
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2005

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 000-30269

PIXELWORKS, INC.

(Exact name of registrant as specified in its charter)

OREGON

(State or other jurisdiction of incorporation)

91-1761992

(I.R.S. Employer Identification No.)

**8100 SW Nyberg Road
Tualatin, Oregon 97062
(503) 454-1750**

(Address, including zip code, and telephone number, including
area code, of registrant's principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the last 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No ☐

Number of shares of Common Stock outstanding as of July 31, 2005: **46,953,860**

PIXELWORKS, INC.
FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2005

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

PIXELWORKS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS (In thousands) (Unaudited)

	June 30, 2005	December 31, 2004
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 35,234	\$ 32,585
Short-term marketable securities	106,615	160,213
Accounts receivable, net	18,133	14,605
Inventories, net	25,000	18,575
Prepaid expenses and other current assets	7,190	4,856
Total current assets	192,172	230,834
Long-term marketable securities	20,831	79,483
Property and equipment, net	15,328	12,444
Other assets, net	13,799	8,101
Debt issuance costs, net	4,135	4,483
Deferred tax assets, net	28,591	4,868
Acquired intangible assets, net	42,632	2,520
Goodwill	120,603	80,836
Total assets	<u>\$ 438,091</u>	<u>\$ 423,569</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 7,526	\$ 5,946
Accrued liabilities and current portion of long-term liabilities	18,811	12,842
Income taxes payable	314	2,393
Total current liabilities	26,651	21,181
Long-term liabilities, net of current portion	3,674	365
Long-term debt	150,000	150,000
Total liabilities	180,325	171,546
Shareholders' equity:		
Preferred stock	—	—
Common stock	315,278	304,996
Shares exchangeable into common stock	5,500	6,144
Accumulated other comprehensive income	59	531
Deferred stock-based compensation	(2,044)	(60)
Accumulated deficit	(61,027)	(59,588)
Total shareholders' equity	257,766	252,023
Total liabilities and shareholders' equity	<u>\$ 438,091</u>	<u>\$ 423,569</u>

See accompanying notes to condensed consolidated financial statements.

PIXELWORKS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Revenue	\$ 41,315	\$ 48,509	\$ 81,576	\$ 93,779
Cost of revenue (1)	25,113	25,477	48,456	47,360
Gross profit	16,202	23,032	33,120	46,419
Operating expenses:				
Research and development (2)	11,571	7,953	21,013	15,657
Selling, general and administrative (3)	6,900	6,056	13,968	11,530
Stock-based compensation and amortization of purchased intangible assets	385	213	522	498
Total operating expenses	18,856	14,222	35,503	27,685
Income (loss) from operations	(2,654)	8,810	(2,383)	18,734
Interest income	1,693	528	3,408	764
Interest expense	(660)	(294)	(1,317)	(295)
Realized loss on sale of marketable securities	(779)	—	(779)	—
Amortization of debt issuance costs	(178)	(115)	(355)	(115)
Interest and other income, net	76	119	957	354
Income (loss) before income taxes	(2,578)	8,929	(1,426)	19,088
Provision for (recovery of) income taxes	(303)	3,170	13	6,776
Net income (loss)	\$ (2,275)	\$ 5,759	\$ (1,439)	\$ 12,312
Net income (loss) per share:				
Basic	\$ (0.05)	\$ 0.12	\$ (0.03)	\$ 0.26
Diluted	\$ (0.05)	\$ 0.12	\$ (0.03)	\$ 0.25
Weighted average shares outstanding:				
Basic	47,101	46,636	47,064	46,479
Diluted	47,101	51,194	47,064	49,658
(1) Includes amortization of:				
Acquired developed technology	\$ 439	\$ 132	\$ 571	\$ 264
Acquired inventory mark-up	85	—	85	—
Acquired backlog	19	—	19	—
Deferred stock-based compensation	11	—	11	—
(2) Excludes stock-based compensation of:	149	73	160	153
(3) Excludes stock-based compensation of:	59	18	64	102

See accompanying notes to condensed consolidated financial statements.

PIXELWORKS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2005	2004
Cash flows from operating activities:		
Net income (loss)	\$ (1,439)	\$ 12,312
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	6,407	3,196
Amortization of purchased intangible assets	888	507
Loss on sale of marketable securities	779	—
Tax benefit from stock options	378	6,106
Stock-based compensation	235	255
(Gain) loss on asset disposals	(83)	160
Deferred tax assets, net	—	(2,999)
Amortization of debt issuance costs	355	115
Amortization of deferred tax charge	27	27
Deferred rent	6	2
Changes in operating assets and liabilities, net of assets acquired:		
Accounts receivable, net	932	(11,031)
Inventories, net	4,383	(5,464)
Prepaid expenses and other current and long-term assets	(1,082)	299
Accounts payable	(234)	6,542
Accrued current and long-term liabilities and income taxes payable	(4,747)	5,291
Net cash provided by operating activities	6,805	15,318
Cash flows from investing activities:		
Purchases of marketable securities	(90,036)	(150,408)
Proceeds from sales and maturities of marketable securities	201,035	14,300
Acquisition of Equator Technologies, Inc., net of cash acquired	(107,051)	—
Purchases of property and equipment	(4,708)	(3,186)
Purchases of other assets	(1,929)	(2,736)
Payments on equipment and other asset financing	(2,441)	(1,632)
Proceeds from sale of assets	57	3
Net cash used in investing activities	(5,073)	(143,659)
Cash flows from financing activities:		
Proceeds from issuances of common stock	924	4,309
Proceeds from the issuance of long-term debt	—	145,500
Debt issuance costs	(7)	(324)
Lease incentives	—	124
Net cash provided by financing activities	917	149,609
Net increase in cash and cash equivalents	2,649	21,268
Cash and cash equivalents, beginning of period	32,585	16,490
Cash and cash equivalents, end of period	\$ 35,234	\$ 37,758
Supplemental disclosure of cash flow information:		
Cash paid during the period for:		
Interest	\$ 1,317	\$ 1
Income taxes	1,686	1
Supplemental disclosure of non-cash investing and financing activities:		
Acquisitions of property and equipment and other assets under extended payment terms	\$ 7,910	\$ 4,595
Transfer of cost-based investment to available-for-sale marketable security	—	10,000
Release and cancellation of common shares held in escrow	—	541
Debt issuance costs withheld from proceeds	—	4,500

See accompanying notes to condensed consolidated financial statements.

PIXELWORKS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except per share data)
(Unaudited)

NOTE 1: BASIS OF PRESENTATION

Nature of Business

Pixelworks, Inc. ("Pixelworks" or the "Company") is a leading designer, developer and marketer of semiconductors and software for the advanced display industry, including advanced televisions, multimedia projectors and flat panel monitors. Our system-on-chip semiconductors provide the 'intelligence' for these types of displays by processing and optimizing video and computer graphic signals to produce high quality images.

Condensed Consolidated Financial Statements

These condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP") have been condensed or omitted pursuant to such regulations, although we believe that the disclosures provided are adequate to prevent the information presented from being misleading.

The financial information included herein for the three and six months ended June 30, 2005 and 2004 is unaudited; however, such information reflects all adjustments, consisting only of normal recurring adjustments, that are, in the opinion of management, necessary for a fair presentation of the financial position, results of operations and cash flows of the Company for these interim periods. The financial information as of December 31, 2004 is derived from our audited consolidated financial statements and notes thereto for the fiscal year ended December 31, 2004, included in Item 8 of our Annual Report on Form 10-K, and should be read in conjunction with such consolidated financial statements.

The results of operations for the three and six months ended June 30, 2005 are not necessarily indicative of the results expected for the entire fiscal year ending December 31, 2005.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires us to make estimates and judgments that affect the amounts reported in the financial statements and accompanying notes. Our significant estimates and judgments include those related to product returns, warranty obligations, bad debts, inventory valuation, property and equipment, intangible assets and income taxes. The actual results experienced by the Company could differ materially from our estimates.

Reclassifications

Certain reclassifications have been made to the 2004 condensed consolidated financial statements to conform to the 2005 presentation, including the reclassification of investments in auction rate securities from cash and cash equivalents to available-for-sale short-term marketable securities and the reclassification of tooling depreciation from research and development expense to cost of revenue. Additionally, facilities and information technology expenses have been allocated between selling, general and administrative expense, research and development expense and cost of revenue based on employee headcount.

NOTE 2: STOCK PLANS

We have a 1997 Stock Incentive Plan and a 2001 Nonqualified Stock Option Plan under which employees, officers and directors may be granted stock options to purchase shares of the Company's common stock. We also have a 2000 Employee Stock Purchase Plan under which eligible employees may purchase shares of Pixelworks' common stock at 85% of fair market value at specific, pre-determined dates.

As permitted by Statement of Financial Accounting Standards ("SFAS") No. 123, *Accounting for Stock-Based Compensation* ("SFAS 123"), and SFAS No. 148, *Accounting for Stock-Based Compensation – Transition and Disclosure, an Amendment of FASB Statement No. 123*, we continue to apply the intrinsic value based method of accounting for stock compensation described in Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("Opinion 25"). As such, stock-based compensation cost is measured as the excess, if any, of the quoted market price of Pixelworks' stock on the grant, or other measurement date, over the amount that an option holder must pay to acquire the stock.

Entities electing to continue to apply Opinion 25 must make prominent pro-forma disclosures of net income and earnings per share as if the fair value based method prescribed by SFAS 123 had been applied. Had we accounted for our stock-based compensation plans in accordance with SFAS 123, our net income (loss) would have approximated the pro-forma amounts below:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Net income (loss) as reported	\$ (2,275)	\$ 5,759	\$ (1,439)	\$ 12,312
Add: Stock-based compensation included in reported net income (loss), net of related tax effects	193	59	232	166
Deduct: Stock-based compensation determined under the fair value based method, net of related tax effects	(3,315)	(2,395)	(7,435)	(4,627)
Pro-forma net income (loss)	<u>\$ (5,397)</u>	<u>\$ 3,423</u>	<u>\$ (8,642)</u>	<u>\$ 7,851</u>
Reported basic net income (loss) per share	\$ (0.05)	\$ 0.12	\$ (0.03)	\$ 0.26
Pro-forma basic net income (loss) per share	<u>\$ (0.11)</u>	<u>\$ 0.07</u>	<u>\$ (0.18)</u>	<u>\$ 0.17</u>
Reported diluted net income (loss) per share	\$ (0.05)	\$ 0.12	\$ (0.03)	\$ 0.25
Pro-forma diluted net income (loss) per share	<u>\$ (0.11)</u>	<u>\$ 0.07</u>	<u>\$ (0.18)</u>	<u>\$ 0.17</u>

The fair value of stock-based compensation costs reflected in the above pro-forma amounts were determined using the Black-Scholes option pricing model and the following weighted average assumptions:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Stock Option Plans:				
Risk free interest rate	3.96%	4.18%	4.01%	3.96%
Expected dividend yield	0%	0%	0%	0%
Expected life (in years)	6.0	6.0	6.5	6.1
Volatility	94%	100%	95%	101%
Employee Stock Purchase Plan:				
Risk free interest rate	2.42%	1.92%	2.00%	1.90%
Expected dividend yield	0%	0%	0%	0%
Expected life (in years)	1.0	1.8	0.8	1.6
Volatility	79%	104%	92%	104%

The effects of applying SFAS 123 in this pro-forma disclosure are not indicative of future amounts and additional awards are anticipated in future periods.

NOTE 3: BALANCE SHEET COMPONENTS

Marketable Securities

At December 31, 2004, we classified all marketable securities as held-to-maturity in accordance with SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, with the exception of auction rate securities and our investment in Semiconductor Manufacturing International Corporation ("SMIC"), which we classified as available-for-sale.

On March 31, 2005, we determined that we no longer had the intent to hold any of our securities to maturity based on the potential for future acquisitions, and we reclassified all of our held-to-maturity securities to available-for-sale. The amortized cost of the securities transferred from held-to-maturity to available-for-sale was \$159,632 on the March 31, 2005 transfer date.

Short-term marketable securities were classified as follows:

	June 30, 2005	December 31, 2004
Available-for-sale	\$ 106,615	\$ 77,150
Held-to-maturity	—	83,063
Short-term marketable securities	<u>\$ 106,615</u>	<u>\$ 160,213</u>

Long-term marketable securities were classified as follows:

	<u>June 30, 2005</u>	<u>December 31, 2004</u>
Available-for-sale	\$ 20,831	\$ 10,531
Held-to-maturity	—	68,952
Long-term marketable securities	<u>\$ 20,831</u>	<u>\$ 79,483</u>

Unrealized holding losses on short-term available-for-sale marketable securities, net of tax, were \$73 at June 30, 2005. Unrealized holding gains on long-term available-for-sale marketable securities, net of tax, were \$132 at June 30, 2005. These unrealized holding gains and losses are recorded in accumulated other comprehensive income, a component of shareholders' equity, at June 30, 2005.

There were no unrealized holding gains or losses on available-for-sale auction rate securities at December 31, 2004, and the unrealized holding gain on our investment in SMIC at December 31, 2004, net of tax, was \$531. This unrealized holding gain was recorded in accumulated other comprehensive income at December 31, 2004.

Gross unrealized holding losses on short-term held-to-maturity marketable securities were \$48 at December 31, 2004, and gross unrealized losses on long-term held-to-maturity marketable securities were \$68 at December 31, 2004.

Accounts Receivable, Net

Accounts receivable are recorded at invoiced amount and do not bear interest when recorded or accrue interest when past due. We do not have any off balance sheet exposure risk related to customers. Accounts receivable are stated net of an allowance for doubtful accounts, which is maintained for estimated losses that may result from the inability of our customers to make required payments. Accounts receivable, net consisted of the following:

	<u>June 30, 2005</u>	<u>December 31, 2004</u>
Accounts receivable, gross	\$ 18,345	\$ 14,817
Less allowance for doubtful accounts	(212)	(212)
Accounts receivable, net	<u>\$ 18,133</u>	<u>\$ 14,605</u>

Inventories, Net

Inventories consist of finished goods and work-in-process, and are stated at the lower of standard cost (which approximates actual cost on a first-in, first-out basis) or market (net realizable value), net of a reserve for slow moving and obsolete items. Inventories, net consisted of the following:

	<u>June 30,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
Finished goods	\$ 19,076	\$ 11,648
Work-in-process	7,433	8,516
	<u>26,509</u>	<u>20,164</u>
Less reserve for slow moving and obsolete items	(1,509)	(1,589)
Inventories, net	<u>\$ 25,000</u>	<u>\$ 18,575</u>

The following is a summary of the change in our reserve for slow moving and obsolete items:

	<u>Six Months Ended</u> <u>June 30,</u>	
	<u>2005</u>	<u>2004</u>
Balance at beginning of period	\$ 1,589	\$ 1,942
Usage:		
Inventory scrapped	(110)	(308)
Inventory utilized	(327)	(582)
Subtotal - usage	<u>(437)</u>	<u>(890)</u>
Provision	357	322
Balance at end of period	<u>\$ 1,509</u>	<u>\$ 1,374</u>

While we do not currently expect to be able to sell or otherwise use the reserved inventory we have on hand at June 30, 2005 based upon our forecast and backlog, it is possible that a customer will decide in the future to purchase a portion of the reserved inventory. It is not currently possible to predict if or when this will happen, or how much we may sell.

Property and Equipment, Net

Property and equipment, net consisted of the following:

	<u>June 30,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
Gross carrying amount of assets	\$ 41,637	\$ 34,193
Less accumulated depreciation and amortization	(26,309)	(21,749)
Property and equipment, net	<u>\$ 15,328</u>	<u>\$ 12,444</u>

Acquired Intangible Assets, Net

Acquired intangible assets, net consisted of the following:

	June 30, 2005	December 31, 2004
Gross carrying amount of assets	\$ 46,277	\$ 5,277
Less accumulated amortization	(3,645)	(2,757)
Acquired intangible assets, net	<u>\$ 42,632</u>	<u>\$ 2,520</u>

Accrued Liabilities and Current Portion of Long-Term Liabilities

Accrued liabilities and current portion of long-term liabilities consisted of the following:

	June 30, 2005	December 31, 2004
Accrued payroll and related liabilities	\$ 5,574	\$ 4,586
Current portion of accrued liabilities for asset financing	5,340	3,185
Accrued commissions and royalties	1,368	719
Accrued manufacturing liabilities	1,121	477
Reserve for warranty returns	653	419
Current portion of deferred lease liability	598	—
Reserve for sales returns and allowances	388	524
Accrued interest payable	335	335
Other	3,434	2,597
Accrued liabilities and current portion of long-term liabilities	<u>\$ 18,811</u>	<u>\$ 12,842</u>

The following is a summary of the change in our reserve for sales returns and allowances:

	Six Months Ended June 30, 2005	2004
Balance at beginning of period	\$ 524	\$ 202
Provision	141	620
Charge offs	(277)	(88)
Balance at end of period	<u>\$ 388</u>	<u>\$ 734</u>

The following is a summary of the change in our reserve for warranty returns:

	Six Months Ended June 30,	
	2005	2004
Balance at beginning of period	\$ 419	\$ 569
Provision	510	87
Charge offs	(276)	(227)
Balance at end of period	<u>\$ 653</u>	<u>\$ 429</u>

Long-Term Debt

On May 18, 2004, we issued \$125,000 of convertible subordinated debentures (the “debentures”) due 2024 in a private offering pursuant to Rule 144A under the Securities Act of 1933 and outside of the United States in accordance with Regulation S under the Securities Act. On June 4, 2004, we issued an additional \$25,000 of debentures pursuant to the exercise of an option granted to the initial purchasers.

The debentures bear interest at a rate of 1.75% per annum and interest is payable on May 15 and November 15 of each year, beginning November 15, 2004. The debentures are convertible, under certain circumstances, into our common stock at a conversion rate of 41.0627 shares of common stock per \$1,000 principal amount of debentures for a total of 6,159 shares. This is equivalent to a conversion price of approximately \$24.35 per share. The debentures are convertible if (a) during any calendar quarter, the market price of our common stock exceeds 130% of the conversion price per share for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous calendar quarter, (b) the trading price of the debentures declines to less than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the debentures for five consecutive trading days, (c) a call for redemption occurs, or (d) in the event of certain other corporate transactions. We may redeem some or all of the debentures for cash on or after May 15, 2011 at a price equal to 100% of the principal amount of the debentures plus accrued and unpaid interest. The holders of the debentures have the right to require us to purchase all or a portion of their debentures on May 15, 2011, May 15, 2014 and May 15, 2019, at a price equal to 100% of the principal amount plus accrued and unpaid interest.

We have filed a shelf registration statement with the Securities and Exchange Commission covering resales of the debentures and the common stock issuable upon conversion of the debentures. The registration statement was declared effective August 24, 2004. The debentures are unsecured obligations and are subordinated in right of payment to all our existing and future senior debt.

NOTE 4: COMPREHENSIVE INCOME (LOSS)

Total comprehensive income (loss) for the three and six months ended June 30, 2005 and 2004 was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Net income (loss)	\$ (2,275)	\$ 5,759	\$ (1,439)	\$ 12,312
Unrealized gain (loss) on available for-sale marketable securities, net of tax	1,161	(2,840)	(472)	475
Comprehensive income (loss)	<u>\$ (1,114)</u>	<u>\$ 2,919</u>	<u>\$ (1,911)</u>	<u>\$ 12,787</u>

NOTE 5: EARNINGS PER SHARE

We calculate earnings per share in accordance with SFAS No. 128, *Earnings per Share*. Basic earnings per share amounts are computed based on the weighted average number of common shares outstanding, and includes exchangeable shares. These exchangeable shares, which were issued on September 6, 2002 by Jaldi, our Canadian subsidiary, to its shareholders in connection with the Jaldi asset acquisition, have characteristics essentially equivalent to Pixelworks' common stock.

Diluted weighted average shares outstanding includes the increased number of common shares that would be outstanding assuming the exercise of certain stock options and the vesting of certain restricted stock, when such exercise or vesting would have the effect of reducing earnings per share. In the fourth quarter of 2004, we adopted Emerging Issues Task Force Issue No. 04-8, *The Effect of Contingently Convertible Debt on Diluted Earnings per Share*. As a result, diluted weighted average shares outstanding also includes the increased number of common shares that would be outstanding assuming the conversion of our convertible debentures, using the if-converted method, when such conversion would have the effect of reducing earnings per share.

The following schedule reconciles basic and diluted weighted average shares outstanding for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Basic weighted average shares outstanding	47,101	46,636	47,064	46,479
Incremental shares related to conversion of debentures	—	2,719	—	1,359
Incremental shares related to stock options and restricted stock	—	1,839	—	1,820
Diluted weighted average shares outstanding	<u>47,101</u>	<u>51,194</u>	<u>47,064</u>	<u>49,658</u>

The following schedule reconciles net income (loss) used in the calculation of basic net income (loss) per share to net income (loss) used in the calculation of diluted net income (loss) per share for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Net income (loss) used in calculating basic net income (loss) per share	\$ (2,275)	\$ 5,759	\$ (1,439)	\$ 12,312
Add: Interest expense and amortization of debt issuance costs, net of taxes	—	264	—	264
Net income (loss) used in calculating diluted net income (loss) per share	\$ (2,275)	\$ 6,023	\$ (1,439)	\$ 12,576

Because of our net loss position for the three and six months ended June 30, 2005, incremental shares related to stock options of 775 and 791, respectively, are excluded from diluted weighted average shares outstanding.

