

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
UPH HOLDINGS, INC.	§	CASE NO. 13-10570
PAC-WEST TELECOMM, INC.	§	CASE NO. 13-10571
TEX-LINK COMMUNICATIONS, INC.	§	CASE NO. 13-10572
UNIPOINT HOLDINGS, INC.	§	CASE NO. 13-10573
UNIPOINT ENHANCED SERVICES, INC.	§	CASE NO. 13-10574
UNIPOINT SERVICES, INC.	§	CASE NO. 13-10575
NWIRE, LLC	§	CASE NO. 13-10576
PEERING PARTNERS COMMUNICATIONS, LLC	§	CASE NO. 13-10577

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DEBTORS. § CHAPTER 11

EIN: 45-1144038; 68-0383568; 74-
2729541; 20-3399903; 74-3023729; 38-
3659257; 37-1441383; 27-2200110; 27-
4254637

6500 RIVER PL. BLVD., BLDG. 2, # 200 § JOINT ADMINISTRATION
AUSTIN, TEXAS 78730 § REQUESTED

**DEBTORS' MOTION FOR ORDER
AUTHORIZING THE DEBTORS TO REJECT UNEXPIRED LEASE
(201 MISSION LEASE) EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW UPH Holdings, Inc., ("UPH"), Pac-West Telecomm, Inc., ("Pac-West"),
Tex-Link Communications, Inc. ("Tex-Link"), UniPoint Holdings, Inc. ("UniPoint Holdings"),
UniPoint Enhanced Services, Inc. ("UniPoint Enhanced Services"), UniPoint Services, Inc.,
("UniPoint Services"), nWire, LLC ("nWire"), and Peering Partners Communications, LLC
("Peering Partners") (collectively the "Debtors"), and file this their Motion for Order
Authorizing the Debtors to Reject Unexpired Lease (201 Mission Lease) Effective *Nunc Pro
Tunc* to the Petition Date (the "Motion to Reject") pursuant to 11 U.S.C. § 365(a). In support,
the Debtors would show:

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I.
Jurisdiction And Venue

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O). The relief requested in this Motion is sought pursuant to 11 U.S.C. §§ 105(a) and 365(a), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”).

II.
Factual Background

2. On March 28, 2013 (the “Petition Date”), the Debtors commenced their cases under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or creditors’ committee has been appointed.

3. A description of the background of the Debtors and the events leading up to the filing of the voluntary petitions by the Debtors, is provided in the Declaration of J. Michael Holloway in Support of First Day Motions, which is incorporated herein by reference.

III.
Relief Requested

4. Pursuant to this Motion, the Debtors respectfully request entry of an order authorizing the Debtors to reject the unexpired lease (“Lease”) identified in Exhibit “A.” The Debtors request that the rejection of the Lease be authorized *nunc pro tunc* to the Petition Date.

5. The Debtor Pac-West entered into the Lease in December 2010 with CA-Mission Street Limited Partnership (“CA-Mission”) for office space in a building, commonly known as 201 Mission (“Premises”), located at 201 Mission Street, San Francisco, California. On or prior to the Petition Date, the Debtor Pac-West will have ceased operations at the Premises, vacated the Premises, and surrendered possession and keys to the landlord. On or prior to the Petition Date, the Debtor

Pac-West will no longer have a use for the Premises. Absent rejection of the Lease, pursuant to the Lease, the Debtor Pac-West will continue to be obligated to pay rent for the remainder of the term of the Lease, even though, as of the Petition Date, it will no longer be continuing operations at the Premises and will have no other productive use for the Premises. The Lease provides for gradually increasing monthly base rental payments, and the estimated cost of the payments for the remaining term of the Lease is about \$219,937.96. The Lease further provides that the Debtor Pac-West is responsible for payment of additional amounts for taxes, utilities, insurance, monthly usage fees, and other charges associated with the Lease.

6. Pursuant to § 365(a) of the Bankruptcy Code, the Debtors may, subject to Court approval, reject unexpired leases and executory contracts. Section 365(a) provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” *See NLRB v. Bildisco & Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). In determining whether the rejection of an unexpired lease or executory contract should be authorized, courts apply the business judgment standard. *See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1003); *In re Pilgrim’s Pride Corp.*, 403 B.R. 413 (Bankr. N.D. Tex. 2009). Courts agree that the business judgment standard is satisfied when a debtor determines that such rejection will benefit the estate. *See In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

7. In addition, bankruptcy courts are empowered to authorize retroactive rejection of an executory contract or unexpired lease under § 365(a) of the Bankruptcy Code if the equities favor retroactive rejection. *See, e.g., Thinking Machines Corp. v. Mellon Financial Services Corp #1 (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995); *Stonebriar Mall Ltd. P’ship v. CCI Wireless, LLC (In re CCI Wireless, LLC)*, 297 B.R. 133, 138 (D. Colo. 2003).

8. After careful review and due deliberation, the Debtors have determined in their business judgment that the Lease is unnecessary to the continued operation of the Debtors' businesses, has no value to the estate, and should be rejected. As stated above, in considering their options with respect to the Lease, the Debtors have determined that they no longer have a need to use the Premises, and that there is no viable possibility other than rejection of the Lease. As a consequence, the Lease is no longer of use to the Debtors, and the Debtors vacated the premises months ago. Moreover, the Lease contains terms that are burdensome on the Debtors and have no residual value for the Debtors. Additionally, the Debtors do not believe that it is in the estates' best interest for the Debtors to spend time, focus, and money on attempting to market the Lease in an attempt to sublease it, even if permitted by the landlord. Accordingly, the purpose of the rejection requested herein is to reduce the size and costs of the Debtors' operations, in the most efficient and expeditious way, to promote their successful reorganization.

9. In the business judgment of the Debtors, the rejection of the Lease identified in Exhibit "A" is in the best interest of the Debtors, their creditors, all other parties in interest, and should be approved. Through the rejection of the Lease, the Debtors will be relieved from paying rent, as well as certain other costs, including taxes, utilities, insurance, monthly usage charges, and other charges associated with the Lease. By rejecting the Lease as of the Petition Date, the Debtors will avoid incurring unnecessary administrative charges that will provide no tangible benefit to the Debtors' estate. The resulting savings from the rejection of the Lease will increase the Debtors' cash flow and assist in managing their estates, further promoting their reorganization. Moreover, rejection of the Lease effective as of the Petition Date is necessary and justified under the circumstances. As of the Petition Date, the Debtor Pac-West will have vacated the Premises and surrendered possession and

keys to the landlord. Thus, the Debtors believe that the *nunc pro tunc* rejection of the Lease as of the Petition Date is in the best interest of the Debtors' estates, their creditors, and other parties in interest.

WHEREFORE, PREMISES CONSIDERED the Debtors pray that the rejection of the Lease identified in the attached Exhibit "A" be approved, and that the Debtors have such other relief as is just.

Dated: March 28, 2013.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
(512) 236-2000
(512) 236-2002 - FAX

By: /s/ Jennifer F. Wertz
Patricia B. Tomasco
State Bar No. 01797600
(512) 236-2076 – Direct Phone
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(512) 236-2247 – Direct Phone
(512) 391-2147 – Direct Fax
Email address: jwertz@jw.com

**PROPOSED COUNSEL FOR
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2013, a true and correct copy of the foregoing has been served either electronically or via United States mail, postage prepaid, or facsimile to the following, and upon the parties listed on the attached.

US Trustee
903 San Jacinto Blvd., Room 230
Austin, Texas 78700

Stuart Komrower
Ilana Volkov
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.
25 Main Street
Hackensack, New Jersey 07601

Jones Lang LaSalle Americas, Inc.
201 Mission Street, Suite 1960
San Francisco, CA 94105
Attn: General Manager

CA-Mission Street Limited Partnership
c/o LaSalle Investment Management, Inc.
200 E. Randolph Drive, 44th Floor
Chicago, IL 60601

Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
ATTN: Jonathan M. Kennedy, Esq.

/s/ Jennifer F. Wertz
Jennifer F. Wertz

201 MISSION
SAN FRANCISCO, CALIFORNIA

OFFICE LEASE AGREEMENT

BETWEEN

CA-MISSION STREET LIMITED PARTNERSHIP, a Delaware limited partnership
("LANDLORD")

AND

PAC-WEST TELECOMM, INC., a California corporation
("TENANT")

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OFFICE LEASE AGREEMENT

THIS OFFICE LEASE AGREEMENT (this "Lease") is entered into as of December __, 2010, by and between CA-MISSION STREET LIMITED PARTNERSHIP, a Delaware limited partnership, ("Landlord") and PAC-WEST TELECOMM, INC., a California corporation ("Tenant"). The following exhibits and attachments are incorporated into and made a material part of this Lease: Exhibit A (Outline and Location of Premises), Exhibit B (Expenses, Taxes and Insurance Expenses), Exhibit C (Space Plan), Exhibit D (Commencement Letter), Exhibit E (Building Rules and Regulations), and Exhibit F (Additional Provisions).

1. Basic Lease Information.

1.01 "Building" shall mean the building located at 201 Mission Street, San Francisco, California, commonly known as 201 Mission. "Rentable Square Footage of the Building" is deemed to be 483,528 square feet.

1.02 "Premises" shall mean the area shown on Exhibit A to this Lease. The Premises consists of a portion of the seventh (7th) floor known as Suite 720. The "Rentable Square Footage of the Premises" is deemed to be 4,111 square feet, calculated in accordance with the "Standard Method For Measuring Floor Area in Office Buildings" approved June 7, 1996, by the American National Standards Institute and the Building Owners and Managers Association International (ANSI/BOMA Z65.1-1996) as interpreted and applied by Landlord's measurement firm to the Building. Landlord and Tenant stipulate and agree that the Rentable Square Footage of the Building and the Rentable Square Footage of the Premises are correct.

1.03 "Base Rent":

Period	Annual Rate Per Square Foot	Monthly Base Rent
Month 1* - Month 12	\$28.00	\$9,592.33**
Month 13 - Month 24	\$29.00	\$9,934.92
Month 25 - Month 36	\$30.00	\$10,277.50
Month 37 - Month 48	\$31.00	\$10,620.08

* If the Commencement Date is other than the first (1st) day of a calendar month, "Month 1" shall be the first full calendar month of the Term plus any partial calendar month in which Commencement Date occurs, and in the event Month 1 is so deemed to include any partial calendar month, Tenant shall pay the prorated amount of the monthly installment of Base Rent for such partial calendar month on the Commencement Date.

** Subject to abatement pursuant to Section 4.02

1.04 "Tenant's Pro Rata Share": 0.85%.

1.05 "Base Year" for Taxes (defined in Exhibit B): 2011; "Base Year" for Expenses (defined in Exhibit B): 2011; "Base Year" for Insurance Expenses (defined in Exhibit B): 2011.

1.06 "Term":

The period commencing on the Commencement Date (defined below) and, unless terminated earlier in accordance with this Lease, ending on the last day of the forty-eighth (48th) full calendar month following the Commencement Date (the "Termination Date"); provided, however, if the Commencement Date occurs on the first (1st) day of a calendar month, then the Termination Date shall be the date immediately preceding the fourth (4th) anniversary of the Commencement Date. The "Commencement Date" shall be the later of: (i) February 1, 2011, or (ii) the date on which the Landlord Work (defined in Section 1.15) is Substantially Complete (defined in Section 3).

1.07 "Parking Rights": None.

1.08 [INTENTIONALLY OMITTED]

1.09 "Security Deposit": \$21,240.00.

1.10 [INTENTIONALLY OMITTED]

1.11 "Brokers": Jones Lang LaSalle, representing Landlord, and CB Richard Ellis representing Tenant.

1.12 "Permitted Use": General office and administrative use.

1.13 "Notice Address(es)":

Landlord:

Jones Lang LaSalle Americas, Inc.
201 Mission Street, Suite 1960
San Francisco, California 94105
Attn: General Manager

and:

CA-Mission Street Limited
Partnership
c/o LaSalle Investment
Management, Inc.
200 E Randolph Dr., 44th Floor
Chicago, IL 60601
Attn: John Minahan

With a copy to:

Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, California 94111
Attn: Jonathan M. Kennedy, Esq.

Tenant:

Prior to the Commencement Date:

4210 Coronado Avenue
Stockton, California 95204

From and after the Commencement Date:

4210 Coronado Avenue
Stockton, California 95204

With a copy to:

Stites & Harbison, PLLC
303 Peachtree Street, NE
2800 SunTrust Plaza
Atlanta, Georgia 30308
Attn: Robert H. Turner III, Esq.

Rent Payments: Rent shall be payable to "CA-Mission Street Limited Partnership" at the following address:

CA-Mission Street Limited Partnership
Jones Lang LaSalle Americas as Agent
39481 Treasury Center
Chicago, IL 60694-9400

1.14 "Business Day(s)" are Monday through Friday of each week, exclusive of New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("Holidays"). Landlord may designate additional Holidays that are commonly recognized by other office buildings in the area where the Building is located. "Building Service Hours" are 7:00 A.M. to 6:00 P.M. on Business Days and 9:00 A.M. to 1:00 P.M. on Saturdays.

1.15 "Landlord Work" means the following work that Landlord is obligated to perform in the Premises, at its sole cost and expense, at the locations (if applicable to a specific location) identified in the Space Plan:

- Install plenum exhaust fan in the telecommunications closet;
- Refurbish entry door to Premises;
- Install a dishwasher in kitchen including associated mill work;
- Install additional electrical which shall consist of: two (2) new electrical whips in open area; two (2) new duplex outlets in one private office; two (2) teledata in one office; one (1) new quad outlet in reception area; one (1) new teledata port in reception area; conversion of one (1) floor monument to an electrical whip; adding one (1) floor monument with teledata port to main conference room;
- New base coat of paint throughout suite; ten (10) accent walls to be painted in one of three accent colors chosen by Tenant

1.16 "Property" means the Building and the parcel(s) of land on which it is located and, at Landlord's discretion, the parking facilities and other improvements, if any, serving the Building and the parcel(s) of land on which they are located.

