN EASEMENT AND RIGHT OF WAY TO CONSTRUCT, USE, MAINTAIN AND OPERATE AN UNDERGROUND ELECTRICAL POWER LINE WITHIN A STRIP OF LAND, 8.00 FEET IN WIDTH, OVER THAT PORTION OF LOT 3 OF TRACT NO. 7953, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008 OF OFFICIAL RECORDS, LYING 4.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF LOT 3, DISTANT THEREON SOUTH 40°38'25" WEST, 3.99 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 2 OF SAID TRACT NO. 7953; THENCE NORTH 48°30'22" WEST, 267.86 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 2, SAID POINT BEING DISTANT ALONG SAID SOUTHWESTERLY LINE NORTH 49°21'34" WEST, 267.83 FEET FROM SAID SOUTHERLY CORNER.

PARCEL B-4:

A NON-EXCLUSIVE EASEMENT, 40.00 FEET WIDE, FOR INGRESS AND EGRESS PURPOSES, FOR THE MAINTENANCE OF THE UTILITY SPINE AND BUILDINGS LOCATED OVER THAT PORTION OF LOT 3 OF TRACT NO. 7953, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008 OF OFFICIAL RECORDS, THE SOUTHEASTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 2 OF SAID TRACT NO. 7953; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, NORTH 40°38'26" EAST, 99.17 FEET TO AN ANGLE POINT IN THE MOST SOUTHWESTERLY LINE OF LOT 1 OF SAID TRACT NO. 7953.



PARCEL C:

EASEMENTS AS SET FORTH IN SECTION 1.05 (A PORTION THEREOF), 1.06, 1.08, 1.10 AND 1.11 OF THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS RECORDED NOVEMBER 6, 1972 IN BOOK 10413, PAGE 573 AS AMENDED BY THAT CERTAIN DOCUMENT ENTITLED "FIRST AMENDMENT TO RECIPROCAL GRANT OF EASEMENTS" RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1004 AND SUBSEQUENT QUITCLAIM DEEDS RECORDED IN BOOK 11137, PAGE 1018 AND IN BOOK 11137, PAGE 1022, ALL OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

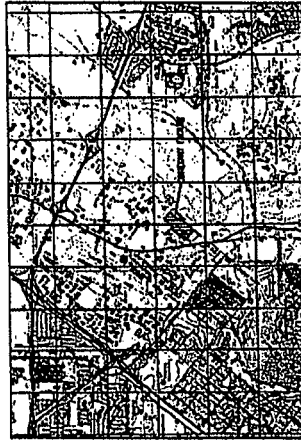
A NON-EXCLUSIVE EASEMENT AS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "GRANT AND QUITCLAIM OF EASEMENTS" RECORDED MAY 26, 1978 IN BOOK 12690, PAGE 854 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: 445-131-02 AND 445-131-03

**EXHIBIT B**  
**SVE SYSTEM AS-BUILT PLANS**

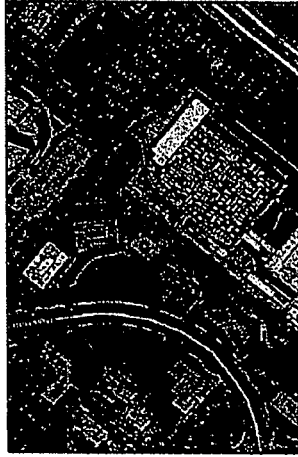
[Attached]

# CONEXANT SYSTEMS INC. NEWPORT BEACH, CA SOIL VAPOR EXTRACTION DESIGN AS-BUILTS OCTOBER 2008



LOCATION MAP

INDEX OF DRAWINGS	
SHEET	DESCRIPTION
G-1	COVER SHEET
G-2	GENERAL NOTES
G-3	GENERAL NOTES
G-4	SITE PLAN
G-5	SVL PIPING-OFFSITE
G-6	TRENCH AND WELLHEAD DETAILS-OFFSITE
G-7	MANFOLD DETAILS-OFFSITE
G-8	MANFOLD DETAILS-OFFSITE
G-9	SVL PIPING DETAIL-ONSITE/SOURCE AREA
G-10	TRENCH DETAILS-ONSITE
G-11	TRENCH DETAILS-ONSITE
G-12	SOURCE AREA MANFOLD DETAIL-ONSITE
P-1	SVL PIPING DETAIL CANOPY AREA
E-1	COLUMN DETAIL-ONSITE
	SOIL VAPOR EXTRACTION COMPOUND
	PROCESS AND INSTRUMENTATION DIAGRAM
	SINGLE LINE DIAGRAM



SITE

CONEXANT SYSTEMS INC. 4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 PHONE (949) 433-1045 FAX (949) 433-1046		JACOB & KERNER ASSOCIATES, INC. 1525 BURGESS PARKWAY SUITE 4-101 NEWPORT BEACH, CALIFORNIA 92660 PHONE (949) 433-1045 FAX (949) 433-1046	
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**1.9 PREREQUISITE**

- 1.1 ALL WORK SHALL COMPLY WITH OSHA REGULATIONS AND STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (LATEST EDITION OF PDF).
- 1.2 CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING UNDERGROUND SERVICE AGENCY TO LOCATE ANY UTILITIES THAT ARE LOCATED IN THE PROJECTED WORK AREA (PHONE NUMBER 1-800-422-1163). CONTRACTOR SHALL REMAIN ON SITE AT ALL TIMES DURING THE CONSTRUCTION PERIOD TO COORDINATE WITH THE UTILITY COMPANIES TO AVOID DAMAGE TO EXISTING UTILITIES. IT WILL BE THE CONTRACTOR'S RESPONSIBILITY TO ASSESS THE EXACT LOCATION OF ALL UTILITIES PRIOR TO THE COMMENCEMENT OF WORK.
- 1.3 ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL ORDINANCES. IF CONFLICT ARISES, LOCAL BUILDING CODE REQUIREMENTS SUPERSEDE THESE PLANS AND SPECIFICATIONS.
- 1.4 PRIOR TO COMMENCING WORK, THE CONTRACTOR SHALL SECURE ALL NECESSARY PERMIT APPROVALS FROM LOCAL BUILDING AND SAFETY DEPARTMENT AND SHALL COORDINATE ALL PERMISSALS REQUIRED BY OTHERS AGENCIES/JURISDICTIONS.
- 1.5 CONTRACTOR SHALL POSSESS CURRENT LICENSE FOR CONCRETE AND STEELWORK CONTAMINATED MATERIALS CONTROL PLAN WHEN NOT BE GENERATED BY CONSTRUCTION.
- 1.6 CONTRACTOR, EMPLOYEES OF CONTRACTOR AND ANY SUB CONTRACTORS SHALL HAVE RECEIVED THE HEALTH CARE TRAINING COURSE AND MUST BE COMPLIANT WITH ALL FEDERAL, REGULATIONS, TITLE 29 PART 1910-100 AND THE CALIFORNIA CODE OF REGULATIONS TITLE 8, GENERAL INDUSTRIAL STANDARDS, SUBSECTION 7, SECTION 2000-914A. A SITE SAFETY PLAN SHALL BE PROVIDED TO THE CONTRACTOR AND SHALL BE AVAILABLE AT ALL SITES DURING CONSTRUCTION.
- 1.7 ALL SITE PERSONNEL, PERFORMANCE WORK, WITH OR WITHOUT EXPERIENCE, ARE REQUIRED TO COMPLY WITH THE GUIDELINES OF JACOBI REPER AND ASSOCIATES INC. ALL SITE PERSONNEL MUST BE TRAINED AND REQUIRED TO WEAR THE SITE HEALTH AND SAFETY PLAN ONLY. PERSONS WHO CHOOSE NOT TO COMPLY, WILL NOT BE ALLOWED SITE ACCESS.
- 1.8 CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL DIMENSIONS AND LOCATIONS SHOWN PRIOR TO COMMENSING WORK AND CONSULT WITH DETAILS AND NOTES SHALL BE SUBJECT TO THE IMMEDIATE ATTENTION OF THE ENGINEER IN WRITING.
- 1.9 DETAILS TAKE PRECEDENCE OVER CONSTRUCTION METHODS. WORK AFTER ORDER OF WORK MAY VARYING, THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE CORRECT LOCATION OF ALL UTILITIES PRIOR TO COMMENSING WORK. NO CHANGES OR ADDITIONS TO THE SCOPE OF WORK DEPicted HEREIN SHALL BE MADE WITHOUT PRIOR APPROVAL OF THE ENGINEER.
- 1.10 CONTRACTORS SHALL OBTAIN ANY NECESSARY CONSTRUCTION PERMITS, INCLUDING ELECTRICAL AND PLUMBING PERMITS AND SO-CALLED ANY REQUIRED INSPECTIONS. THE CONTRACTOR SHALL MAINTAIN COPIES OF ALL PERMITS AT THE JOB SITE THE SUBJECT INSPECTION AND PROVIDE A COPY TO THE ENGINEER PRIOR TO BEGINNING WORK.
- 1.11 CONTRACTOR SHALL LOCATE ALL UTILITIES AND PROTECT THEM FROM DAMAGE. THE CONTRACTOR SHALL MAINTAIN RECORDS OF ALL UTILITIES LOCATED BY THE CONTRACTOR AND PROVIDE FOR SERVICE CONTINUATION ALONG WITH RECORDS AT ITS EXPENSE.
- 1.12 INSTALLATION OF NEW UTILITIES SHALL BE COORDINATED WITH THE REQUIREMENTS OF THE SCOPE OF WORK. NEW UTILITIES WILL BE INSTALLED BY OWNERS SMALLER OR DEEPER THAN THE EXISTING UTILITIES. EXISTING PIPES, LATERALS AND MAINS SHALL BE IDENTIFIED AND PROTECTED. WHERE COLLISION OCCURS, THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY.
- 1.13 THE CONTRACTOR SHALL MAINTAIN AN ORDERLY AND CLEAN JOB SITE. THE CONTRACTOR SHALL REMOVE AND PROPERLY DISPOSE OF ALL CONSTRUCTION RELATED WASTE, DEBRIS, AND EXCESS MATERIALS.
- 1.14 THE SELECTION OF FEATURES (UTILITIES AND FOUNDATIONS) SHALL BE COORDINATED WITH THE FIELD ENGINEER AND SITE CONSTRUCTIONS. SECURITY FOR MATERIALS SHALL BE COORDINATED WITH THE ENGINEER AND OTHER ON-SITE CONSTRUCTIONS. SECURITY FOR CONTRACTOR'S EQUIPMENT AND MATERIALS IS THE RESPONSIBILITY OF THE CONTRACTOR.
- 1.15 THE ELAVATION OF FEATURES (UTILITIES AND FOUNDATIONS) SHALL BE COORDINATED WITH THE FIELD ENGINEER AND SITE CONSTRUCTIONS MANAGER BEFORE EXISTING PROFILES THAT CROSS THROUGH.
- 1.16 THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL FIELD DIMENSIONS BEFORE WORK COMMENCES.
- 1.17 THE CONTRACTOR SHALL PROVIDE THE ENGINEER WITH AN AS-BUILT DRAWING OF ANY CONSTRUCTION AND CONSTRUCTION PROCESS AND/OR COMPLIMENT DEFENSE FROM THE DRAWINGS IN THIS DESIGN.
- 1.18 A FIVE-CONSTRUCTION MEETING WILL BE HELD BETWEEN A REPRESENTATIVE FROM CONTRACT, OWNER, MANAGER, AND THE CONTRACTOR PRIOR TO BEGINNING ANY WORK.
- 1.19 A SCHEDULE OF ACTIVITIES MUST BE SUBMITTED WITH THE BID. BACKGROUNDING WITH THESE MEASURES AND APPROVED AND COMPLETE DAILY. ANY CHANGES TO THE APPROVED TIME FRAME WILL REQUIRE CONTRACT'S APPROVAL.