For the three and six months ended June 30, 2005, weighted average shares related to stock options of 6,286 and 5,499, respectively, were excluded from the calculation of diluted weighted average shares outstanding because the exercise prices of these options were equal to or greater than the average market price of Pixelworks' common stock during the respective periods, and as a result, their inclusion would have been anti-dilutive. For the three and six months ended June 30, 2004, weighted average shares related to stock options of 683 and 1,251, respectively, were excluded for this reason.

NOTE 6: SEGMENT INFORMATION

In accordance with SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, we have identified a single operating segment: the design and development of integrated circuits for electronic display devices. Substantially all of our assets are located in the United States.

Geographic Information

Revenue by geographic region, attributed to countries based on the domicile of the bill-to customer, was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Japan	\$ 15,905	\$ 17,281	\$ 29,660	\$ 34,722
Taiwan	6,973	12,078	17,328	23,722
China	6,872	9,978	11,862	16,784
Korea	3,040	2,841	6,828	7,116
Europe	7,324	3,722	13,613	6,100
U.S.	315	609	799	1,194
Other	886	2,000	1,486	4,141
	<u>\$ 41,315</u>	<u>\$ 48,509</u>	<u>\$ 81,576</u>	<u>\$ 93,779</u>

Significant Customers

Sales to distributors represented 53% and 71% of total revenue for the three and six months ended June 30, 2005 and 2004, respectively. The following distributors accounted for 10% or more of total revenue:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Tokyo Electron Device Limited	26%	27%	25%	29%
Neoview	0%	14%	3%	16%

Effective February 4, 2005, we terminated our distributor relationship with Neoview, located in Taiwan. We now sell our products directly to Taiwanese customers previously served by Neoview, as well as through our other Taiwanese distributors.

Sales to our top five end customers represented 41% and 34% of total revenue for the three months ended June 30, 2005 and 2004, respectively, and 36% and 32% of total revenue for the six months ended June 30, 2005 and 2004, respectively.

End customers include customers who purchase directly from us, as well as customers who purchase our products indirectly through distributors and contract manufacturers. For the three months ended June 30, 2005, one end customer represented 13% of total revenue and a second customer represented 10% of total revenue. No end customer accounted for more than 10% of total revenue for the six months ended June 30, 2005, or the three and six months ended June 30, 2004.

The following accounts represented 10% or more of gross accounts receivable:

	June 30, 2005	December 31, 2004
Account A	19%	26%
Account B	11%	9%
Account C	1%	11%

NOTE 7: RISKS AND UNCERTAINTIES

Concentration of Suppliers

We do not own or operate a semiconductor fabrication facility and do not have the resources to manufacture our products internally. We rely on four third-party foundries to produce all of our products and we do not have any long-term agreements with any of these suppliers. In light of these dependencies, it is reasonably possible that failure to perform by one of these suppliers could have a severe impact on our results of operations.

Risk of Technological Change

The markets in which we compete or seek to compete are subject to rapid technological change, frequent new product introductions, changing customer requirements for new products and features and evolving industry standards. The introduction of new technologies and the emergence of new industry standards could render our products less desirable or obsolete, which could harm our business.

Concentrations of Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk consist of cash equivalents, short and long-term marketable securities and accounts receivable. We limit our exposure to credit risk associated with cash equivalent and marketable security balances by placing our funds in various high quality securities and limiting concentrations of issuers and maturity dates. We limit our exposure to credit risk associated with accounts receivable by carefully evaluating creditworthiness before offering terms to customers.

NOTE 8: COMMITMENTS AND CONTINGENCIES

Indemnifications

Certain of our agreements include limited indemnification provisions for claims from third parties relating to our intellectual property. Such indemnification provisions are accounted for in accordance with SFAS No. 5, *Accounting for Contingencies*. The indemnification is limited to the amount paid by the customer. As of June 30, 2005, we have not incurred any material liabilities arising from these indemnification obligations, however in the future, such obligations could immediately impact our results of operations but would not materially affect our business.

NOTE 9: ACQUISITION

On June 14, 2005, the Company acquired 100% of the outstanding shares of Equator Technologies, Inc. ("Equator"). Equator is at the forefront of delivering programmable advanced video compression technology with system-on-chip integrated circuits and software solutions that unlock broadband networks for video entertainment and communications. This acquisition will provide programmable technologies to Pixelworks customers in order to create a new generation of digital televisions, including those that might integrate Internet Protocol television decoding technology to allow viewing of digital video directly over the Internet. The results of Equator's operations have been included in our consolidated statement of operations beginning on the date of acquisition.

The aggregate purchase price for Equator was \$117,913, which consisted of cash of \$107,854, the value of 1,263 options exchanged of \$8,336, plus acquisition costs of \$1,723. The estimated fair value of the options exchanged was calculated using the Black-Scholes option pricing model with the average closing price of Pixelworks' common stock for two days prior to the announcement of the Agreement and Plan of Merger, the day of the announcement, and two days following the announcement (\$7.62 per share) and following weighted average assumptions: risk-free interest rate of 2.55%, an expected dividend yield of 0%, an expected life of 1.2 years, and volatility of 59%.

The purchase price was allocated to the assets and liabilities based on fair values as follows:

Purchase price		\$	117,913
Less net assets acquired:			
Assets acquired:			
Cash	5,044		
Accounts receivable	4,464		
Inventory	10,808		
Other current assets	296		
Non-current assets	24,553		
Developed technology	36,800		
Other acquired intangible assets	4,200		
Deferred stock compensation	2,219		
Less:			
Liabilities assumed	(10,210)		(78,174)
Goodwill		\$	39,739

In connection with this acquisition, we performed a valuation of acquired intangible assets. We assigned \$36,800 of the purchase price to acquired developed technology with a five year estimated life, \$3,400 to customer relationships with a three year estimated life, and \$800 to backlog and trademark with estimated lives of one year or less. In-process research and development was considered in our analysis of the Equator intangible assets; however, it was determined to have no value since the technologies were determined to be too early in the research and development stages.

We also recorded gross deferred tax assets of approximately \$65,414, subject to a valuation allowance of \$26,417, and deferred tax liabilities of \$17,000 to recognize book basis and tax basis differences of various balance sheet assets and liabilities and corporate tax attributes acquired. If the valuation allowance is subsequently changed, the amount of any adjustment will offset goodwill.

The goodwill resulting from this transaction was assigned to Pixelworks, Inc., our sole reporting unit.

In addition to the \$107,854 cash consideration included in the purchase price we paid \$2,518 in cash, which was classified as contingent consideration on the acquisition date. The Equator shareholders will receive disbursement of the \$2,518 if certain revenue targets are achieved by March 31, 2006. If the target is not fully achieved by March 31, 2006, we will receive a refund of a portion of the contingent consideration. At June 30, 2005, the remaining contingent consideration is included in prepaid expenses and other current assets.

The purchase price allocation is substantially complete. Certain elements, such as the filing of pre-acquisition tax returns, may impact the final purchase price allocation. Although we do not anticipate significant revisions to the purchase price allocation, material adjustments could occur.

The following table reflects the unaudited combined results of Pixelworks and Equator as if the merger had taken place as of January 1, 2005 and 2004, respectively. For the three and six months ended June 30, 2004, weighted average shares related to convertible subordinated debentures of 2,719 and 1,359, respectively, were excluded from the calculation of diluted weighted average shares outstanding because their inclusion would have been anti-dilutive.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Net revenue	\$ 49,339	\$ 51,555	\$ 96,519	\$ 99,575
Net income (loss)	\$ (6,824)	\$ 1,599	\$ (10,884)	\$ 3,068
Net income (loss) per share:				
Basic	\$ (0.14)	\$ 0.03	\$ (0.23)	\$ 0.07
Diluted	\$ (0.14)	\$ 0.03	\$ (0.23)	\$ 0.06
Weighted average shares outstanding:				
Basic	47,101	46,636	47,064	46,479
Diluted	47,101	48,475	47,064	48,299

The pro-forma information does not necessarily reflect the actual results that would have occurred, nor is it necessarily indicative of future results of operations of the combined companies.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-looking Statements

This Management's Discussion and Analysis of Financial Condition and Results of Operations and other sections of this Report contain "forward-looking statements" within the meaning of the Securities Litigation Reform Act of 1995 that are based on current expectations, estimates, beliefs, assumptions and projections about our business. Words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," "estimates" and variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and involve certain risks and uncertainties that are difficult to predict. Actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements due to numerous factors. Such factors include, but are not limited to, increased competition, adverse business conditions, failure to design, develop and manufacture new products, lack of success in technological advancements, lack of acceptance of new products, unexpected changes in the demand for our products and services, the inability to successfully manage inventory pricing pressures, failure to reduce costs or improve operating efficiencies, changes to and compliance with international laws and regulations, currency fluctuations and our ability to attract, hire and retain key and qualified employees. These forward-looking statements speak only as of the date on which they are made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q. If we do update or correct one or more forward-looking statements, you should not conclude that we will make additional updates or corrections with respect thereto or with respect to other forward-looking statements.

(Dollars in thousands)

Overview

We are a leading designer, developer and marketer of semiconductors and software for the advanced display industry, including advanced televisions, multimedia projectors and flat panel monitors. Our system-on-chip semiconductors provide the 'intelligence' for these new types of displays by processing and optimizing video and computer graphic signals to produce high-quality and realistic images. Many of the world's leading manufacturers of consumer electronics and computer display products utilize our technology to enhance image quality and ease of use of their products. Our goal is to provide all of the electronics necessary to process the entire signal path in order to provide a turn-key solution for our customers.

On June 14, 2005, we acquired 100% of the outstanding shares of Equator Technologies, Inc. ("Equator"). Equator is at the forefront of delivering programmable advanced video compression technology with system-on-chip integrated circuits and software solutions that unlock broadband networks for video entertainment and communications. This acquisition will provide programmable technologies to Pixelworks customers in order to create a new generation of digital televisions, including those that might integrate Internet Protocol television decoding technology to allow viewing of digital video directly over the Internet. The results of operations of Equator are included in our financial statements beginning on the date of closing.

We sell our products worldwide through a direct sales force and indirectly through distributors and manufacturers' representatives. Manufacturers' representatives support some of our European and Asian sales. We sell to distributors in Japan, Taiwan, China and Europe. Sales to distributors represented 53% and 71% of total revenue for the three and six months ended June 30, 2005 and 2004, respectively. Effective February 4, 2005, we terminated our distributor relationship with Neoview, one of our Taiwanese distributors. We now sell our products directly to Taiwanese customers previously served by Neoview, as well as through our other Taiwanese distributors. The termination of this relationship led to

the decrease in sales to distributors during the three and six months ended June 30, 2005, compared to the three and six months ended June 30, 2004.

Historically, significant portions of our revenue have been generated by sales to a relatively small number of end customers and distributors. Sales to our top five end customers represented 41% and 34% of total revenue for the three months ended June 30, 2005 and 2004, respectively, and 36% and 32% of revenue for the six months ended June 30, 2005 and 2004, respectively. During the three months ended June 30, 2005 there were two end customers that accounted for 10% or more of total revenue. There were no end customers that accounted for 10% or more of total revenue during the six months ended June 30, 2005 or the three and six months ended June 30, 2004. End customers include customers who purchase directly from us, as well as customers who purchase our products indirectly through distributors and contract manufacturers.

Significant portions of our products are sold overseas. Sales outside the U.S. accounted for approximately 99% of total revenue for the three and six months ended June 30, 2005 and 2004. Our integrators, branded manufacturers and branded suppliers incorporate our products into systems that are sold worldwide. All revenue to date has been denominated in U.S. dollars.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of financial statements in conformity with GAAP requires us to make estimates and judgments that affect the amounts reported in the financial statements and accompanying notes. On an ongoing basis, we evaluate our estimates, including those related to product returns, warranty obligations, inventories, property and equipment, intangible assets and income taxes. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect the more significant judgments and estimates we use in preparing our consolidated financial statements:

Revenue Recognition. We recognize revenue in accordance with Staff Accounting Bulletin No. 104, *Revenue Recognition*. Accordingly, revenue is recognized when an authorized purchase order has been received, the sales price is fixed and determinable, title and risk of loss have transferred, collection of the resulting receivable is probable and product returns are reasonably estimable. This generally occurs upon shipment of the underlying merchandise.

Sales Returns and Allowances. Our customers do not have a stated right to return product other than under our warranty policy discussed below. As such, customer returns are accepted on a case-by-case basis as customer accommodations only. However, certain of our distributors have stock rotation provisions in their distributor agreements, which allow them to return 5-10% of the products purchased in the prior six months in exchange for products of equal value. Certain distributors also have price protection provisions in their agreements with us.

We record estimated reductions to gross profit for these sales returns and allowances in our reserve for sales returns and allowances. We update the balance in this reserve at each reporting period based on historical experience. If actual returns and allowances increase, we may be required to recognize additional reductions to gross profit.

Product Warranties. We warrant that our products will be free from defects in materials and workmanship for a period of twelve months from delivery. Warranty repairs are guaranteed for the

remainder of the original warranty period. Our warranty is limited to repairing or replacing products, or refunding the purchase price.

We provide for the estimated cost of product warranties in our warranty reserve. We update the balance in this reserve based on historical experience at each reporting period. While we engage in extensive product quality programs and processes, which include actively monitoring and evaluating the quality of our suppliers, should actual product failure rates or product replacement costs differ from our estimates, revisions to the estimated warranty liability may be required.

Allowance for Doubtful Accounts. We offer credit to customers after careful examination of their creditworthiness. We maintain an allowance for doubtful accounts for estimated losses that may result from the inability of our customers to make required payments. We evaluate the balance in the allowance based on historical experience and the age of outstanding receivables at each reporting period. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

Inventory Valuation. We record a reserve against our inventory for estimated obsolete, unmarketable, and otherwise impaired products by calculating the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions. We review our inventory at the end of each reporting period for valuation issues. If actual market conditions are less favorable than those we projected at the time the reserve was recorded, additional inventory reserves may be required.

Useful Lives and Recoverability of Equipment and Other Long-Lived Assets. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we evaluate the remaining useful life and recoverability of equipment and other assets, including identifiable intangible assets with definite lives, whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If there is an indicator of impairment, we prepare an estimate of future, undiscounted cash flows expected to result from the use of each asset and its eventual disposition. If these cash flows are less than the carrying value of the asset, we adjust the carrying amount of the asset to its estimated fair value.

Goodwill. Goodwill is not amortized. Instead we test goodwill, which represents the excess cost over the fair value of net assets acquired in business combinations, annually for impairment, and more frequently if events and circumstances indicate that it might be impaired. The impairment tests are performed in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*. Accordingly, an impairment loss is recognized to the extent that the carrying amount of goodwill exceeds its implied fair value. This determination is made at the reporting unit level. We have assigned all goodwill to a single, enterprise-level reporting unit. The impairment test consists of two steps. First, we determine the fair value of the reporting unit. The fair value is then compared to its carrying amount. Second, if the carrying amount of the reporting unit exceeds its fair value, an impairment loss is recognized for any excess of the carrying amount of the reporting unit's goodwill over the implied fair value of that goodwill. The implied fair value of goodwill is determined by allocating the fair value of the reporting unit in a manner similar to a purchase price allocation in accordance with SFAS No. 141, *Business Combinations*. The residual fair value after this allocation is the implied fair value of the reporting unit goodwill. We perform our annual impairment test in the first quarter of each year. We did not record any impairment losses against goodwill when we performed the test in the first quarter of 2005 or 2004.

Income Taxes. Deferred income taxes are provided for temporary differences between the amount of assets and liabilities for financial and tax reporting purposes. We establish a valuation allowance in accordance with SFAS No. 109, *Accounting for Income Taxes*, to reduce our deferred tax assets to the amount that is more likely than not to be realized. Should we determine that we will not be able to realize all or part of our net deferred tax asset in the future, an adjustment to the deferred tax asset may be charged to income in the period such determination was made.

Tax contingencies are recorded to address potential exposures involving tax positions we have taken that could be challenged by taxing authorities. These potential exposures result from the varying applications of statutes, rules, regulations and interpretations. Our tax contingencies contain assumptions based on past experiences and judgments about potential actions by taxing jurisdictions. The ultimate resolution of these matters may be greater or less than the amount that we have accrued.

Results of Operations

The following table sets forth certain financial data for the periods indicated:

	Three Months Ended June 30,				Six Months Ended June 30,			
	2005		2004		2005		2004	
	Dollars	% of revenue	Dollars	% of revenue	Dollars	% of revenue	Dollars	% of revenue
Revenue	\$ 41,315	100.0%	\$ 48,509	100.0%	\$ 81,576	100.0%	\$ 93,779	100.0%
Cost of revenue	25,113	60.8	25,477	52.5	48,456	59.4	47,360	50.5
Gross profit	16,202	39.2	23,032	47.5	33,120	40.6	46,419	49.5
Operating expenses:								
Research and development	11,571	28.0	7,953	16.4	21,013	25.8	15,657	16.7
Selling, general and administrative	6,900	16.7	6,056	12.5	13,968	17.1	11,530	12.3
Stock-based compensation and amortization of purchased intangible assets	385	0.9	213	0.4	522	0.6	498	0.5
Total operating expenses	18,856	45.6	14,222	29.3	35,503	43.5	27,685	29.5
Income (loss) from operations	(2,654)	(6.4)	8,810	18.2	(2,383)	(2.9)	18,734	20.0
Interest income	1,693	4.1	528	1.1	3,408	4.2	764	0.8
Interest expense	(660)	(1.6)	(294)	(0.6)	(1,317)	(1.6)	(295)	(0.3)
Realized loss on sale of marketable securities	(779)	(1.9)	—	0.0	(779)	(1.0)	—	0.0
Amortization of debt issuance costs	(178)	(0.4)	(115)	(0.2)	(355)	(0.4)	(115)	(0.1)
Interest and other income, net	76	0.2	119	0.2	957	1.2	354	0.4
Income (loss) before income taxes	(2,578)	(6.2)	8,929	18.4	(1,426)	(1.7)	19,088	20.4
Provision for (recovery of) income taxes	(303)	(0.7)	3,170	6.5	13	0.0	6,776	7.2
Net income (loss)	\$ (2,275)	(5.5)%	\$ 5,759	11.9%	\$ (1,439)	(1.8)%	\$ 12,312	13.1%

Percentages may not add due to rounding.

Revenue

Revenue for the three months ended June 30, 2005 was 15% lower than revenue for the three months ended June 30, 2004. Revenue for the six months ended June 30, 2005 was 13% lower than revenue for the six months ended June 30, 2004. These decreases in revenue were attributable to decreases in units sold and average selling prices, as follows:

	<u>Units Sold</u>	<u>Average Selling Price</u>
Three months ended June 30, 2005 compared to three months ended June 30, 2004	(3)%	(13)%
Six months ended June 30, 2005 compared to six months ended June 30, 2004	0%	(13)%

Revenue by market as a percentage of total revenue was as follows:

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>
Advanced televisions	55%	41%	57%	39%
Multimedia projectors	34%	43%	32%	46%
LCD monitors	7%	14%	8%	13%
Other	4%	2%	3%	2%

Advanced Televisions

Total revenue from advanced television sales increased 14% to \$22,598 in the second quarter of 2005 from \$19,774 in the second quarter of 2004. Units shipped increased 26%, while average selling prices decreased 10%. For the six months ended June 30, 2005, total revenue from advanced television sales was \$45,976, an increase of 24% over \$36,991 for the six months ended June 30, 2004. Units shipped increased 30%, while average selling prices decreased 4%.

The advanced television market includes products sold into the flat panel television sector, which is comprised of liquid crystal display ("LCD") televisions and plasma televisions, and products sold into digital cathode ray tube ("CRT") and digital rear projection televisions. Revenue from products sold into the flat panel television sector comprised more than 90% of our advanced television revenue during the three and six months ended June 30, 2005. During the three and six months ended June 30, 2004, revenue from products sold into the flat panel televisions sector comprised approximately 59% and 65%, respectively, of our total advanced television revenue. The increases in revenue to the flat panel television sector were attributable to overall growth in the market. These increases were partially offset by decreases in revenue to the CRT sector during the three and six months ended June 30, 2005.

Our advanced television revenue is generated on sales to customers located in China, Taiwan, Europe, Korea and Japan.

In the third quarter of 2005, we expect that advanced television revenue will increase approximately 0% to 10% from the second quarter of 2005.

Multimedia Projectors

Total revenue from multimedia projector sales decreased 32% to \$14,162 in the second quarter of 2005 from \$20,708 in the second quarter of 2004. Units shipped decreased 11%, while average selling prices decreased 23%. For the six months ended June 30, 2005, total revenue from multimedia projector sales was \$26,116, a decrease of 39% from \$43,100 for the six months ended June 30, 2004. Units shipped during the six months ended June 30, 2005 were 21% lower than during the six months ended June 30, 2004, while average selling prices were 23% lower.

The decreases in revenue in the multimedia projector market are primarily attributable to market share lost to Texas Instruments in projectors using their Digital Light Processing ("DLP") display device. Our products are now primarily sold into projectors using polysilicon LCD's as the display device. At this

point, we believe that the market split between DLP and polysilicon is relatively stable with each representing approximately one half of the total market.