2. Lease Grant.

The Premises are hereby leased to Tenant from Landlord for the Term, together with the right to use any portions of the Property that are designated by Landlord for the common use of tenants and others (the "Common Areas"), subject to the terms and conditions of this Lease.

3. Possession.

3.01 Subject to any matters identified by Tenant in writing to Landlord on or before the Commencement Date, together with any punch-list items in connection with the Landlord Work identified in writing and delivered to Landlord within thirty (30) days following the Commencement Date, Tenant acknowledges that it is leasing the Premises in "as-is, where is" condition, without any obligation on the part of Landlord to make or pay for any improvements therein, except to the extent of the Landlord Work. The Landlord Work shall be deemed to be

"Substantially Complete" on the date that all Landlord Work has been performed, other than any details of construction, mechanical adjustment or any other similar matter, the non-completion of which does not materially interfere with Tenant's use of the Premises. If Landlord is delayed in the performance of the Landlord Work as a result of the acts or omissions of Tenant, the Tenant Related Parties (defined in Section 13) or their respective contractors or vendors, including, without limitation, changes requested by Tenant to approved plans, Tenant's failure to comply with any of its obligations under this Lease or Tenant's specifications of any materials or equipment with long lead times (each a "Tenant Delay"), the Landlord Work shall be deemed to be Substantially Complete on the date that Landlord could reasonably have been expected to Substantially Complete the Landlord Work absent any Tenant Delay. Landlord's failure to Substantially Complete the applicable portion of the Landlord Work by any estimated Commencement Date shall not be a default by Landlord or otherwise render Landlord liable for damages. Promptly after the determination of the Commencement Date, Landlord and Tenant shall execute and deliver a letter in the form attached as Exhibit D (the "Commencement Letter"). Tenant's failure to execute and return the Commencement Letter, or to provide written objection to the statements contained in the Commencement Letter, within ten (10) days after the date of the Commencement Letter shall be deemed an approval by Tenant of the statements contained therein.

3.02 Subject to Landlord's obligation to perform the Landlord Work, and further subject to the conditions stated in the first sentence of Section 3.01, the Premises are accepted by Tenant in "as is" condition and configuration without any representations or warranties by Landlord. By taking possession of the Premises, Tenant agrees that the Premises are in good order and satisfactory condition. Subject to the foregoing, no representation or warranty, express or implied, has been made by Landlord with respect to any matter whatsoever, including the condition of the Premises or the Building, the suitability of the Premises or the Building for Tenant's particular use, or any other conditions that may affect Tenant's use and enjoyment of the Premises or the Building. No rights to any view or to light or air over the Building or any other property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. Landlord shall not be liable for a failure to deliver possession of the Premises or any other space due to the holdover or unlawful possession of such space by another party, provided, however, Landlord shall use commercially reasonable efforts to obtain possession of any such space. Except as otherwise provided in this Lease, Tenant shall not be permitted to take possession of or enter the Premises prior to the Commencement Date without Landlord's permission.

3.03 Subject to the terms and conditions of this Lease including, without limitation, Section 13, and provided Landlord has received the pre-paid Base Rent required by Section 4.01 below, the Security Deposit and all evidence of insurance coverage required hereunder, Tenant, at Tenant's sole risk, shall be permitted to enter the Premises from and after the date that is twenty-one (21) days prior to the date that Landlord reasonably anticipates to be the Commencement Date, solely for the purpose of installing furniture, fixtures and equipment in the Premises. Landlord may withdraw such permission for Tenant to enter the Premises prior to the Commencement Date at any time that Landlord reasonably determines that such entry by Tenant is causing a dangerous situation for Landlord, Tenant, Tenant's vendors and contractors or other tenants in the Building. Such early entry shall be subject to all the terms and provisions of this Lease other than Tenant's obligation to pay Rent during such early access period, except for the cost of services requested by Tenant (e.g., after hours HVAC service, after hours security, etc.), unless Tenant commences business operations in the Premises during such early access period. If Tenant commences business operations in the

Premises, then the Commencement Date shall be deemed to have occurred on the date that Tenant commences such business operations.

4. Rent.

4.01 From and after the Commencement Date, Tenant shall pay Landlord, without any setoff or deduction, unless expressly set forth in this Lease, all Base Rent and Additional Rent due for the Term (collectively referred to as "Rent"). "Additional Rent" means all sums (exclusive of Base Rent) that Tenant is required to pay Landlord under this Lease. Tenant shall pay and be liable for all rental, sales and use taxes (but excluding income taxes), if any, imposed upon or measured by Rent. Base Rent and recurring monthly charges of Additional Rent shall be due and payable in advance on the first day of each calendar month without notice or demand, provided that the installment of Base Rent for the fifth (5th) full calendar month shall be payable upon the execution of this Lease by Tenant. All other items of Rent shall be due and payable by Tenant on or before thirty (30) days after billing by Landlord. Rent shall be made payable to the entity, and sent to the address, that Landlord designates in writing and shall be made by good and sufficient check or by other means acceptable to Landlord. Landlord may return to Tenant, at any time within fifteen (15) days after receiving same, any payment of Rent (a) made following any Default (irrespective of whether Landlord has commenced the exercise of any remedy), or (b) that is less than the amount due. Each such returned payment (whether made by returning Tenant's actual check, or by issuing a refund in the event Tenant's check was deposited) shall be conclusively presumed not to have been received or approved by Landlord. If Tenant does not pay any Rent when due hereunder, Tenant shall pay Landlord an administration fee in the amount of five percent (5%) of the past due amount. In addition, past due Rent shall accrue interest at a rate equal to the lesser of (i) twelve percent (12%) per annum or (ii) the maximum legal rate, and Tenant shall pay Landlord a fee for any checks returned by Tenant's bank for any reason. To ascertain whether any interest payable exceeds the legal limits imposed, any non-principal payment (including the administration fee) shall be considered to the extent permitted by Law to be an expense or a fee, premium or penalty, rather than interest. Landlord's acceptance of less than the correct amount of Rent shall be considered a payment on account of the oldest obligation due from Tenant hereunder, then to any current Rent then due hereunder, notwithstanding any statement to the contrary contained on or accompanying any such payment from Tenant. Rent for any partial month during the Term shall be prorated. No endorsement or statement on a check or letter accompanying payment shall be considered an accord and satisfaction. Any such partial payment shall be treated as a payment on account, and Landlord may accept such payment without prejudice to Landlord's right to recover any balance due or to pursue any other remedy permitted by this Lease. Accordingly, Tenant hereby waives the provisions of California Uniform Commercial Code §3311 (and any similar Law that would permit an accord and satisfaction contrary to the provisions of this Section 4.01). No payment, receipt or acceptance of Rent following (a) any Default; (b) the commencement of any action against Tenant; (c) termination of this Lease or the entry of judgment against Tenant for possession of the Premises; or (d) the exercise of any other remedy by Landlord, shall cure the Default, reinstate the Lease, grant any relief from forfeiture, continue or extend the Term, or otherwise affect or constitute a waiver of Landlord's right to or exercise of any remedy, including Landlord's right to terminate the Lease and recover possession of the Premises; provided, however, the full payment of all amounts required to cure any monetary Default shall operate to cure said Default if paid within the time period provided under this Lease. Tenant acknowledges and agrees that the foregoing constitutes actual notice to Tenant of the provisions of California Code of Civil

Procedure §1161.1(c). Tenant's covenant to pay Rent is independent of every other covenant in this Lease.

4.02. Notwithstanding Section 4.01 above to the contrary, so long as Tenant is not in Default under any term of this Lease, Tenant shall be entitled to an abatement of Base Rent for the initial four (4) full calendar months of the Term (the "Abatement Period"). The total amount of Base Rent abated during the Abatement Period is referred to herein as the "Abated Rent". If Tenant is in Default at any time during the Term, (a) at Landlord's option, the unamortized portion of all Abated Rent credited to Tenant prior to the occurrence of the Default (assuming amortization on a straight line basis over the period of the Term) shall become due and payable to Landlord; and (b) if the Default occurs prior to the expiration of the Abatement Period, there will be no further abatement of Base Rent pursuant to this Section 4.02. No such recapture by Landlord of the Abated Rent pursuant to clause (a) above shall constitute a waiver of any Default of Tenant or any election of remedies by Landlord.

4.03. Tenant shall pay Tenant's Pro Rata Share of Taxes, Insurance Expenses and Expenses in accordance with Exhibit B of this Lease.

5. Compliance with Laws; Use.

The Premises shall be used for the Permitted Use and for no other use whatsoever. Tenant shall comply with all statutes, codes, ordinances, orders, rules and regulations of any municipal or governmental entity whether in effect now or later, including the Americans with Disabilities Act ("Law(s)"), regarding the operation of Tenant's business and the use, condition, configuration and occupancy of the Premises, and except to the extent of any compliance triggered by Tenant or its officers, directors, partners, employees, contractors or invitees, Landlord shall comply with Title III of the Americans with Disabilities Act with respect to the Common Areas of the Building. In addition, Tenant shall, at its sole cost and expense, promptly comply with any Laws that relate to the "Base Building" (defined below), but only to the extent such obligations are triggered by Tenant's use of the Premises, other than for general office use, or Alterations or improvements in the Premises performed or requested by Tenant. "Base Building" shall include the structural portions of the Building, the public restrooms and the Building mechanical, electrical and plumbing systems and equipment located in the internal core of the Building on the floor or floors on which the Premises are located. Tenant shall promptly provide Landlord with copies of any notices it receives regarding an alleged violation of Law in connection with Tenant's use or occupancy of the Premises. Tenant shall not exceed the standard density limit for the Building. Tenant shall comply with the rules and regulations of the Building attached as Exhibit E and such other reasonable rules and regulations adopted by Landlord from time to time, including rules and regulations for the performance of Alterations (defined in Section 9.03). Landlord, at its sole cost and expense (except to the extent properly included in Expenses), shall be responsible for correcting any violations of applicable Laws (including Title III of the Americans with Disabilities Act) with respect to the Premises and the Common Areas of the Building, provided that Landlord's obligation with respect to the Premises shall be limited to violations that arise out of the Landlord Work and/or the condition of the Premises prior to the construction of the Tenant Improvements and the installation of any furniture, equipment and other personal property of Tenant. Notwithstanding the foregoing, Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by Law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by Law. Notwithstanding the foregoing, Tenant, not

Landlord, shall be responsible for the correction of any violations that arise out of or in connection with the specific nature of Tenant's business in the Premises (other than general office use), the acts or omissions of Tenant, its agents, employees or contractors, Tenant's arrangement of any furniture, equipment or other property in the Premises, any repairs, alterations, additions or improvements performed by or on behalf of Tenant and any design or configuration of the Premises specifically requested by Tenant.

6. Security for Lease.

6.01 The Security Deposit in the form of cash shall be delivered to Landlord upon the execution of this Lease by Tenant and held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations. The Security Deposit is not an advance payment of Rent or a measure of damages. Landlord may from time to time and without prejudice to any other remedy provided in this Lease or by Law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due Rent or to satisfy any other loss or damage resulting from Tenant's breach under this Lease. If Landlord uses any portion of the Security Deposit, Tenant, within ten (10) days after demand, shall restore the Security Deposit to its original amount. Landlord shall return any unapplied portion of the Security Deposit to Tenant within forty-five (45) days after the later to occur of: (a) determination of the final Rent due from Tenant; or (b) the later to occur of the Termination Date or the date Tenant surrenders the Premises to Landlord in compliance with Section 25. Landlord may assign the Security Deposit to a successor or transferee and, following the assignment, Landlord shall have no further liability for the return of the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor Laws now or hereafter in effect.

6.02 Upon written request by Tenant, the Security Deposit shall be reduced to \$10,620.00 on the second (2nd) anniversary of the expiration of the Abatement Period, provided that (1) no Default exists on the date Tenant delivers written request pursuant hereto or the date of the proposed reduction, (2) no Default has previously existed, and (3) no event exists as of the date Tenant delivers written request pursuant hereto or the date of the proposed reduction which, with notice and the passage of time, or both, would constitute a Default. Notwithstanding the foregoing provisions of this Section 6.02 to the contrary, if, after any reduction in the Security Deposit, Tenant is in uncured Default, at Landlord's option, the Security Deposit shall be reinstated to the initial amount described in the Section 1.09 above, and Tenant's failure to so reinstate the Security Deposit within ten (10) days after notice from Landlord shall constitute an additional Default hereunder, without the necessity of notice or the passage of grace periods.

7. Building Services.

7.01 Landlord shall furnish Tenant with the following services: (a) water for use in the Base Building lavatories; (b) customary heat and air conditioning in season during Building Service Hours, although (i) Tenant shall have the right to receive HVAC service during hours other than Building Service Hours by paying Landlord's then standard charge for additional HVAC service and providing such prior notice as is reasonably specified by Landlord (Landlord's charge for additional HVAC service shall be based on a minimum of four (4) hours of usage), and (ii) if Tenant is permitted to connect any supplemental HVAC units to the Building's condenser water loop or chilled water line, such permission shall be conditioned upon Landlord having adequate excess capacity from time to time and such connection and use shall be subject to Landlord's

reasonable approval and reasonable restrictions imposed by Landlord, and Landlord shall have the right to charge Tenant a connection fee and/or a monthly usage fee, as reasonably determined by Landlord; (c) standard janitorial service on Business Days; (d) elevator service; (e) electricity in accordance with the terms and conditions in Section 7.02; (f) access to the Building for Tenant and its employees twenty-four (24) hours per day/7 days per week, subject to the terms of this Lease and such protective services or monitoring systems, if any, as Landlord may reasonably impose, including, without limitation, sign-in procedures and/or presentation of identification cards; and (g) such other services as Landlord reasonably determines are necessary or appropriate for the Property. If Landlord, at Tenant's request, provides any services which are not Landlord's express obligation under this Lease, including, without limitation, any repairs which are Tenant's responsibility pursuant to Section 9 below, Tenant shall pay Landlord, or such other party designated by Landlord, the cost of providing such service plus a reasonable administrative charge.