**1.9 PREREQUISITE**

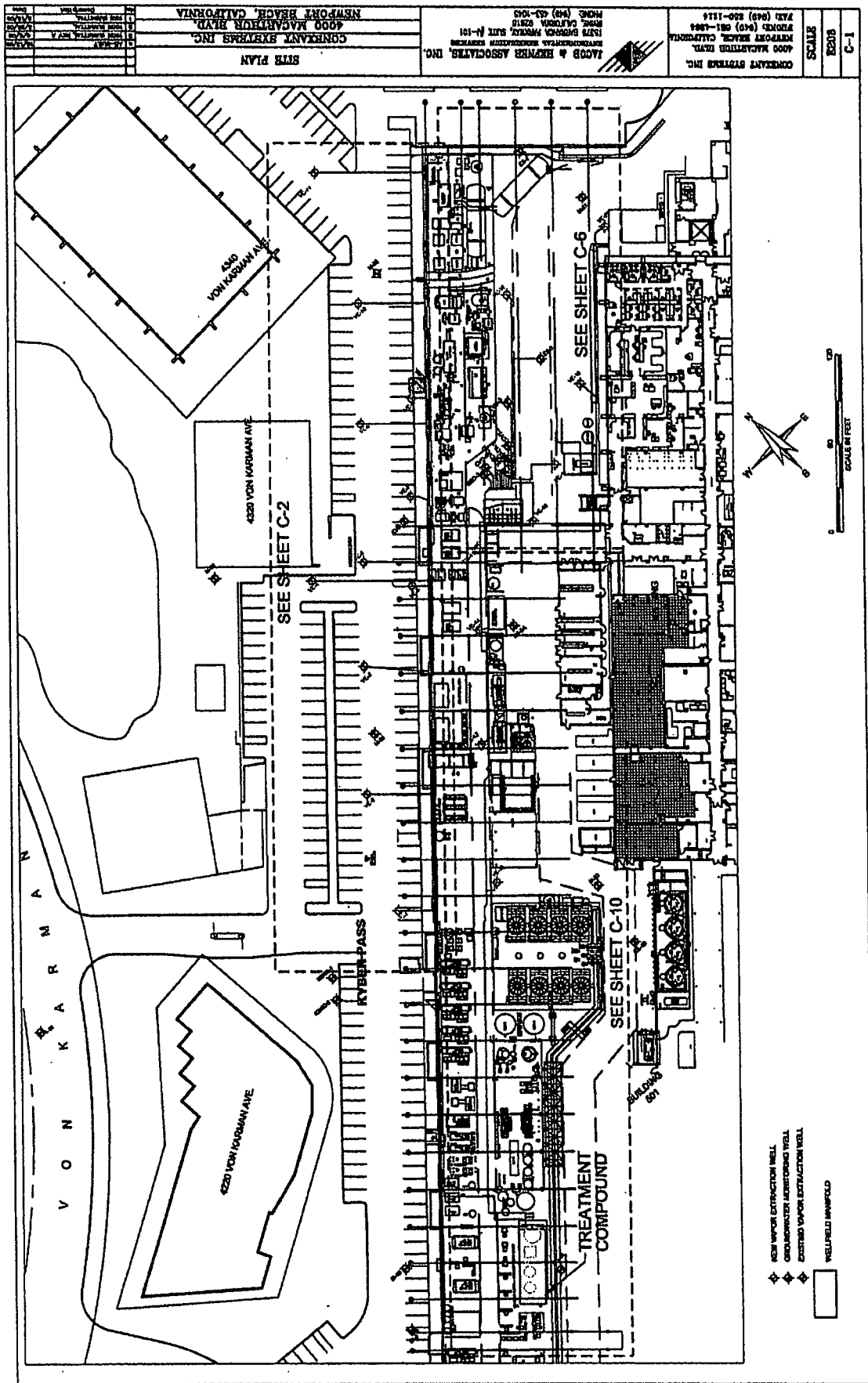
- 2.5 TRAFFIC CONTROL DEVICES SUCH AS TRAFFIC CONES, WARNING TAPE, SIGNS AND BARRICADES SHALL BE PROVIDED AT ALL DISSEMINATIONS AND DEMONSTRATED AT WORK AREAS THROUGHOUT THE PROJECT. THESE DEVICES SHALL BE MAINTAINED IN A MANNER THAT DOES NOT OBSTRUCT ACCESS TO THE TREATMENT AREA. REASONABLE FEES SHALL BE USED DURING CONSTRUCTION TO SECURE ACCESS TO EXCAVATIONS WHICH MAY REMAIN OPEN FOR AN EXTENDED PERIOD OF TIME.
  - 2.6 THE CONTRACTOR SHALL CONDUCT ITS ACTIVITIES ON THE SITE TO MINIMIZE IMPACT TO BUSINESS ACTIVITIES AND PROVIDE ADEQUATE ACCESS TO AND FROM TO MAINTAIN BUSINESS OPERATION.
- 3.0 SITE WORK
- 3.1 CONCRETE SHALL HAVE OR MEET ANY NECESSARY TEST VALUES FOR THE PURPOSES OF LOCKING EXISTING UNDERGROUND UTILITIES, STRUCTURES, ETC. PRIOR TO EXCAVATING ACTIVITIES.
  - 3.2 CONTRACTOR SHALL VERIFY WHETHER OR NOT PLACE PIPING, BACKFILL, CONTACTS AND EXISTENCE ADJUSTMENTS ARE REQUIRED. FULL INSULATION OF THE REGISTRATION POINTS HYDRAULIC AND ELECTRICAL CIRCUIT IS REQUIRED. ACTUAL BURIAL DEPTH TO BE DETERMINED BY THE CONTRACTOR BASED ON MAINTENANCE A VARIATION DEPTH OF 24-INCHES TO TOP OF PIPE INCLUDING PADMANT THICKNESS.
  - 3.3 TRENCH DEPTH SHALL BE SUCH THAT PIPING FROM THE UNWEARLED AREA, IN THE TREATMENT COMPAUND, SHALL BE MAINTAINED WITHIN +/- 1-INCH OF REFERENCE ELEVATION.
  - 3.4 AREAL TRENCH WIDTH TO BE DETERMINED BY CONTRACTOR BASED ON THE NUMBER OF PIPES IN THE TRENCH.
  - 3.5 CONTRACTOR SHALL PROTECT AND COVER ALL OTHER TRENCHES WITHIN A MINIMUM 1'-WIDE STRIP PLATES DURING CONSTRUCTION UNLESS ITS OTHERWISE APPROVED BY CONSULTANT'S REPRESENTATIVE.
  - 3.6 INSULATION AND CONNECTION OF THE ELECTRICAL SUPPLY TO THE EQUIPMENT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR. PERMIT ACQUISITION AND FIELD INSPECTION INFORMATION SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
  - 3.7 ALL PIPE SUPPORTS REMAINED IN ADDITION TO THOSE SHOWN FOR THE PROPER PLACEMENT, SURGE AND RUM OF THE UNDERGROUND PIPING SHALL BE DESIGNED, LOCKED AND INSTALLED BY THE CONTRACTOR. BACKFILL MATERIAL SHALL BE GRANULAR SWEET SOIL PER SPECIFICATIONS 200-1.3.5 AND 200-1.3 OF THE PAC.
  - 3.8 ANY MISALIGNMENT CORRECTED BETWEEN THESE GUIDELINES AND ACTUAL OR ANTICIPATED SITE CONDITIONS SHALL BE BROUGHT TO THE ATTENTION OF CONSULTANT'S ENGINEER.
  - 3.10 NO FELD CHANGES SHALL BE MADE TO THE DESIGN AS SHOWN IN THESE INSTALLATION SPECIFICATIONS AND DIMENSIONS WITHOUT PROPOSED CHANGES SUBMITTED TO AND APPROVED BY CONSULTANT'S ENGINEER.
  - 3.11 ALL PIPES TO BE CONTAINABLE 40 PVC BELOW EXISTING SURFACES AND SCHEDULE 40 PVC ABOVE EXISTING SURFACE UNLESS OTHERWISE SPECIFIED. ABOVE GROUND PIPING WITHIN THE CONCEPT AREA MAY BE SCHEDULE 40 PVC.
  - 3.12 ALL PIPING, UNWEARLED PIPING, AND VALVING SHALL BE INSPECTED BY J-AN'S ENGINEER FOR CONFORMANCE TO DRAWING REQUIREMENTS PRIOR TO FINAL HURRIAP AND INSULATION BY THE CONTRACTOR.
  - 3.13 THE UNWEARLED PIPING INSIDE THE TREATMENT AREA SHALL HAVE APPROPRIATE SUPPORT. A UNWEARLED CHANNEL, WARMED ON A BASE PLATE SECURED TO THE GROUND OR ANOTHER STRUCTURE SHALL ALSO BE PROVIDED. THE PIPE SUPPORT AND RETENTION/MATERIAL CAPACITY ADMINISTERED SHALL ALSO BE PROVIDED.
  - 3.14 IN THE CASE OF UNDERGROUND UTILITIES, PIPING, AND ADJACENT STRUCTURES AND EXISTENCES FROM SETTLEMENT AND/OR OTHER DAMAGE.
  - 3.15 CONTRACTOR SHALL CONSIDER CONCOURSE AROUND EXISTING BODIES AS REQUIRED TO COMPLETE PIPING CONNECTIONS. CONTRACTOR SHALL PROVIDE AND INSTALL NEW BODIES AS REQUIRED. (C/F ENCLD WEIGHMAN VALLEY OR EXAMPLAR)
  - 3.16 ALL WELL HEAD BOX FINISHED ELEVATIONS SHALL BE AT LEAST 1'-4" ABOVE EXISTING GRADE ELEVATION AT EACH LOCATION.
  - 3.17 NOTIFY THE CONSULTANT'S ENGINEER AT LEAST 24 HOURS BEFORE OTHER SCHEDULING THE FIELD WORK OR RESCHEDULING INTERFERING.
  - 3.18 ALL PROFILES MUST BE SAW CUT WITH STRAIGHT AND TRUE LINE.
  - 3.19 ALL REDLINES, IF REQUIRED, SHALL MEET THE REQUIREMENT OF ASTM-A15-01.