Consistent with the three and six months ended June 30, 2004, the majority of our sales to multimedia projector manufacturers during the three and six months ended June 30, 2005 were to customers located in Japan. Japanese customers accounted for 87% and 68% of total projector revenue for the three months ended June 30, 2005 and 2004, respectively, and 87% and 66% of total projector revenue for the six months ended June 30, 2005 and 2004, respectively.

We believe that multimedia projector revenue in the third quarter of 2005 will decrease approximately 5% to 10% from the second quarter of 2005. The decrease will be driven by seasonal softness in this market.

LCD Monitors

Total revenue from LCD monitor sales decreased 57% to \$2,992 in the second quarter of 2005 from \$7,002 in the second quarter of 2004. Units shipped decreased 72%, but average selling prices increased 54%. For the six months ended June 30, 2005, total revenue from LCD monitor sales was \$6,176, a decrease of 47% from \$11,754 for the six months ended June 30, 2004. Units shipped during the six months ended June 30, 2005 were 67% lower than during the six months ended June 30, 2004, but average selling prices were 61% higher.

The overall decrease in LCD monitor revenue is primarily attributable to our strategy to stop developing mainstream products for this market, and to focus on higher end products. The increase in average selling prices resulted from an increase in the percentage of chips sold into Ultra Extended Graphics Array ("UXGA") monitors, which carry higher average selling prices than chips sold into Super Extended Graphics Array ("SXGA") or Extended Graphics Array ("XGA") monitors.

The majority of our monitor revenue is generated on sales to customers located in Taiwan.

In the third quarter of 2005, we expect that our LCD monitor revenue will decrease approximately 10% to 15% from second quarter 2005 LCD monitor revenue.

Other

Other revenue includes sales of evaluation kits as well as the impact of changes in our reserve for sales returns and allowances. It also includes sales into small, niche markets that are unrelated to the three primary markets for our products. For the three and six months ended June 30, 2005, it also includes a negligible amount of revenue from our acquisition of Equator, which closed June 14, 2005. Equator revenue for the third quarter of 2005 is expected to be \$8,500 to \$9,500.

Cost of revenue and gross profit

Cost of revenue includes purchased materials, assembly, test, labor and overhead, warranty expense, royalties, amortization of purchased developed technology, provisions for slow moving and obsolete inventory and information technology and facilities allocations.

Gross profit decreased to 39.2% and 40.6% for the three and six months ended June 30, 2005, respectively, from 47.5% and 49.5% for the comparable periods in 2004. The decrease is primarily driven by an increase in amortization of acquired intangible assets of \$326 for the three and six months ended June 30, 2005, an increase in our warranty and inventory reserves, increases in royalty expense, and changes in the mix of products sold. The decrease in sales to multimedia projector manufacturers as a percentage of total revenue contributed significantly to the overall decrease in gross profit, as our multimedia projector sales generally have the highest gross profit margins.

We expect our gross profit margin to be approximately 29% to 31% for the third quarter of 2005. This decrease will be driven primarily by acquisition-related expenses amortized to cost of sales, which are estimated to be \$5,500 to \$6,000, and will reduce gross profit margin by approximately 1,200 basis points.

Research and development

Research and development expense includes compensation and related costs for personnel, depreciation and amortization, fees for outside services and expensed equipment and software. Research and development expense, inclusive of stock-based compensation expense, was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Research and development expense, inclusive of stock-based compensation	\$ 11,720	\$ 8,026	\$ 21,173	\$ 15,810

Research and development expense, inclusive of stock-based compensation expense, increased \$3,694, or 46%, from the three months ended June 30, 2004 to the three months ended June 30, 2005, due to the following factors:

- Depreciation and amortization expense increased \$1,514 due to increased licensed technology and software asset purchases.
- Compensation expense increased \$1,003 due to an increase in research and development personnel. At June 30, 2005 headcount in research and development was 121 higher than June 30, 2004. Forty-nine of this increase was attributable to the acquisition of Equator.
- Facilities and information technology expenses allocated to research and development increased \$766 from the three months ended June 30, 2004 to the three months ended June 30, 2005. This was primarily attributable to increases in compensation costs resulting from increased headcount in information technology, an increase in rent expense to support the higher headcount, increases in depreciation, amortization, expensed equipment, fees for outside services and telecommunications charges.

Research and development expense, inclusive of stock-based compensation expense, increased \$5,363, or 34%, from the six months ended June 30, 2004 to the six months ended June 30, 2005, due to the following offsetting factors:

- Depreciation and amortization expense increased \$2,773 due to increased licensed technology and software asset purchases.
- Compensation expense increased \$1,506 due to an increase in research and development personnel.
- Facilities and information technology expenses allocated to research and development increased \$1,222 from the six months ended June 30, 2004 to the six months ended June 30, 2005. This was primarily attributable to increases in compensation costs resulting from increased headcount in information technology, an increase in rent expense to support the higher headcount, increases in depreciation, amortization, expensed equipment, fees for outside services and telecommunications charges.
- Nonrecurring engineering and outside services increased \$496 due to an increase in the number of projects under development.

- Expensed equipment and software decreased \$583 due to the timing of purchases.

We expect our research and development expenses to continue to increase in future periods as a result of our ongoing investment in new product development programs, as well as the inclusion of Equator expenditures.

Selling, general and administrative

Selling, general and administrative expense includes compensation and related costs for personnel, travel, outside services, sales commissions and other overhead incurred in our sales, marketing, customer support, management, legal and other professional and administrative support functions. Selling, general and administrative expense, inclusive of stock-based compensation expense, was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Selling, general and administrative expense inclusive of stock-based compensation	\$ 6,959	\$ 6,074	\$ 14,032	\$ 11,632

Selling, general and administrative expense, inclusive of stock-based compensation expense, increased \$885, or 15%, from the three months ended June 30, 2004 to the three months ended June 30, 2005, due to the following offsetting factors:

- Compensation expense increased \$690 due to an increase in administrative and sales and marketing personnel. At June 30, 2005, headcount in selling, general and administrative cost centers increased 73 over June 30, 2004. Sixteen of this increase was attributable to the acquisition of Equator.
- The facilities and information technology expenses allocated to selling, general and administrative expense increased \$457. This was primarily attributable to increases in compensation costs resulting from increased headcount in information technology, an increase in rent expense to support the higher headcount, increases in depreciation, amortization, expensed equipment, fees for outside services and telecommunications charges.
- Fees for investor relations, recruiting, accounting and legal, and other outside services decreased \$212.

Selling, general and administrative expense, inclusive of stock-based compensation expense, increased \$2,400, or 21%, from the six months ended June 30, 2004 to the six months ended June 30, 2005, due to the following offsetting factors:

- Compensation expense increased \$1,577 due to an increase in headcount in administrative and sales and marketing personnel.
- The facilities and information technology expenses allocated to selling, general and administrative expense increased \$740. This was primarily attributable to increases in compensation costs resulting from increased headcount in information technology, an increase in rent expense to support the higher headcount, increases in depreciation, amortization, expensed equipment, fees for outside services and telecommunications charges.
- Sales and marketing related travel and trade show expenses increased \$290.
- Sales commissions expense increased \$255.

- Depreciation and amortization expense and expensed equipment increased \$172.
- Insurance expense decreased \$294 due to lower premiums.

We expect our selling, general and administrative expenses to increase in future periods. The increases will result from higher sales-related and overhead costs, as well as the inclusion of Equator expenditures.

Stock-based compensation and amortization of purchased intangible assets

Stock-based compensation and amortization of purchased intangible assets was \$385 and \$522 for the three and six months ended June 30, 2005, respectively, compared to \$213 and \$498 for the comparable periods in 2004. Stock-based compensation and amortization of purchased intangible assets increased due to our acquisition of Equator, which closed June 14, 2005. As a result of the acquisition, we recorded deferred stock compensation in the amount of \$2,219, which represented the intrinsic value of the unvested Equator options that we assumed.

Interest income, net

Interest income, net includes interest income earned on cash equivalents and short and long-term marketable securities, interest expense related to our 1.75% convertible subordinated debentures, realized loss on the sale of marketable securities and amortization of our debt issuance costs. The debt issuance costs have been capitalized, included in long-term assets on the balance sheet, and are being amortized over seven years.

Interest income was \$1,693 and \$3,408 for the three and six months ended June 30, 2005, respectively, and \$528 and \$764 for the comparable periods in 2004. Interest expense was \$660 and \$1,317 for the three and six months ended June 30, 2005, respectively, and \$294 and \$295 for the comparable periods in 2004. Amortization of debt issuance costs was \$178 and \$355 for the three and six months ended June 30, 2005, respectively, and \$115 for the three and six months ended June 30, 2004. Interest income increased due to the investment of the proceeds from the issuance of the debentures. The increase in interest expense and amortization of debt issuance costs were also attributable to the issuance of the debentures. Our 1.75% convertible debentures were issued in May and June of 2004 and were therefore not outstanding for the entire three and six month period ending June 30, 2004. We also realized a loss on the sale of marketable securities of \$779 during the second quarter of 2005. The loss was attributable to the sale of marketable securities to fund the acquisition of Equator.

Provision for income taxes

We have recorded a benefit for income taxes of \$303 and a provision of \$13 for the three and six months ended June 30, 2005, respectively. For the comparable periods in 2004, the provision for income taxes was \$3,170 and \$6,776, respectively. The decrease in the provision was primarily attributable to our decreased income before taxes and the generation of various credits offset by the recognition of valuation allowance and other permanent items. The effective tax rate differs from the federal statutory rate primarily due to the following: the utilization of federal, state and foreign tax credits, non-cash and other permanent expense items treated differently for book and tax purposes, the accrual of contingent amounts related to potential permanent establishment exposure and the establishment of valuation allowance against credits generated in state and foreign jurisdictions.

Liquidity and Capital Resources

Cash and cash equivalents and short and long-term marketable securities

As of June 30, 2005 we had cash and cash equivalents of \$35,234, short and long-term marketable securities of \$127,446 and working capital of \$165,521. Cash provided by operations during the six months ended June 30, 2005 was \$6,805 compared to \$15,318 during the six months ended June 30, 2004. The decrease in cash provided by operations is primarily attributable to the net loss of \$1,439 incurred for the six months ended June 30, 2005 as compared to the net income of \$12,312 incurred during the six months ended June 30, 2004.

Cash used in investing activities during the six months ended June 30, 2005 was \$5,073. This compares to \$143,659 used in investing activities during the six months ended June 30, 2004. Cash used in investing activities during the six months ended June 30, 2005 was used primarily for our acquisition of Equator, purchases of marketable securities, purchases of property and equipment and other assets, and payments on accrued balances related to asset acquisitions. These were mostly offset by sales and maturities of marketable securities. Cash used in investing activities during the six months ended June 30, 2004 was used primarily for purchases of marketable securities, purchases of property and equipment and other assets, and payments on accrued balances related to asset acquisitions.

Cash provided by financing activities was \$917 for the six months ended June 30, 2005. This compares to \$149,609 provided by financing activities during the six months ended June 30, 2004. Cash provided by financing activities for the six months ended June 30, 2005 primarily consisted of proceeds from the issuance of common stock. Cash provided by financing activities for the six months ended June 30, 2004 primarily consisted of proceeds from the issuance of the convertible subordinated debentures and proceeds from the issuance of common stock.

We anticipate that our existing cash and investment balances, along with cash expected to be generated from operations will be adequate to fund our operating and investing needs for the next twelve months and the foreseeable future. From time to time, we may evaluate acquisitions of businesses, products or technologies that complement our business. Any such transactions, if consummated, may consume a material portion of our working capital or require the issuance of equity securities that may result in dilution to existing shareholders.

Accounts receivable, net

Accounts receivable, net increased to \$18,133 at June 30, 2005 from \$14,605 at December 31, 2004. The increase is primarily attributable to the acquisition of Equator. Equator accounts receivable at June 30, 2005 totaled \$2,372. Average days sales outstanding was 40 at June 30, 2005 compared to 34 days at December 31, 2004. The change in days sales outstanding is primarily attributable to the addition of accounts receivable related to Equator.

Inventories, net

Inventories, net increased to \$25,000 at June 30, 2005 from \$18,575 at December 31, 2004. The increase is primarily attributable to the inventory assumed as part of the Equator acquisition. The inventory assumed was \$10,808, which included a fair value mark-up of \$5,190. This represents the difference between the estimated average selling price of the inventory less cost to complete, cost to sell and a reasonable profit allowance. Inventory turnover on an annualized basis increased from approximately four at December 31, 2004 to approximately five at June 30, 2005. At June 30, 2005, this represents approximately ten weeks of inventory. The increase in inventory turnover is primarily attributable to lower average inventory levels in the end of the second quarter of 2005 as compared to the end of the fourth quarter of 2004, and higher cost of sales during the second quarter of 2005.

Contractual Payment Obligations

A summary of our contractual payment obligations as of June 30, 2005 was as follows:

Contractual Obligation	Payments Due By Period				
	Total	2005	2006 and 2007	2008 and 2009	2010 and beyond
Long-term debt	\$ 150,000	\$ —	\$ —	\$ —	\$ 150,000
Estimated Q3 2005 non-cancelable purchase commitments to contract manufacturers	25,872	25,872	—	—	—
Operating leases	9,587	4,244	4,573	770	—

The lease payments above are net of sublease rentals of \$95 and \$40 for the years ending December 31, 2005 and 2006, respectively.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a material current or future effect on our financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Recent Accounting Pronouncements

In May 2005, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards (“SFAS”) No. 154, *Accounting Changes and Error Corrections – a replacement of APB Opinion No. 20 and FASB Statement No. 3*. SFAS No. 154 replaces Accounting Principles Board (“APB”) Opinion No. 20, *Accounting Changes*, and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements*, and changes the requirements for the accounting for, and reporting of, a change in accounting principle. This statement carries forward without change the guidance contained in Opinion 20 for reporting the correction of an error in previously issued financial statements and a change in accounting estimate. SFAS No. 154 is effective for accounting changes and corrections of errors in fiscal years beginning after December 31, 2005. Early adoption is permitted for accounting changes and corrections of errors made in fiscal years beginning after the date SFAS No. 154 is issued. We do not expect that the adoption of SFAS No. 154 will have a material impact on our consolidated financial statements.

In April 2005, the Securities and Exchange Commission issued release number 33-8568, *Amendment to Rule 4-01(a) of Regulation S-X Regarding the Compliance Date for Statement of Financial Accounting Standards No. 123 (Revised 2004), Share Based Payment*. This release delays the date for compliance with SFAS No. 123 (Revised 2004), *Share Based Payment* from the first interim or annual reporting period beginning after June 15, 2005 to the registrant’s first fiscal year beginning on or after June 15, 2005. SFAS No. 123R requires public entities to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award, and no longer allows companies to apply the intrinsic value based method of accounting for stock compensation described in APB Opinion No. 25, *Accounting for Stock Issued to Employees*. While we are still in the process of determining how we will adopt Statement 123R and what the impact on our financial statements will be, we do expect it to have an adverse effect on our consolidated statements of operations and earnings per share.

RISK FACTORS

Investing in our shares of common stock involves a high degree of risk. If any of the following risks occur, the market price of our shares of common stock could decline and investors could lose all or part of their investment.

RISKS RELATED TO OUR OPERATIONS

We face considerable business and financial risks related to our acquisition of Equator Technologies, Inc.

In June 2005, we completed the acquisition of Equator Technologies, Inc. (“Equator”), a privately held company, for an aggregate purchase price of \$117.9 million. The acquisition of Equator required a substantial expenditure and involves substantial risks on our part. Equator’s current product offerings and technological developments relate to internet protocol television (“IPTV”) set top boxes, digital media appliances, videoconferencing devices and security devices. These are emerging technologies and the markets they serve are as yet developing and largely untested, and we do not have direct experience developing and selling products into these markets. In addition, in making the acquisition of Equator we have made certain assumptions and projections with respect to the following: Equator’s revenue for future quarters; our expectations regarding the growth of the markets Equator serves; the ability of Equator to introduce new products and software and the risk that customers will not accept those new products and software; and the synergies we believe we can realize from the acquisition. We cannot be sure that such assumptions are correct. For these reasons we cannot provide assurance that the acquisition of Equator will produce the revenues, earnings or business synergies that we anticipate, or that it will perform as expected.

We may be unable to successfully integrate Equator Technologies, Inc., and any future acquisition or equity investment we make could disrupt our business and severely harm our financial condition.

We may not be able to successfully integrate businesses, products, technologies or personnel of Equator or of any other entity that we might acquire in the future and any failure to do so could disrupt our business and seriously harm our financial condition. In addition, if we acquire companies with weak internal controls, it will take time to get the acquired company up to the same level of operating effectiveness as Pixelworks and to implement adequate internal control, management, financial and operating reporting systems. Our inability to address these risks could negatively affect our operating results.

To date, we have acquired Pantera, Inc. in January 2001, nDSP in January 2002, Jaldi Semiconductor in September 2002 and Equator Technologies, Inc. in June 2005. In March 2003, we announced the execution of a definitive merger agreement with Genesis Microchip, Inc.; however, the merger was terminated in August of 2003, and we incurred \$8,949 of expenses related to the transaction. In the third quarter of 2003, we made an investment of \$10,000 in Semiconductor Manufacturing International Corporation (SMIC). We intend to continue to consider investments in or acquisitions of complementary businesses, products or technologies.

The acquisitions of Pantera, nDSP and Jaldi contained a very high level of risk primarily because the investments were made based on in-process technological development that may not have been completed, or if completed, may not have become commercially viable.

These and any future acquisitions and investments could result in:

- issuance of stock that dilutes current shareholders’ percentage ownership;
- incurrence of debt;
- assumption of liabilities;
- amortization expenses related to other intangible assets;
- impairment of goodwill;
- large and immediate write-offs; or
- decrease in cash that could otherwise serve as working capital.

Our operation of any acquired business will also involve numerous risks, including, but not limited to:

- problems combining the purchased operations, technologies or products;
- unanticipated costs;

- diversion of management's attention from our core business;
- adverse effects on existing business relationships with customers;
- risks associated with entering markets in which we have no or limited prior experience; and
- potential loss of key employees, particularly those of the acquired organizations.

The year ended December 31, 2004 was our first year of annual profitability since inception and we may be unable to achieve profitability in future periods.

While we had net income of \$21,781 for the year ended December 31, 2004, we incurred a net loss of \$1,439 in the six months ended June 30, 2005 and our accumulated deficit is \$61,027 through June 30, 2005. The year ended December 31, 2004 was our first year of annual profitability since inception. In the future we expect our research and development and selling, general and administrative expenses to increase. Given expected increases in operating expenses, we must increase revenues and gross profit to remain profitable. We cannot be certain that we will achieve profitability in the future or, if we do, that we can sustain or increase profitability on a quarterly or annual basis. This may in turn cause the price of our common stock to decline. In addition, if we are not profitable in the future we may be unable to continue our operations.

Fluctuations in our quarterly operating results make it difficult to predict our future performance and may result in volatility in the market price of our common stock.

Our quarterly operating results have varied from quarter to quarter and are likely to vary in the future based on a number of factors related to our industry and the markets for our products. Some of these factors are not in our control and any of them may cause the price of our common stock to fluctuate. These factors include:

- our success in integrating the operations of our recently acquired subsidiary, Equator Technologies, Inc.;
- demand for multimedia projectors, advanced televisions, LCD monitors, Internet protocol television ("IPTV") set top boxes, digital media appliances, videoconferencing devices, and other digital video display devices;
- demand for our products and the timing of orders for our products;
- the deferral of customer orders in anticipation of new products or product enhancements from us or our competitors or due to a reduction in our end customers' demand;
- the loss of one or more of our key distributors or customers or a reduction, delay or cancellation of orders from one or more of these parties;
- changes in the available production capacity at the semiconductor fabrication foundries that manufacture our products and changes in the costs of manufacturing;
- our ability to provide adequate supplies of our products to customers and avoid excess inventory;
- announcement or introduction of products and technologies by our competitors;
- changes in product mix, product costs or pricing, or distribution channels; and

- general economic conditions and economic conditions specific to the advanced display and semiconductor markets.

These factors are difficult or impossible to forecast, and these or other factors could seriously harm our business. We anticipate the rate of new orders may vary significantly from quarter to quarter.

Our operating expenses and inventory levels are based on our expectations of future revenues and our operating expenses are relatively fixed in the short term. Consequently, if anticipated sales and shipments in any quarter do not occur when expected, operating expenses and inventory levels could be disproportionately high, and our operating results for that quarter and, potentially, future quarters may be negatively impacted. Any shortfall in our revenues would have a direct impact on our business. In addition, fluctuations in our quarterly results could adversely affect the price of our common stock in a manner unrelated to our long-term operating performance. Because our operating results are volatile and difficult to predict, you should not rely on the results of one quarter as an indication of our future performance. It is possible that in some future quarter our operating results will fall below the expectations of securities analysts and investors. In this event, the price of our common stock may decline significantly.

Our products are characterized by average selling prices that decline over relatively short time periods, which will negatively affect financial results unless we are able to reduce our product costs or introduce new products with higher average selling prices.

Average selling prices for our products decline over relatively short time periods while many of our product costs are fixed. When our average selling prices decline, our gross profits decline unless we are able to sell more units or reduce the cost to manufacture our products. Our operating results are negatively affected when revenue or gross profit margins decline. We have experienced these results and expect that we will continue to experience them in the future, although we cannot predict when they may occur or how severe they will be.

Our highly integrated products and high-speed mixed signal products are difficult to manufacture without defects and the existence of defects could result in an increase in our costs and delays in the availability of our products.