7.02 Electricity used by Tenant in the Premises shall be paid for by Tenant through inclusion in Expenses (except as provided for excess usage). Without the consent of Landlord, Tenant's use of electrical service shall not exceed Building standard usage, per square foot, as reasonably determined by Landlord, based upon the Building standard electrical design load. Landlord shall have the right to measure electrical usage by commonly accepted methods, including the installation of measuring devices such as submeters and check meters. If it is determined that Tenant is using electricity in such quantities or during such periods as to cause the total cost of Tenant's electrical usage, on a monthly, per-rentable-square-foot basis, to materially exceed that which Landlord reasonably deems to be standard for the Building, Tenant shall pay Landlord Additional Rent for the cost of such excess electrical usage and, if applicable, for the cost of purchasing and installing the measuring device(s).

7.03 Landlord's failure to furnish, or any interruption, diminishment or termination of services due to the application of Laws, the failure of any equipment, the performance of maintenance, repairs, improvements or alterations, utility interruptions or the occurrence of an event of Force Majeure (defined in Section 26.03) (collectively a "Service Failure") shall not render Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement. However, if the Premises, or a material portion of the Premises, are made untenable for a period in excess of five (5) consecutive Business Days as a result of a Service Failure that is reasonably within the control of Landlord to correct, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the sixth (6th) consecutive Business Day of the Service Failure and ending on the day the service has been restored. If the entire Premises have not been rendered untenable by the Service Failure, the amount of abatement shall be equitably prorated.

8. Leasehold Improvements.

All improvements in and to the Premises, including any Alterations (defined in Section 9.03) (collectively, "Leasehold Improvements") shall remain upon the Premises at the end of the Term without compensation to Tenant, provided that Tenant, at its expense, shall remove any Cable (defined in Section 9.01 below). In addition, Landlord, by written notice to Tenant at least 30 days prior to the Termination Date, may require Tenant, at Tenant's expense, to remove any Alterations (the Cable and such other items collectively are referred to as "Required Removables"), but shall not require Tenant to remove any improvements or other work (including, without limitation, painting and carpeting) that were part of the Landlord Work;

Landlord acknowledges and agrees that for the purposes hereof no part of the Landlord Work shall constitute a Required Removable. Required Removables shall include, without limitation, internal stairways, raised floors, personal baths and showers, vaults, supplemental HVAC units (and associated mechanical infrastructure), rolling file systems and structural alterations and modifications and specialized non-standard office improvements (game room, bowling alley, etc.). Notwithstanding the foregoing, Tenant, at the time it requests approval for a proposed Alteration, including any initial Alterations or Landlord Work, may request in writing that Landlord advise Tenant whether the improvement is a Required Removable. Within 10 days after receipt of Tenant's request, Landlord shall advise Tenant in writing as to which portions of the proposed Alterations or other improvements are Required Removables. Required Removables shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to perform its obligations in a timely manner, Landlord may perform such work at Tenant's expense.

9. Repairs and Alterations.

9.01 Tenant, at its sole cost and expense, shall perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease, and keep the Premises in good condition and repair, reasonable wear and tear excepted. Tenant's repair and maintenance obligations include, without limitation, repairs to: (a) floor covering; (b) interior partitions; (c) doors; (d) the interior side of demising walls; (e) Alterations (described in Section 9.03); (f) supplemental air conditioning units, kitchens, including hot water heaters, plumbing, and similar facilities exclusively serving Tenant, whether such items are installed by Tenant or are currently existing in the Premises; and (g) electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant (collectively, "Cable"). All repairs and other work performed by Tenant or its contractors, including that involving Cable, shall be subject to the terms of Section 9.03 below. If Tenant fails to make any repairs to the Premises for more than fifteen (15) days after notice from Landlord (although notice shall not be required in an emergency), Landlord may make the repairs, and, within thirty (30) days after Landlord's demand, Tenant shall pay the reasonable cost of the repairs, together with an administrative charge in an amount equal to ten percent (10%) of the cost of the repairs.

9.02 Landlord shall keep and maintain in good repair and working order and perform maintenance upon the: (a) structural elements of the Building; (b) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building in general; (c) Common Areas; (d) roof of the Building; (e) exterior windows of the Building; and (f) elevators serving the Building. Landlord shall promptly make repairs for which Landlord is responsible. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932, and Sections 1941 and 1942 of the California Civil Code, or any similar or successor Laws now or hereafter in effect.

9.03 Tenant shall not make alterations, repairs, additions or improvements or install any Cable (collectively referred to as "Alterations") without first obtaining the written consent of Landlord in each instance, which consent shall not be unreasonably withheld or delayed. However, Landlord's consent shall not be required for any Alteration that satisfies all of the following criteria (a "Cosmetic Alteration"): (a) is of a cosmetic nature such as painting, wallpapering, hanging pictures and installing carpeting; (b) is not visible from the exterior of the Premises or Building; (c) will not affect the Base Building (defined in Section 5); (d) does not require work to be performed inside the walls or above the ceiling of the Premises, and (e) is less than \$50,000.00. Cosmetic Alterations shall be subject to all the other provisions of this

Section 9.03. Prior to starting any work, Tenant shall furnish Landlord with detailed plans and specifications (which shall be in CAD format if requested by Landlord) prepared by a duly licensed architect or engineer; names of contractors reasonably acceptable to Landlord (provided that Landlord may designate specific contractors with respect to Base Building and vertical Cable, as may be described more fully below); required permits and approvals; evidence of contractor's and subcontractor's insurance in amounts reasonably required by Landlord and naming Landlord and the managing agent for the Building (or any successor(s)) as additional insureds; and any security for performance in amounts reasonably required by Landlord. Landlord may designate specific contractors with respect to oversight, installation, repair, connection to, and removal of vertical Cable. All Cable shall be clearly marked with adhesive plastic labels (or plastic tags attached to such Cable with wire) to show Tenant's name, suite number, and the purpose of such Cable (i) every 6 feet outside the Premises (specifically including, but not limited to, the electrical room risers and any Common Areas), and (ii) at the termination point(s) of such Cable. Changes to the plans and specifications must also be submitted to Landlord for its approval. Alterations shall be constructed in a good and workmanlike manner using materials of a quality reasonably approved by Landlord, and Tenant shall ensure that no Alteration impairs any Building system or Landlord's ability to perform its obligations hereunder. Landlord's consent shall be deemed to have been reasonably withheld if the proposed Alterations could (a) affect any structural component of the Building; (b) be visible from or otherwise affect any portion of the Building other than the interior of the Premises; (c) affect any Base Building systems; (d) result in Landlord being required under any Laws to perform any work that Landlord could otherwise avoid or defer; (e) result in an increase in the demand for utilities or services that Landlord is required to provide (whether to Tenant or to any other tenant in the Building); (f) cause an increase in any Insurance Expenses; (g) result in the disturbance or exposure of, or damage to, any ACM or other Hazardous Material (defined below); or (h) violate or result in a violation of any Law, Rule or requirement under this Lease. Tenant shall reimburse Landlord for any sums paid by Landlord for third party examination of Tenant's plans for non-Cosmetic Alterations. In addition, Tenant shall pay Landlord a fee for Landlord's oversight and coordination of any non-Cosmetic Alterations equal to five percent (5%) of the cost of the Alterations. Landlord may, in the exercise of its reasonable discretion, require a deposit of its estimated fees in advance of performing any review. Neither the payment of any such fees or costs, nor the monitoring, administration or control by Landlord of any contractor or any part of the Alterations shall be deemed to constitute any express or implied warranty or representation that any Alteration was properly designed or constructed, nor shall it create any liability on the part of Landlord. Upon completion, Tenant shall furnish "as-built" plans (in CAD format, if requested by Landlord) for non-Cosmetic Alterations, completion affidavits and full and final waivers of lien. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. Upon substantial completion of any Alteration, Tenant shall (a) cause a timely notice of completion to be recorded in the Office of the Recorder of the county in which the Building is located, in accordance with California Civil Code §3093 or any successor statute; and (b) deliver to Landlord evidence of full payment and unconditional final lien waivers for all labor, services and materials furnished in connection therewith.

10. Entry by Landlord.

Landlord may enter the Premises to inspect, show or clean the Premises or to perform or facilitate the performance of repairs, alterations or additions to the Premises or any portion of the Building. Except in emergencies or to provide Building services, Landlord shall provide Tenant with prior verbal notice of entry and shall use reasonable efforts to minimize any interference with Tenant's use of the Premises. If necessary, and upon written notice to Tenant

(except in the case of an emergency in which event no notice shall be required), Landlord may temporarily close all or a portion of the Premises to perform repairs, alterations and additions. However, except in emergencies, Landlord shall not close the Premises if the work can reasonably be completed on weekends and after Building Service Hours. Provided Landlord complies with the notice requirements of this Section 10, entry by Landlord shall not constitute a constructive eviction or entitle Tenant to an abatement or reduction of Rent.

11. Assignment and Subletting.

11.01 Tenant shall not assign, sublease, transfer or encumber any interest in this Lease or allow any third party to use any portion of the Premises (collectively or individually, a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed if Landlord does not exercise its recapture rights under Section 11.02. Without limitation, it is agreed that Landlord's consent shall not be considered unreasonably withheld if the proposed transferee is a governmental entity or an occupant of the Building or if the proposed transferee, whether or not an occupant of the Building, is engaged in written negotiations or proposals with Landlord regarding the leasing of space within the Building. If the entity(ies) which directly or indirectly controls the voting shares/rights of Tenant (other than through the ownership of voting securities listed on a recognized securities exchange) changes at any time, such change of ownership or control shall constitute a Transfer. Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any similar or successor Laws, now or hereafter in effect, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable Laws, on behalf of the proposed transferee. Any Transfer in violation of this Section shall, at Landlord's option, be deemed a Default by Tenant as described in Section 18, and shall be voidable by Landlord. In no event shall any Transfer, including a Permitted Transfer, release or relieve Tenant from any obligation under this Lease, and Tenant shall remain primarily liable for the performance of the tenant's obligations under this Lease, as amended from time to time.

11.02 Tenant shall provide Landlord with financial statements (prepared in accordance with generally accepted accounting principles), a reasonably determined calculation of excess rent (described in Section 11.03 below) and company information for the proposed transferee (or, in the case of a change of ownership or control, for the proposed new controlling entity(ies)), a fully executed copy of the proposed assignment, sublease or other Transfer documentation and such other information as Landlord may reasonably request. Within fifteen (15) Business Days after receipt of the required information and documentation, Landlord shall either: (a) consent to the Transfer by execution of a consent agreement in a form reasonably designated by Landlord; (b) reasonably refuse to consent to the Transfer in writing; or (c) in the event of an assignment of this Lease or subletting of more than twenty percent (20%) of the Rentable Square Footage of the Premises, recapture the portion of the Premises that Tenant is proposing to Transfer. If Landlord exercises its right to recapture, this Lease shall automatically be amended (or terminated if the entire Premises is being assigned or sublet) to delete the applicable portion of the Premises effective on the proposed effective date of the Transfer, although Landlord may require Tenant to execute a reasonable amendment or other document reflecting such reduction or termination. Concurrently with Tenant's request for a proposed Transfer, Tenant shall pay Landlord a review fee of \$1,500.00 for Landlord's review of any requested Transfer, regardless of whether consent is granted, and thereafter Tenant shall be obligated to pay all reasonable costs incurred by Landlord in preparing the documents for any requested Transfer, including but not limited to Landlord's attorneys' fees.

11.03 Tenant shall pay Landlord fifty percent (50%) of all rent and other consideration which Tenant receives as a result of a Transfer that is in excess of the Rent payable to Landlord for the portion of the Premises and Term covered by the Transfer. Tenant shall pay Landlord for Landlord's share of the excess within thirty (30) days after Tenant's receipt of the excess. In determining the excess due Landlord, Tenant may deduct from the excess, on a straight-line basis, the following reasonable and customary expenses directly incurred by Tenant attributable to the Transfer: commercially reasonable attorneys' fees and brokerage commissions.

11.04 Notwithstanding anything to the contrary contained in this Section 11, neither Tenant nor any other person having a right to possess, use, or occupy (for convenience, collectively referred to in this subsection as "Use") the Premises shall enter into any lease, sublease, license, concession or other agreement for Use of all or any portion of the Premises which provides for rental or other payment for such Use based, in whole or in part, on the net income or profits derived by any person that leases, possesses, uses, or occupies all or any portion of the Premises (other than an amount based on a fixed percentage or percentages of receipts or sales), and any such purported lease, sublease, license, concession or other agreement shall be absolutely void and ineffective as a transfer of any right or interest in the Use of all or any part of the Premises.

11.05 If this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may elect to collect Rent directly from the assignee. If the Premises or any part thereof is sublet or used or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord may, after any Default(s) by Tenant (or if Tenant becomes insolvent), collect from the subtenant or occupant all amounts due from such party to Tenant. Tenant hereby authorizes and directs any assignee or subtenant (a "Transferee") to make payments of rent or other consideration directly to Landlord upon receipt of any notice from Landlord requesting such action. Landlord may apply all such amounts collected to Rent due or coming due hereunder, and no such collection or application shall be deemed a waiver of any of Landlord's rights or remedies hereunder, or the acceptance by Landlord of such party as a permitted Transferee, or the release of Tenant or any Guarantor from any of its obligations under or in connection with this Lease. The consent by Landlord to any Transfer shall not relieve Tenant from obtaining the express written consent of Landlord to any other Transfer. The listing of any name other than that of Tenant on any door of the Premises or on any directory or in any elevator in the Building, or otherwise, or the acceptance of Rent for the Premises from any entity other than Tenant shall not operate to vest in the person so named any right or interest in this Lease or in the Premises, or be deemed to constitute, or serve as a substitute for, or any waiver of, any consent of Landlord required under this Section 11.