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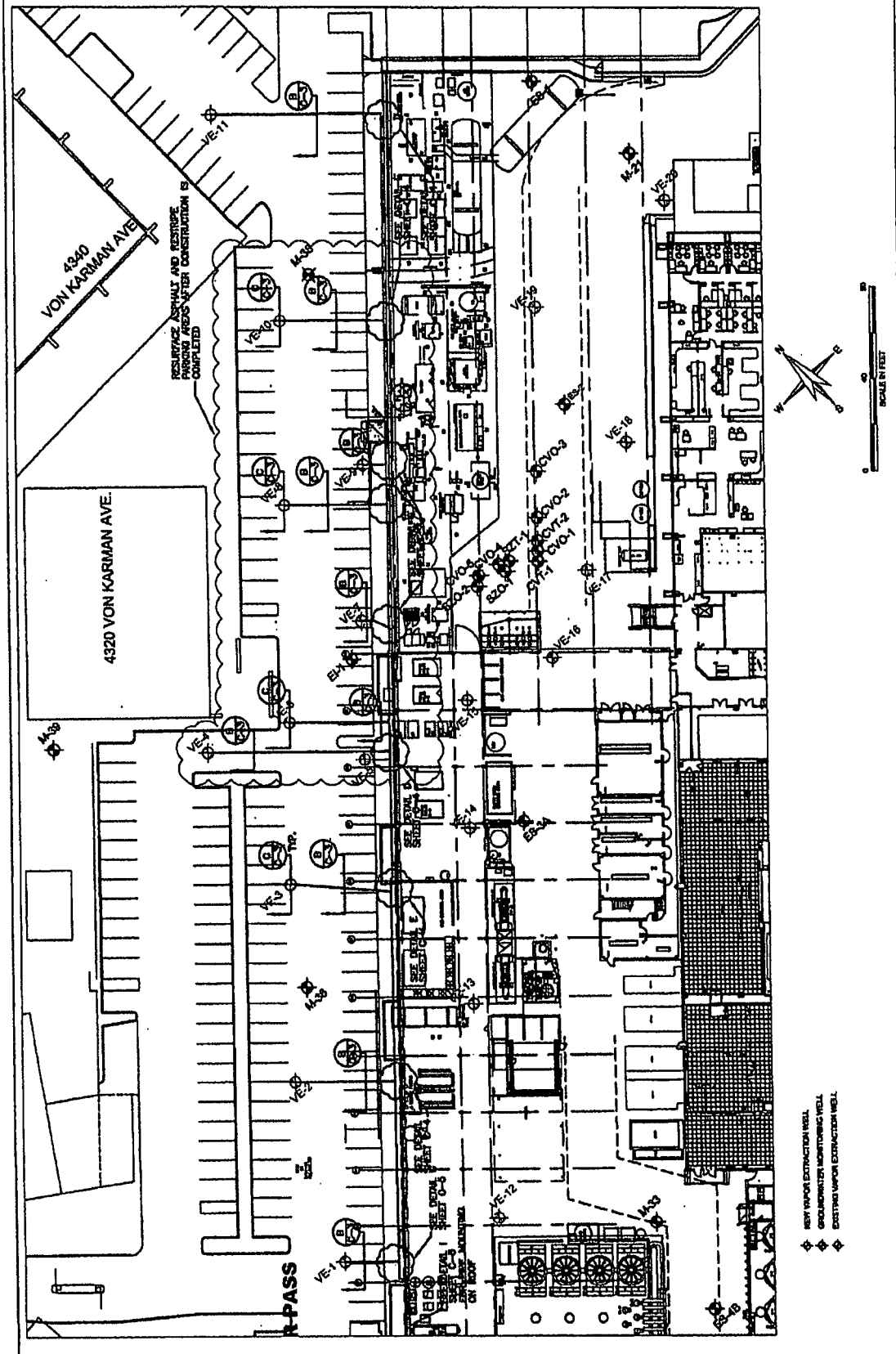
**GENERAL NOTES:**