The manufacture of semiconductors is a complex process and it is often difficult for semiconductor foundries to produce semiconductors free of defects. Because many of our products are more highly integrated than other semiconductors and incorporate mixed analog and digital signal processing and embedded memory technology, they are even more difficult to produce without defects.

The ability to manufacture products of acceptable quality depends on both product design and manufacturing process technology. Since defective products can be caused by either design or manufacturing difficulties, identifying quality problems can occur only by analyzing and testing our semiconductors in a system after they have been manufactured. The difficulty in identifying defects is compounded because the process technology is unique to each of the multiple semiconductor foundries we contract with to manufacture our products. Failure to achieve defect-free products due to their increasing complexity may result in an increase in our cost and delays in the availability of our products. For example, we have experienced field failures of our semiconductors in certain customer system applications that required us to institute additional semiconductor level testing. As a result of these field failures we incurred costs due to customers returning potentially affected products. Additionally, customers have experienced delays in receiving product shipments from us that resulted in the loss of revenue and profits. Shipment of defective products may also harm our reputation with customers.

If we do not achieve additional design wins in the future, our ability to grow would be seriously limited.

Our future success will depend on developers of advanced display products designing our products into their systems. To achieve design wins we must define and deliver cost-effective, innovative and integrated

semiconductors. Once a supplier's products have been designed into a system, the developer may be reluctant to change its source of components due to the significant costs associated with qualifying a new supplier. Accordingly, the failure on our part to obtain additional design wins with leading branded manufacturers or integrators, and to successfully design, develop and introduce new products and product enhancements could harm our business, financial condition and results of operations.

Achieving a design win does not necessarily mean that a developer will order large volumes of our products. A design win is not a binding commitment by a developer to purchase our products. Rather, it is a decision by a developer to use our products in the design process of that developer's products. Developers can choose at any time to discontinue using our products in their designs or product development efforts. If our products are chosen to be incorporated into a developer's products, we may still not realize significant revenues from that developer if that developer's products are not commercially successful or if that developer chooses to qualify a second source for the products that we promote.

Because of the complex nature of our semiconductor designs and of the associated manufacturing process and the rapid evolution of our customers' product designs, we may not be able to develop new products or product enhancements in a timely manner, which could decrease customer demand for our products and reduce our revenues.

The development of our semiconductors, some of which incorporate mixed analog and digital signal processing, is highly complex. These complexities require that we employ advanced designs and manufacturing processes that are unproven. We have experienced increased development time and delays in introducing new products that resulted in significantly less revenue than originally expected for those products. We will not always succeed in developing new products or product enhancements nor will we always do so in a timely manner. Acquisitions have significantly added to the complexity of our product development efforts. We must now coordinate very complex product development programs between multiple geographically dispersed locations.

Many of our designs involve the development of new high-speed analog circuits that are difficult to simulate and that require physical prototypes not required by the primarily digital circuits we currently design. The result could be longer and less predictable development cycles.

Successful development and timely introduction of new or enhanced products depends on a number of other factors, including:

- accurate prediction of customer requirements and evolving industry standards, including video decoding, digital interface and content piracy protection standards;
- development of advanced display technologies and capabilities;
- timely completion and introduction of new product designs;
- use of advanced foundry processes and achievement of high manufacturing yields; and
- market acceptance of the new products.

If we are not able to successfully develop and introduce our products in a timely manner, our business and results of operations will be adversely affected.

Integration of software in our products adds complexity and cost that may affect our ability to achieve design wins and may affect our profitability.

Our products incorporate software and software development tools. The integration of software adds complexity, may extend our internal development programs and could impact our customers' development schedules. This complexity requires increased coordination between hardware and software development schedules and may increase our operating expenses without a corresponding increase in product revenue. Some customers and potential customers may choose not to use our products because of the additional requirements of implementing our software, preferring to use a product that works with their existing software. This additional level of complexity lengthens the sales cycle and may result in customers selecting competitive products requiring less software integration.

A significant amount of our revenue comes from a few customers and distributors. Any decrease in revenues from, or loss of, any of these customers or distributors could significantly reduce our total revenues.

We are and will continue to be dependent on a limited number of large distributors and customers for a substantial portion of our revenue. Sales to distributors represented 53% of our total revenue for the six months ended June 30, 2005, and 69%, 69% and 68% of total revenue for the years ending December 31, 2004, 2003 and 2002, respectively. During the six months ended June 30, 2005, sales to Tokyo Electron Device Limited, or TED, our Japanese distributor, represented 25% of our total revenue. Sales to TED represented 31%, 39% and 45%, respectively, of our total revenue for the years ended December 31, 2004, 2003 and 2002. Sales to our top five end customers accounted for approximately 36% of our total revenue for the six months ended June 30, 2005, and 33%, 35% and 41% of our total revenue for the years ended December 31, 2004, 2003 and 2002, respectively. As a result of this distributor and end customer concentration, any one of the following factors could significantly impact our revenues:

- a significant reduction, delay or cancellation of orders from one or more of our key distributors, branded manufacturers or integrators; or
- a decision by one or more significant customers to select products manufactured by a competitor, or its own internally developed semiconductor, for inclusion in future product generations.

The display manufacturing market is highly concentrated among relatively few large manufacturers. We expect our operating results to continue to depend on revenues from a relatively small number of customers.

The concentration of our accounts receivable with a limited number of customers exposes us to increased credit risk and could harm our operating results and cash flows.

At June 30, 2005 we had two customers that represented more than 10% of our accounts receivable. TED represented 19% and 26% of total accounts receivable at June 30, 2005 and December 31, 2004, respectively. A second customer accounted for 11% and 9% of total accounts receivable at June 30, 2005 and December 31, 2004, respectively. A third customer represented 1% and 11% of total accounts receivable at June 30, 2005 and December 31, 2004, respectively. The failure to pay these balances by these or any other customer would result in an expense that would increase our operating expenses and would reduce our cash flows.

International sales account for almost all of our revenue, and if we do not successfully address the risks associated with our international operations, our revenue could decrease.

Sales outside the U.S. accounted for approximately 99% of total revenue for the six months ended June 30, 2005 and 2004. We anticipate that sales outside the U.S. will continue to account for a substantial portion of our revenue in future periods. In addition, customers who incorporate our products into their products sell a substantial portion outside of the U.S., thereby exposing us indirectly to further international risks. In addition, all of our products are manufactured outside of the U.S. We are, therefore, subject to many international risks, including, but not limited to:

- increased difficulties in managing international distributors and manufacturers of our products and components due to varying time zones, languages and business customs;
- foreign currency exchange fluctuations such as the devaluation in the currencies of Japan, People's Republic of China ("PRC"), Taiwan and Korea that could result in an increased cost of procuring our semiconductors;
- potentially adverse tax consequences, such as license fee revenue taxes imposed in Japan;
- difficulties regarding timing and availability of export and import licenses, which have limited our ability to freely move demonstration equipment and samples in and out of Asia;
- political and economic instability, particularly in the PRC, Taiwan and Korea;
- reduced or limited protection of our intellectual property, significant amounts of which are contained in software, which is more prone to design piracy;
- increased transaction costs related to sales transactions conducted outside of the U.S., such as charges to secure letters of credit for foreign receivables;
- difficulties in maintaining sales representatives outside of the U.S. that are knowledgeable about our industry and products;
- changes in the regulatory environment in the PRC, Japan, Korea and Taiwan that may significantly impact purchases of our products by our customers;
- outbreaks of SARS or other pandemics in the PRC or other parts of Asia; and
- difficulties in collecting accounts receivable.

Our growing presence and investment within the Peoples Republic of China subjects us to risks of economic and political instability in the area, which could adversely impact our results of operations.

A substantial and potentially increasing portion of our products are manufactured by foundries located in the PRC and a large number of our customers are geographically concentrated in the PRC. In addition, approximately 38% of our employees are located in this area and we made an investment of \$10,000 in SMIC, located in Shanghai, China in the third quarter of 2003. Disruptions from natural disasters, health epidemics (including new outbreaks of SARS or bird flu) and political, social and economic instability may affect the region, and would have a negative impact on our results of operations. In addition, the economy of the PRC differs from the economies of many countries in respects such as structure, government involvement, level of development, growth rate, capital reinvestment, allocation of resources, self-sufficiency, rate of inflation and balance of payments position, among others. In the past, the economy of the PRC has been primarily a planned economy subject to state plans. Since the entry of the PRC into the World Trade Organization in 2002, the PRC government has been reforming its economic and political systems. These reforms have resulted in significant economic growth and social change. We cannot assure, however, that the PRC's policies for economic reforms will be consistent or effective. Our results of operations and financial position may be harmed by changes in the PRC's political, economic or social conditions.

Our dependence on selling through distributors and integrators increases the complexity of managing our supply chain and may result in excess inventory or inventory shortages.

Selling through distributors and integrators reduces our ability to forecast sales and increases the complexity of our business. Since our distributors act as intermediaries between us and the companies using our products, we must rely on our distributors to accurately report inventory levels and production forecasts. Some of our products are sold to integrators, who then integrate our semiconductors into a system that is then sold to an original equipment manufacturer or “OEM.” This adds another layer between us and the ultimate source of demand for our products, the consumer. These arrangements require us to manage a more complex supply chain and monitor the financial condition and creditworthiness of our distributors, integrators and customers. Our failure to manage one or more of these challenges could result in excess inventory or shortages that could seriously impact our operating revenue or limit the ability of companies using our semiconductors to deliver their products.

Dependence on a limited number of sole-source, third party manufacturers for our products exposes us to shortages based on capacity allocation or low manufacturing yield, errors in manufacturing, price increases with little notice, volatile inventory levels and delays in product delivery, which could result in delays in satisfying customer demand, increased costs and loss of revenues.

We do not own or operate a semiconductor fabrication facility and we do not have the resources to manufacture our products internally. We rely on third-party foundries for wafer fabrication and other contract manufacturers for assembly and testing of our products. Our requirements represent only a small portion of the total production capacity of our contract manufacturers. Our third-party manufacturers have in the past re-allocated capacity to other customers even during periods of high demand for our products. We expect that this may occur again in the future. We have limited control over delivery schedules, quality assurance, manufacturing yields, potential errors in manufacturing and production costs. We do not have long-term supply contracts with our third-party manufacturers so they are not obligated to supply us with products for any specific period of time, in any specific quantity or at any specific price, except as may be provided in a particular purchase order. From time to time our third-party manufacturers increase prices charged to manufacture our products with little notice. This requires us to either increase the price we charge for our products or suffer a decrease in our gross margins. We try not to maintain substantial inventories of products, but need to order products long before we have firm purchase orders for those products which could result in excess inventory or inventory shortages.

If we are unable to obtain our products from manufacturers on schedule, our ability to satisfy customer demand will be harmed, and revenue from the sale of products may be lost or delayed. If orders for our products are cancelled, expected revenues would not be realized. In addition, if the price charged by our third-party manufacturers increases we will be required to increase our prices, which could harm our competitiveness.

The concentration of our manufacturers and customers in the same geographic region increases our risk that a natural disaster, labor strike or political unrest could disrupt our operations.

Most of our current manufacturers and customers are located in the PRC, Japan, Korea and Taiwan. The risk of earthquakes in the Pacific Rim region is significant due to the proximity of major earthquake fault lines in the area. A current manufacturer’s facilities were affected by a significant earthquake in Taiwan in September 1999. As a consequence of this earthquake, the manufacturer suffered power outages and disruption that impaired its production capacity. Earthquakes, fire, flooding, power outages and other natural disasters in the Pacific Rim region, or political unrest, labor strikes or work stoppages in countries where our manufacturers and customers are located likely would result in the disruption of our manufacturers’ and customers’ operations. Any disruption resulting from extraordinary events could cause significant delays in shipments of our products until we are able to shift our manufacturing from the affected contractor to another third-party vendor. There can be no assurance that alternative capacity could be obtained on favorable terms, if at all.

We use a COT, or customer owned tooling, process for manufacturing some of our products which exposes us to the possibility of poor yields and unacceptably high product costs.

We are building many of our products on a customer owned tooling basis, also known in the semiconductor industry as COT, where we directly contract the manufacture of wafers and assume the responsibility for the assembly and testing of our products. As a result, we are subject to increased risks arising from wafer manufacturing yields and risks associated with coordination of the manufacturing, assembly and testing process. Poor product yields would result in higher product costs, which could make our products uncompetitive with products offered by our competitors if we chose to increase our prices, or could result in low gross profit margins if we did not increase our prices.

We are dependent on our foundries to implement complex semiconductor technologies, which could adversely affect our operations if those technologies are not available, delayed or inefficiently implemented.

In order to increase performance and functionality and reduce the size of our products, we are continuously developing new products using advanced technologies that further miniaturize semiconductors. However, we are dependent on our foundries to develop and provide access to the advanced processes that enable such miniaturization. We cannot be certain that future advanced manufacturing processes will be implemented without difficulties, delays or increased expenses. Our business, financial condition and results of operations could be materially and adversely affected if advanced manufacturing processes are unavailable to us, substantially delayed or inefficiently implemented.

Manufacturers of our semiconductor products periodically discontinue manufacturing processes, which could make our products unavailable from our current suppliers.

Semiconductor manufacturing technologies change rapidly and manufacturers typically discontinue older manufacturing processes in favor of newer ones. Once a manufacturer makes the decision to retire a manufacturing process, notice is generally given to its customers. Customers will then either retire the affected part or develop a new version of the part that can be manufactured on the newer process. In the event that a manufacturing process is discontinued, our products could become unavailable from our current suppliers. Additionally, migrating to a new, more advanced process requires significant expenditures for research and development. A significant portion of our products use embedded DRAM technology and the required manufacturing process for this technology is anticipated to be available for at least the next two years. We also utilize 0.18um, 0.15um and 0.13um standard logic processes, which we expect will be readily available for the next five to seven years. We have commitments from our suppliers to notify us in the event of a discontinuance of a manufacturing process in order to assist us with product transitions.

If we have to qualify a new contract manufacturer or foundry for any of our products, we may experience delays that result in lost revenues and damaged customer relationships.

None of our products are fabricated by more than one supplier. Additionally, our products require manufacturing with state-of-the-art fabrication equipment and techniques. Because the lead-time needed to establish a relationship with a new contract manufacturer is at least six months, and the estimated time for us to adapt a product's design to a particular contract manufacturer's process is at least four months, there is no readily available alternative source of supply for any specific product. This could cause significant delays in shipping products, which may result in lost revenues and damaged customer relationships.

Our future success depends upon the continued services of key personnel, many of whom would be difficult to replace and the loss of one or more of these employees could seriously harm our business by delaying product development.

Our future success depends upon the continued services of our executive officers, key hardware and software engineers, and sales, marketing and support personnel, many of whom would be difficult to replace. The loss of one or more of these employees, particularly Allen Alley, our President and Chief Executive Officer, could seriously harm our business. In addition, because of the highly technical nature of

our business, the loss of key engineering personnel could delay product introductions and significantly impair our ability to successfully create future products. We believe our success depends, in large part, upon our ability to identify, attract and retain qualified hardware and software engineers, and sales, marketing, finance and managerial personnel. Competition for talented personnel is intense and we may not be able to retain our key personnel or identify, attract or retain other highly qualified personnel in the future. We have experienced, and may continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. If we do not succeed in hiring and retaining employees with appropriate qualifications, our product development efforts, revenues and business could be seriously harmed.

Because we do not have long-term commitments from our customers, and plan purchases based on estimates of customer demand which may be inaccurate, we must contract for the manufacture of our products based on those potentially inaccurate estimates.

Our sales are made on the basis of purchase orders rather than long-term purchase commitments. Our customers may cancel or defer purchase orders at any time. This process requires us to make multiple demand forecast assumptions, each of which may introduce error into our estimates. If our customers or we overestimate demand, we may purchase components or have products manufactured that we may not be able to use or sell. As a result, we would have excess inventory, which would negatively affect our operating results. Conversely, if our customers or we underestimate demand or if sufficient manufacturing capacity is unavailable, we would forego revenue opportunities, lose market share and damage our customer relationships.

Development projects may cause us to incur substantial operating expenses without the guarantee of any associated revenue or far in advance of revenue.

We have development projects that consume large amounts of engineering resources far in advance of product revenue. Our work under these projects is technically challenging and places considerable demands on our limited resources, particularly on our most senior engineering talent, and may not result in revenue for twelve to eighteen months, if at all. In addition, allocating significant resources to these projects may detract from or delay the completion of other important development projects. Any of these development projects could be canceled at any time without notice. These factors could have a material and adverse effect on our long-term business and results of operations.

Because of our long product development process and sales cycle, we may incur substantial expenses before we earn associated revenues and may not ultimately sell as many units of our products as we forecasted.

We develop products based on anticipated market and customer requirements and incur substantial product development expenditures, which can include the payment of large up-front, third-party license fees and royalties, prior to generating associated revenues. Because the development of our products incorporates not only our complex and evolving technology, but also our customers' specific requirements, a lengthy sales process is often required before potential customers begin the technical evaluation of our products. Our customers typically perform numerous tests and extensively evaluate our products before incorporating them into their systems. The time required for testing, evaluation and design of our products into a customer's equipment can take up to six months or more. It can take an additional six months before a customer commences volume shipments of systems that incorporate our products. Even when we achieve a design win, the customer may never ship systems incorporating our products. We cannot assure you that the time required for the testing, evaluation and design of our products by our customers would not exceed six months. Because of this lengthy development cycle, we will experience delays between the time we incur expenditures for research and development, sales and marketing, inventory levels and the time we generate revenues, if any, from these expenditures. Additionally, if actual sales volumes for a particular product are substantially less than originally forecasted, we may experience large write-offs of capitalized license fees, product masks and prepaid royalties that would negatively affect our operating results.

Shortages of other key components for our customers' products could delay our ability to sell our products.

Shortages of components and other materials that are critical to the design and manufacture of our customers' products could limit our sales. These components include liquid crystal display panels and other display components, analog-to-digital converters, digital receivers and video decoders. During 2000, some of our customers experienced delays in the availability of key components from other suppliers, which, in turn, caused a delay in demand for the products that we supplied to our customers.

Shortages of materials used in the manufacturing of our products may increase our costs or limit our revenues and impair our ability to ship our products on time.

From time to time, shortages of materials that are used in our products may occur. In particular, we may experience shortages of semiconductor wafers and packages. If material shortages occur, we may incur additional costs or be unable to ship our products to our customers in a timely fashion, both of which could harm our business and negatively impact our earnings.

Our products could become obsolete if necessary licenses of third-party technology are not available to us or are only available on terms that are not commercially viable.

We license technology from third parties that is incorporated into our products or product enhancements. Future products or product enhancements may require additional third-party licenses that may not be available to us or on terms that are commercially reasonable. If we are unable to obtain any third-party license required to develop new products and product enhancements, we may have to obtain substitute technology of lower quality or performance standards or at greater cost, either of which could seriously harm the competitiveness of our products.

We may not be able to respond to the rapid technological changes in the markets in which we compete, or we may not be able to comply with industry standards in the future making our products less desirable or obsolete.

The markets in which we compete or seek to compete are subject to rapid technological change, frequent new product introductions, changing customer requirements for new products and features, and evolving industry standards. The introduction of new technologies and the emergence of new industry standards could render our products less desirable or obsolete, which could harm our business. Examples of changing industry standards include the introduction of high-definition television, or HDTV, new video decoding technology (such as H.264 or Windows Media 9), new digital receivers and displays with resolutions that have required us to accelerate development of new products to meet these new standards.

Our software development tools may be incompatible with industry standards and challenging to implement, which could slow product development or cause us to lose customers and design wins.

Our existing products incorporate complex software tools designed to help customers bring products into production. Software development is a complex process and we are dependent on software development languages and operating systems from vendors that may compromise our ability to design software in a timely manner. Also, software development is a volatile market and new software languages are introduced to the market that may be incompatible with our existing systems and tools. New software development languages may not be compatible with our own, requiring significant engineering efforts to migrate our existing systems in order to be compatible with those new languages. Existing or new software development tools could make our current products obsolete or hard to use. Software development disruptions could slow our product development or cause us to lose customers and design wins.

Our integrated circuits and software could contain defects, which could reduce sales of those products or result in claims against us.

Despite testing by both our customers and us, errors or performance problems may be found in existing or new semiconductors and software. This could result in a delay in the recognition or loss of revenues, loss of market share or failure to achieve market acceptance. These defects may cause us to incur significant warranty, support and repair costs. They could also divert the attention of our engineering personnel from our product development efforts and harm our relationships with our customers. The occurrence of these problems could result in the delay or loss of market acceptance of our semiconductors and would likely harm our business. Defects, integration issues or other performance problems in our semiconductors and software could result in financial or other damages to our customers or could damage market acceptance of our products. Our customers could also seek damages from us for their losses. A product liability claim brought against us, even if unsuccessful, would likely be time consuming and costly to defend.

Others may bring infringement actions against us that could be time-consuming and expensive to defend.