11.06 So long as Tenant is not entering into the Permitted Transfer for the purpose of avoiding or otherwise circumventing the remaining terms of this Article 11, Tenant may assign its entire interest under this Lease, without the consent of Landlord, to (i) an affiliate, subsidiary, or parent of Tenant, or a corporation, partnership or other legal entity wholly owned by Tenant (collectively, an "Affiliated Party"), or (ii) a successor to Tenant by purchase, merger, consolidation or reorganization, provided that all of the following conditions are satisfied (each such Transfer a "Permitted Transfer"): (1) Tenant is not in Default; (2) Tenant gives Landlord written notice at least thirty (30) days prior to the effective date of the proposed Permitted Transfer; and (3) with respect to a purchase, merger, consolidation or reorganization or any Permitted Transfer which results in Tenant ceasing to exist as a separate legal entity, (a) Tenant's successor shall own all or substantially all of the assets of Tenant, and (b) Tenant's

successor shall have a net worth which is at least equal to the greater of Tenant's net worth at the date of this Lease or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, Tenant's successor shall sign a commercially reasonable form of assumption agreement. As used herein, (A) "parent" shall mean a company which owns a majority of Tenant's voting equity; (B) "subsidiary" shall mean an entity wholly owned by Tenant or at least 51% of whose voting equity is owned by Tenant; and (C) "affiliate" shall mean an entity controlled by, controlling or under common control with Tenant. Notwithstanding the foregoing, if any parent, affiliate or subsidiary to which this Lease has been assigned or transferred subsequently sells or transfers its voting equity or its interest under this Lease other than to another parent, subsidiary or affiliate of the original Tenant named hereunder, such sale or transfer shall be deemed to be a Transfer requiring the consent of Landlord hereunder.

12. Liens.

Tenant shall not permit mechanics' or other liens to be placed upon or otherwise encumber the Property, Premises or Tenant's leasehold interest in connection with any work or service done or purportedly done by or for the benefit of Tenant or its transferees, or the Premises. Tenant shall give Landlord notice at least fifteen (15) days prior to the commencement of any work in the Premises to afford Landlord the opportunity, where applicable, to post and record notices of non-responsibility. Tenant, within ten (10) days of notice from Landlord, shall fully discharge any lien by settlement, by payment of the claim, posting a proper bond, or by insuring over the lien in the manner prescribed by the applicable lien Law and, if Tenant fails to do so, Tenant shall be deemed in Default under this Lease and, in addition to any other remedies available to Landlord as a result of such Default by Tenant, Landlord, at its option (without any duty to investigate the validity of the lien or other encumbrance), may bond, insure over or otherwise discharge the lien. Tenant shall reimburse Landlord for any amount paid by Landlord, including, without limitation, reasonable attorneys' fees.

13. Indemnity and Waiver of Claims.

13.01 Except to the extent caused solely by the gross negligence or willful misconduct of Landlord or any Landlord Related Parties (defined below), Tenant shall indemnify, protect, defend and hold Landlord and Landlord Related Parties harmless against and from all liabilities, obligations, losses, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees (if and to the extent permitted by Law) (collectively referred to as "Losses"), which may be imposed upon, incurred by or asserted against Landlord or any of the Landlord Related Parties by any third party and arising out of or in connection with any damage or injury occurring in the Premises or any acts or omissions (including violations of Law) of Tenant, its trustees, members, principals, beneficiaries, partners, officers, directors, employees and agents (each a "Tenant Related Party") or any of Tenant's transferees, contractors or licensees. Tenant hereby waives all claims against and releases Landlord and its trustees, members, principals, beneficiaries, partners, officers, directors, employees, Mortgagees (defined in Section 23) and agents (the "Landlord Related Parties") from all claims for any injury to or death of persons, damage to property or business loss in any manner related to (a) Force Majeure, (b) acts of third parties, (c) the bursting or leaking of any tank, water closet, drain or other pipe, (d) the inadequacy or failure of any security or protective services, personnel or equipment, or (e) any matter not within the reasonable control of Landlord.

Except to the extent caused solely by the negligence or willful misconduct of Tenant or any Tenant Related Parties (defined below), Landlord shall indemnify, protect, defend and hold Tenant and Tenant Related Parties harmless against and from all Losses, which may be imposed upon, incurred by or asserted against Tenant or any of the Tenant Related Parties by any third party and arising out of or in connection with Landlord's failure to maintain the Common Areas or Landlord's breach of this Lease.

13.02 "Environmental Laws" means all Laws pertaining to (a) protection of health against environmental hazards; (b) the protection of the environment, including air, soils, wetlands, and surface and underground water, from contamination by any substance that may have any adverse health effect; (c) underground storage tank regulation or removal; (d) protection or regulation of natural resources; (e) protection of wetlands or wildlife; (f) management, regulation and disposal of solid and hazardous wastes; (g) radioactive materials; (h) biologically hazardous materials; (i) indoor air quality; (j) the manufacture, possession, presence, use, generation, storage, transportation, treatment, release, emission, discharge, disposal, abatement, cleanup, removal, remediation or handling of any Hazardous Substances. Environmental Laws include the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"); the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., as well as all similar state and local Laws. "Hazardous Material" means any substance the release of or the exposure to which is prohibited, limited or regulated by any Environmental Law, or which poses a hazard to human health because of its toxicity or other adverse effect, including (a) any "oil," as defined by the Federal Water Pollution Control Act and regulations promulgated thereunder (including crude oil or any fraction of crude oil); (b) any radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §2011 et seq.; (c) *Stachybotris chartarum* and other molds; (d) asbestos containing materials ("ACM") in any form or condition; and (e) polychlorinated biphenyls ("PCBs") and any substances or compounds containing PCBs.

- (a) Tenant shall not use, store or permit Hazardous Materials to be present on or about the Premises. Notwithstanding the foregoing, Tenant may keep and use, solely for maintenance and administrative purposes, small amounts of ordinary cleaning and office supplies customarily used in business offices (such as, for example, glass cleaner, carpet spot remover, and toner for Tenant's business equipment in use on the Premises), provided that Tenant complies with all Environmental Laws relating to the use, storage or disposal of all such supplies.
- (b) If the use, storage or possession of Hazardous Materials by Tenant or any Tenant Related Party on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises or the Building, Tenant agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with (a) the requirements of all Environmental Laws, and any Governmental Authority responsible for the enforcement of any Environmental Laws; and (b) any additional requirements of Landlord that are necessary, in Landlord's sole discretion, to protect the value of the Premises and the Building. Landlord shall also have the right, but not the obligation, to take whatever action with respect to any such Hazardous Materials

that it deems necessary, in Landlord's sole discretion, to protect the value of the Premises and the Building. All costs and expenses paid or incurred by Landlord in the exercise of such right shall be payable by Tenant upon demand. As of the date hereof, Landlord has no knowledge of any existing violation of Environmental Laws in the Building or Premises;

- (c) Upon reasonable Notice to Tenant, Landlord may inspect the Premises for the purpose of determining whether there exists on the Premises any Hazardous Materials or other condition or activity that is in violation of the requirements of this Lease or of any Environmental Laws. The right granted to Landlord herein to perform inspections shall not create a duty on Landlord's part to inspect the Premises, or liability on the part of Landlord for Tenant's use, storage or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith. Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of debris, waste or Hazardous Materials placed on or about the Premises by Tenant or any Tenant Related Party, and in a condition that complies with all Environmental Laws.
- (d) Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all claims, damages, liabilities, fines, judgments, penalties, costs, losses (including loss in value of the Premises or the Building, the loss of rentable or usable space, any adverse effect on marketability of the Building or any space therein, and all sums paid for settlement of claims), costs incurred in connection with any site investigation or any cleanup, removal or restoration mandated by any Governmental Authority, and expenses (including attorneys' fees, consultant and expert fees) to the extent attributable to (i) any Hazardous Materials placed on or about the Building by Tenant or any Tenant Related Party, or on or about the Premises by any party other than Landlord, at any time during the Term, or (ii) Tenant's failure to comply with any of its obligations under this Article 13, all of which shall survive the expiration or earlier termination of this Lease.

14. Insurance.

14.01 From and after the date Tenant first has access to the Premises, Tenant shall maintain the following insurance ("Tenant's Insurance"):

- (a) Commercial General Liability Insurance applicable to the Premises and its appurtenances written on an occurrence basis providing, on an occurrence basis, covering the Premises and all operations of Tenant in or about the Premises against claims for bodily injury, death, property damage and products liability and to include contractual liability coverage insuring Tenant's indemnification obligations under this Lease, to be in combined single limits of not less than \$2,000,000 each occurrence for bodily injury, death and property damage, \$2,000,000 for products/completed operations aggregate, \$2,000,000 for personal injury, and to have general aggregate limits of not less than \$2,000,000 (per location) and Umbrella Liability Insurance in an amount not less than \$5,000,000 for each policy year. The general aggregate limits under the Commercial General Liability insurance policy or policies shall apply separately to the Premises and to Tenant's use thereof (and not to any other location or use

of Tenant) and such policy shall contain an endorsement to that effect. The certificate of insurance evidencing the form of policy shall specify all endorsements required herein and shall specify on the face thereof that the limits of such policy apply separately to the Premises.

- (b) Insurance covering any of the items included in any equipment maintained by Tenant, as well as trade fixtures, merchandise, movable partitions, furniture and other personal property from time to time in, on or upon the Premises ("Tenant's Property"), and all Leasehold Improvements, in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against perils included within the standard form of "all-risk" (i.e., "Special Cause of Loss") fire and casualty insurance policy;
- (c) Workers' Compensation Insurance in amounts required by Law;
- (d) Employers Liability Coverage of at least \$1,000,000.00 per occurrence (with \$500,000.00 disease coverage per employee);
- (e) if Tenant owns or leases any vehicles, automobile liability coverage for all vehicles owned or leased by Tenant in an amount not less than \$1,000,000.00 per accident; and
- (f) business interruption coverage in an amount equal to 100% of Tenant's estimated gross revenues from the Premises for a twelve (12) month period.

All policies of the insurance provided for in this Section 14.01 above shall be issued in form acceptable to Landlord by insurance companies with a rating and financial size of not less than A:XII in the most current available "Best's Insurance Reports", and licensed to do business in the state of California. Each and every such policy:

- (i) shall designate Landlord (as well as Landlord's managing agent, asset manager, and any mortgagee of Landlord and any other party reasonably designated by Landlord) as an additional insured, except with respect to the insurance described in clauses (c) and (d) above;
- (ii) shall be delivered in its entirety (or, in lieu thereof, a certificate in form and substance satisfactory to Landlord) to each of Landlord and any such other parties in interest prior to any entry by Tenant or Tenant's employees or contractors onto the Premises and thereafter within five (5) days after the inception (or renewal) of each new policy, and as often as any such policy shall expire or terminate. Renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent;
- (iii) shall contain a provision that the insurer will give to Landlord at least thirty (30) days notice in writing (and ten (10) days in the case of non-payment) in advance of any material change, cancellation, termination or lapse, or the effective date of any reduction in the amounts of insurance; and
- (iv) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Landlord may carry.

In addition, Landlord shall be named as a loss payee with respect to Tenant's Property insurance on the Leasehold Improvements. Tenant will be responsible for the payment of any deductible amount under any policy of insurance maintained by Tenant. Tenant shall additionally carry and maintain such other types of insurance coverage in such reasonable amounts covering the Premises and Tenant's operations therein, and as may be reasonably requested from time to time by Landlord.

14.02 So long as the same is available at commercially reasonable rates, Landlord shall maintain so called All Risk property insurance on the Building in amounts reasonably determined by Landlord to be necessary, together with such other insurance coverage as Landlord, in its reasonable judgment, may elect to maintain; Landlord may elect to self-insure with respect to any such coverage.

15. Subrogation.

Landlord and Tenant hereby waive and release, and shall cause their respective insurance carriers to waive and release, any and all rights of recovery, claims, actions or causes of action against the other for any loss or damage with respect to Tenant's Property, Leasehold Improvements, the Building, the Premises, or any contents thereof, including rights, claims, actions and causes of action based on negligence, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance. The parties agree that the foregoing waiver shall be binding upon their respective property and business income insurance carriers, and (except for any insurance policy that provides that the insured thereunder may effectively waive subrogation without further action on the part of the insured) each party shall obtain endorsements or take such other action as may be required to effect such insurer's waiver of subrogation under each such policy. Notwithstanding the foregoing, if any Casualty (defined below) insured by Landlord is caused by the negligence or willful misconduct of Tenant or any Tenant Related Party, Tenant shall reimburse Landlord, as Additional Rent, within ten (10) days following Landlord's demand therefor, all deductible amounts and other expenses payable by Landlord in connection with such Casualty that are not covered by the proceeds of Landlord's insurance.

16. Casualty Damage.

16.01 If all or any portion of the Premises becomes untenable or inaccessible by fire or other casualty to the Premises or the Common Areas (collectively a "Casualty"), Landlord, with reasonable promptness, shall cause a general contractor selected by Landlord to provide Landlord with a written estimate of the amount of time required, using standard working methods, to substantially complete the repair and restoration of the Premises and any Common Areas necessary to provide access to the Premises ("Completion Estimate"). Landlord shall promptly forward a copy of the Completion Estimate to Tenant. If the Completion Estimate indicates that the Premises or any Common Areas necessary to provide access to the Premises cannot be made tenantable within 180 days from the date the repair is started, then either party shall have the right to terminate this Lease upon written notice to the other within ten (10) days after Tenant's receipt of the Completion Estimate. Tenant, however, shall not have the right to terminate this Lease if the Casualty was caused by the negligence or intentional misconduct of Tenant or any Tenant Related Parties. In addition, Landlord, by notice to Tenant within ninety (90) days after the date of the Casualty, shall have the right to terminate this Lease if: (1) the Premises have been materially damaged and there is less than 2 years of the Term remaining on the date of the Casualty; (2) any Mortgagee requires that the

insurance proceeds be applied to the payment of the mortgage debt; or (3) a material uninsured loss to the Building or Premises occurs.