- 3.20 PVC PIPE SHALL BE JOINED BY SOLVENT WELDING IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS. ALL JOINTS SHALL BE STRESS FREE.
- 3.21 NEW AND EXISTING SOIL VAPOR EXTRACTING WELLS WILL BE INSTALLED BY OTHERS. CONTRACTOR IS RESPONSIBLE FOR COMPLETING WELLHEADS AS INDICATED ON DRAWINGS.
- 3.22 ALL ABOVE GROUND PIPING SHALL BE SUPPORTED BY THE GROUND SURFACE OR ATTACHED TO UNDERLAY (OR EQUIVALENT) PREVENT SAGGING.
- 3.23 ALL ABOVE GROUND PIPING BETWEEN PVC SUPPORTS WILL BE IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS TO PREVENT SAGGING.
- 3.24 ALL ABOVE GROUND PIPING SHALL BE SUPPORTED ON WALLS SUCH THAT THE BUILDING SUPPORT COLLARS PROVIDE PROTECTION TO THE PIPES FROM TRAFFIC.
- 3.25 ALL PIPING SHALL BE PERMANENTLY LABELED AT EACH END WITH ASSOCIATED WELLHEAD IDENTIFICATION LABEL BEFORE COORDINATE WITH SOIL.
- 3.26 PIPING TO BE INSTALLED SHALL BE TESTED BY APPLYING LOW PRESSURE AIR TO THE PIPING. A WATER/PROP TEST SHALL BE CONDUCTED TO EACH JOINT. IF A LEAK IS OBSERVED, THE EXCESSIVE LEAK WILL BE REPAIRED AT THE CONTRACTOR'S EXPENSE. THE EXCESSIVE LEAK WILL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
- 3.27 THE CONTRACTOR SHALL NOT BOREHOLE THE TRENCHES UNLESS APPROVAL IS PROVIDED BY THE CONSULTANT ENGINEER.
- 3.28 THE CONTRACTOR SHALL REPLACE IN KIND ALL LANDSCAPE AND GROUND COVERINGS DISTURBED OR DAMAGED BY THE WORK.
- 3.29 THE CONTRACTOR WILL BE RESPONSIBLE FOR THE PROTECTION AND INTEGRITY OF EXISTING SVE AND GROUNDWATER MONITORING WELLS.
- 3.30 CONTRACTOR WILL BE RESPONSIBLE FOR FIELD LOOKING AND PROTECTING EXISTING GROUNDWATER MONITORING WELLS. DAMAGE TO THE WELLS BY THE CONTRACTOR WILL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
- 4.0 TRENCH CONSTRUCTION
  - 4.1 TRENCH BACKFILL SHALL BE, WHERE SOIL IS APPROVED, COMPACTED WHEEL TRACKS ARE NOT SURFACED.
  - 4.2 BACKFILL MAY BE SUBJECT TO TESTING AND IF THE REQUIRED STATE OF COMPACTION IS NOT OBTAINED, THE OWNER MAY REQUIRE THAT THE BACKFILL BE REMOVED AND COMPACTED AT THE CONTRACTOR'S EXPENSE.
  - 4.3 CUT SLOPE SHALL BE AS DETERMINED BY THE CONTRACTOR. ALL EXCAVATION WORK SHALL BE PERFORMED IN ACCORDANCE WITH ALL CONDITIONS SET FORTH BY OWNER'S REVISED SPECIFICATIONS FOR EXCAVATIONS, 28 CFR 1929 SUBPART A.
  - 4.4 TRENCH BOTTOM SHALL BE PRO COMPACTED SOIL. CONTRACTOR SHALL VERIFY TRENCH BOTTOM SATURABILITY (IN ORDER TO AVOID EXCESSIVE SETTLEMENT) FOR PROJECT. PLACEMENT OF PIPE AND PVC BEDDING MATERIAL SHALL NOT BE PERFORMED UNTIL APPROVAL OF TRENCH BOTTOM HAS BEEN RECEIVED.
  - 4.5 PIPE BEDDING MATERIALS SHALL BE PLACED BY HAND IN 6-INCH (150MM) LIFTS. BANK TO BANK, TO 6-INCHES ABOVE THE PIPE SURFACE.
  - 4.6 MINIMUM TOP OF PIPE DEPTH IS 24-INCHES.
  - 4.7 ALL OPEN EXCAVATIONS SHALL BE SUPPORTED, AS NECESSARY, WITH SHIELDING IN ACCORDANCE WITH APPLICABLE OSHA REQUIREMENTS.
  - 4.8 THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR ENSURING A UNIFORM SLOPED BEDDING AND COVER THAT CONTINUOUSLY SUPPORTS THE PIPE AT 5 PERCENT SLOPE BACK TO WELL LOCATION.
  - 4.9 OPEN TRENCHES SHALL BE COMPLETELY COVERED OR SURROUNDED BY TEMPORARY SAFETY FENCING AT ALL TIMES WHEN WORK IS NOT BEING DONE IN THE EXCAVATION AREA. THE SAFETY FENCING SHALL BE MAINTAINED UNTIL THE TRENCH IS BACKFILLED AND COMPACTED TO THE EXISTING GROUND, 6 INCHES.
  - 4.10 CONTINUOUS MAGNETIC LOCATOR TAPE WILL BE INSTALLED IN ALL TRENCHES DURING BACKFILLING FOR IDENTIFICATION PURPOSES.
  - 4.11 SOIL TRENCH BACKFILL, WHERE SUBSIDY, SHALL BE MATURE COMPOSTED.

- 5.0 ASPHALT REPLACEMENT
  - 5.1 NEW PAVEMENT AND ASPHALT BASE SHALL BE OF THE SAME TYPE AND THICKNESS AS THAT WHICH IS REMOVED, BUT IN NO CASE SHALL BE LESS THAN INDICATED.
  - 5.2 TOP COURSE OF ASPHALT CONCRETE SHALL BE 3-INCH GRADE C1-AF-8000 AND BASE COURSE OF ASPHALT CONCRETE SHALL BE 3-INCH GRADE 8-AF-8000.
  - 5.3 TACK COAT ALL EXISTING EXPOSURE WITH MC-70, MC-70 LEAKED ASPHALT.
  - 5.4 COMPACT BASE COURSE FOR ASPHALT CONCRETE TO SIZE STANDARD PROCTOR DENSITY.
  - 5.5 REMOVE AND DISPOSE OF ALL EXCESS MATERIALS IN CONFORMANCE WITH APPLICABLE REGULATIONS.
- 6.0 CONCRETE REPLACEMENT
  - 6.1 ALL CURE BUREAU SHALL CONFORM TO THE LATEST STANDARD SPECIFICATION FOR PUBLIC WORKS CONSTRUCTION (PWC).
  - 6.2 CONCRETE PAVEMENT SHALL BE CLASS 850-C-3530 PER PWC.
  - 6.3 CONCRETE PAVEMENT SHALL BE APPLIED TO ALL EXISTING SURFACES, AND REPAIRS AS SPECIFIED. IT SHALL BE THICKENED-3 LIFTED PAVEMENT BY EXISTING COMPANY ON APPROVED COORDINATE.
  - 6.4 REPAIRING DAYS SHALL CONFORM TO ASTM 1-415-40 AND BE PLACED 12-INCHES ON CENTER EACH DIRECTION.
  - 6.5 CONCRETE WHERE INDICATED SHALL BE A STRUCTURAL 401 WITH A MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3000 PSI.
  - 6.6 WHERE CONCRETE IS PLACED ADJACENT TO AN EXISTING SLAB, THE CONTRACTOR SHALL USE A J-ROCK BEARING BOWELS TO PROVIDE A 1/2" MINIMUM GAP BETWEEN THE NEW CONCRETE AND THE EXISTING SLAB. BOWELS WILL REMAIN THE EXISTING 24" WIDE AND BE FILL IN PLACE WITH AN EXISTING ASPHALT.
- 7.0 VOC EMISSIONS/REMOVED MATERIAL MANAGEMENT
  - 7.1 THE CONTRACTOR WILL FOLLOW THE SCODD 1188 MONITORING GUIDELINES FOR ALL EXCAVATED MATERIALS AND SOILS. THE CONTRACTOR SHALL PROVIDE EXCAVATION MONITORING AND WILL SUPPLY THE SCODD 1188 FORM. IF CONTAMINANT DOES NOT HAVE ONE IN PLACE.
  - 7.2 VOLATILE ORGANIC COMPOUNDS (VOC) MONITORING - EXCAVATION IN AREAS SUSCEPTIBLE TO CONTAMINANTS SHALL ONLY BE PERFORMED IN AREAS WHERE EXCAVATION IS REQUIRED UNDER CORN EXCAVATION STANDARDS. THE CONTRACTOR WILL BE RESPONSIBLE FOR THE PROTECTION OF ALL EMPLOYEES PERFORMING MONITORING AGAINST EXPOSURE TO VOC'S AND SHALL ADDRESS THE EXPOSURE CONTROL MEASURES, INCLUDING MONITORING OF SOIL DURING EXCAVATION.
  - 7.3 ASPHALT AND CONCRETE SURFACES REMOVED DURING EXCAVATION SHALL BE DISPOSED OF A NON-HAZARDOUS WASTE BY THE CONTRACTOR. IN ACCORDANCE WITH LOCAL REGULATIONS, UNLESS THERE IS REASON TO BELIEVE THE MATERIALS ARE IMPACTED.
  - 7.4 THE CONTRACTOR SHALL STOCKPILE CRUDE OIL OR DESIRE MATERIAL DISPLAYING VOC ODORS OR SCUMING OR WHICH ARE FOUND TO CONTAIN VOC EXCESSIVE THE STOCKPILING SHALL HAVE A LAYER OF HEAVY PLASTIC SHEETING PLACED OVER THE MATERIALS AND BE SPUNTED WITH AN ADDED APPROVED WATER SUPPLEMENTATION ON BE REMOVED CONTINUED WITH HEAVY PLASTIC SHEETING.
- 8.0 CLEANUP AND SITE MAINTENANCE DURING CONSTRUCTION
  - 8.1 CONTRACTOR SHALL RESTORE THE SITE TO ITS ORIGINAL CONDITION (E.G. ASPHALT PAVEMENT AND CLEANUP).
  - 8.2 DURING CONSTRUCTION THE CONTRACTOR SHALL STORE MATERIALS AND EQUIPMENT AND CLEAR THE SITE DAILY TO MAINTAIN A TIGHT AND ORDERLY APPEARANCE. NO EXCESS MATERIALS OF EXCESS MATERIAL SHALL REMAIN.
- 9.0 WARRANTY
  - 9.1 ALL MATERIALS SHALL BE NEW AND IN GOOD CONDITION. ALL WORK SHALL BE GUARANTEED FOR A PERIOD OF ONE YEAR. ANY DEFECTS SHALL BE REMOVED AND REPLACED WITHOUT ANY COST TO THE OWNER.