We may become subject to claims involving patents or other intellectual property rights. For example, in early 2000, we were notified by InFocus Corporation ("InFocus") that we were infringing on patents held by InFocus. In February 2000, we entered into a license agreement with InFocus granting us the right to use the technology covered by those InFocus patents. As a result, we recorded a one-time charge of \$4,078 for patent settlement expense in the first quarter of 2000. Intellectual property claims could subject us to significant liability for damages and invalidate our proprietary rights. In addition, intellectual property claims may be brought against customers that incorporate our products in the design of their own products. These claims, regardless of their success or merit and regardless of whether we are named as defendants in a lawsuit, would likely be time-consuming and expensive to resolve and would divert the time and attention of management and technical personnel. Any future intellectual property litigation or claims also could force us to do one or more of the following:

- stop selling products using technology that contains the allegedly infringing intellectual property;
- attempt to obtain a license to the relevant intellectual property, which license may not be available on reasonable terms or at all;
- attempt to redesign those products that contain the allegedly infringing intellectual property; and
- pay damages for past infringement claims that are determined to be valid or which are arrived at in settlement of such litigation or threatened litigation.

If we are forced to take any of the foregoing actions, we may be unable to manufacture and sell our products, which could seriously harm our business. In addition, we may not be able to develop, license or acquire non-infringing technology under reasonable terms. These developments could result in an inability to compete for customers or could adversely affect our ability to increase our earnings.

Our limited ability to protect our intellectual property and proprietary rights could harm our competitive position by allowing our competitors to access our proprietary technology and to introduce similar products.

Our ability to compete effectively with other companies will depend, in part, on our ability to maintain the proprietary nature of our technology, including our semiconductor designs and software. We rely on a combination of patent, copyright, trademark and trade secret laws, as well as nondisclosure agreements and other methods, to protect our proprietary technologies. We hold 36 patents and have 77 patent applications pending for protection of our significant technologies. We cannot assure you that the degree of protection offered by patents or trade secret laws will be sufficient. Furthermore, we cannot assure you that any patents will be issued as a result of any pending applications, or that, if issued, any claims allowed will be sufficiently broad to protect our technology. In addition, it is possible that existing or future patents may be

challenged, invalidated or circumvented. Competitors in both the U.S. and foreign countries, many of whom have substantially greater resources, may apply for and obtain patents that will prevent, limit or interfere with our ability to make and sell our products, or develop similar technology independently or design around our patents. Effective copyright, trademark and trade secret protection may be unavailable or limited in foreign countries. In addition, we provide the computer programming code for our software to selected customers in connection with their product development efforts, thereby increasing the risk that customers will misappropriate our proprietary software.

Goodwill represents a significant portion of our total assets.

As of June 30, 2005, goodwill amounted to \$120,603 or approximately 28% of our total assets. We are required to review goodwill for possible impairment on an annual basis or when events and circumstances arise which indicate a possible impairment. The review of goodwill for impairment may result in large write-offs of goodwill, which could have a material adverse effect on our results of operations.

We have incurred substantial indebtedness as a result of the sale of convertible debentures.

In the second quarter of 2004, we issued \$150,000 of 1.75% convertible debentures due 2024 in a private placement pursuant to Rule 144A and Regulation S under the Securities Act of 1933. As a result of this indebtedness, our principal obligations increased substantially. These debt obligations could materially and adversely affect our ability to obtain debt financing for working capital, acquisitions or other purposes, limit our flexibility in planning for or reacting to changes in our business, reduce funds available for use in our operations and could make us more vulnerable to industry downturns and competitive pressures. Our ability to meet our debt service obligations will be dependent upon our future performance, which will be subject to financial, business and other factors affecting our operations, many of which are beyond our control.

Failure to manage our expansion effectively could adversely affect our ability to increase our business and our results of operations.

Our ability to successfully market and sell our products in a rapidly evolving market requires effective planning and management processes. We continue to increase the scope of our operations domestically and internationally and have increased our headcount from 349 employees at the end of 2004 to 494 at June 30, 2005, which includes 69 employees from our acquisition of Equator Technologies, Inc. Our past growth, and our expected future growth, places a significant strain on our management systems and resources including our financial and managerial controls, reporting systems and procedures. To manage our growth effectively, we must implement and improve operational and financial systems, train and manage our employee base and attract and retain qualified personnel with relevant experience. We must also manage multiple relationships with customers, business partners, contract manufacturers, suppliers and other third parties. Moreover, we could spend substantial amounts of time and money in connection with our rapid growth and may have unexpected costs. Our systems, procedures or controls may not be adequate to support our operations and we may not be able to expand quickly enough to exploit potential market opportunities. While we have not, to date, suffered any significant adverse consequences due to our growth, if we do not continue to manage growth effectively our operating expenses could increase more rapidly than our revenue, causing decreased profitability.

Risks Related to Our Industry

Failure of consumer demand for advanced displays and other digital display technologies to increase would impede our growth and adversely affect our business.

Our product development strategies anticipate that consumer demand for flat panel displays, digital televisions, IPTV televisions and set top boxes and other emerging display technologies will increase in the future. The success of our products is dependent on increased demand for these display technologies. The

potential size of the market for products incorporating these display technologies and the timing of its development are uncertain and will depend upon a number of factors, all of which are beyond our control. In order for the market for many of our products to grow, advanced display products must be widely available and affordable to consumers. In the past, the supply of advanced display products has been cyclical. We expect this pattern to continue. Undercapacity in the advanced display market may limit our ability to increase our revenues because our customers may limit their purchases of our products if they cannot obtain sufficient supplies of LCD panels or other advanced display components. In addition, advanced display prices may remain high because of limited supply, and consumer demand may not grow.

If products incorporating our semiconductors are not compatible with computer display protocols, video standards and other devices, the market for our products will be reduced and our business prospects could be significantly limited.

Our products are incorporated into our customers' products, which have different parts and specifications and utilize multiple protocols that allow them to be compatible with specific computers, video standards and other devices. If our customers' products are not compatible with these protocols and standards, consumers will return these products, or consumers will not purchase these products, and the markets for our customers' products could be significantly reduced. As a result, a portion of our market would be eliminated, and our business would be harmed.

Intense competition in our markets may reduce sales of our products, reduce our market share, decrease our gross profit and result in large losses.

Rapid technological change, evolving industry standards, compressed product life cycles and declining average selling prices are characteristics of our market and could have a material adverse effect on our business, financial condition and results of operations. As the overall price of advanced flat panel display screens continues to fall, we may be required to offer our products to manufacturers at discounted prices due to increased price competition. At the same time, new, alternative technologies and industry standards may emerge that directly compete with technologies that we offer. We may be required to increase our investment in research and development at the same time that product prices are falling. In addition, even after making this investment, we cannot assure you that our technologies will be superior to those of our competitors or that our products will achieve market acceptance, whether for performance or price reasons. Failure to effectively respond to these trends could reduce the demand for our products.

We compete with specialized and diversified electronics and semiconductor companies that offer advanced display, digital TV and IPTV semiconductor products. Some of these include ATI, Genesis Microchip, I-Chips, ITE, Macronix, Mediatek, Media Reality Technologies, Micronas, MStar Semiconductor, Inc., Oplus, Realtek, Sigma Designs, Silicon Image, Silicon Optix, STMicroelectronics, Techwell, Topro, Trident, Trumpion, Weltrend, Zoran and other companies. Potential competitors may include diversified semiconductor manufacturers and the semiconductor divisions or affiliates of some of our customers, including Intel, Koninklijke Philips Electronics, LG Electronics, Matsushita Electric Industrial, Mitsubishi, National Semiconductor, NEC, nVidia, Samsung Electronics, Sanyo Electric Company, Sharp Corporation, Sony Corporation, Texas Instruments and Toshiba Corporation. In addition, start-up companies may seek to compete in our markets. Many of our competitors have longer operating histories and greater resources to support development and marketing efforts. Some of our competitors may operate their own fabrication facilities. These competitors may be able to react more quickly and devote more resources to efforts that compete directly with our own. In the future, our current or potential customers may also develop their own proprietary technologies and become our competitors. Our competitors may develop advanced technologies enabling them to offer more cost-effective and higher quality semiconductors to our customers than those offered by us. Increased competition could harm our business, financial condition and results of operations by, for example, increasing pressure on our profit margin or causing us to lose sales opportunities. We cannot assure you that we can compete successfully against current or potential competitors.

The cyclical nature of the semiconductor industry may lead to significant variances in the demand for our products and could harm our operations.

In the past, the semiconductor industry has been characterized by significant downturns and wide fluctuations in supply and demand. Also, during this time, the industry has experienced significant fluctuations in anticipation of changes in general economic conditions, including economic conditions in Asia and North America. The cyclical nature of the semiconductor industry has led to significant variances in product demand and production capacity. It has also accelerated erosion of average selling prices per unit. We may experience periodic fluctuations in our future financial results because of changes in industry-wide conditions.

Other Risks

The anti-takeover provisions of Oregon law and in our articles of incorporation could adversely affect the rights of the holders of our common stock by preventing a sale or takeover of us at a price or prices favorable to the holders of our common stock.

Provisions of our articles of incorporation and bylaws and provisions of Oregon law may have the effect of delaying or preventing a merger or acquisition of us, making a merger or acquisition of us less desirable to a potential acquirer or preventing a change in our management, even if the shareholders consider the merger or acquisition favorable or if doing so would benefit our shareholders. In addition, these provisions could limit the price that investors would be willing to pay in the future for shares of our common stock. The following are examples of such provisions in our articles of incorporation or bylaws:

- our board of directors is authorized, without prior shareholder approval, to create and issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us or change our control, commonly referred to as “blank check” preferred stock;
- members of our board of directors can only be removed for cause;
- the board of directors may alter our bylaws without obtaining shareholder approval; and
- shareholders are required to provide advance notice for nominations for election to the board of directors or for proposing matters to be acted upon at a shareholder meeting.

Our principal shareholders have significant voting power and may take actions that may make it more difficult to sell our shares at a premium to take over candidates.

Our executive officers, directors and other principal shareholders, in the aggregate, beneficially own 20,664,823 shares or approximately 43% of our outstanding common stock and exchangeable shares as of July 31, 2005. These shareholders currently have, and will continue to have, significant influence with respect to the election of our directors and approval or disapproval of our significant corporate actions. This influence over our affairs might be adverse to the interest of our other shareholders. In addition, the voting power of these shareholders could have the effect of delaying or preventing a change in control of our business or otherwise discouraging a potential acquirer from attempting to obtain control of us, which could prevent our other shareholders from realizing a premium over the market price for their common stock.

The price of our common stock has and may continue to fluctuate substantially.

Investors may not be able to sell shares of our common stock at or above the price they paid due to a number of factors, including:

- actual or anticipated fluctuations in our operating results;

- changes in expectations as to our future financial performance;
- changes in financial estimates of securities analysts;
- announcements by us or our competitors of technological innovations, design wins, contracts, standards or acquisitions;
- the operating and stock price performance of other comparable companies;
- announcements of future expectations by our customers;
- changes in market valuations of other technology companies; and
- inconsistent trading volume levels of our common stock.

In particular, the stock prices of technology companies similar to us have been highly volatile. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. Market fluctuations as well as general economic, political and market conditions including recessions, interest rate changes or international currency fluctuations, may negatively impact the market price of our common stock. Therefore, the price of our common stock may decline, and the value of your investment may be reduced regardless of our performance.

We may be unable to meet our future capital requirements, which would limit our ability to grow.

We believe our current cash and marketable security balances will be sufficient to meet our capital requirements for the next twelve months. However, we may need, or could elect to seek, additional funding prior to that time. To the extent that currently available funds are insufficient to fund our future activities, we may need to raise additional funds through public or private equity or debt financing. Additional funds may not be available on terms favorable to us or our shareholders. Further, if we issue equity securities, our shareholders may experience additional dilution or the new equity securities may have rights, preferences or privileges senior to those of our common stock. If we cannot raise funds on acceptable terms, we may not be able to develop or enhance our products, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements.

We may be unable to meet changing laws, regulations and standards relating to corporate governance and public disclosure.

We are spending an increasing amount of management time and external resources to comply with changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new SEC regulations and NASDAQ Stock Market rules. In particular, Section 404 of the Sarbanes-Oxley Act of 2002 requires management's annual review and evaluation of our internal control systems, and attestations of the effectiveness of these systems by our independent registered public accounting firm. The process of documenting and testing our controls has required that we hire additional personnel and outside advisory services and has resulted in additional accounting and legal expenses. While we invested significant time and money in our effort to evaluate and test our internal control over financial reporting, a material weakness was identified in our internal control over financial reporting in 2004. Although we believe that we have remediated the material weakness identified, our disclosure of this material weakness may impact investor perception of our company and may affect our stock price. In addition, there are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including cost limitations, the possibility of human error, judgments and assumptions regarding the likelihood of future events, and the circumvention or

overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can provide only reasonable assurance of achieving their control objectives.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our primary market risk exposure is the impact of interest rate fluctuations on interest income earned on our investment portfolio. We mitigate risks associated with such fluctuations, as well as the risk of loss of principal, by investing in high-credit quality securities and limiting concentrations of issuers and maturity dates. Derivative financial instruments are not part of our investment portfolio.

As of June 30, 2005, we had convertible subordinated debentures of \$150,000 outstanding with a fixed interest rate of 1.75%. Interest rate changes affect the fair value of the debentures, but do not affect our earnings or cash flow.

All of our sales are denominated in U.S. dollars and as a result, we have relatively little exposure to foreign currency exchange risk with respect to our sales. We have employees located in offices in Canada, Japan, Taiwan, the People's Republic of China, and Korea, and as such, a portion of our operating expenses are denominated in foreign currencies. Accordingly, our operating results are affected by changes in the exchange rate between the U.S. dollar and those currencies. Any future strengthening of those currencies against the U.S. dollar could negatively impact our operating results by increasing our operating expenses as measured in U.S. dollars. While we cannot reasonably estimate the effect that an immediate 10% change in foreign currency exchange rates would have on our operating results or cash flows, we believe that the effect would not be material. We do not currently hedge against foreign currency rate fluctuations.

Item 4. Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures.

Our management, with the participation of our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), carried out an evaluation of the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report pursuant to Securities Exchange Act Rule 13a-15(e) and 15d-15(e). Based upon this evaluation, our CEO and CFO concluded that our controls and procedures are effective in timely alerting them to material information regarding the Company (including its consolidated subsidiaries) required to be included in our periodic SEC filings.

(b) Changes in Internal Controls.

There has been no change in our internal control over financial reporting during the quarter ended June 30, 2005 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II – OTHER INFORMATION

Item 4. Submission of Matters to a Vote of Security Holders

The 2005 Annual Meeting of Shareholders of Pixelworks, Inc. was held on May 24, 2005 to conduct the following items of business:

1. To elect five Directors to serve for the following year or until their successors are elected;
2. To amend Pixelworks' 1997 Stock Incentive Plan to prohibit repricing of options without shareholder approval;
3. To amend Pixelworks' 1997 Stock Incentive Plan to increase the number of shares available for grant under the plan;

4. To ratify the appointment of KPMG LLP as Pixelworks' independent registered public accounting firm for the current fiscal year; and
5. To transact any other business that properly comes before the meeting.

The following nominees were elected to serve on the board of directors by the votes and terms indicated below:

<u>Nominee</u>	<u>For</u>	<u>Withheld</u>	<u>Term Ending</u>
Allen H. Alley	38,254,769	3,262,154	2006
Mark Christensen	40,394,079	1,122,844	2006
C. Scott Gibson	37,379,090	4,137,833	2006
Frank Gill	37,186,095	4,330,828	2006
Bruce Walicek	39,706,804	1,810,119	2006

The proposal to amend Pixelworks' 1997 Stock Incentive Plan to prohibit repricing of options without shareholder approval was approved and received the following votes:

	<u>No. of Votes</u>
For	25,364,446
Against	1,378,118
Abstain	37,156

The proposal to amend Pixelworks' 1997 Stock Incentive Plan to increase the number of shares available for grant under the plan was approved and received the following votes:

	<u>No. of Votes</u>
For	18,930,106
Against	7,787,062
Abstain	62,552

The proposal to ratify the appointment of KPMG LLP as Pixelworks' independent registered public accounting firm for the current fiscal year was approved and received the following votes:

	<u>No. of Votes</u>
For	39,245,800
Against	2,252,209
Abstain	18,914

There were no other matters of business that properly came before the meeting that were voted upon.

Item 6. Exhibits

- 10.1 Equator Technologies, Inc. 1996 Stock Option Plan, as amended (incorporated by reference to Exhibit 99.1 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.2 Stock Option Agreement, dated April 18, 2002, between Equator Technologies, Inc. and Christopher H. Basoglu (incorporated by reference to Exhibit 99.2 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.3 Stock Option Agreement, dated April 8, 2003, between Equator Technologies, Inc. and Christopher H. Basoglu (incorporated by reference to Exhibit 99.3 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.4 Stock Option Agreement, dated November 11, 2003, between Equator Technologies, Inc. and Christopher H. Basoglu (incorporated by reference to Exhibit 99.4 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.5 Stock Option Agreement, dated April 18, 2002, between Equator Technologies, Inc. and Richard E. Christopher (incorporated by reference to Exhibit 99.5 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.6 Stock Option Agreement, dated April 8, 2003, between Equator Technologies, Inc. and Richard E. Christopher (incorporated by reference to Exhibit 99.6 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.7 Stock Option Agreement, dated November 11, 2003, between Equator Technologies, Inc. and Richard E. Christopher (incorporated by reference to Exhibit 99.7 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.8 Stock Option Agreement, dated September 15, 2004, between Equator Technologies, Inc. and Richard E. Christopher (incorporated by reference to Exhibit 99.8 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.9 Stock Option Agreement, dated November 11, 2003, between Equator Technologies, Inc. and Michael Myhre (incorporated by reference to Exhibit 99.9 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.10 Stock Option Agreement, dated July 18, 2002, between Equator Technologies, Inc. and Tedford Niday (incorporated by reference to Exhibit 99.10 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.11 Stock Option Agreement, dated April 8, 2003, between Equator Technologies, Inc. and Tedford Niday (incorporated by reference to Exhibit 99.11 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +

- 10.12 Stock Option Agreement, dated November 11, 2003, between Equator Technologies, Inc. and Tedford Niday (incorporated by reference to Exhibit 99.12 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.13 Stock Option Agreement, dated March 29, 2001, between Equator Technologies, Inc. and John O'Donnell (incorporated by reference to Exhibit 99.13 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.14 Stock Option Agreement, dated July 18, 2002, between Equator Technologies, Inc. and John O'Donnell (incorporated by reference to Exhibit 99.14 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.15 Stock Option Agreement, dated April 8, 2003, between Equator Technologies, Inc. and John O'Donnell (incorporated by reference to Exhibit 99.15 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.16 Stock Option Agreement, dated November 11, 2003, between Equator Technologies, Inc. and John O'Donnell (incorporated by reference to Exhibit 99.16 to the Company's Registration Statement on Form S-8 filed June 17, 2005). +
- 10.17 Pixelworks, Inc. 1997 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 99.1 to the Company's Registration Statement on Form S-8 filed June 21, 2005). +
- 10.18 Office Lease dated April 12, 2001, by and between Equator Technologies, Inc. and Pike Street Delaware, Inc.
- 10.19 Real Property Lease dated March 21, 2001, by and between Equator Technologies, Inc. and Limar Realty Corp. #30.
- 31.1 Certification of Chief Executive Officer.
- 31.2 Certification of Chief Financial Officer.
- 32.1 Certification of Chief Executive Officer.
- 32.2 Certification of Chief Financial Officer.

+ Indicates a management contract or compensation arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PIXELWORKS, INC.
(Registrant)

Date: August 9, 2005

By: /s/ Jeffrey B. Bouchard
Jeffrey B. Bouchard
*Vice President, Finance and
Chief Financial Officer*

OFFICE LEASE

520 PIKE TOWER

WITH

EQUATOR TECHNOLOGIES, INC.

SUITE: 900

DATED: April 12, 2001

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<u>ARTICLE 31:</u>	<u>DISABILITIES ACTS</u>
<u>ARTICLE 32:</u>	<u>DEFINITIONS</u>
<u>ARTICLE 33:</u>	<u>OFFER</u>
<u>ARTICLE 34:</u>	<u>YEAR 2000 PERFORMANCE</u>
<u>ARTICLE 35:</u>	<u>MISCELLANEOUS</u>
<u>ARTICLE 36:</u>	<u>ENTIRE AGREEMENT</u>

EXHIBITS/RIDERS
1.M

OFFICE LEASE

THIS OFFICE LEASE ("Lease") is made and entered into as of the 12th day of April, 2001, by and between PIKE STREET DELAWARE, INC. ("Landlord"), a Delaware corporation, and EQUATOR TECHNOLOGIES, INC. ("Tenant"), a California corporation.

WITNESSETH:

ARTICLE 1: BASIC PROVISIONS

This Article contains the basic lease provisions between Landlord and Tenant.