16.02 If this Lease is not terminated, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, restore the Premises and Common Areas. Such restoration shall be to substantially the same condition that existed prior to the Casualty, except for modifications required by Law or any other modifications to the Common Areas deemed desirable by Landlord. Upon notice from Landlord, Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant's insurance with respect to any Leasehold Improvements performed by or for the benefit of Tenant; provided if the estimated cost to repair such Leasehold Improvements exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, the excess cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repairs. Within 15 days of demand, Tenant shall also pay Landlord for any additional excess costs that are determined during the performance of the repairs to such Leasehold Improvements. In no event shall Landlord be required to spend more for the restoration of the Premises and Common Areas than the proceeds received by Landlord, whether insurance proceeds or proceeds from Tenant. Landlord shall not be liable for any inconvenience to Tenant, or injury to Tenant's business resulting in any way from the Casualty or the repair thereof. Provided that Tenant is not in Default, during any period of time that all or a material portion of the Premises is rendered untenantable as a result of a Casualty, the Rent shall abate for the portion of the Premises that is untenantable and not used by Tenant.

16.03 The provisions of this Lease, including this Section 16, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or the Property, and any Laws, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any similar or successor Laws now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises or the Property.

17. Condemnation.

Either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under Law, by eminent domain or private purchase in lieu thereof (a "Taking"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or Property which would have a material adverse effect on Landlord's ability to profitably operate the remainder of the Building. The terminating party shall provide written notice of termination to the other party within 45 days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent and Tenant's Pro Rata Share shall be appropriately adjusted to account for any reduction in the square footage of the Building or Premises. All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds are expressly waived by Tenant, provided, however, Tenant may file a separate claim for Tenant's Property and Tenant's reasonable relocation expenses, provided the filing of the claim does not diminish the amount of Landlord's award. If only a part of the Premises is subject to a Taking and this Lease is not terminated, Landlord, with reasonable diligence, will restore the remaining portion of the Premises as nearly as practicable to the

condition immediately prior to the Taking. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

18. Events of Default.

In addition to any other default specifically described in this Lease, each of the following occurrences shall be a "Default": (a) Tenant's failure to pay any portion of Rent when due, if the failure continues for five (5) days after written notice to Tenant ("Monetary Default"); (b) Tenant's failure (other than a Monetary Default) to comply with any term, provision, condition or covenant of this Lease, if the failure is not cured within thirty (30) days after written notice to Tenant provided, however, if Tenant's failure to comply cannot reasonably be cured within ten (10) days, Tenant shall be allowed additional time (not to exceed 45 days) as is reasonably necessary to cure the failure so long as Tenant begins the cure within ten (10) days and diligently pursues the cure to completion; (c) Tenant permits a Transfer without Landlord's required approval or otherwise in violation of Section 11 of this Lease; (d) Tenant becomes insolvent, makes a transfer in fraud of creditors, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts when due or forfeits or loses its right to conduct business; (e) the leasehold estate is taken by process or operation of Law; (f) in the case of any ground floor or retail Tenant, Tenant does not take possession of or abandons or vacates all or any portion of the Premises; or (g) Tenant is in default beyond any notice and cure period under any other lease or agreement with Landlord at the Building or Property. If Landlord provides Tenant with notice of Tenant's failure to comply with any specific provision of this Lease on two (2) or more occasions during any twelve (12) month period, Tenant's subsequent violation of such provision shall, at Landlord's option, be an incurable Default by Tenant and Tenant shall lose any renewal and/or expansion options. All notices sent under this Section shall be in satisfaction of, and not in addition to, notice required by Law. Tenant acknowledges that its obligation to pay Rent hereunder is a condition as well as a covenant, and that such obligation is independent of any and all covenants of Landlord hereunder. Tenant shall not interpose any counterclaim of whatever nature or description in any summary proceeding commenced by Landlord for non-payment of Rent. Tenant waives any rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, or under any other applicable present or future Law, if Tenant is evicted or Landlord takes possession of the Premises by reason of any Default.

19. Remedies.

19.01 Upon the occurrence of any Default under this Lease, whether enumerated in Section 18 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever (and without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligations, except for those notices specifically required pursuant to the terms of Section 18 or this Section 19, and waives any and all other notices or demand requirements imposed by applicable Law):

- (a) Terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to the sum of the following:
 - (i) The Worth at the Time of Award (defined below) 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 Rent loss that Tenant affirmatively 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 Rent loss that Tenant affirmatively proves could be reasonably avoided;
- (iv) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and
- (v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "Worth at the Time of Award" of the amounts referred to in parts (i) and (ii) above, shall be computed by allowing interest at an annual rate equal to the lesser of (A) the maximum rate permitted by Law, or (B) the Prime Rate plus five (5%). For purposes hereof, the "Prime Rate" shall be annual interest rate publicly announced as its prime or base rate by a federally insured bank selected by Landlord in the State of California. The "Worth at the Time of Award" of the amount referred to in part (iii), above, 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 1%;

- (b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due; or
- (c) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above in Paragraph 19.01(a).

19.02 The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

19.03 TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179

OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER LAWS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE LEASE TERM OR THEREAFTER PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH.

THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE. IF THE JURY WAIVER PROVISIONS OF THIS SECTION 19.03 ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW, THEN THE FOLLOWING PROVISIONS SHALL APPLY. It is the desire and intention of the parties to agree upon a mechanism and procedure under which controversies and disputes arising out of this Lease or related to the Premises will be resolved in a prompt and expeditious manner. Accordingly, except with respect to actions for unlawful or forcible detainer or with respect to the prejudgment remedy of attachment, any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents or subsidiaries or affiliated entities) on any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises and/or any claim of injury or damage, whether sounding in contract, tort, or otherwise, shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 — 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the "Referee Sections"). Any fee to initiate the judicial reference proceedings and all fees charged and costs incurred by the referee shall be paid by the party initiating such procedure (except that if a reporter is requested by either party, then a reporter shall be present at all proceedings where requested and the fees of such reporter — except for copies ordered by the other parties — shall be borne by the party requesting the reporter); provided however, that allocation of the costs and fees, including any initiation fee, of such proceeding shall be ultimately determined in accordance with Section 26.02 below. The venue of the proceedings shall be in the county in which the Premises are located. Within 10 days of receipt by any party of a written request to resolve any dispute or controversy pursuant to this Section 19.03, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the parties are unable to agree upon a referee within such 10 day period, then any party may thereafter file a lawsuit in the county in which the Premises are located for the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., the American Arbitration Association or similar mediation/arbitration entity. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections. The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at Law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with this Lease. The referee shall not, however, have the power to award punitive damages, nor any other damages which are not permitted by the express provisions of this Lease, and the parties hereby waive any right to recover any such damages. The parties shall be entitled to conduct all discovery as provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law. The reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards, the referee shall follow California law applicable at the time of the reference proceeding. The parties shall promptly and diligently cooperate with one another and the referee,

and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Section 19.03. In this regard, the parties agree that the parties and the referee shall use best efforts to ensure that (a) discovery be conducted for a period no longer than 6 months from the date the referee is appointed, excluding motions regarding discovery, and (b) a trial date be set within 9 months of the date the referee is appointed. In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, or with the judge if there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court. Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder. The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend this general reference agreement to be specifically enforceable in accordance with the Code of Civil Procedure. Nothing in this Section 19.03 shall prejudice the right of any party to obtain provisional relief or other equitable remedies from a court of competent jurisdiction as shall otherwise be available under the Code of Civil Procedure and/or applicable court rules.

19.04. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon any Default shall not be deemed or construed to constitute a waiver of such Default.

19.05. If Tenant is in Default of any of its non-monetary obligations under the Lease, Landlord shall have the right to perform such obligations. Tenant shall reimburse Landlord for the cost of such performance upon demand together with an administrative charge equal to ten percent (10%) of the cost of the work performed by Landlord.

19.06. No act of Landlord or of any Landlord Related Party, including Landlord's acceptance of the keys to the Premises, shall constitute Landlord's acceptance of a surrender or abandonment of the Premises by Tenant prior to the expiration of the Term unless such acceptance is expressly acknowledged by Landlord in a written agreement executed by both parties.

19.07. This Section 19 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

20. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) SHALL BE LIMITED TO THE LESSER OF (A) THE INTEREST OF LANDLORD IN THE PROPERTY, OR (B) THE EQUITY INTEREST LANDLORD WOULD HAVE IN THE PROPERTY IF THE PROPERTY WERE ENCUMBERED BY THIRD PARTY DEBT IN AN AMOUNT EQUAL TO 70% OF THE VALUE OF THE PROPERTY. TENANT SHALL LOOK SOLELY TO

LANDLORD'S INTEREST IN THE PROPERTY FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD OR ANY LANDLORD RELATED PARTY. NEITHER ANY LIMITED PARTNER OF LANDLORD NOR ANY LANDLORD RELATED PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL LANDLORD OR ANY LANDLORD RELATED PARTY BE LIABLE TO TENANT FOR ANY LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. BEFORE FILING SUIT FOR AN ALLEGED DEFAULT BY LANDLORD, TENANT SHALL GIVE LANDLORD AND THE MORTGAGEE(S) WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES (DEFINED IN SECTION 23 BELOW), WRITTEN NOTICE AND THIRTY (30) DAYS TO CURE THE ALLEGED DEFAULT, AND LANDLORD SHALL NOT BE IN DEFAULT UNDER THIS LEASE UNLESS LANDLORD HAS FAILED TO CURE OR COMMENCE TO CURE OF SUCH ALLEGED DEFAULT WITHIN THIRTY (30) DAYS AFTER WRITTEN NOTICE FROM TENANT.

21. Relocation.

Landlord, at its expense, at any time before or during the Term, may relocate Tenant from the Premises to space of reasonably comparable views, size, buildout and utility ("Relocation Space") within the Building or other buildings within the same project upon seventy (70) days' prior written notice to Tenant. From and after the date of the relocation, the Base Rent and Tenant's Pro Rata Share shall be adjusted based on the rentable square footage of the Relocation Space; provided, however, in no event shall the Base Rent or Tenant's Pro Rata Share increase as a result of a relocation required by Landlord pursuant to this Section 21. Landlord shall pay Tenant's reasonable costs of relocation which amount shall include all costs for moving Tenant's furniture, equipment, supplies and other personal property, as well as the cost of printing and distributing change of address notices to Tenant's customers and one month's supply of stationery showing the new address.

22. Holding Over.

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease, occupancy of the Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease, and Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the sum of the Base Rent and Additional Rent in effect during the last calendar month of the Term. No holdover by Tenant or payment by Tenant after the termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. If Landlord is unable to deliver possession of the Premises to a new tenant or to perform improvements for a new tenant as a result of Tenant's holdover, Tenant shall be liable for any and all damages, fees, and/or costs incurred or to be incurred (including consequential damages) that Landlord suffers from the holdover.

23. Subordination to Mortgages; Estoppel Certificate.

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a "Mortgage"). The party having the benefit of a Mortgage shall be referred to as a "Mortgagee". This clause shall be self-operative, but upon request from a Mortgagee, Tenant shall execute Mortgagee's standard form subordination agreement in favor of the Mortgagee.

As an alternative, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. Upon request, Tenant, without charge, shall attorn to any successor to Landlord's interest in this Lease. Tenant shall, within ten (10) days after receipt of a written request from Landlord, execute and deliver a subordination agreement and/or estoppel certificate to those parties as are reasonably requested by the other (including a Mortgagee or prospective purchaser). Without limitation, such estoppel certificate may include a certification as to the status of this Lease, the existence of any defaults and the amount of Rent that is due and payable. Tenant acknowledges its obligation to pay an administration fee at a daily rate of \$50.00 for each day that Tenant is late in providing any such subordination agreement or estoppel certificate (or a daily rate of \$100.00 for both), commencing on the eleventh (11th) day following Landlord's request therefor. If Tenant has not provided any such subordination agreement or estoppel certificate within twenty (20) days following Landlord's written request therefor, Tenant hereby appoints Landlord as Tenant's attorney-in-fact, which appointment is coupled with an interest, to execute, acknowledge and deliver any such subordination agreement or estoppel certificate for and on behalf of Tenant, without any liability on the part of Landlord for the accuracy of any information contained therein, and Tenant shall thereupon be deemed to have acknowledged the accuracy of all information set forth therein for the benefit of Landlord, any current or prospective Mortgagee, or any prospective purchaser of any interest of Landlord in the Building. However, if any such party is unwilling to rely on such subordination agreement or estoppel certificate from Landlord (or if Landlord is unwilling for any reason to execute such subordination agreement or estoppel certificate as attorney-in-fact for Tenant), the daily administration fee described herein shall continue until such time as Tenant has provided the subordination agreement or estoppel certificate as originally requested. Upon written request by Tenant, Landlord will use reasonable efforts to obtain a subordination, non-disturbance and attornment agreement ("SNDA") for the benefit of Tenant from any future Mortgagee whereby the Mortgagee agrees to recognize the rights of Tenant under this Lease in the event of a foreclosure of the Mortgage held by such Mortgagee on such Mortgagee's then current standard form of agreement. "Reasonable efforts" of Landlord shall not require Landlord to incur any cost, expense or liability to obtain such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the Mortgagee. Landlord's failure to obtain a SNDA for Tenant shall have no effect on the rights, obligations and liabilities of Landlord and Tenant or be considered to be a default by Landlord hereunder.

24. Notice.

All demands, approvals, consents or notices (collectively referred to as a "notice") shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in Section 1; provided, however, notices sent by Landlord regarding general Building operational matters may be posted in the Building mailroom or the general Building newsletter or sent via e-mail to the e-mail address provided by Tenant to Landlord for such purpose. In addition, if the Building is closed (whether due to emergency, governmental order or any other reason), then any notice address at the Building shall not be deemed a required notice address during such closure, and, unless Tenant has provided an alternative valid notice address to Landlord for use during such closure, any notices sent during such closure may be sent via e-mail or in any other practical manner reasonably designed to ensure receipt by the intended recipient. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, 3 days after notice is

deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

25. Surrender of Premises.

At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's Property and any and all Required Removables from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted. If Tenant fails to remove any of Tenant's Property or Required Removables, or to restore the Premises to the required condition as of the date of termination of this Lease or Tenant's right to possession of the Premises, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and/or store Tenant's Property and Required Removables, as the case may be; and/or perform such restoration of the Premises. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant's Property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's Property from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's Property to be abandoned and, at Landlord's option, title to Tenant's Property shall vest in Landlord or Landlord may dispose of Tenant's Property in any manner Landlord deems appropriate.