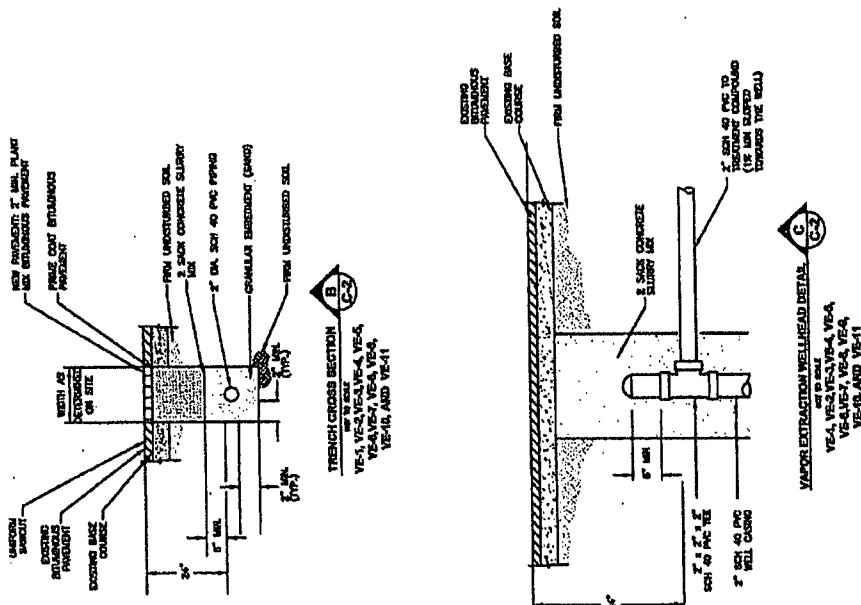
4300 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 PHONE (714) 840-1114 FAX (714) 840-1114	JACOBS & BEYER ASSOCIATES, INC. 1575 BROADWAY, SUITE 4-101 NEWPORT BEACH, CALIFORNIA 92660 PHONE (714) 433-1045	CONCRETE SYSTEMS, INC. 4300 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 PHONE (714) 840-1114	C-2 20248 SCALE 1" = 10'
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[illegible]

**BITUMINOUS REPLACEMENT NOTES:**

- [illegible]





**NOTES:**

1. ABOVE GROUND MANFOLD PRINTED
2. VOLUME CRUISE - C-307 1/2" X 1/2" NPT BACKGROUND LIQUID FILLED (TYPICAL 13 PLACES)
3. MANIFOLD PRINTING SECURED TO BLOCK WALL WITH UNISTRUT AND PIPE CLAMP

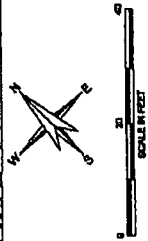
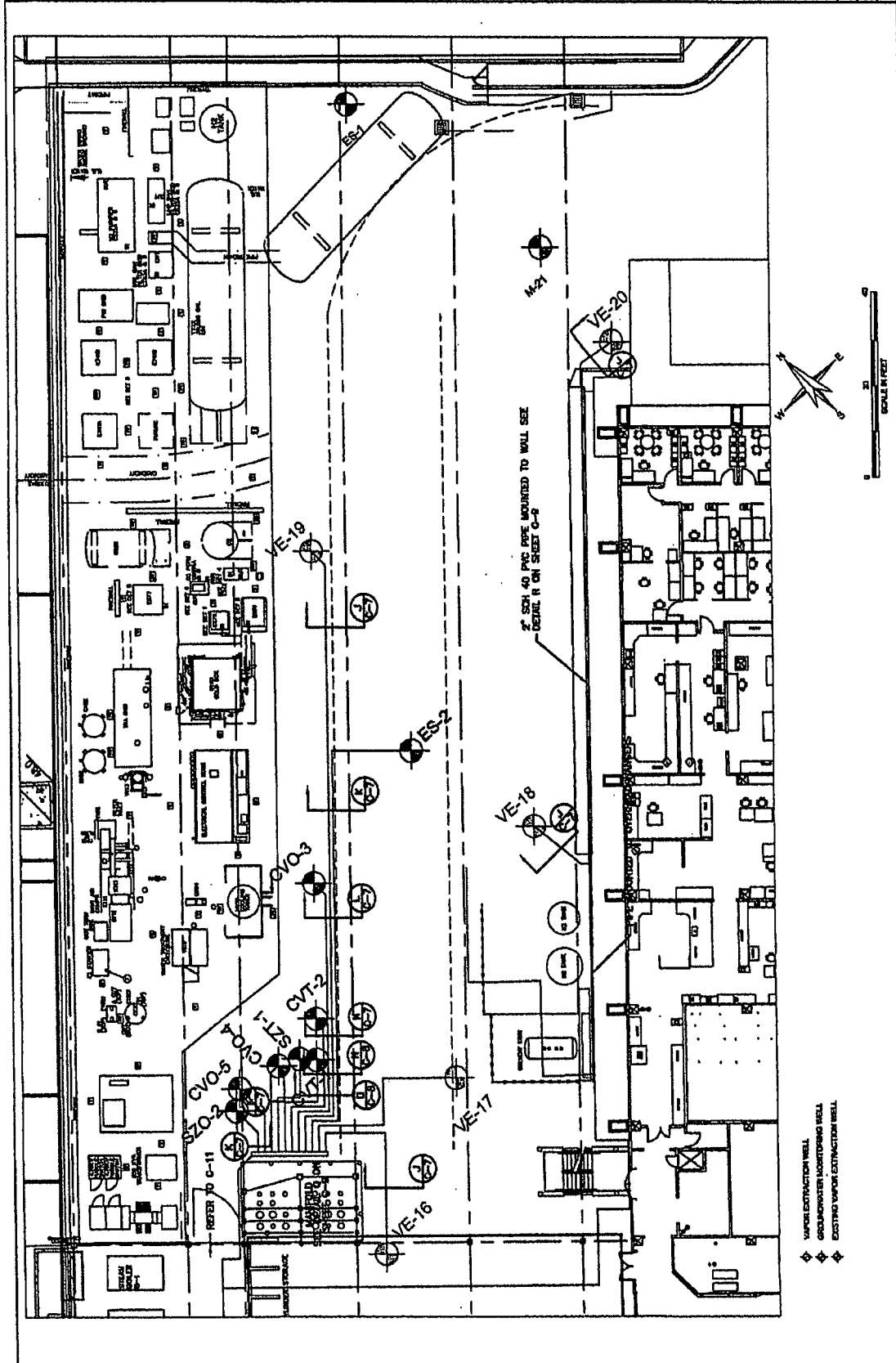
**D** MANIFOLD DETAIL  
TYPICAL 1 PLACE  
VE-4 AND VE-5

**E** MANIFOLD DETAIL  
TYPICAL 9 PLACES  
VE-2, VE-3, VE-4, VE-5, VE-6, VE-7, VE-8, VE-9, VE-10

**F** MANIFOLD DETAIL  
TYPICAL 1 PLACE  
VE-11

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4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 (949) 441-4544 FAX: (949) 441-4544 CONCRETE SYSTEMS INC.	4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 (949) 441-4544 FAX: (949) 441-4544 CONCRETE SYSTEMS INC.	JACOBI & HERGENROTHER ASSOCIATES, INC. 1425 BOWLING GREEN, SUITE 101 NEWPORT BEACH, CALIFORNIA 92660 (949) 433-1045	SHEET PIPING DETAIL-ON SITE/SOURCE AREA CONCRETE SYSTEMS INC.
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- ◆ VAPOR EXTRACTION WELL
- ◆ GROUNDWATER MONITORING WELL
- ◆ EXISTING VAPOR EXTRACTION WELL