- A. Building:** 520 Pike Tower, located at 520 Pike Street, Seattle, Washington (the "Property", as further described in Article 32 and Exhibit A-1).
- B. Premises:** Suite 900 in the Building as outlined or cross-hatched on Exhibit A-2.
- C. Commencement Date:** October 1, 2001 subject to Article 3.
- D. Expiration Date:** September 30, 2006 subject to Article 3.
- E. Rentable Area:** The rentable area of the Premises shall be deemed 16,500 square feet, and the rentable area of the Property shall be deemed 362,690 square feet, for purposes of this Lease, subject to Article 32.
- F. Tenant's Share:** Four point five five percent (4.55%), subject to Articles 4 and 32.
- G. Base Rent:** \$48,125.00 per month from the Commencement Date through September 30, 2002, and \$49,500.00 per month from October 1, 2002 through September 30, 2003, and \$50,875.00 per month from October 1, 2003 through September 30, 2004, and \$52,250.00 per month from October 1, 2004 through September 30, 2005, and \$53,625.00 per month thereafter through the Expiration Date, as further described in Article 4.
- H. Additional Rent:** Tenant shall pay Tenant's Share of Taxes and Expenses in excess of the amounts respectively for the years 2001 ("Base Tax Year") and 2001 ("Base Expense Year"), as further described in Article 4.
- I. Permitted Use:** Executive and administrative offices, subject to Article 7.
- J. Security Deposit:** \$59,000.00, which shall be subject to Article 16.
- PRIOR LEASE BETWEEN THE PARTIES:** Landlord, as successor in interest to Sixth & Pike Associates, L.P., and Tenant are parties to a lease for the Premises dated September 13, 1996 which lease was modified by the Lease Termination Agreement between the parties dated July 17, 2000 (the "Prior Lease"). Upon the Commencement Date herein, this Lease shall supercede the Prior Lease and provided Tenant is not in default under the Prior Lease, the security deposit shall be applied toward the Security Deposit required herein.
- K. Broker (if any):** Washington Partners, Inc. who shall be paid by Landlord, subject to Article 26.
- L. Guarantor(s):** N/A
- M. Riders/Exhibits:** In addition to Exhibit A-1 (Property), Exhibit A-2 (Premises) and Rider One (Rules), this Lease includes: Work Agreement and Parking Agreement.

N. Landlord's Notice Address (subject to Article 25):

c/o Tower Realty Management Corporation
520 Pike Street - Office of the Building
Seattle, Washington 98101
Attention: Property Manager

with copy to:

c/o Tower Realty Management Corporation
255 Shoreline Drive, Suite 600
Redwood City, California 94065
Attention: Asset Manager

O. Tenant's Notice Address (subject to Article 25):

Equator Technologies, Inc.
520 Pike Street, Suite 900
Seattle, Washington 98101
Attention: Office Manager

and with a copy to:

Equator Technologies, Inc.
1300 Whit Oaks Road
Campbell, CA 95008
Attention: Facilities/Human Resources Director

P. Rent Payments:

Rent shall be paid to "Pike Street Delaware, Inc." at 75 Remittance Drive, Suite 1118, Chicago, Illinois 60675-1118 or such other parties and addresses as to which Landlord shall provide advance notice.

The foregoing provisions shall be interpreted and applied in accordance with the other provisions of this Lease. The terms of this Article, and the terms defined in Article 32 and other Articles, shall have the meanings specified therefor when used as capitalized terms in other provisions of this Lease or related documentation (except as expressly provided to the contrary therein).

ARTICLE 2: PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises subject to the provisions herein contained. Tenant has inspected the Premises (and portions of the Property, Systems and Equipment providing access to or serving the Premises) or has had an opportunity to do so, and agrees to accept the same "as is" without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs, installations or improvements unless expressly provided under this Lease.

ARTICLE 3: TERM AND COMMENCEMENT

A. Term and Confirmation. The term ("Term") of this Lease shall commence on the Commencement Date and end on the Expiration Date, unless sooner terminated as provided herein, subject to adjustment as provided below and the other provisions hereof. If the Commencement Date is advanced or postponed as provided below, the Expiration Date set forth in Article 1 shall not be changed, unless Landlord so elects by notice to Tenant. Tenant shall execute a confirmation of the Commencement Date and other matters in such form as Landlord may reasonably request within ten (10) days after requested; any failure to respond within such time shall be deemed an acceptance of the matters as set forth in Landlord's confirmation. If Tenant disagrees with Landlord's adjustment of the Commencement Date, Tenant shall pay Rent and perform all other obligations commencing on the date determined by Landlord, subject to refund or credit when the matter is resolved.

B. Early Commencement. The Commencement Date, Rent and Tenant's other obligations shall be advanced to such earlier date as: (i) Landlord substantially completes any improvements to the Premises required under this Lease to an extent that Tenant is able to occupy the Premises, and Landlord delivers possession thereof, or (ii) Tenant, with Landlord's written permission, otherwise commences occupying the Premises. If either such events occurs with respect to a portion of the Premises, the Commencement Date, Rent and Tenant's other obligations shall be so advanced with respect to such portion (and fairly prorated based on the rentable square footage involved). During any period that Tenant shall be permitted to enter the Premises prior to the Commencement Date other than to occupy the same (e.g., to perform alterations or improvements), Tenant shall comply with all terms and provisions of this Lease, except those provisions requiring the payment of Base Rent. Landlord shall permit early entry, so long as the Premises are legally available, Landlord has completed any work required under this Lease, and Tenant is in compliance with the other provisions of this Lease, including the insurance requirements under Article 10.

C. Commencement Delays. The Commencement Date, Rent and Tenant's other obligations shall be postponed to the extent Tenant is unable to occupy the Premises because Landlord fails: (i) to substantially complete any improvements to the Premises required to be performed by Landlord under this Lease, or (ii) to deliver possession of the Premises for any other reason, including holding over by prior occupants, except to the extent that Tenant, its contractors, agents or employees in any way contribute to either such failures. If either such event occurs with respect to a portion of the Premises, the Commencement Date, Rent and Tenant's other obligations shall be so postponed with respect to such portion (and fairly prorated based on the rentable square footage involved). If Landlord so fails for a ninety (90) day initial grace period, Tenant shall have the right to terminate this Lease by notice within ten (10) days thereafter, subject to Landlord's right to cure as provided in Article 21. Any such delay in the Commencement Date shall not subject Landlord to liability for loss or damage resulting therefrom, and Tenant's sole recourse with respect thereto shall be the postponement of Rent and other obligations and right to terminate this Lease described herein.

ARTICLE 4: BASE RENT AND ADDITIONAL RENT

A. Base Rent. Tenant shall pay Landlord the monthly Base Rent set forth in Article 1 in advance on or before the first day of each calendar month during the Term; provided, Tenant shall pay Base Rent for the first full calendar month for which Base Rent shall be due (and any initial partial month) when Tenant executes this Lease.

B. Taxes and Expenses. Tenant shall pay Landlord Tenant's Share of Taxes and Expenses in excess of the amounts of Taxes and Expenses respectively for the Base Tax Year and Base Expense Year in the manner described below. The foregoing capitalized terms shall have the meanings specified therefor in Articles 1 and 32.

C. Payments. Tenant shall pay such amounts as follows:

(i) Landlord may reasonably estimate in advance the amounts Tenant shall owe for Taxes and Expenses for any full or partial calendar year of the Term. In such event, Tenant shall pay such estimated amounts, on a monthly basis, on or before the first day of each calendar month, together with Tenant's payment of Base Rent. Such estimate may be reasonably adjusted from time to time by Landlord, including adjustments to reflect the final Tax bills each year.

(ii) Within 120 days after the end of each calendar year, or as soon thereafter as practicable, Landlord shall provide a statement (the "Statement") to Tenant showing: (a) the amount of actual Taxes and Expenses for such calendar year, with a listing of amounts for major categories of Expenses, (b) any amount paid by Tenant towards Taxes and Expenses during such calendar year on an estimated basis, and (c) any revised estimate of Tenant's obligations for Taxes and Expenses for the current calendar year.

(iii) If the Statement shows that Tenant's estimated payments were less than Tenant's actual obligations for Taxes and Expenses for such year, Tenant shall pay the difference within ten (10) days after Landlord sends the Statement.

(iv) If the Statement shows an increase in Tenant's estimated payments for the current calendar year, Tenant shall: (a) pay the difference between the new and former estimates

for the period from January 1 of the current calendar year through the month in which the Statement is sent within ten (10) days after Landlord sends the Statement, and (b) thereafter pay the new estimated amount until Landlord further revises such estimated amount.

(v) If the Statement shows that Tenant's estimated payments exceeded Tenant's actual obligations for Taxes and Expenses, Landlord shall credit the difference against payment of Rent next due. If the Term shall have expired and no further Rent shall be due, Landlord shall provide a refund of such difference at the time Landlord sends the Statement.

(vi) Landlord reserves the right to reasonably change, from time to time, the manner or timing of Tenant's payments for Taxes and Expenses. In lieu of providing one Statement covering all such items, Landlord may provide separate statements, at the same or different times, including separate statements for Taxes after bills are received.

(vii) Tenant acknowledges that Landlord's ability to budget and incur expenses depends on the finality of such Statement, and accordingly agrees that time is of the essence of this Paragraph. If Tenant takes exception to any matter contained in the Statement as provided herein, Tenant shall notify Landlord of such exception in writing not later than thirty (30) days following Tenant's receipt of such statement, and Landlord shall refer the matter to an independent certified public accountant, whose certification as to the proper amount shall be final and conclusive as between Landlord and Tenant. Tenant shall promptly pay the cost of such certification unless such certification determines that Tenant was overbilled by more than 5%. Pending resolution of any such exceptions in the foregoing manner, Tenant shall continue paying Tenant's Share of Taxes and Expenses in the amounts determined by Landlord, subject to adjustment after any such exceptions are so resolved. If such certification determines that Tenant was overbilled, then Tenant shall receive a credit for the amount of such overbilling against payments of Rent next due.

D. Fiscal Years and Tax Years. If Landlord now or hereafter uses a non-calendar fiscal year: (i) all references to calendar years herein shall refer to such fiscal years, (ii) all references to January 1 and December 31 herein shall refer, respectively, to the first and last days of such fiscal years as the context requires, and (iii) if Landlord changes fiscal years, Landlord shall make appropriate prorations such that Tenant's obligations hereunder are not materially adversely affected thereby. Subject to Paragraph E below, Landlord shall include in Taxes each year hereunder: (a) in general, the amounts levied, assessed or imposed for such year, whether paid or payable in another year, (b) for personal property taxes, the amounts paid during such year, and (c) for Taxes paid in installments over more than one year, the amounts paid each year, and any interest thereon. If any taxing authority uses a fiscal year other than a calendar year, Landlord may elect from time to time, consistent with sound accounting and management practices, to require payments by Tenant based on: (x) amounts paid or payable during each calendar year without regard to such fiscal years, (y) amounts paid or payable during each calendar year, averaging the bills for each calendar year based on the number of days or months of such calendar year included in each fiscal tax year, or (z) amounts paid or payable for or during each fiscal tax year.

E. Tax Refunds, Protest Costs, and Expense Adjustments For Prior Years. Landlord shall each year: (i) credit against Taxes any refunds received during such year, (ii) include in Taxes any additional amount paid during such year, involving an adjustment to Taxes for a prior year, due to error by the taxing authority, supplemental assessment, or other reason, (iii) include, in either Taxes or Expenses, any fees for attorneys, consultants and experts, and other costs paid during such year in attempting to protest, appeal or otherwise seek to reduce or minimize Taxes, whether or not successful, (iv) credit against Expenses the cost of any item previously included in Expenses, to the extent that Landlord receives reimbursement from insurance proceeds or a third party during such year (excluding tenant payments for Taxes and Expenses), and (v) make any other appropriate changes to reflect adjustments to Taxes or Expenses for prior years, regardless of whether Landlord uses an accrual system of accounting for other purposes.

F. Grossing Up. If the Property is not at least 95% occupied during all or a portion of any calendar year, Landlord may, in accordance with sound accounting and management practices, determine the amount of variable Taxes and Expenses (i.e. those items which vary according to occupancy levels) that would have been paid had the Property been at least 95% occupied, and the amount so determined shall be deemed to have been the amount of Taxes and Expenses for such year. If Landlord is not furnishing any particular utility or service (the cost of which, if performed by Landlord, would be included in Expenses) to a tenant during any period, Landlord may for such period: (i) adjust Expenses to reflect the additional amount that would reasonably have been incurred during such period had Landlord furnished such utility or service to

such tenant, or (ii) exclude the rentable area of such tenant from the rentable area of the Property in computing Tenant's Share of the component of Expenses for such utility or service.

G. Tenant's Share Adjustments. If the Property or any development of which it is a part, shall contain non-office uses during any period, Landlord shall have the right to determine, in accordance with sound accounting and management practices, Tenant's Share of Taxes and Expenses for only the office portion of the Property or of such development; in such event, Tenant's Share shall be based on the ratio of the rentable area of the Premises to the rentable area of such office portion for such period. Tenant's Share shall be subject to such other adjustments for such periods as may be applicable pursuant to Paragraph E, above, and pursuant to the definition of Tenant's Share in Article 32.

H. Prorations. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent and any other amounts payable on a monthly basis shall be prorated on a per diem basis for such partial calendar months. If the Base Rent is scheduled to increase under Article 1 other than on the first day of a calendar month, the amount for such month shall be prorated on a per diem basis to reflect the number of days of such month at the then current and increased rates, respectively. If the Term commences other than on January 1, or ends other than on December 31, Tenant's obligations to pay amounts towards Taxes and Expenses for such first or final calendar years shall be prorated on a per diem basis to reflect the portion of such years included in the Term.

I. Payments After Lease Term Ends. Tenant's obligations to pay Taxes and Expenses (or any other amounts) accruing during, or relating to, the period prior to expiration or earlier termination of this Lease, shall survive such expiration or termination. Landlord may reasonably estimate all or any of such obligations within a reasonable time before, or anytime after, such expiration or termination. Tenant shall pay the full amount of such estimate, and any additional amount due after the actual amounts are determined, in each case within ten (10) days after Landlord sends a statement therefor. If the actual amount is less than the amount Tenant pays as an estimate, Landlord shall refund the difference within thirty (30) days after such determination is made.

J. Landlord's Accounting Practices and Records. Landlord shall maintain records respecting Taxes and Expenses and determine the same in accordance with sound accounting and management practices. Subject to the other provisions of this Article, Landlord may from time to time use a full accrual system of accounting, or a modified cash basis of accounting with appropriate accrual adjustments to ensure that each year includes substantially the same major recurring items. Unless Tenant takes exception by notice to Landlord within thirty (30) days after Landlord provides any Statement to Tenant, such Statement shall be considered final and binding on Tenant (except as to additional Expenses or Taxes not then known or omitted by error). If Tenant takes exception by notice within such time, Landlord may seek certification from Landlord's independent certified public accountant as to the proper amount of Taxes and Expenses. In such case: (i) such certification shall be considered final and binding on both parties (except as to additional Expenses or Taxes not then known or omitted by error), and (ii) Tenant shall pay Landlord for the cost of such certification, unless it shows that Taxes and Expenses were overstated by at least five (5) percent. Pending resolution of any such exceptions, Tenant shall pay Tenant's Share of Taxes and Expenses in the amounts shown on such Statement, subject to credit, refund or additional payment after any such exceptions are resolved.

K. Base Year Adjustments. If Taxes for the Base Tax Year are reduced as the result of protest, or by means of agreement, or as the result of legal proceedings or otherwise, Landlord shall adjust Tenant's obligations for Taxes in all years following the Base Tax Year, and Tenant shall pay Landlord within 30 days after notice any additional amount required by such adjustment for any such years or portions thereof that have theretofore occurred. Landlord shall exclude from Base Year Expenses any non-recurring items, including capital expenditures otherwise permitted under Article 32 of the Lease (and shall only include the amortization of such expenditures in subsequent year Expenses to the extent permitted under Article 32, including any remaining amortization of permitted capital expenditures made prior to or after the Commencement Date). If Landlord eliminates from any subsequent year Expenses a recurring category of expenses previously included in Base Year Expenses, Landlord shall subtract such category from Base Year Expenses commencing with such subsequent year.

L. General Payment Matters. Base Rent, Taxes, Expenses and any other amounts which Tenant is or becomes obligated to pay Landlord under this Lease or other agreement entered in connection herewith, are sometimes herein referred to collectively as "Rent," and all remedies applicable to the non-payment of rent shall be applicable thereto. Rent shall be paid in good funds and legal tender of the United States of America. Tenant shall pay Rent without any

deduction, recoupment, set-off or counterclaim, and without relief from any valuation or appraisal laws. Rent obligations hereunder are independent covenants. Provided that Landlord shall provide such statement within seven (7) months of the expiration of this Lease, no delay by Landlord in providing the Statement (or separate statements) shall be deemed a default by Landlord or a waiver of Landlord's right to require payment of Tenant's obligations for actual or estimated Taxes or Expenses. In no event shall a decrease in Taxes or Expenses ever decrease the monthly Base Rent or give rise to a credit in favor of Tenant. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant.

ARTICLE 5: QUIET ENJOYMENT

Landlord agrees that if Tenant timely pays the Rent and performs the terms and provisions hereunder, Tenant shall hold the Premises during the Term, free of lawful claims by any party acting by or through Landlord, subject to all other terms and provisions of this Lease.

ARTICLE 6: UTILITIES AND SERVICES

A. Standard Landlord Utilities and Services. Landlord shall provide the following utilities and services (the cost of which shall be included in Expenses, except as provided below):

(i) Heat and air-conditioning to provide a temperature required, In Landlord's reasonable opinion, for occupancy of the Premises as offices, from 8:00 a.m. until 6:00 p.m. Monday through Friday, excluding all Holidays.

(ii) Water from city mains for drinking, lavatory and toilet purposes only, at those points of supply provided for nonexclusive general use of tenants at the Property, or points of supply in the Premises installed by or with Landlord's written consent for such purposes.

(iii) Cleaning and trash removal service in and about the Premises as is customary for office space in office buildings.

(iv) Passenger elevator service at all times (subject to changes in the number of elevators in service after hours or at other times), and freight elevator service (subject to scheduling by Landlord and such standard charges as Landlord may impose), in common with Landlord and other parties.

(v) Electricity for building-standard overhead office lighting fixtures, and equipment and accessories customary for offices (up to 280 hours per month), where: (a) the connected electrical load of all of the same does not exceed an average of 4 watts per usable square foot of the Premises (or such lesser amount as may be available, based on the safe and lawful capacity of the electrical circuit(s) and facilities serving the Premises), (b) the electricity is at nominal 120 volts, single phase (or 110 volts, depending on available service in the Building), and (c) the Systems and Equipment are suitable, the safe and lawful capacity thereof is not exceeded, and sufficient capacity remains at all times for other existing and future tenants, as determined in Landlord's reasonable discretion.

B. Additional Utilities and Services. Landlord shall not be responsible for inadequate air-conditioning or ventilation whenever the use or occupancy of the Premises exceeds the normal capacity or design loads of, affects the temperature or humidity otherwise maintained by, or otherwise adversely affects the operation of, the Systems and Equipment for the Property, whether due to items of equipment or machinery generating heat, above normal concentrations of personnel or equipment, alterations to the Premises made by or through Tenant without balancing the air or installing supplemental HVAC equipment. Without limiting the generality of the foregoing, Landlord shall not be responsible for inadequate air conditioning or ventilation to the extent that the same occurs because Tenant, without providing adequate air conditioning and ventilation: (i) uses or permits the use of any item, or concentrated group, of equipment consuming more than 500 watts in the aggregate at rated capacity, or (ii) occupies or permits the Premises to be occupied with concentrations of personnel greater than one person per 200 usable square feet. In any such case, Landlord may elect to balance the air, install, operate, maintain and replace such supplemental HVAC equipment during the Term, at Tenant's expense, as an extra utility or service (or require that Tenant arrange for the same as Work under Article 9). Landlord shall seek to provide such extra utilities or services as Tenant may from time to time request, if the same are reasonable and feasible for Landlord to provide and do not involve modifications or additions to the Property or existing Systems and Equipment, and if Landlord

shall receive Tenant's request within a reasonable period prior to the time such extra utilities or services are required. Tenant shall pay, for any extra utilities or services, such standard charges as Landlord shall from time to time establish, Landlord's out-of-pocket costs for architects, engineers, consultants and other parties relating to such extra utilities or services, and a fee equal to fifteen percent (15%) of such costs. All payments for such extra utilities or services shall be due at the same time as the installment of Base Rent with which the same are billed, or if billed separately, shall be due within ten (10) days after such billing. Notwithstanding the foregoing to the contrary, in lieu of charging separately for additional utilities and services, Landlord may reasonably elect from time to time to expand or modify the amounts of services and utilities available without separate charge, in which case the costs thereof shall be included in Expenses.

C. Monitoring. Landlord may install and operate meters, submeters or any other reasonable system for monitoring or estimating any services or utilities used by Tenant in excess of those required to be provided by Landlord under this Article (including a system for Landlord's engineer to reasonably estimate any such excess usage). If such system indicates such excess services or utilities, Tenant shall pay Landlord's charges and fees as described in Paragraph B, above, for installing and operating such system and any supplementary air-conditioning, ventilation, heat, electrical or other systems or equipment (or adjustments or modifications to the existing Systems and Equipment) which Landlord may make, and Landlord's charges for such amount of excess services or utilities used by Tenant.

D. Interruptions and Changes. Landlord shall have no liability for interruptions, variations, shortages, failures, changes in quality, quantity, character or availability of any utilities or services caused by repairs, maintenance, replacements, alterations (including any freon retrofit work), labor controversies, accidents, inability to obtain services, utilities or supplies, governmental or utility company acts or omissions, requirements, guidelines or requests, or other causes beyond Landlord's reasonable control (or under any circumstances with respect to utilities or services not required to be provided by Landlord hereunder). Under no circumstances whatsoever shall any of the foregoing be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, serve to abate Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damages in connection with the foregoing events. Nevertheless, in any such events after receiving notice, Landlord shall use reasonable efforts to restore such utilities or services required to be provided hereunder to reasonable levels.