26. Miscellaneous.

26.01 This Lease shall be interpreted and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of California. Tenant agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any proceeding in any California state or United States court sitting in the county where the Premises are located, may be made by certified or registered mail, return receipt requested, to the Tenant's Notice Address as specified herein, and service so made shall be complete upon receipt; except that if Tenant shall refuse to accept delivery, service shall be deemed complete on the date such delivery was attempted and refused.

26.02 If Landlord utilizes the services of an attorney due to Tenant's failure to pay Rent when due or otherwise comply with the provisions of this Lease, then Tenant shall be required to pay Additional Rent in an amount equal to the reasonable attorneys' fees and costs actually incurred by Landlord in connection therewith irrespective of whether any legal action or proceeding may be commenced or filed by Landlord. If any such work is performed by in-house counsel for Landlord, the value of such work shall be determined at a reasonable hourly rate for comparable outside counsel; provided, however, the parties hereby confirm that such fees shall be recoverable with respect to legal work performed by Landlord's in-house counsel only to the extent that such work is not duplicative of legal work performed by outside counsel representing Landlord in such matter. Notwithstanding the foregoing, in any action or proceeding between Landlord and Tenant, including any appellate or alternative dispute resolution proceeding, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys' fees actually incurred. Any such fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such obligation is intended to be severable.

from the other provisions of this Lease and to survive and not be merged into any such judgment.

26.03 No failure by either party to declare a default immediately upon its occurrence, nor any delay by either party in taking action for a default, nor Landlord's acceptance of Rent with knowledge of a Default by Tenant, shall constitute a waiver of the Default, nor shall it constitute an estoppel.

26.04 Whenever a period of time is prescribed for the taking of an action by either party (other than with respect to Tenant's obligation to pay Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing party ("Force Majeure").

26.05 Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Building and Property. Upon transfer, Landlord shall be released from any further obligations hereunder and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations, provided that any successor pursuant to a voluntary, third party transfer (but not as part of an involuntary transfer resulting from a foreclosure or deed in lieu thereof) shall have assumed Landlord's obligations under this Lease.

26.06 Landlord has delivered a copy of this lease to Tenant for Tenant's review only and the delivery of it does not constitute an offer to Tenant or an option. Tenant represents that it has dealt directly with and only with Tenant's Broker (identified in Section 1.11) as a broker in connection with this Lease. Tenant shall defend, indemnify and hold Landlord and the Landlord Related Parties harmless from all claims of any other brokers claiming to have represented Tenant in connection with this Lease. Landlord shall defend, indemnify and hold Tenant and the Tenant Related Parties harmless from all claims of any brokers claiming to have represented Landlord in connection with this Lease.

26.07 Landlord, at Landlord's cost, shall provide "Building Standard" signage at the main lobby directory, 7th floor elevator lobby, and at the entrance to the Premises identifying Tenant; any replacements of or changes to such signage shall be at Tenant's sole cost and expense. Tenant shall not place or permit to be placed any lights, decorations, banners, signs, window or door lettering, advertising media, or any other item that can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent, which may be withheld in Landlord's sole discretion. Subject to the foregoing, Tenant shall have the right to install custom signage in the Premises; any such signage shall be a Required Removable. By no later than the Termination Date (or earlier the date of any earlier termination of this Lease), Tenant shall repair any damage to the Premises or the Building caused by any installation, maintenance or removal of signage, all at Tenant's expense. If any such items are installed without Landlord's consent, or are not timely removed, or repairs are not timely made, Landlord shall have the right (but not the obligation) to remove any or all of such items and/or repair any such damage or injury, all at Tenant's sole cost and expense.

26.08 Time is of the essence of each and every term, condition and provision of this Lease in which time of performance is a factor. The parties agree that notwithstanding any Law to the contrary, Landlord has no duty to notify Tenant that Tenant has failed to give any notice that Tenant has the right to give under the Lease, including notice of the exercise of any option.

26.09 Tenant may peacefully have, hold and enjoy the Premises, subject to the terms of this Lease, provided Tenant pays the Rent and fully performs all of its covenants and agreements. This covenant shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building.

26.10 This Lease does not grant any rights to light or air over or about the Building. Landlord excepts and reserves exclusively to itself any and all rights not specifically granted to Tenant under this Lease. Landlord reserves the right to make changes to the Property, Building and Common Areas as Landlord deems appropriate.

26.11 If Tenant comprises more than one person, all such persons shall be jointly and severally liable for payment of Rent and the performance of Tenant's obligations hereunder. If Tenant is a partnership, all current and future general partners of Tenant shall be jointly and severally liable for such obligations. No individual partner or other person shall be deemed to be released from its obligations hereunder except to the extent any such release is expressly set forth in a written agreement executed by Landlord in the exercise of its sole discretion. If there is more than one Tenant or if Tenant is comprised of more than one party or entity, requests or demands from any one person or entity comprising Tenant shall be deemed to have been made by all such persons or entities. Notices to any one person or entity shall be deemed to have been given to all persons and entities. Notwithstanding anything in this Section 26.11 to the contrary, Landlord hereby acknowledges that as of the date of this Lease, Tenant is a California corporation, and so long as the named Tenant hereunder remains a California corporation, the terms of this Section 26.11 shall not apply.

26.12 Tenant represents, warrants and covenants that:

(a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control;

(b) Tenant and its principals are not engaged, and will not engage, in this transaction, directly or indirectly, on behalf of, or instigating or facilitating, and will not instigate or facilitate, this transaction, directly or indirectly, on behalf of, any such person, group, entity, or nation; and

(c) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Lease.

26.13 If any term or provision of this Lease shall to any extent be void or unenforceable, the remainder of this Lease shall not be affected. Tenant represents and warrants to Landlord, and agrees, that each individual executing this Lease on behalf of Tenant is authorized to do so on behalf of Tenant and that the entity(ies) or individual(s) constituting Tenant which may own or control Tenant or which may be owned or controlled by Tenant are not and at no time will be (i) in violation of any Laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofact/11sbn.pdf> or any replacement website or other replacement official publication of such list.

26.14 This Lease has been negotiated at arms' length between persons knowledgeable in business and real estate matters who have had the opportunity to confer with counsel in the negotiation hereof. Accordingly, any rule of law or legal decision that would require interpretation of this Lease against the party that drafted it is not applicable and is waived, and this Lease shall be given a fair and reasonable interpretation in accordance with the meaning of its terms. References in this Lease to articles, sections, paragraphs or exhibits pertain to articles, sections, paragraphs and exhibits of this Lease unless otherwise specified. The word "including" means "including, without limitation." The word "or" means "and/or" unless the context clearly indicates an obligation to choose one of two or more alternatives. The word "person" includes legal entities as well as natural persons. The word "may" means "may, but shall not be required to." Unless otherwise expressly specified in the applicable provisions, the phrase "at any time" means "at any time and from time to time." The article, section and paragraph headings in this Lease are solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect the meaning, construction or effect hereof. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require. Any reference to any specific statute, ordinance or other Law shall be deemed to include any amendments thereto, or any successor or similar Law addressing the same subject matter.

26.15 The terms of this Lease and the details of its negotiation constitute confidential information pertaining to the Building that is proprietary to Landlord. Tenant acknowledges that its disclosure of any of such information could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it shall keep (and shall cause its employees, agents, principals and all other Tenant Related Parties to keep) all such information confidential and shall not disclose all or any portion thereof to any person except: (a) as and to the extent required by Law; and (b) to bona fide prospective assignees or sublessees of Tenant, or to Tenant's attorneys, tax and financial advisors, lenders and investors, to the extent such persons have a need to know and as necessary for the conduct of Tenant's business, provided that such persons also first agree in writing to keep all such information confidential for the benefit of Landlord.

26.16 Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant, by any Tenant Related Party, or by any other person, except Landlord. Any such recording in violation of this Section 26.16 shall constitute a Default by Tenant.

26.17 This Lease shall only become effective and binding upon full execution hereof by Landlord and delivery of a signed copy to Tenant. This Lease may be executed in one or more counterparts, and each of which, so executed, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

26.18 This Lease constitutes the final, complete and exclusive statement among the parties hereto, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and, subject to the provisions herein, inures to the benefit of their respective heirs, representatives, successors and assigns. No party has been induced to enter into this Lease by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Lease. Any agreement made after the date of this Lease is ineffective to modify, waive, or terminate this Lease, in whole or in part, unless such agreement is in writing, signed by the parties to this Lease, and specifically states that such agreement modifies this Lease.

Landlord and Tenant have executed this Lease as of the day and year first above written.


LANDLORD:


CA-MISSION STREET LIMITED PARTNERSHIP, a Delaware limited partnership

By: **NAPI REIT, INC., a Maryland corporation**
Its: **General Partner**

By: _____
Name: _____
Title: _____

TENANT:
PAC-WEST TELECOMM, INC., a California corporation

By: 
Name: Jennifer Eubanks
Its: CEO

By: 
Name: Robert Turner
Its: CEO

Tenant's Tax ID Number (SSN or FEIN):

108 038 3568

REQUIREMENTS FOR TENANT EXECUTION OF LEASE

If Tenant is a California corporation, the following requirements must be satisfied:

- (A) Unless Tenant provides Landlord the documentation set forth in clause (B) below, the Lease must be signed by two (2) officers: one officer being the chairman of the board, the president or a vice president, and the second officer being the secretary, an assistant secretary, the chief financial officer or an assistant treasurer. If one person holds both categories of offices, that person should sign the Lease in both of those capacities. If Tenant elects to execute the Lease in accordance with this clause (A), Tenant shall provide Landlord with an incumbency certificate signed by the secretary of the corporation (unless the secretary of the corporation is one of the persons signing the Lease, in which case the incumbency certificate shall be signed by all Directors of the corporation) and in a form reasonably acceptable to Landlord, identifying the offices of all persons signing the Lease.
- (B) In lieu of the two officer signature requirement provided in clause (A) above, Tenant shall provide Landlord a copy of a corporate resolution signed by all Directors of the corporation and in a form reasonably acceptable to Landlord authorizing the person or persons designated to sign the Lease to do so.
- (C) In all circumstances, Tenant shall provide Landlord a certificate from the California Secretary of State confirming that Tenant is in good standing and qualified to do business in California.

EXHIBIT A

OUTLINE AND LOCATION OF PREMISES

This Exhibit is attached to and made a part of the Office Lease Agreement (the "Lease") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("Landlord") and PAC-WEST TELECOMM, INC., a California corporation ("Tenant") for space in the Building located at 201 Mission Street, San Francisco, California.

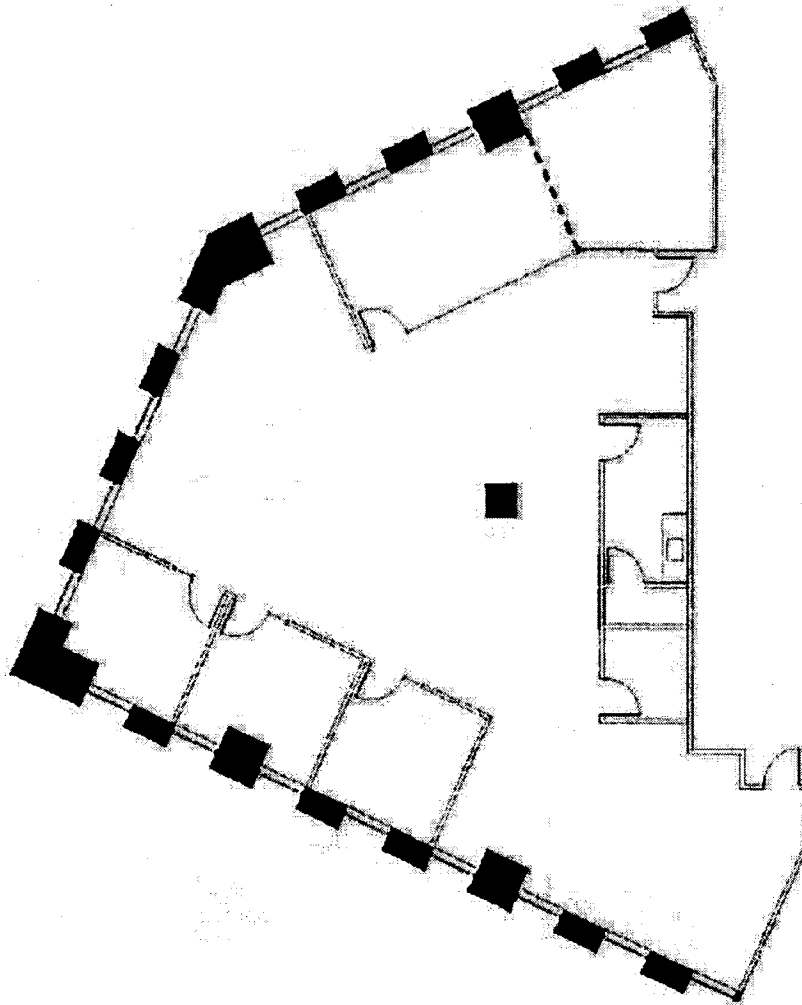


EXHIBIT B

EXPENSES, TAXES AND INSURANCE EXPENSES

This Exhibit is attached to and made a part of the Office Lease Agreement (the "Lease") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("Landlord") and PAC-WEST TELECOMM, INC., a California corporation ("Tenant") for space in the Building located at 201 Mission Street, San Francisco, California.