**TRENCH CROSS SECTION**

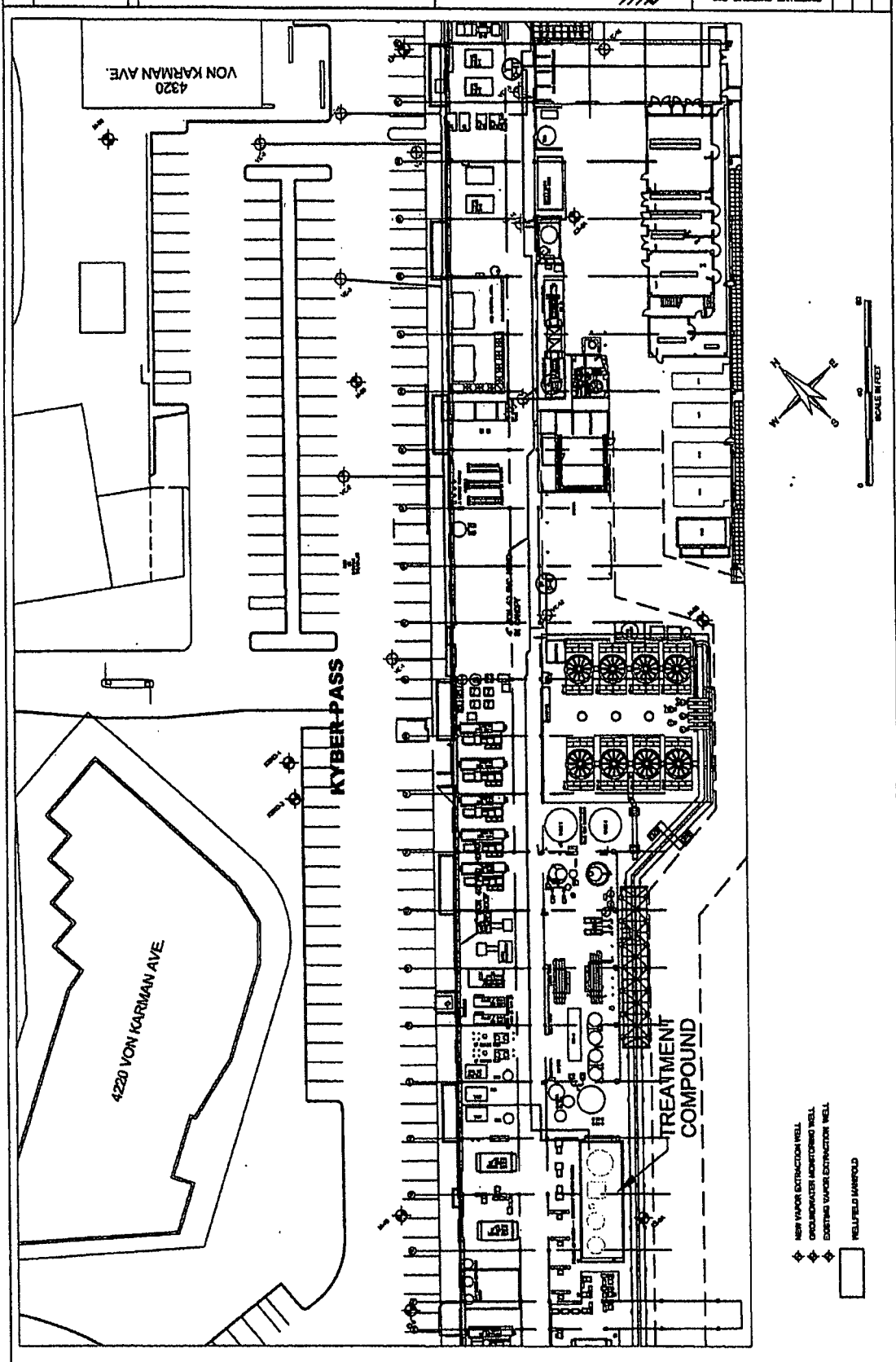
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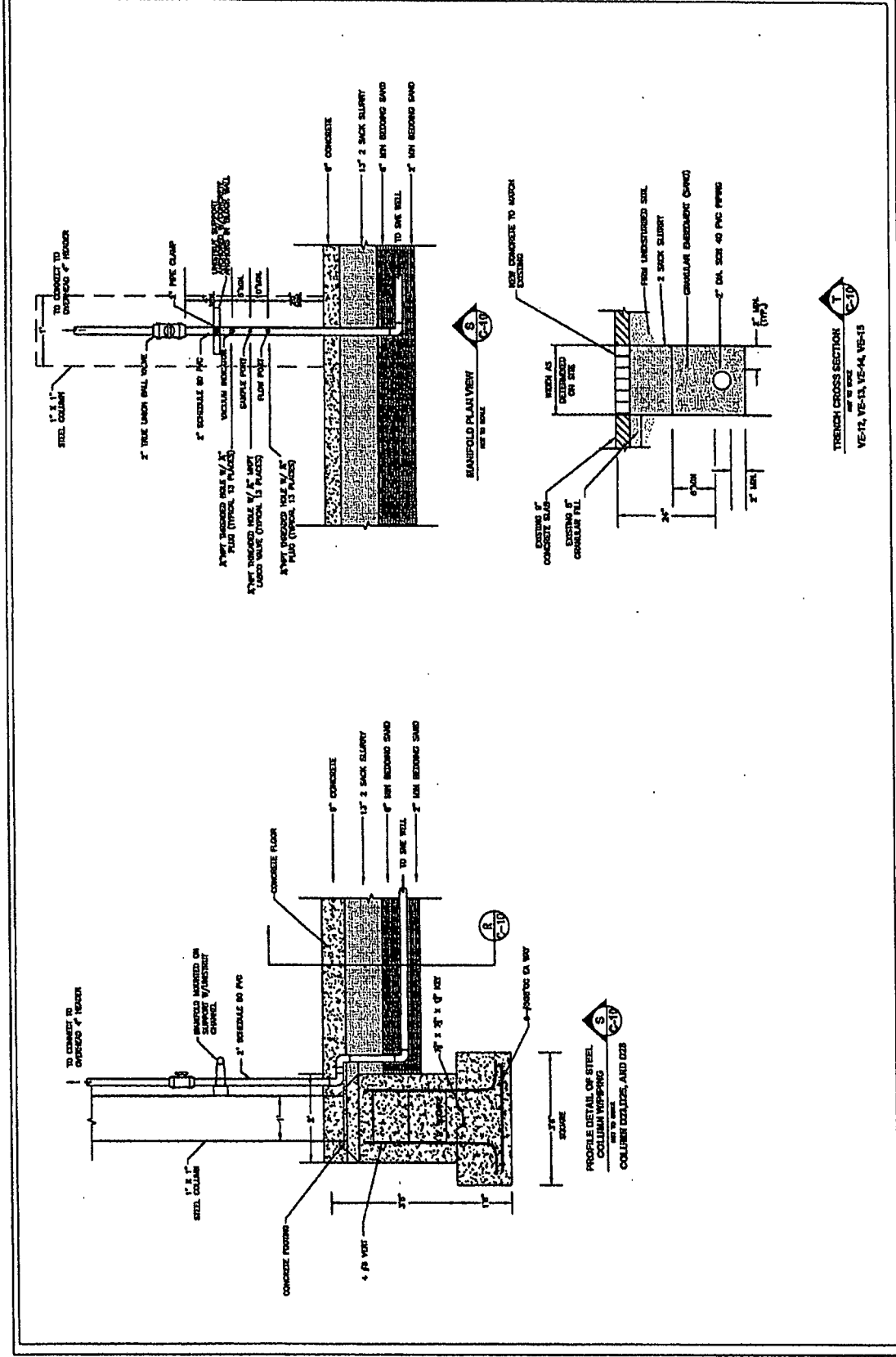
COMPANY EASTON LTD.  
4000 MACARTHUR BLVD.  
MERRICK HATCH, CALIFORNIA  
FURNISH (949) 501-4204  
FAX (949) 500-1114

JACOB & HENNER ASSOCIATES, INC.  
INTERNATIONAL MARKETING SERVICES  
1000 BROADWAY, SUITE 14-101  
NEW YORK, CALIFORNIA 92316  
(818) 433-1045