ARTICLE 7: USE, COMPLIANCE WITH LAWS, AND RULES

A. Use of Premises. Tenant shall use the Premises only for the permitted use identified in Article 1, and no other purpose whatsoever, subject to the other provisions hereof and of this Lease. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not use or permit the Premises to be used as a: (i) political party or social-welfare office, (ii) medical, dental, psychology or science office or laboratory, including for treatment, research, testing or counseling, (iii) multi-party "executive" or "legal" suite type offices, (iv) data processing, telecommunications or telemarketing center, (v) school, educational or training facility, (vi) employment, placement, recruiting or clerical support agency, (vii) computerized vehicle sales, loan or "finder" service, (viii) governmental or quasi-governmental office, whether local, state, federal or foreign, including diplomatic and consulate, (ix) travel agency or reservation center, (x) radio or television studio or broadcasting or recording facility, or (xi) retail real estate brokerage, retail stock brokerage, retail bank or other retail financial institution, loan office, depository, check-cashing or wire-transferring service.

B. Laws and Other Requirements. Tenant shall not use or permit within the Premises anything that will: (i) violate the requirements of Landlord's insurers, the American Insurance Association, or any board of underwriters, (ii) cause a cancellation of Landlord's policies, impair the insurability of the Property, or increase Landlord's premiums (any such increase shall be paid by Tenant without such payment being deemed permission to continue such activity or a waiver of any other remedies of Landlord), or (iii) violate the reasonable requirements of any Lenders, the certificates of occupancy issued for the Premises or the Property, or any other requirements, covenants, conditions or restrictions affecting the Property at any time. Tenant shall comply with all Laws relating to the Premises and Tenant's use of the Premises and Property, including Laws governing Hazardous Materials as described in Article 30, and the Disabilities Acts as described in Article 31. Tenant's obligations to comply with Laws shall include, without limitation: (a) obtaining all permits, licenses, certificates and approvals to conduct its business in the Premises, or any necessary waivers or variances, without thereby subjecting Landlord, the Property or other occupants to any costs, requirements, liabilities or restrictions, (b) any work to

or for the Premises (or any systems or equipment exclusively serving the Premises, including any freon retrofitting work for such exclusive systems and equipment) required by Laws, and (c) any work outside the Premises (if Landlord permits such work) required by Laws based on Tenant's use of, work within, or systems or equipment exclusively serving, the Premises, whether any such work is deemed structural, involves a capital expenditure or results in a benefit extending beyond the Term. Any work hereunder shall be deemed "Work" subject to Article 9.

C. Rules. Tenant shall comply with the Rules set forth in Rider One attached hereto (the "Rules"). Landlord shall have the right, by notice to Tenant or by posting at the Property, to reasonably amend such Rules and supplement the same with other reasonable Rules relating to the Property, or the promotion of safety, care, efficiency, cleanliness or good order therein. Nothing herein shall be construed to give Tenant or any other Person any claim, demand or cause of action against Landlord arising out of the violation of such Rules by any other tenant or visitor of the Property, or out of the enforcement, modification or waiver of the Rules by Landlord in any particular instance.

ARTICLE 8: MAINTENANCE AND REPAIRS

Except for customary cleaning and trash removal provided by Landlord under Article 6, and casualty damage to be repaired by Landlord under Article 11, Tenant shall keep and maintain (or cause to be kept and maintained) the Premises in good and sanitary condition, working order and repair, in compliance with all applicable Laws as described in Article 7, and as required under other provisions of this Lease, including the Rules (including any carpet and other flooring material, paint and wall-coverings, doors, windows, ceilings, interior surfaces of walls, lighting (including lamps, bulbs, ballasts and starters), plumbing and other fixtures, alterations, improvements, systems and equipment in or exclusively serving the Premises whether installed by Landlord or Tenant). In the event that any repairs, maintenance or replacements are required, Tenant shall promptly notify Landlord and arrange for the same either: (i) through Landlord for such reasonable charges as Landlord may establish from time to time, payable within ten (10) days after billed, or (ii) at Landlord's option, by engaging such contractors as Landlord shall first designate or approve in writing to perform such work, all in a first class, workmanlike manner approved by Landlord in advance in writing and otherwise in compliance with Article 9 respecting "Work". Tenant shall promptly notify Landlord concerning the necessity for any repairs or other work hereunder and upon completion thereof. Tenant shall pay Landlord for any repairs, maintenance and replacements to areas of the Property outside the Premises, caused, in whole or in part, as a result of moving any furniture, fixtures, or other property to or from the Premises, or otherwise by Tenant or its employees, agents, contractors, or visitors (notwithstanding anything to the contrary contained in this Lease). Except as provided in the preceding sentence, or for damage covered under Article 11, Landlord shall keep the common areas of the Property in good and sanitary condition, working order and repair (the cost of which shall be included in Expenses).

ARTICLE 9: ALTERATIONS AND LIENS

A. Alterations and Approval. Tenant shall not attach any fixtures, equipment or other items to the Premises, or paint or make any other additions, changes, alterations or improvements to the Premises or the Systems and Equipment serving the Premises (all such work is referred to collectively herein as the "Work"), without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent, except that Landlord reserves the right to withhold consent in Landlord's sole discretion for Work affecting the structure, safety, efficiency or security of the Property or Premises, the Systems and Equipment, or the appearance of the Premises from any common or public areas. In seeking approval, Tenant shall submit for Landlord's prior written approval: (i) the names, addresses and background information concerning all architects, engineers, contractors, subcontractors and suppliers Tenant proposes to use, and (ii) detailed plans and specifications prepared by the approved architects and engineers. In addition, Tenant shall provide Landlord with notice of whether the Work will involve or affect any Hazardous Materials, whether such materials are customary and usual based on standard industry practices, and all other details relating thereto.

B. Approval Conditions. Landlord reserves the right to impose requirements as a condition of such consent or otherwise in connection with the Work, including requirements that Tenant: (i) obtain and post permits, (ii) provide bonds, additional insurance, and/or a cash deposit of the total amount required to pay for the Work (including plans, specifications, engineering and other lienable costs, and Landlord's fee described below) for Landlord to release or apply as the Work is properly completed and lien waivers, affidavits and other documentation satisfactory to Landlord are submitted, (iii) submit architect, engineer, contractor, subcontractor and supplier

affidavits of payment and recordable lien waivers in compliance with the Laws of the State of Washington, (iv) use union labor (if Landlord uses union labor), (v) permit Landlord or its representatives to inspect the Work at reasonable times, and (vi) comply with such other requirements as Landlord may impose concerning the manner and times in which such Work shall be done. Landlord may require that all Work be performed under Landlord's supervision, and Landlord reserves the right to designate the architects, engineers, contractors, subcontractors and suppliers who will design and perform all Work and supply all materials affecting the Systems and Equipment or structure of the Property. If Landlord approves, inspects, supervises, recommends or designates any architects, engineers, contractors, subcontractors or suppliers, the same shall not be deemed a warranty as to the adequacy of the design, workmanship or quality of materials, or compliance of the Work with the plans and specifications or any Laws.

C. Performance of Work. All Work shall be performed: (i) in a thoroughly first class, professional and workmanlike manner, (ii) only with materials that are new, high quality, and free of material defects, (iii) strictly in accordance with plans, specifications, parties and other matters approved or designated by Landlord in advance in writing, (iv) not to adversely affect the Systems and Equipment or the structure of the Property, (v) diligently to completion and so as to avoid any disturbance, disruption or inconvenience to other tenants and the operation of the Property, and (vi) in compliance with all Laws, the Rules and other provisions of this Lease, and such other requirements as Landlord may impose concerning the manner and times in which such Work shall be done. Any floor, wall or ceiling coring work or penetrations or use of noisy or heavy equipment which may interfere with the conduct of business by other tenants at the Property shall, at Landlord's option, be performed at times other than Landlord's normal business hours (at Tenant's sole cost). If Tenant fails to perform the Work as required herein or the materials supplied fail to comply herewith or with the specifications approved by Landlord, and Tenant fails to commence to cure such failure within 48 hours after notice by Landlord, and diligently prosecute until completion (except notice shall not be required in emergencies), Landlord shall have the right to stop the Work until such failure is cured (which shall not be in limitation of Landlord's other remedies and shall not serve to abate the Rent or Tenant's other obligations under this Lease). Upon completion of any Work hereunder, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

D. Liens. Tenant shall pay all costs for the Work when due. Tenant shall keep the Property, Premises and this Lease free from any mechanic's, materialman's, architect's, engineer's or similar liens or encumbrances, and any claims therefor, or stop or violation notices, in connection with any Work. Tenant shall give Landlord notice at least ten (10) days prior to the commencement of any Work (or such additional time as may be necessary under applicable Laws), to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such claim, lien or encumbrance, or stop or violation notices of record, by bond or otherwise within ten (10) days after notice by Landlord. If Tenant fails to do so, Landlord may pay the amount (or any portion thereof) or take such other action as Landlord deems necessary to remove such claim, lien or encumbrance, or stop or violation notices, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Landlord shall be deemed additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to, or any Lender's interest in, the Property or Premises to any such claims, liens or encumbrances, or stop or violation notices, whether claimed pursuant to statute or other Law or express or implied contract.

E. Removal of Work Upon Termination of Lease. All Work hereunder shall remain or be removed from the Premises upon expiration or earlier termination of this Lease to the extent required under Article 23.

F. Landlord's Fees and Costs. If Landlord acts as Tenant's construction manager for Work under this Lease, Tenant shall pay Landlord a fee for reviewing, scheduling, monitoring, supervising, and providing access for or in connection with the Work, in an amount equal to fifteen percent (15%) of the total cost of the Work (including costs of plans and permits therefor), and Landlord's out-of-pocket costs, including any costs for security, utilities, trash removal, temporary barricades, janitorial, engineering, architectural or consulting services, and other matters in connection with the Work, payable within ten (10) business days after billed. If Landlord is not the construction manager, the parties shall mutually agree upon the fee to be charged for Landlord's reviewing, scheduling, monitoring, supervising, and/or providing access for or in connection with the Work, in addition to Landlord's out-of-pocket costs, including any costs for security, utilities, trash removal, temporary barricades, janitorial, engineering, architectural or

consulting services, and other matters in connection with the Work, which shall be payable within ten (10) business days after billed.

ARTICLE 10: INSURANCE AND WAIVER OF CLAIMS

A. Required Insurance. Tenant shall maintain at its expense during the Term with respect to the Premises and Tenant's use thereof and of the Property:

(i) Worker's Compensation Insurance in the amounts required by statute, and Employer Liability Insurance in at least the following amounts: (a) Bodily Injury by Accident - \$500,000 per accident, (b) Bodily Injury by Disease - \$500,000 per employee, and (c) Aggregate Limit - \$1,000,000 per policy year.

(ii) Property Damage Insurance for the protection of Tenant and Landlord, as their interests may appear, covering any alterations or improvements in excess of any work provided or paid for by Landlord under this Lease, Tenant's personal property, business records, fixtures and equipment, and other insurable risks in amounts not less than the full insurable replacement cost of such property and full insurable value of such other interests of Tenant, with coverage at least as broad as the most recent editions published by Insurance Services Office, Inc. or any successor organization ("ISO"), of: (a) Building and Personal Property Coverage Form (CP0010), (b) Business Income Coverage Form (CP0030), covering at least one year of anticipated income, (c) Boiler and Machinery Coverage Form (BM0025), (d) Causes of Special Loss Form (CP1030), and (e) Sprinkler Leakage - Earthquake Extension (CP1039).

(iii) Commercial General Liability Insurance ("CGL") at least as broad as the most recent ISO edition of Commercial General Liability Coverage Form (CG0001) with limits of at least the following amounts: (a) Death or Bodily Injury - \$2,000,000, (b) Property Damage or Destruction (including loss of use thereof) - \$1,000,000, (c) Products/Completed Operations - \$1,000,000, (d) Personal or Advertising injury - \$1,000,000, (e) Each Occurrence Limit - \$2,000,000, and (f) General Aggregate Limit - \$3,000,000 per policy year. Such policy shall include endorsements: (1) for contractual liability covering Tenant's indemnity obligations under this Lease, and (2) adding Landlord, the management company for the Property, and other parties designated by Landlord, as Additional Insureds, on a form at least as broad as the most recent edition of Additional Insured - Manager or Lessor of Premises Endorsement Form (CG2011) published by ISO.

B. Certificates, Subrogation and Other Matters. Tenant shall provide Landlord with certificates evidencing the coverage required hereunder prior to the Commencement Date, or Tenant's entry to the Premises for construction of improvements or any other purpose (whichever first occurs). Such certificates shall: (i) be on ACORD Form 27 or such other form approved or required by Landlord, (ii) state that such insurance coverage may not be changed, canceled or non-renewed without at least thirty (30) days' prior written notice to Landlord, and (iii) include, as attachments, originals of the Additional Insured endorsements to Tenant's CGL policy required above. Tenant shall provide renewal certificates to Landlord at least thirty (30) days prior to expiration of such policies. Except as expressly provided to the contrary herein, coverage hereunder shall apply to events occurring during the policy year regardless of when a claim is made. Landlord may periodically require that Tenant reasonably increase or expand the aforementioned coverage. Except as provided to the contrary herein, any insurance carried by Landlord or Tenant shall be for the sole benefit of the party carrying such insurance. If Tenant obtains insurance under "blanket policies," Tenant shall obtain an endorsement providing that the insurance limits required hereunder are not subject to reduction or impairment by claims or losses at other locations. Tenant's insurance policies shall be primary to all policies of Landlord and any other Additional Insureds (whose policies shall be deemed excess and non-contributory). All insurance required hereunder shall be provided by responsible insurers licensed in the State of Washington, and shall have a general policy holder's rating of at least A and a financial rating of at least X in the then current edition of Best's Insurance Reports. The parties mutually hereby waive all rights and claims against each other for all losses covered by their respective insurance policies (or required to be covered by insurance under this Lease), and waive all rights of subrogation of their respective insurers. The parties agree that their respective insurance policies are now, or shall be, endorsed such that said waiver of subrogation shall not affect the right of the insured to recover thereunder. Landlord disclaims any representation as to whether the foregoing coverages will be adequate to protect Tenant, and Tenant agrees to carry such additional coverage as may be necessary or appropriate.

C. Waiver of Claims. Except for claims arising from Landlord's intentional or grossly negligent acts, Tenant waives all claims against Landlord for injury or death to persons, damage to property or to any other interest of Tenant sustained by Tenant or any party claiming by or

through Tenant resulting from: (i) any occurrence in or upon the Premises, (ii) leaking of roofs, bursting, stoppage or leaking of water, gas, sewer or steam pipes or equipment, including sprinklers, (iii) wind, rain, snow, ice, flooding (including flooding of basements and other subsurface areas), freezing, fire, explosion, earthquake, excessive heat or cold, dampness, fire or other casualty, (iv) the Property, Premises, Systems and Equipment being defective, out of repair, or failing, and (v) vandalism, malicious mischief, theft, misappropriation or other acts or omissions of any parties including Tenant's employees, other tenants, and their respective agents, employees, invitees and contractors (and Tenant shall give Landlord immediate notice of any such occurrences). This provision is in addition to, and not in limitation of, other provisions of this Lease limiting Landlord's liability.

D. Mutual Waiver of Claims; Waiver of Subrogation. Landlord and Tenant release each other, and their respective officers, directors, trustees, beneficiaries, partners, members, managers, agents, and employees, from, and waive their entire claim of recovery for, any claims for damage to the Premises and the Building and to Tenant's alterations, trade fixtures and personal property that are caused by or result from fire, lightening or any other perils normally included in an "all risk" property insurance policy whether or not such loss or damage is due to the negligence of Landlord, or its officers, directors, trustees, beneficiaries, partners, members, managers, agents, and employees, or of Tenant, or its officers, directors, trustees, beneficiaries, partners, members, managers, agents, and employees. Landlord and Tenant shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by such insurance policy.

ARTICLE 11: CASUALTY DAMAGE

A. Restoration. Tenant shall promptly notify Landlord of any damage to the Premises by fire or other casualty. If the Premises or any common areas of the Property providing access thereto shall be damaged by fire or other casualty, Landlord shall use available insurance proceeds to restore the same. Such restoration shall be to substantially the same condition prior to the casualty, except for modifications required by zoning and building codes and other Laws or by any Lender, any other modifications to the common areas deemed desirable by Landlord (provided access to the Premises is not materially impaired), and except that Landlord shall not be required to repair or replace any of Tenant's furniture, furnishings, fixtures or equipment, or any alterations or improvements in excess of any work provided or paid for by Landlord under this Lease. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof. Promptly following completion of Landlord's restoration work, Tenant shall repair and replace Tenant's furniture, furnishings, fixtures, equipment, and any alterations or improvements made by Tenant in excess of those provided or paid for by Landlord, subject to and in compliance with the other provisions of this Lease.

B. Abatement of Rent. Landlord shall allow Tenant a proportionate abatement of Base Rent from the date of the casualty through the date that Landlord substantially completes Landlord's repair obligations hereunder (or the date that Landlord would have substantially completed such repairs, but for delays by Tenant or any other occupant of the Premises, or any of their agents, employees, invitees, Transferees and contractors), provided such abatement: (i) shall apply only to the extent the Premises are untenantable for the purposes permitted under this Lease and not used by Tenant as a result thereof, based proportionately on the square footage of the Premises so affected and not used, and (ii) shall not apply if Tenant or any other occupant of the Premises, or any of their agents, employees, invitees, Transferees or contractors caused the damage.

C. Termination of Lease. Notwithstanding the foregoing to the contrary, in lieu of performing the restoration work, Landlord may elect to terminate this Lease by notifying Tenant in writing of such termination within sixty (60) days after the date of damage (such termination notice to include a termination date providing at least thirty (30) days for Tenant to vacate the Premises), or if the Property shall be damaged by fire or other casualty or cause such that: (a) repairs to the Premises and access thereto cannot reasonably be completed within 120 days after the casualty without the payment of overtime or other premiums, (b) more than twenty-five percent (25%) of the Premises is affected by the damage and fewer than eighteen (18) months remain in the Term, or any material damage occurs to the Premises during the last twelve (12) months of the Term, (c) any Lender shall require that the insurance proceeds or any portion thereof be used to retire the Mortgage debt (or shall terminate the ground lease, as the case may be), or the damage is not fully covered, except for deductible amounts, by Landlord's insurance policies, or (d) the cost of the repairs, alterations, restoration or improvement work would exceed

twenty-five percent (25%) of the replacement value of the Building (whether or not the Premises are affected by the damage). Tenant agrees that the abatement of Rent provided herein shall be Tenant's sole recourse in the event of such damage, and waives any other rights Tenant may have under any applicable Law to perform repairs or terminate the Lease by reason of damage to the Premises or Property.

ARTICLE 12: CONDEMNATION

If at least fifty percent (50%) of the rentable area of the Premises shall be taken by power of eminent domain or condemned by a competent authority or by conveyance in lieu thereof for public or quasi-public use ("Condemnation"), including any temporary taking for a period of one year or longer, this Lease shall terminate on the date possession for such use is so taken. If: (i) less than fifty percent (50%) of the Premises is taken, but the taking includes or affects a material portion of the Building or Property, or the economical operation thereof, or (ii) the taking is temporary and will be in effect for less than one year but more than thirty (30) days, then in either such event, Landlord may elect to terminate this Lease upon at least thirty (30) days' prior notice to Tenant. The parties further agree that: (a) if this Lease is terminated, all Rent shall be apportioned as of the date of such termination or the date of such taking, whichever shall first occur, (b) if the taking is temporary, Rent shall not be abated for the period of the taking, but Tenant may seek a condemnation award therefor (and the Term shall not be extended thereby), and (c) if this Lease is not terminated but any part of the Premises is permanently taken, the Rent shall be proportionately abated based on the square footage of the Premises so taken. Landlord shall be entitled to receive the entire award or payment in connection with such Condemnation and Tenant hereby assigns to Landlord any interest therein for the value of Tenant's unexpired leasehold estate or any other claim and waives any right to participate therein, except that Tenant shall have the right to claim damages for a temporary taking of the leasehold as described above, and for moving expenses and any taking of Tenant's personal property.

ARTICLE 13: ASSIGNMENT AND SUBLETTING

A. Transfers. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld as further described below: (i) assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, by operation of Law or otherwise, (ii) sublet the Premises or any part thereof, (iii) permit the use of the Premises by any Persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any Person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"), or (iv) advertise the Premises or Lease for Transfers. If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice shall include: (a) the proposed effective date (which shall not be less than thirty (30) nor more than 180 days after Tenant's notice), (b) the portion of the Premises to be Transferred (herein called the "Subject Space"), (c) the terms of the proposed Transfer and the consideration therefor, the name, address and background information concerning the proposed Transferee, and a true and complete copy of all proposed Transfer documentation, and (d) financial statements (balance sheets and income/expense statements for the current and prior three (3) years (if three years are available)) of the proposed Transferee, in form and detail reasonably satisfactory to Landlord, certified by an officer, partner or owner of the Transferee, and any other information to enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and such other information as Landlord may reasonably require. Any Transfer made without complying with this Article shall at Landlord's option be null, void and of no effect, or shall constitute a Default under this Lease. Whether or not Landlord shall grant consent, Tenant shall pay a reasonable fee (but not less than \$500.00) towards Landlord's review and processing expenses (such fee shall be estimated by Landlord and approved by Tenant in advance), as well as any reasonable legal fees incurred by Landlord within ten (10) days after written request by Landlord.