1. Payments.

1.01 Commencing as of the first (1st) day of the calendar year following the Base Year (each such calendar year or any portion thereof during the Term being referred to herein as an "Adjustment Year"), Tenant shall pay Tenant's Pro Rata Share of the amount, if any, by which Expenses (defined below) for each applicable Adjustment Year exceed Expenses for the Base Year (the "Expense Excess") and also the amount, if any, by which Taxes (defined below) for each applicable Adjustment Year exceed Taxes for the Base Year (the "Tax Excess") and the amount, if any, by which Insurance Expenses (defined below) for each applicable Adjustment Year exceed Insurance Expenses for the Base Year (the "Insurance Expense Excess"). If Expenses, Taxes or Insurance Expenses in any Adjustment Year decrease below the amount of Expenses, Taxes or Insurance Expenses for the Base Year, Tenant's Pro Rata Share of Expenses, Taxes or Insurance Expenses, as the case may be, for such Adjustment Year shall be \$0. Landlord shall provide Tenant with a good faith estimate of the Expense Excess, the Tax Excess and the Insurance Expense Excess for each Adjustment Year. On or before the first day of each month, Tenant shall pay to Landlord a monthly installment equal to one-twelfth of Tenant's Pro Rata Share of Landlord's estimate of the Expense Excess, Tax Excess and the Insurance Expense Excess. If Landlord determines that its good faith estimate of the Expense Excess, the Tax Excess or the Insurance Expense Excess was incorrect by a material amount, Landlord may provide Tenant with a revised estimate. After its receipt of the revised estimate, Tenant's monthly payments shall be based upon the revised estimate. If Landlord does not provide Tenant with an estimate of the Expense Excess, the Tax Excess or the Insurance Expense Excess for any Adjustment Year by December 15th of the immediately preceding calendar year, Tenant shall continue to pay monthly installments based on the estimate for the previous calendar year if such year was an Adjustment Year, until Landlord provides Tenant with an estimate for the then current Adjustment Year. Upon delivery of such estimate, an adjustment shall be made for any month for which Tenant paid monthly installments based on the estimate for the previous calendar year. Tenant shall pay Landlord the amount of any underpayment within thirty (30) days after receipt of the applicable estimate. Any overpayment shall be refunded to Tenant within (30) days or credited against the next due future installment(s) of Additional Rent.

1.02 As soon as is practical following the end of each Adjustment Year, Landlord shall furnish Tenant with a statement (each, a "Final Statement") of the actual Expenses and Expense Excess, actual Taxes and Tax Excess and actual Insurance Expenses and Insurance Expense Excess for the applicable Adjustment Year. If the estimated Expense Excess, estimated Tax Excess or Insurance Excess for the applicable Adjustment Year is more than the actual Expense Excess, the actual Tax Excess or the actual Insurance Expense Excess, as the case may be, for such Adjustment Year, Landlord shall apply any overpayment by Tenant against Additional Rent due or next becoming due; provided, however, if the Term expires before the determination of the overpayment, Landlord shall refund any overpayment to Tenant

after first deducting any amount of Rent due. If the estimated Expense Excess, estimated Tax Excess or estimated Insurance Expense Excess for the applicable Adjustment Year is less than the actual Expense Excess, actual Tax Excess or actual Insurance Expense Excess, as the case may be, for such Adjustment Year, Tenant shall pay Landlord, within thirty (30) days after Tenant's receipt of the applicable Final Statement, any underpayment for the applicable Adjustment Year.

2. Expenses.

2.01 "Expenses" means all costs and expenses incurred in each calendar year during the Term in connection with operating, maintaining, repairing, and managing the Building and the Property. Expenses include, without limitation: (a) all labor and labor related costs, including wages, salaries, bonuses, taxes, insurance, uniforms, training, retirement plans, pension plans and other employee benefits for service personnel engaged in the operation, maintenance and security of the Building and the direct costs of training such employees limiting such charges only to amounts reasonably estimated by the Landlord to be directly allocable to services rendered by the employees and personnel for the benefit of the Building; (b) management fees of all income (excluding such management cost recovery) derived from the Building, including without limitation, all Rent hereunder, all rent and other payments derived from other tenants in the Building, parking revenues and other revenues derived from licensees of any other part of or right in the Building; (c) the cost of equipping, staffing and operating an on-site and/or off-site management office for the Building; provided if the management office services one or more other buildings or properties, the shared costs and expenses of equipping, staffing and operating such management office(s) shall be equitably prorated and apportioned between the Building and the other buildings or properties; (d) accounting costs; (e) the cost of services; (f) rental and purchase cost of parts, supplies, tools and equipment; (g) electricity, gas and other utility costs; and (h) the amortized cost of capital improvements (as distinguished from replacement parts or components installed in the ordinary course of business) made subsequent to the Base Year which are: (1) performed primarily to reduce current or future operating expense costs, upgrade Building security or otherwise materially improve the operating efficiency of the Property; or (2) required to comply with any Laws that are enacted, or first interpreted to apply to the Property, after the date of the Lease. The cost of any such included capital improvements shall be amortized by Landlord over the lesser of the Payback Period (defined below) or the useful life of the capital improvement as reasonably determined by Landlord. The amortized cost of capital improvements may, at Landlord's option, include actual or imputed interest at the rate that Landlord would reasonably be required to pay to finance the cost of the capital improvement. "Payback Period" means the reasonably estimated period of time that it takes for the cost savings resulting from a capital improvement to equal the total cost of the capital improvement. Landlord, by itself or through an affiliate, shall have the right to directly perform, provide and be compensated for any services under the Lease. If Landlord incurs Expenses for the Building or Property together with one or more other buildings or properties, whether pursuant to a reciprocal easement agreement, common area agreement or otherwise, the shared costs and expenses shall be equitably prorated and apportioned between the Building and Property and the other buildings or properties.

2.02 Anything to the contrary contained in Section 2.01 notwithstanding, Expenses shall not include: (i) the cost of capital improvements (except as set forth above); (ii) depreciation; (iii) principal or interest payments, fees, charges or other costs of mortgage and other non-operating debts of Landlord; (iv) the cost of repairs or other work to the extent Landlord is reimbursed by insurance or condemnation proceeds, any contractor, manufacturer or supplier warranty of service contract or any other costs for which Landlord has been reimbursed or

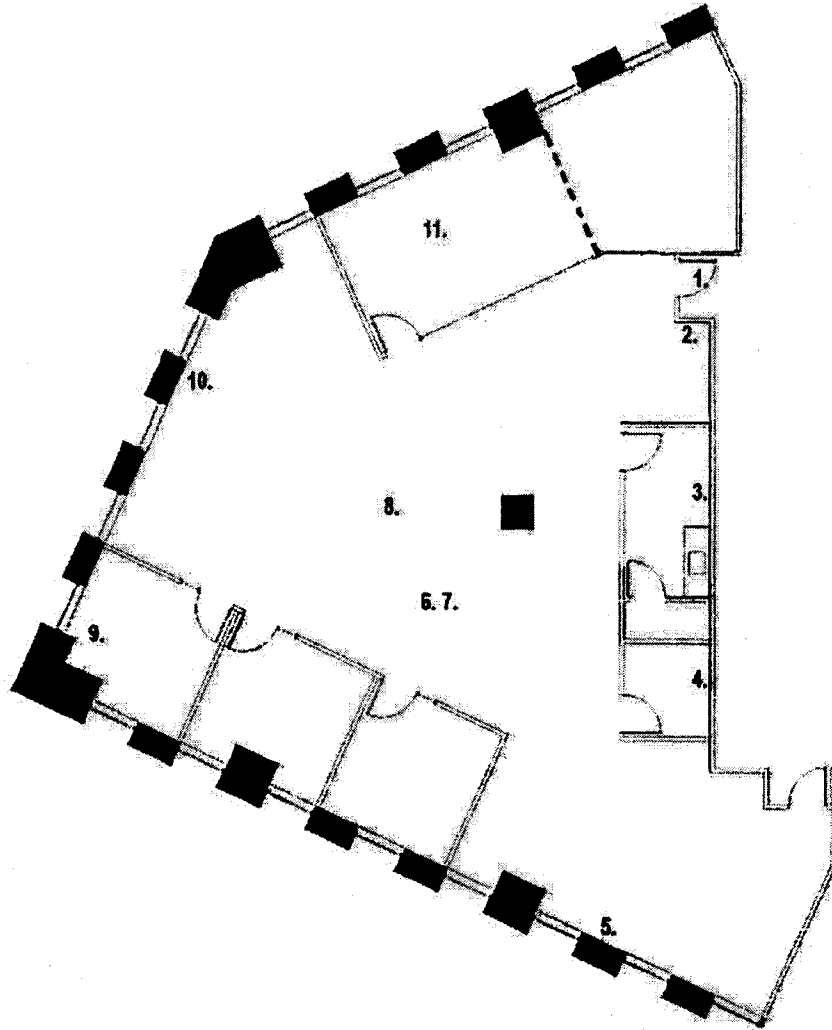
receives a credit refund or discount for same; (v) all costs in connection with leasing space in the Building, including brokerage commissions, lease concessions, rental abatements and construction allowances granted to specific tenants; (vi) costs incurred in connection with the sale, financing or refinancing of the Building; (vii) fines, interest and penalties incurred due to the late payment of Taxes or Expenses; (viii) organizational expenses associated with the creation and operation of the entity which constitutes Landlord; (ix) any penalties or damages that Landlord pays to Tenant under this Lease or to other tenants in the Building under their respective leases; or (x) reserves of any kind, including, but not limited to replacement reserves, and reserves for bad debts or lost rent or any similar charge not involving the payment of money to third parties.

3. "Taxes" shall mean: (a) all real property taxes and other assessments on the Building and/or Property, including, but not limited to, gross receipts taxes, assessments for special improvement districts and building improvement districts, governmental charges, fees and assessments for police, fire, traffic mitigation or other governmental service of purported benefit to the Property, taxes and assessments levied in substitution or supplementation in whole or in part of any such taxes and assessments and the Property's share of any real estate taxes and assessments under any reciprocal easement agreement, common area agreement or similar agreement as to the Property; (b) all personal property taxes for property that is owned by Landlord and used in connection with the operation, maintenance and repair of the Property (equitably adjusted with respect to any such personal property that is used by Landlord in connection with the operation, maintenance and repair of properties other than the Property); and (c) all costs and fees incurred in connection with the seeking of reductions in any tax liabilities described in (a) and (b), including, without limitation, any costs incurred by Landlord for compliance, review and appeal of tax liabilities. Without limitation, Taxes shall not include any income, capital levy, transfer, capital stock, gift, estate or inheritance tax. If a change is obtained for Taxes for the Base Year, Taxes for the Base Year shall be restated and the Tax Excess for all Adjustment Years shall be recomputed. Tenant shall pay Landlord the amount of Tenant's Pro Rata Share of any such increase in the Tax Excess within thirty (30) days after Tenant's receipt of a statement from Landlord.

4. "Insurance Expenses" shall mean the amount paid or incurred by Landlord (i) in insuring all or any portion of the Property under policies of insurance and/or commercially reasonable self-insurance, which may include commercial general liability insurance, property insurance, worker's compensation insurance, rent interruption insurance, contingent liability and builder's risk insurance, and any insurance as may from time to time be maintained by Landlord and (ii) for deductible payments under any insured claims.

5. "Occupancy Adjustment". If at any time during a calendar year (or portion thereof), including the Base Year, the Building is less than ninety-five percent (95%) occupied or Landlord is not supplying services to at least 95% of the total Rentable Square Footage of the Building, Expenses and Insurance Expenses shall be determined as if the Building had been 95% occupied and Landlord had been supplying services to 95% of the Rentable Square Footage of the Building during such calendar year. Notwithstanding the foregoing, Landlord may calculate the extrapolation of Expenses and Insurance Expenses under this Section based on 100% occupancy and service so long as such percentage is used consistently for each year of the Term. The extrapolation of Expenses and Insurance Expenses under this Section shall be performed in accordance with the methodology specified by the Building Owners and Managers Association or other generally accepted industry practices.

EXHIBIT C
SPACE PLAN



1. Refurbish entry door to Premises
2. Add one (1) new quad outlet and one (1) new teledata port;
3. Install new dishwasher & associated millwork;
4. Install new plenum exhaust fan;
5. Add one (1) new electrical whip;
6. Paint new base coat throughout premises;
7. Paint ten (10) walls with one of three total accent colors, to be chosen by Tenant;
8. Convert floor monument to electrical whip;
9. Add two (2) new duplex outlets and two (2) new teledata ports
10. Add one (1) new electrical whip;
11. Add one (1) new duplex outlet and one (1) new teledata floor monument;

EXHIBIT D

COMMENCEMENT LETTER

(EXAMPLE)

Date _____
Tenant _____
Address [Tenant Name] _____

Re: Commencement Letter with respect to that certain Lease dated as of _____, 2010, by and between CA-MISSION STREET LIMITED PARTNERSHIP, as Landlord, and _____, as Tenant, for 4,111 rentable square feet on the seventh (7th) floor of the Building located at 201 Mission Street, San Francisco, California.

Dear _____:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and acknowledges:

1. The Commencement Date is _____;
2. The Schedule of Base Rent is _____;
3. The Termination Date is _____.

Please acknowledge the foregoing and your acceptance of possession by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention. Tenant's failure to execute and return this letter, or to provide written objection to the statements contained in this letter, within 10 days after the date of this letter shall be deemed an approval by Tenant of the statements contained herein.

Sincerely,

Authorized Signatory

Acknowledged and Accepted:

Tenant: [Tenant Name]

By: [EXHIBIT - DO NOT SIGN]
Name: _____
Title: _____
Date: _____

EXHIBIT E

BUILDING RULES AND REGULATIONS

This Exhibit is attached to and made a part of the Office Lease Agreement (the "Lease") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("Landlord") and PAC-WEST TELECOMM, INC., a California corporation ("Tenant") for space in the Building located at 201 Mission Street, San Francisco, California.

The following rules and regulations shall apply, where applicable, to the Premises, the Building, the parking facilities (if any), the Property and the appurtenances. In the event of a conflict between the following rules and regulations and the remainder of the terms of the Lease, the remainder of the terms of the Lease shall control.