348 PIPING DETAIL CANOPY AREA  
CONEXANT SYSTEMS INC.  
4000 MACARTHUR BLVD.  
NEWPORT BEACH, CALIFORNIA

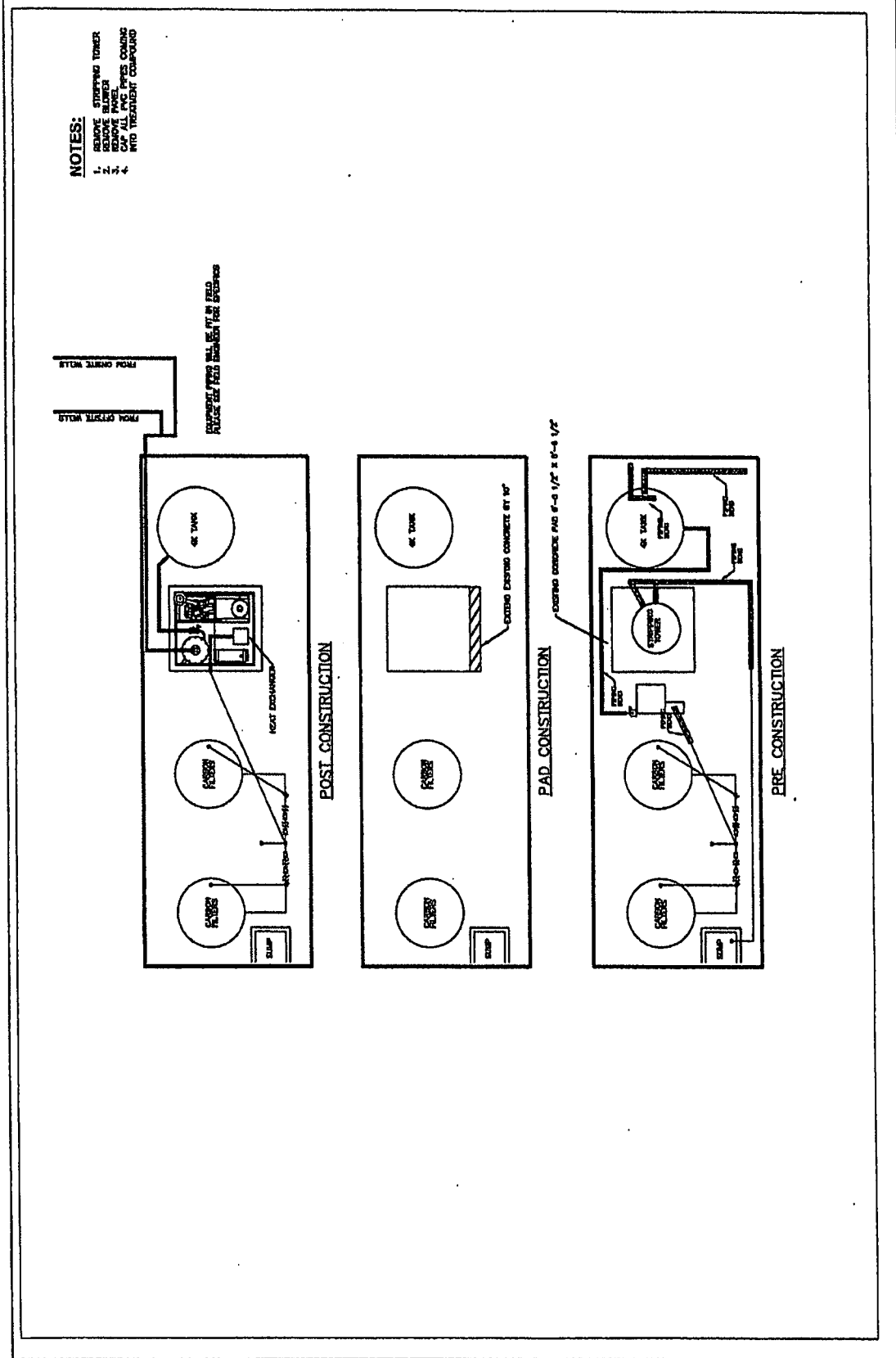


11-C	CONCRETE SYSTEMS INC.	JACOB & HERVEN ASSOCIATES, INC.	CONCRETE SYSTEMS INC.
SCALE	4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 (415) 800-1116	4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 (415) 800-1116	4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA 92660 (415) 800-1116
DATE	12/10/83	12/10/83	12/10/83
PROJECT	VE-12, VE-13, VE-14, VE-15	VE-12, VE-13, VE-14, VE-15	VE-12, VE-13, VE-14, VE-15
11-C	CONCRETE SYSTEMS INC.	JACOB & HERVEN ASSOCIATES, INC.	CONCRETE SYSTEMS INC.





SHEET NO. 1 PROJECT NO. 92-03 DATE 12/1/92 DRAWN BY J.A. CHECKED BY J.A. APPROVED BY J.A.	SOIL VAPOR EXTRACTION COMPOUND CONCREANT SYSTEMS INC. 4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA	JACOB & KEENE ASSOCIATES, INC. 1505 GARDEN WAY, SUITE 401 NEWPORT BEACH, CALIFORNIA 92660 PHONE: (714) 433-1043	CONCREANT SYSTEMS INC. 4000 MACARTHUR BLVD. NEWPORT BEACH, CALIFORNIA PHONE: (714) 551-4504 FAX: (714) 551-1114
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- NOTES:**
1. REMOVE EXISTING TOWER
  2. REMOVE EXISTING BLUNDER
  3. REMOVE EXISTING PANEL
  4. CAP ALL PVC PIPES COMING INTO TREATMENT COMPOUND





**EXHIBIT C**  
**FORM OF MEMORANDUM**

[Attached]

RECORDING REQUESTED BY AND WHEN  
RECORDED, RETURN TO:

Conexant Systems, Inc.  
4000 MacArthur Blvd.  
Newport Beach, California 92660  
Attention: Mark Peterson, Esq., General Counsel

FOR RECORDER'S USE

## MEMORANDUM OF ENVIRONMENTAL MANAGEMENT AGREEMENT

THIS MEMORANDUM OF ENVIRONMENTAL MANAGEMENT AGREEMENT (this "Memorandum") dated December \_\_, 2010 (for identification purpose only), is entered into by and between CONEXANT SYSTEMS, INC., a Delaware corporation ("Conexant"), and UPTOWN NEWPORT LP, a Delaware limited partnership ("Uptown"). Conexant and Uptown are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

A. Substantially concurrently with the recordation of this Memorandum, Conexant is conveying to Uptown certain real property located in the City of Newport Beach, County of Orange, State of California, more particularly described in Exhibit A attached hereto (the "Site") and the existing improvements at the Site (collectively, the "Property"), pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated December 9, 2010, by and between Uptown and Conexant (as amended, the "PSA").

B. In connection with such conveyance, Conexant and Uptown have entered into that certain Environmental Management Agreement dated as of even date herewith ("Agreement"), pursuant to which the Parties have made certain agreements between themselves with respect to the presence of certain Hazardous Materials on and under the Property and certain surrounding property. By recording this Memorandum in the Official Records of Orange County, California, the Parties desire to make the Agreement a matter of public record. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the PSA.

### AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Environmental Management Agreement. The Parties have allocated risks and established their respective rights, duties and liabilities with respect to the presence of Hazardous Materials on, under and about the Property in accordance with the terms and conditions set forth in the Agreement. The Agreement is incorporated by reference into this Memorandum.

2. Access.

2.1 Pursuant to the Agreement, Uptown has granted to Conexant and by this Memorandum Uptown hereby grants to Conexant and its employees, agents and contractors (collectively, the "Licensed Parties") a license and right of access (collectively, the "License") to, from, through, over, under and about the Property (subject to the rights of tenants under existing leases) for the following purposes (collectively, the "Licensed Activities"): (i) accessing, operating, maintaining, repairing,

replacing, decommissioning and removing the SVE System and the Groundwater System (collectively, the "Remediation Systems"), (ii) exercising the rights granted to Conexant under Paragraphs 2 and 5 of the Agreement, and (iii) confirming that Uptown has otherwise properly and timely performed its obligations under the Agreement. There shall be no license fee or other charge payable by Conexant on account of the License. The Agreement sets forth additional terms and conditions governing such access right.

2.2 The License is coupled with an interest and shall be irrevocable from and after the Agreement Date and until the date which is sixty (60) days after the date which is the latest to occur of (i) the Groundwater Treatment Termination Date, (ii) the SVE Termination Date, or (iii) the date of issuance of a SVE-NFA.

3. Conflicting Provisions. If a provision in this Memorandum conflicts with a provision in the Agreement, the provision in the Agreement will control.

4. Counterparts. This Memorandum may be signed by the parties in counterparts. The signatures pages from the counterparts may be attached to one counterpart to form a single document, which may be recorded.

(See signatures on the next page.)

IN WITNESS WHEREOF, Conexant and Uptown have executed this Agreement as of the date first above written.

**"CONEXANT"**

CONEXANT SYSTEMS, INC., a Delaware corporation

By: \_\_\_\_\_  
Mark Peterson, Senior Vice President  
General Counsel and Secretary

**"UPTOWN"**

UPTOWN NEWPORT LP, a Delaware limited partnership

By: G&I VI NEWPORT CORP., a Delaware corporation, its General Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Printed Name and Title]

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

All that real property situated in the City of Newport Beach, County of Orange, State of California and more particularly described as follows:

#### **PARCEL A:**

LOT 1 OF TRACT NO. 7953, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

#### **PARCEL B-1:**

LOT 2 OF TRACT NO. 7953, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

EXCEPT FROM LOT 2 ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS OF EVERY KIND AND NATURE BELOW A DEPTH OF FIVE HUNDRED (500) FEET BENEATH THE SURFACE OF THE ABOVE DESCRIBED PROPERTY, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008.

#### **PARCEL B-2:**

A NON-EXCLUSIVE EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS TO AND FROM LOT 2 OF TRACT NO. 7953 (PARCEL B-1) TO VON KARMAN AVENUE, WITHIN A STRIP OF LAND, 30.00 FEET IN WIDTH, LOCATED ON LOT 3 OF TRACT NO. 7953, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 10 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008 OF OFFICIAL RECORDS.

THE CENTERLINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THAT CERTAIN CURVE IN THE CENTERLINE OF VON KARMAN AVENUE SHOWN ON SAID MAP AS BEING CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 600.00 FEET WITH A CENTRAL ANGLE OF 89°59'50" AND AN ARC LENGTH OF 942.45 FEET, A RADIAL OF SAID CURVE FROM SAID POINT BEARS NORTH 25°54'08" WEST; THENCE ALONG THE SOUTHEASTERLY PROLONGATION OF SAID RADIAL, SOUTH 25°54'08" EAST, 95.33 FEET TO A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 200.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE 104.36 FEET THROUGH A



CENTRAL ANGLE OF 29°54'08"; THENCE TANGENT TO SAID CURVE SOUTH 4°00'00" WEST, 198.51 FEET TO A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHERLY AND SOUTHEASTERLY ALONG SAID CURVE 37.25 FEET THROUGH A CENTRAL ANGLE OF 53°21'34"; THENCE SOUTH 49°21'34" EAST, 38.49 FEET TO A LINE PARALLEL WITH AND 15.00 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF LOT 2 OF SAID TRACT NO. 7953; THENCE ALONG SAID PARALLEL LINE, NORTH 40°38'26" EAST, 90.00 FEET.