1. Sidewalks, doorways, vestibules, halls, stairways and other similar areas shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises. No rubbish, litter, trash, or material shall be placed, emptied, or thrown in those areas. At no time shall Tenant permit Tenant's employees to loiter in Common Areas or elsewhere about the Building or Property.
2. Plumbing fixtures and appliances shall be used only for the purposes for which designed and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed in the fixtures or appliances.
3. No signs, advertisements or notices shall be painted or affixed to windows, doors or other parts of the Building, except those of such color, size, style and in such places as are first approved in writing by Landlord. All tenant identification and suite numbers at the entrance to the Premises shall be installed by Landlord, at Tenant's cost and expense, using the standard graphics for the Building. Except in connection with the hanging of lightweight pictures and wall decorations, no nails, hooks or screws shall be inserted into any part of the Premises or Building except by the Building maintenance personnel without Landlord's prior approval, which approval shall not be unreasonably withheld.
4. Landlord may provide and maintain in the first floor (main lobby) of the Building an alphabetical directory board or other directory device listing tenants and no other directory shall be permitted unless previously consented to by Landlord in writing.
5. Tenant shall not place any lock(s) on any door in the Premises or Building without Landlord's prior written consent, which consent shall not be unreasonably withheld, and Landlord shall have the right at all times to retain and use keys or other access codes or devices to all locks within and into the Premises. A reasonable number of keys to the locks on the entry doors in the Premises shall be furnished by Landlord to Tenant at Tenant's cost and Tenant shall not make any duplicate keys. All keys shall be returned to Landlord at the expiration or early termination of the Lease.
6. All contractors, contractor's representatives and installation technicians performing work in the Building shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, and shall be required to comply with Landlord's standard rules, regulations, policies and procedures, which may be revised from time to time.

7. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Tenant of merchandise or materials requiring the use of elevators, stairways, lobby areas or loading dock areas, shall be performed in a manner and restricted to hours reasonably designated by Landlord. Tenant shall obtain Landlord's prior approval by providing a detailed listing of the activity, including the names of any contractors, vendors or delivery companies, which approval shall not be unreasonably withheld. Tenant shall assume all risk for damage, injury or loss in connection with the activity.
8. Landlord shall have the right to approve the weight, size, or location of heavy equipment or articles in and about the Premises, which approval shall not be unreasonably withheld; provided that approval by Landlord shall not relieve Tenant from liability for any damage in connection with such heavy equipment or articles.
9. Tenant shall not: (a) make or permit any improper, objectionable or unpleasant noises or odors in the Building, or otherwise interfere in any way with other tenants or persons having business with them; (b) solicit business or distribute or cause to be distributed, in any portion of the Building, handbills, promotional materials or other advertising; or (c) conduct or permit other activities in the Building that might, in Landlord's sole opinion, constitute a nuisance.
10. No animals, except those assisting handicapped persons, shall be brought into the Building or kept in or about the Premises.
11. No inflammable, explosive or dangerous fluids or substances shall be used or kept by Tenant in the Premises, Building or about the Property, except for those substances as are typically found in similar premises used for general office purposes and are being used by Tenant in a safe manner and in accordance with all applicable Laws. Tenant shall not, without Landlord's prior written consent, use, store, install, spill, remove, release or dispose of, within or about the Premises or any other portion of the Property, any asbestos-containing materials or any solid, liquid or gaseous material now or subsequently considered toxic or hazardous under the provisions of 42 U.S.C. Section 9601 et seq. or any other applicable environmental Law which may now or later be in effect. Tenant shall comply with all Laws pertaining to and governing the use of these materials by Tenant and shall remain solely liable for the costs of abatement and removal.
12. Tenant shall not use or occupy the Premises in any manner or for any purpose which might injure the reputation or impair the present or future value of the Premises or the Building. Tenant shall not use, or permit any part of the Premises to be used for lodging, sleeping or for any illegal purpose.
13. Tenant shall not take any action which would violate Landlord's labor contracts or which would cause a work stoppage, picketing, labor disruption or dispute or interfere with Landlord's or any other tenant's or occupant's business or with the rights and privileges of any person lawfully in the Building ("Labor Disruption"). Tenant shall take the actions necessary to resolve the Labor Disruption, and shall have pickets removed and, at the request of Landlord, immediately terminate any work in the Premises that gave rise to the Labor Disruption, until Landlord gives its written consent for the work to resume. Tenant shall have no claim for damages against Landlord or any of the Landlord Related Parties nor shall the Commencement Date of the Term be extended as a result of the above actions.

14. Tenant shall not install, operate or maintain in the Premises or in any other area of the Building, electrical equipment that would overload the electrical system beyond its capacity for proper, efficient and safe operation as determined solely by Landlord. Tenant shall not furnish cooling or heating to the Premises, including, without limitation, the use of electric or gas heating devices, without Landlord's prior written consent. Tenant shall not use more than its proportionate share of telephone lines and other telecommunication facilities available to service the Building.
15. Tenant shall not operate or permit to be operated a coin or token operated vending machine or similar device (including, without limitation, telephones, lockers, toilets, scales, amusement devices and machines for sale of beverages, foods, candy, cigarettes and other goods), except for machines for the exclusive use of Tenant's employees and invitees.
16. Bicycles and other vehicles are not permitted inside the Building or on the walkways outside the Building, except in areas designated by Landlord.
17. Landlord may from time to time adopt systems and procedures for the security and safety of the Building and Property, its occupants, entry, use and contents. Tenant, its agents, employees, contractors, guests and invitees shall comply with Landlord's systems and procedures.
18. Landlord shall have the right to prohibit the use of the name of the Building or any other publicity by Tenant that in Landlord's sole opinion may impair the reputation of the Building or its desirability. Upon written notice from Landlord, Tenant shall refrain from and discontinue such publicity immediately.
19. Neither Tenant nor its agents, employees, contractors, guests or invitees shall smoke or permit smoking in the Common Areas, unless a portion of the Common Areas have been declared a designated smoking area by Landlord, nor shall the above parties allow smoke from the Premises to emanate into the Common Areas or any other part of the Building. Landlord shall have the right to designate the Building (including the Premises) as a non-smoking building.
20. Landlord shall have the right to designate and approve standard window coverings for the Premises and to establish rules to assure that the Building presents a uniform exterior appearance. Tenant shall ensure, to the extent reasonably practicable, that window coverings are closed on windows in the Premises while they are exposed to the direct rays of the sun.
21. Deliveries to and from the Premises shall be made only at the times in the areas and through the entrances and exits reasonably designated by Landlord. Tenant shall not make deliveries to or from the Premises in a manner that might interfere with the use by any other tenant of its premises or of the Common Areas, any pedestrian use, or any use which is inconsistent with good business practice.
22. The work of cleaning personnel shall not be hindered by Tenant after 5:30 P.M., and cleaning work may be done at any time when the offices are vacant. Windows, doors and fixtures may be cleaned at any time. Tenant shall provide adequate waste and rubbish receptacles to prevent unreasonable hardship to the cleaning service.

23. Window coverings shall be closed when the effect of sunlight would impose unnecessary loads on the air conditioning system.
24. Tenant shall not tamper with or attempt to adjust temperature control thermostats in the Premises. Landlord shall make adjustments in thermostats on call from Tenant.
25. In no event will Tenant allow the Premises to be occupied by more than one (1) person per two hundred (200) rentable square feet, nor will Tenant install equipment in the Premises of a type or at a level which adversely affects the temperature range maintained by the Building's heating and air conditioning system.
26. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building and for the preservation of good order therein and will use commercially reasonable efforts to apply such rules and regulations consistently to all tenants of the Building.

EXHIBIT F

ADDITIONAL PROVISIONS

This Exhibit is attached to and made a part of the Office Lease Agreement (the "Lease") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("Landlord") and PAC-WEST TELECOMM, INC., a California corporation ("Tenant") for space in the Building located at 201 Mission Street, San Francisco, California.

1. Renewal Option.

(a) Grant of Option; Conditions. Tenant shall have the right to extend the Term of the Lease (the "Renewal Option") for one (1) additional period of three (3) years commencing on the day following the Termination Date and ending on the third (3rd) anniversary of the Termination Date (the "Renewal Term"), if:

(i) Landlord receives irrevocable notice of exercise ("Initial Renewal Notice") not less than nine (9) full calendar months prior to the Termination Date and not more than twelve (12) full calendar months prior to the Termination Date; and

(ii) Tenant is not in Default under the Lease at the time that Tenant delivers its Initial Renewal Notice or as of the Termination Date; and

(iii) No part of the Premises is sublet (other than pursuant to a Permitted Transfer) at the time that Tenant delivers its Initial Renewal Notice or as of the as of the Termination Date; and

(iv) The Lease has not been assigned (other than pursuant to a Permitted Transfer) prior to the date that Tenant delivers its Initial Renewal Notice or as of the Termination Date.

(b) Terms Applicable to Premises During Renewal Term. The initial Base Rent rate per rentable square foot of the Premises during the Renewal Term shall equal the Prevailing Market (hereinafter defined) rate per rentable square foot for the Premises. Base Rent during the Renewal Term shall increase, if at all, in accordance with the increases assumed in the determination of Prevailing Market rate. Tenant shall pay Expenses, Taxes and Insurance Expenses for the Premises during the Renewal Term in accordance with the terms of the Lease.

(c) Initial Procedure for Determining Prevailing Market. Within thirty (30) days after receipt of Tenant's Initial Renewal Notice, Landlord shall advise Tenant of the applicable Base Rent rate for the Premises for the Renewal Term. Within fifteen (15) days after the date on which Landlord advises Tenant of the applicable Base Rent rate for the Renewal Term, Tenant shall either (i) give Landlord final binding written notice ("Binding Notice") of Tenant's agreement with Landlord's determination of the Prevailing Market rate for the Renewal Term, or (ii) if Tenant disagrees with Landlord's determination, provide Landlord with written notice of rejection (the "Rejection Notice"). If Tenant fails to provide Landlord with either a Binding Notice or Rejection Notice within such fifteen (15) day period, Tenant will be deemed to have delivered a Binding Notice. If Tenant provides (or is deemed to have provided) Landlord with a Binding Notice, Landlord and Tenant shall enter into the Renewal Amendment (as defined below) upon the terms and conditions set forth herein. If Tenant provides Landlord with a

Rejection Notice, Landlord and Tenant shall work together in good faith to agree upon the Prevailing Market rate for the Premises during the Renewal Term. Upon agreement, Landlord and Tenant shall enter into the Renewal Amendment in accordance with the terms and conditions hereof. Notwithstanding the foregoing, if Landlord and Tenant fail to agree upon the Prevailing Market rate within thirty (30) days after the date Tenant provides Landlord with a Rejection Notice (the "Negotiation Period"), the Prevailing Market rate will be determined in accordance with the arbitration procedures described below.

(d) Arbitration Procedure.

(i) Landlord and Tenant, within five (5) days after the date of expiration of the Negotiation Period, shall each simultaneously submit to the other, in a sealed envelope, its good faith estimate of the Prevailing Market rate for the Premises during the Renewal Term (collectively referred to as the "Estimates"). If the higher of such Estimates is not more than 105% of the lower of such Estimates, then Prevailing Market rate shall be the average of the two Estimates. If the Prevailing Market rate is not resolved by the exchange of Estimates, then, within fourteen (14) days after the exchange of Estimates, Landlord and Tenant shall each select a real estate broker to determine which of the two Estimates most closely reflects the Prevailing Market rate for the Premises during the Renewal Term. Each such real estate broker so selected shall have had at least the immediately preceding ten (10) years' experience as a real estate broker leasing first-class office space in the San Francisco financial district, with working knowledge of current rental rates and practices.

(ii) Upon selection, Landlord's and Tenant's brokers shall work together in good faith to agree upon which of the two Estimates most closely reflects the Prevailing Market rate for the Premises. The Estimate chosen by the brokers shall be binding on both Landlord and Tenant. If either Landlord or Tenant fails to appoint a broker within the fourteen (14) day period referred to above, the broker appointed by the other party shall be the sole broker for the purposes hereof. If the two brokers cannot agree upon which of the two Estimates most closely reflects the Prevailing Market within twenty (20) days after their appointment, then, within fourteen (14) days after the expiration of such twenty (20) day period, the two brokers shall select a third broker meeting the aforementioned criteria. Once the third broker (the "Arbitrator") has been selected as provided for above, then, as soon thereafter as practicable but in any case within fourteen (14) days, the Arbitrator shall select which of the two Estimates most closely reflects the Prevailing Market rate and such Estimate shall be binding on both Landlord and Tenant. The parties shall share equally in the costs of the Arbitrator. Any fees of any appraiser, counsel or experts engaged directly by Landlord or Tenant, however, shall be borne by the party retaining such appraiser, counsel or expert.

(iii) If the Prevailing Market rate has not been determined by the commencement date of the Renewal Term, Tenant shall pay Base Rent upon the terms and conditions in effect during the last month of the Term for the Premises until such time as the Prevailing Market rate has been determined. Upon such determination, the Base Rent for the Premises shall be retroactively adjusted to the commencement of the Renewal Term. If such adjustment results in an underpayment of Base Rent by Tenant, Tenant shall pay Landlord the amount of such underpayment within thirty (30) days after the determination thereof. If such adjustment results in an overpayment of Base Rent by Tenant, Landlord shall credit such overpayment against the next installment of Base Rent due under the Lease and, to the extent necessary, any subsequent installments, until the entire amount of such overpayment has been credited against Base Rent.

(e) Renewal Amendment. If Tenant is entitled to and properly exercises the Renewal Option, Landlord shall prepare an amendment (the "Renewal Amendment") to reflect changes in the Base Rent, Base Year, term, termination date and other appropriate terms. Tenant shall execute and return the Renewal Amendment to Landlord within fifteen (15) Business Days after Tenant's receipt of same, but an otherwise valid exercise of the Renewal Option shall be fully effective whether or not the Renewal Amendment is executed.

(f) Prevailing Market. For purposes hereof, "Prevailing Market" shall mean the arms' length fair market annual rental rate per rentable square foot under new and renewal leases and amendments with terms commencing on or about the date on which the Prevailing Market is being determined hereunder, for tenants of comparable credit worthiness to the Tenant, for space comparable to the Premises in the Building and office buildings comparable to the Building in the San Francisco, California, Financial District. The determination of Prevailing Market shall take into account any material economic differences between the terms of this Lease and any comparison lease or amendment, such as rent abatements, construction costs and other concessions and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes, as well as the level of improvements existing in the Premises.

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