THE SIDE LINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO FORM A CONTINUOUS STRIP OF LAND.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN SAID VON KARMAN AVENUE.

PARCEL B-3:

AN EASEMENT AND RIGHT OF WAY TO CONSTRUCT, USE, MAINTAIN AND OPERATE AN UNDERGROUND ELECTRICAL POWER LINE WITHIN A STRIP OF LAND, 8.00 FEET IN WIDTH, OVER THAT PORTION OF LOT 3 OF TRACT NO. 7953, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008 OF OFFICIAL RECORDS, LYING 4.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF LOT 3, DISTANT THEREON SOUTH 40°38'25" WEST, 3.99 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 2 OF SAID TRACT NO. 7953; THENCE NORTH 48°30'22" WEST, 267.86 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 2, SAID POINT BEING DISTANT ALONG SAID SOUTHWESTERLY LINE NORTH 49°21'34" WEST, 267.83 FEET FROM SAID SOUTHERLY CORNER.

PARCEL B-4:

A NON-EXCLUSIVE EASEMENT, 40.00 FEET WIDE, FOR INGRESS AND EGRESS PURPOSES, FOR THE MAINTENANCE OF THE UTILITY SPINE AND BUILDINGS LOCATED OVER THAT PORTION OF LOT 3 OF TRACT NO. 7953, AS SHOWN ON A MAP RECORDED IN BOOK 310, PAGES 7 TO 11 INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AS RESERVED IN THE DEED RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1008 OF OFFICIAL RECORDS, THE SOUTHEASTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 2 OF SAID TRACT NO. 7953; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, NORTH 40°38'26" EAST, 99.17 FEET TO AN ANGLE POINT IN THE MOST SOUTHWESTERLY

LINE OF LOT 1 OF SAID TRACT NO. 7953.

PARCEL C:

EASEMENTS AS SET FORTH IN SECTION 1.05 (A PORTION THEREOF), 1.06, 1.08, 1.10 AND 1.11 OF THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS RECORDED NOVEMBER 6, 1972 IN BOOK 10413, PAGE 573 AS AMENDED BY THAT CERTAIN DOCUMENT ENTITLED "FIRST AMENDMENT TO RECIPROCAL GRANT OF EASEMENTS" RECORDED MAY 7, 1974 IN BOOK 11137, PAGE 1004 AND SUBSEQUENT QUITCLAIM DEEDS RECORDED IN BOOK 11137, PAGE 1018 AND IN BOOK 11137, PAGE 1022, ALL OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

A NON-EXCLUSIVE EASEMENT AS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "GRANT AND QUITCLAIM OF EASEMENTS" RECORDED MAY 26, 1978 IN BOOK 12690, PAGE 854 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: 445-131-02 AND 445-131-03

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public,  
personally appeared \_\_\_\_\_, who 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 signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who 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 signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

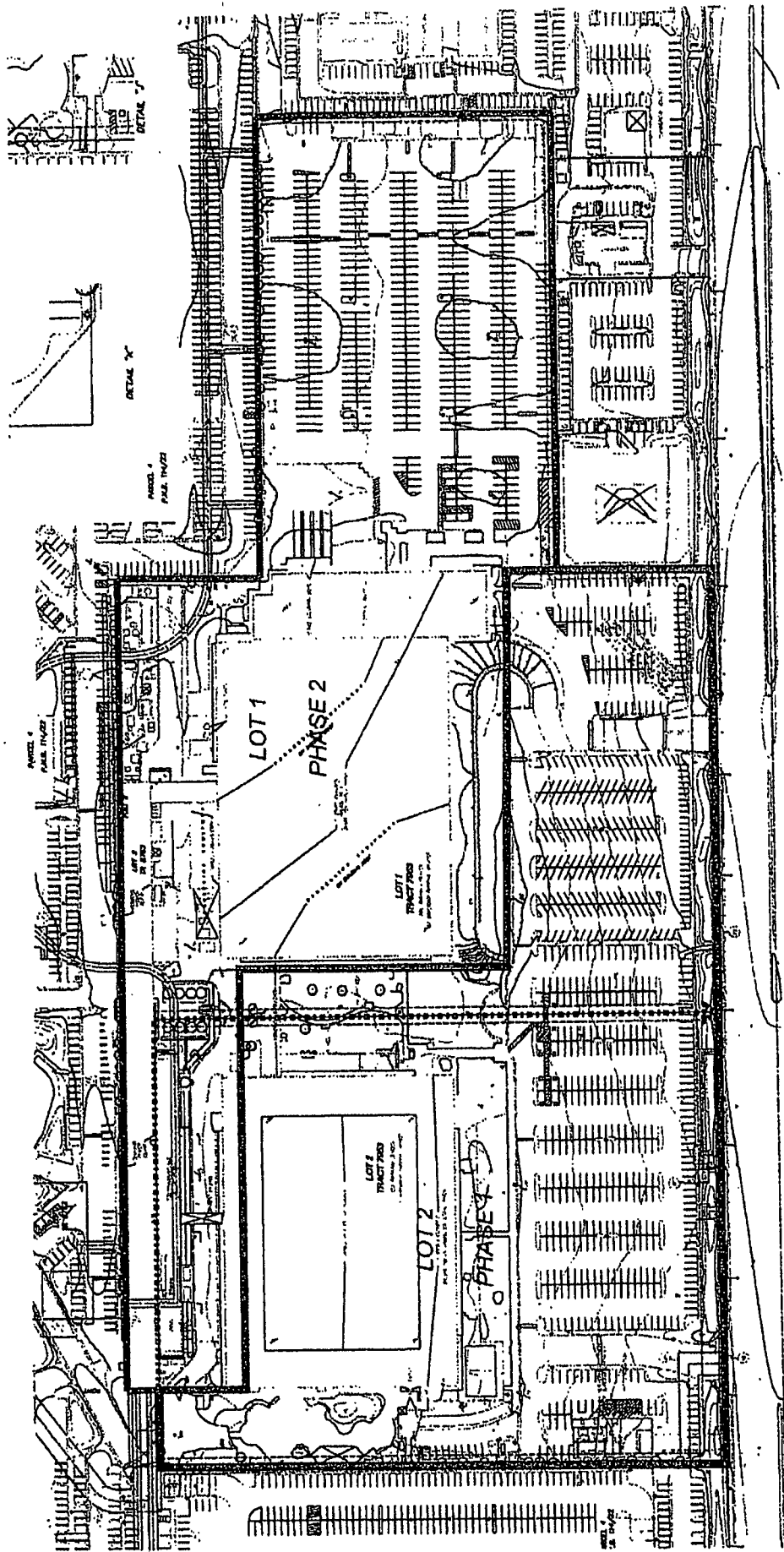


Schedule 7

**Proposed Phase I Lot Line Adjustment**

[Attached]

# EXHIBIT A - PROPOSED LOT LINE ADJUSTMENT



----- LOT LINE TO BE ADJUSTED

===== LOT LINE TO REMAIN PROPOSED LOT LINE

DRA ADVISORS LLC  
Joyce Johnson  
220 EAST 42ND STREET FL 27  
NEW YORK, NY 10017

Phone:

# D R A · ADVISORS LLC

Shipped Via  
**Mercury Business Services, Inc.**  
(212) 868-4480

**47005**  
05/15/2013  
02:50PM  
1 Of: 1

Version: 3.00

**Recipient:** Attn: Conexant Systems, Inc.,  
Claims Processing  
BMC Group, Inc.  
18675 Lake Drive East  
Chanhassen, MN 55317

**RECEIVED**

**MAY 16 2013**

Tracking No.: 47005130515145003

**BMC GROUP**

**Recipient Phone#:**

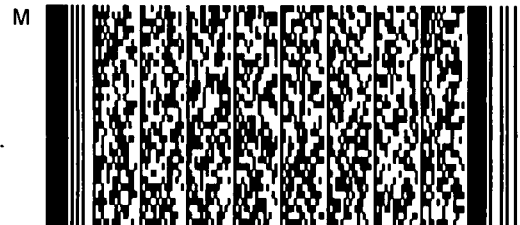
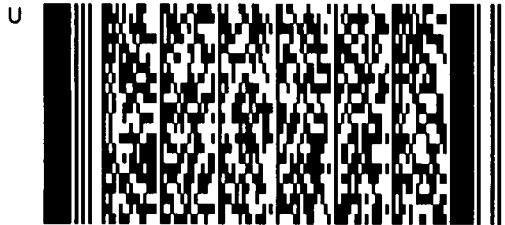
**Sender's Name:** Yvonne Alexander

**Reference No.:** UPTOWN NEWPORT

**Insurance: \$100**

**Service Level: 1030AM**

**Instructions:**



Liability of Mercury Business Services, Inc. is limited to \$100.00 unless otherwise agreed to in writing.