B. Approval. Landlord will not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in Tenant's notice. The parties hereby agree that it shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (i) the Transferee is of a character or reputation or engaged in a business which is not consistent with the quality or nature of the Property or other tenants of the Property, or would be a significantly

less prestigious occupant of the Property than Tenant, (ii) the Transferee intends to use the Subject Space for purposes which are not permitted under this Lease, (iii) the Subject Space is not regular in shape with appropriate means of ingress and egress suitable for normal renting purposes, would result in more than a reasonable number of occupants, or would require increased services by Landlord, (iv) the Transferee is either a government (or agency or instrumentality thereof), (v) the proposed Transferee or any affiliate thereof is an occupant of the Property, (vi) the proposed Transferee does not have, in Landlord's sole good faith determination, satisfactory references or a reasonable financial condition in relation to the obligations to be assumed in connection with the Transfer, (vii) the Transfer is other than a sublease or a non-collateral complete assignment, (viii) the proposed Transfer would cause Landlord to be in violation of any Laws or any other lease, Mortgage or agreement to which Landlord is a party, would give a tenant of the Property a right to cancel its lease, or would create adverse tax consequences for Landlord, or (ix) Tenant has committed and failed to cure a Default. If Tenant disagrees with Landlord's decision to deny approval, Tenant's sole remedy shall be to seek injunctive relief.

C. Transfer Premiums. If Landlord consents to a Transfer, and as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay Landlord fifty percent (50%) of any Transfer Premium derived by Tenant from such Transfer. "Transfer Premium" shall mean, for a lease assignment, all consideration paid or payable therefor. "Transfer Premium" shall mean, for a sublease, all rent, additional rent or other consideration paid by such Transferee in excess of the Rent payable by Tenant under this Lease (on a monthly basis during the Term, and on a per rentable square foot basis, if less than all of the Premises is transferred). "Transfer Premium" shall also include so-called "key money," or other bonus amount paid by Transferee to Tenant, and any payment in excess of fair market value for services rendered by Tenant to Transferee or in excess of Tenant's depreciated tax basis for assets, fixtures, inventory, equipment or furniture transferred by Tenant to Transferee. If part of the consideration for such Transfer shall be payable other than in cash, Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord. The percentage of the Transfer Premium due Landlord hereunder shall be paid within ten (10) days after Tenant receives any Transfer Premium from the Transferee.

D. Recapture. Notwithstanding anything to the contrary contained in this Article, Landlord shall have the option, by giving notice to Tenant within thirty (30) days after receipt of Tenant's notice of any proposed Transfer, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the date stated in Tenant's notice as the effective date of the proposed Transfer (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent or nominee, in which case the parties shall execute reasonable Transfer documentation promptly thereafter). If this Lease shall be canceled with respect to less than the entire Premises, the Rent herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party the parties shall execute written confirmation of the same. Tenant shall surrender and vacate the Subject Space when required hereunder in accordance with Article 23 and any failure to do so shall be subject to Article 24.

E. Terms of Consent. If Landlord consents to a Transfer: (i) the terms and conditions of this Lease, including Tenant's liability for the Subject Space, shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) no Transferee shall succeed to any rights provided in this Lease or any amendment hereto to extend the Term of this Lease, expand the Premises, or lease other space, any such rights being deemed personal to the initial Tenant, (iv) Tenant shall deliver to Landlord promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (v) Tenant shall furnish a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium that Tenant has derived and shall derive from such Transfer. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant and any Transferee relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall within thirty (30) days after demand pay the deficiency, and if understated by more than five percent (5%) Tenant shall pay Landlord's costs of such audit. Any sublease hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (a) deem such sublease as merged and canceled

and repossess the Subject Space by any lawful means, or (b) deem such termination as an assignment of such sublease to Landlord and not as a merger, and require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. If Tenant shall commit a Default under this Lease, and such Default remains uncured after the expiration of notice and cure periods, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease).

F. Certain Transfers. For purposes of this Lease, the term "Transfer" shall also include, and all of the foregoing provisions shall apply to: (i) the conversion, merger or consolidation of Tenant into a limited liability company or limited liability partnership, (ii) if Tenant is a partnership or limited liability company, the withdrawal or change, voluntary, involuntary or by operation of law, of a majority of the partners or members, or a transfer of a majority of partnership or membership interests, within a twelve month period, or the dissolution of the partnership or company, and (iii) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), the dissolution, merger, consolidation or other reorganization of Tenant, or within a twelve month period: (a) the sale or other transfer of more than an aggregate of 50% of the voting shares of Tenant (other than to immediate family members by reason or gift or death) or (b) the sale, mortgage, hypothecation or pledge of more than an aggregate of 50% of Tenant's net assets.

ARTICLE 14: PERSONAL PROPERTY, RENT AND OTHER TAXES

Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions assessed against or levied upon all fixtures, furnishings, personal property, systems and equipment located in or exclusively serving the Premises, and any Work to the Premises under Article 9 or other provisions of this Lease or related documentation. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the other property of Landlord. In the event any such items shall be assessed and billed with the other property of Landlord, Tenant shall pay Landlord its share of such taxes, charges or other governmental impositions within ten (10) days after Landlord delivers a statement and a copy of the assessment or other documentation showing the amount of impositions applicable to Tenant's property. Tenant shall pay any rent tax, sales tax, service tax, transfer tax, value added tax, or any other applicable tax on the Rent, utilities or services herein, the privilege of renting, using or occupying the Premises, or collecting Rent therefrom, or otherwise respecting this Lease or any other document entered in connection herewith.

ARTICLE 15: LANDLORD'S REMEDIES

A. Default. The occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in Paragraph B below: (i) failure to make when due any payment of Rent, unless such failure is cured within five (5) days after notice; (ii) failure to observe or perform any term or condition of this Lease other than the payment of Rent (or the other matters expressly described herein), unless such failure is cured within any period of time following notice expressly provided with respect thereto in other Articles hereof, or otherwise within a reasonable time, but in no event more than twenty (20) days following notice (provided, if the nature of Tenant's failure is such that more time is reasonably required in order to cure, Tenant shall not be in Default if Tenant commences to cure promptly within such period, diligently seeks and keeps Landlord reasonably advised of efforts to cure such failure to completion, and completes such cure within sixty (60) days following Landlord's notice); (iii) failure to cure immediately upon notice thereof any condition which is hazardous, interferes with another Tenant or the operation or leasing of the Property, or may cause the imposition of a fine, penalty or other remedy on Landlord or its agents or affiliates, (iv) violating Article 13 respecting Transfers, or abandoning, vacating or failing to occupy the Premises for more than ten (10) days, or removing or making arrangements to remove substantial portions of the furniture or other personal property from the Premises or any material portion thereof, or (v) (a) making by Tenant or any guarantor of this Lease ("Guarantor") of any general assignment for the benefit of creditors, (b) filing by or for reorganization or arrangement under any Law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant or such Guarantor, the same is dismissed within sixty (60) days), (c) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days, (d) attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, (e) Tenant's or any Guarantor's convening of a meeting of its creditors or any class thereof for the purpose of

effecting a moratorium upon or composition of its debts, (f) Tenant's or any Guarantor's insolvency or failure, or admission of an inability, to pay debts as they mature, or (g) a violation by Tenant or any affiliate of Tenant under any other lease or agreement with Landlord or any affiliate thereof which is not cured within the time permitted for cure thereunder. If Tenant violates the same term or condition of this Lease on two (2) occasions during any twelve (12) month period, Landlord shall have the right to exercise all remedies for any violations of the same term or condition during the next twelve (12) months without providing further notice or an opportunity to cure. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Law; provided, Landlord may elect to comply with such notice and cure periods provided by Law in lieu of the notice and cure periods provided herein.

B. Remedies. If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth to the extent permitted by Law, which shall be distinct, separate and cumulative with and in addition to any other right or remedy allowed under any Law or other provision of this Lease:

(1) Landlord may terminate this Lease and Tenant's right of possession, reenter and repossess the Premises by detainer suit, summary proceedings or other lawful means, and recover from Tenant: (i) any unpaid Rent as of the termination date, (ii) the amount by which: (a) any unpaid Rent which would have accrued after the termination date during the balance of the Term exceeds (b) the reasonable rental value of the Premises under a lease substantially similar to this Lease, taking into account among other things the condition of the Premises, market conditions and the period of time the Premises may reasonably remain vacant before Landlord is able to re-lease the same to a suitable replacement tenant, and Costs of Reletting (as defined in Paragraph H below) that Landlord may incur in order to enter such replacement lease, (iii) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease. For purposes of computing the amount of Rent herein that would have accrued after the termination date, Tenant's obligations for Taxes and Expenses shall be projected based upon the average rate of increase in such items from the Commencement Date through the termination date (or if such period shall be less than three years, then based on Landlord's reasonable estimates). The amounts computed in accordance with the foregoing subclauses (a) and (b) shall both be discounted in accordance with accepted financial practice at the rate of four percent (4%) per annum to the then present value.

(2) Landlord may terminate Tenant's right of possession, reenter and repossess the Premises by detainer suit, summary proceedings or other lawful means, without terminating this Lease, and recover from Tenant: (i) any unpaid Rent as of the date possession is terminated, (ii) any unpaid Rent which thereafter accrues during the Term from the date possession is terminated through the time of judgment (or which may have accrued from the time of any earlier judgment obtained by Landlord), less any consideration received from replacement tenants as further described and applied pursuant to Paragraph H, below, and (iii) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease, including all Costs of Reletting (as defined in Paragraph H below). Tenant shall pay any such amounts to Landlord as the same accrue or after the same have accrued from time to time upon demand. At any time after terminating Tenant's right to possession as provided herein, Landlord may terminate this Lease as provided in clause (1) above by notice to Tenant, and Landlord may pursue such other remedies as may be available to Landlord under this Lease or applicable Law.

C. Mitigation of Damages. If Landlord terminates this Lease or Tenant's right to possession, Landlord shall have no obligation to mitigate Landlord's damages, except to the extent required by applicable Law. If Landlord has not terminated this Lease or Tenant's right to possession, Landlord shall have no obligation to mitigate under any circumstances and may permit the Premises to remain vacant or abandoned; in such case, Tenant may seek to mitigate damages by attempting to sublease the Premises or assign this Lease pursuant to Article 13. If Landlord is required to mitigate damages: (i) Landlord shall be required only to use reasonable efforts to mitigate, which shall not exceed such efforts as Landlord generally uses to lease other space at the Property, (ii) Landlord will not be deemed to have failed to mitigate if Landlord or its affiliates lease any other portions of the Property or other projects owned by Landlord or its affiliates in the same geographic area, before reletting all or any portion of the Premises, and (iii) any failure to mitigate as described herein with respect to any period of time shall only reduce the Rent and other amounts to which Landlord is entitled hereunder by the reasonable rental value of the Premises during such period, taking into account the factors described in clause B(1) above. In recognition that the value of the Property depends on the rental rates and terms of leases therein, Landlord's rejection of a prospective replacement tenant based on an offer of rentals below Landlord's published rates for new leases of comparable space at the Property at the time

in question, or at Landlord's option, below the rates provided in this Lease, or containing terms less favorable than those contained herein, shall not give rise to a claim by Tenant that Landlord failed to mitigate Landlord's damages.

D. Reletting. If this Lease or Tenant's right to possession is terminated, or Tenant abandons the Premises, Landlord may: (i) enter and secure the Premises, change the locks, install barricades, remove any improvements, fixtures or other property of Tenant therein, perform any decorating, remodeling, repairs, alterations, improvements or additions and take such other actions as Landlord shall determine in Landlord's sole discretion to prevent damage or deterioration to the Premises or prepare the same for reletting, and (ii) relet all or any portion of the Premises (separately or as part of a larger space), for any rent, use or period of time (which may extend beyond the Term hereof), and upon any other terms as Landlord shall determine in Landlord's sole discretion, directly or as Tenant's agent (if permitted or required by applicable Law). The consideration received from such reletting shall be applied pursuant to the terms of Paragraph H hereof, and if such consideration, as so applied, is not sufficient to cover all Rent and damages to which Landlord may be entitled hereunder, Tenant shall pay any deficiency to Landlord as the same accrues or after the same has accrued from time to time upon demand, subject to the other provisions hereof.

E. Specific Performance, Collection of Rent and Acceleration. Landlord shall at all times have the right without prior demand or notice except as required by applicable Law to: (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision hereof, and Tenant hereby waives any right to require that Landlord post a bond or other security in connection therewith, and (ii) sue for and collect any unpaid Rent which has accrued. Notwithstanding anything to the contrary contained in this Lease, to the extent not expressly prohibited by applicable Law, in the event of any Default by Tenant, Landlord may terminate this Lease or Tenant's right to possession and accelerate and declare all Rent reserved for the remainder of the Term to be immediately due and payable (in which event, Tenant's obligations for Taxes and Expenses that would have accrued thereafter shall be projected in the manner described in Section B (1), above); provided the Rent so accelerated shall be discounted in accordance with accepted financial practice at the rate of four percent (4%) per annum to the then present value, and Landlord shall, after receiving payment of the same from Tenant, be obligated to turn over to Tenant any actual net reletting proceeds (net of all Costs of Reletting) thereafter received during the remainder of the Term, up to the amount so received from Tenant pursuant to this provision.

F. Late Charges, Interest, and Returned Checks. Tenant shall pay, as additional Rent, a service charge of Three Hundred Dollars (\$300.00) or four percent (4%) of the delinquent amount, whichever is greater, if any portion of Rent is not received when due. In addition, any Rent not paid when due shall accrue interest from the due date at the Default Rate until payment is received by Landlord. Such service charges and interest payments shall not be deemed consent by Landlord to late payments, nor a waiver of Landlord's right to insist upon timely payments at any time, nor a waiver of any remedies to which Landlord is entitled as a result of the late payment of Rent. If Landlord receives two (2) or more checks from Tenant which are returned by Tenant's bank for insufficient funds, Landlord may require that all checks thereafter be bank certified or cashier's checks (without limiting Landlord's other remedies). All bank service charges resulting from any returned checks shall be borne by Tenant.

G. Landlord's Cure of Tenant Defaults. If Tenant fails to perform any obligation under this Lease for five (5) days after notice thereof by Landlord (except that no notice shall be required in emergencies), Landlord shall have the right (but not the duty), to perform such obligation on behalf and for the account of Tenant. In such event, Tenant shall reimburse Landlord upon demand, as additional Rent, for all expenses incurred by Landlord in performing such obligation together with an amount equal to fifteen (15%) thereof for Landlord's overhead, and interest thereon at the Default Rate from the date such expenses were incurred. Landlord's performance of Tenant's obligations hereunder shall not be deemed a waiver or release of Tenant therefrom.

H. Other Matters. No re-entry or repossession, repairs, changes, alterations and additions, reletting, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, nor shall the same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express notice of such intention is sent by Landlord to Tenant. Landlord may bring suits for amounts owed by Tenant hereunder or any portions thereof, as the same accrue or after the same have accrued, and no suit or recovery of any portion due hereunder shall be deemed a waiver of Landlord's right to collect all amounts to which Landlord is entitled hereunder, nor shall the same serve as any defense to any subsequent suit brought for any amount not therefor reduced to

judgment. Landlord may pursue one or more remedies against Tenant and need not make an election of remedies until findings of fact are made by a court of competent jurisdiction. All rent and other consideration paid by any replacement tenants shall be applied at Landlord's option: (i) first, to the Costs of Reletting, (ii) second, to the payment of all costs of enforcing this Lease against Tenant or any Guarantor, (iii) third, to the payment of all interest and service charges accruing hereunder, (iv) fourth, to the payment of Rent theretofore accrued, and (v) with the residue, if any, to be held by Landlord and applied to the payment of Rent and other obligations of Tenant as the same become due (and with any remaining residue to be retained by Landlord). "Costs of Reletting" shall include without limitation, all costs and expenses incurred by Landlord for any repairs or other matters described in Paragraph D above, brokerage commissions, advertising costs, attorneys' fees, any economic incentives given to enter leases with replacement tenants, and costs of collecting rent from replacement tenants. Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues while Tenant is in Default hereunder. The times set forth herein for the curing of Defaults by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any Law to redeem or reinstate this Lease, or Tenant's right to possession, after this Lease, or Tenant's right to possession, is terminated based on a Default by Tenant.

ARTICLE 16: SECURITY DEPOSIT

Tenant shall deposit with Landlord the amount set forth in Article 1 ("Security Deposit"), upon Tenant's execution and submission of this Lease. The Security Deposit shall serve as security for the prompt, full and faithful performance by Tenant of the terms and provisions of this Lease. If Tenant commits a Default, or owes any amounts to Landlord upon the expiration of this Lease, Landlord may use or apply the whole or any part of the Security Deposit for the payment of Tenant's obligations hereunder. The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Law and shall not be construed as liquidated damages. In the event the Security Deposit is reduced by such use or application, Tenant shall deposit with Landlord within ten (10) days after notice, an amount sufficient to restore the full amount of the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds or pay interest on the Security Deposit. Any remaining portion of the Security Deposit shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest in this Lease) within sixty (60) days after Tenant (or such assignee) has vacated the Premises in accordance with Article 23. If the Premises shall be expanded at any time, or if the Term shall be extended at an increased rate of Rent, the Security Deposit shall thereupon be proportionately increased. Tenant shall not assign, pledge or otherwise transfer any interest in the Security Deposit except as part of an assignment of this Lease approved by Landlord under Article 13, and any attempt to do so shall be null and void.

ARTICLE 17: ATTORNEYS' FEES, JURY TRIAL, COUNTERCLAIMS AND VENUE

In the event of any litigation or arbitration between the parties relating to this Lease, the Premises or Property (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings), the prevailing party shall be entitled to recover its attorneys' fees and costs as part of the judgment, award or settlement therein. In the event of a breach of this Lease by either party which does not result in litigation but which causes the non-breaching party to incur attorneys' fees or costs, the breaching party shall reimburse such fees and costs to the non-breaching party upon demand. If either party or any of its officers, directors, trustees, beneficiaries, partners, agents, affiliates or employees shall be made a party to any litigation or arbitration commenced by or against the other party and is not at fault, the other party shall pay all costs, expenses and attorneys' fees incurred by such parties in connection with such litigation. **IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR RELATING TO THIS LEASE, THE PREMISES OR THE PROPERTY.** Although such jury waiver is intended to be self-operative and irrevocable, Landlord and Tenant each further agree, if requested, to confirm such waivers in writing at the time of commencement of any such action, proceeding or counterclaim. If Landlord commences any detainer suit, summary proceedings or other action seeking possession of the Premises, Tenant agrees not to interpose by consolidation of actions, removal to chancery or otherwise, any counterclaim, claim of set-off, recoupment or deduction of Rent, or other claim seeking affirmative relief of any kind (except a mandatory or compulsory counterclaim which Tenant would forfeit if not so interposed). Any action or proceeding brought by either party against the other for any matter arising out of or in

any way relating to this Lease, the Premises or the Property, shall be heard, at Landlord's option, in the court having jurisdiction located closest to the Property.

ARTICLE 18: SUBORDINATION, ATTORNMENT AND LENDER PROTECTION

This Lease is subject and subordinate to all Mortgages now or hereafter placed upon the Property, and all other encumbrances and matters of public record applicable to the Property. Whether before or after any foreclosure or power of sale proceedings are initiated or completed by any Lender or a deed in lieu is granted (or any ground lease is terminated), Tenant agrees upon written request of any such Lender or any purchaser at such sale, to attorn and pay Rent to such party, and recognize such party as Landlord (provided such Lender or purchaser shall agree not to disturb Tenant's occupancy so long as Tenant does not Default hereunder, on a form customarily used by, or otherwise reasonably acceptable to, such party). However, in the event of attornment, no Lender shall be: (i) liable for any act or omission of Landlord, or subject to any offsets or defenses which Tenant might have against Landlord (arising prior to such Lender becoming Landlord under such attornment), (ii) liable for any security deposit or bound by any prepaid Rent not actually received by such Lender, or (iii) bound by any modification of this Lease not consented to by such Lender. Any Lender may elect to make this Lease prior to the lien of its Mortgage by written notice to Tenant, and if the Lender of any prior Mortgage shall require, this Lease shall be prior to any subordinate Mortgage; such elections shall be effective upon written notice to Tenant, or shall be effective as of such earlier or later date set forth in such notice. Tenant agrees to give any Lender by certified mail, return receipt requested, a copy of any notice of default served by Tenant upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of leases, or otherwise) of the address of such Lender. Tenant further agrees that if Landlord shall have failed to cure such default within the time permitted Landlord for cure under this Lease, any such Lender whose address has been provided to Tenant shall have an additional period of thirty (30) days in which to cure (or such additional time as may be required due to causes beyond such Lender's control, including time to obtain possession of the Property by appointment of receiver, power of sale or judicial action). Except as expressly provided to the contrary herein, the provisions of this Article shall be self-operative; however Tenant shall execute and deliver, within ten (10) days after requested, such documentation as Landlord or any Lender may reasonably request from time to time, whether prior to or after a foreclosure or power of sale proceeding is initiated or completed, a deed in lieu is delivered, or a ground lease is terminated, in order to further confirm or effectuate the matters set forth in this Article in recordable form (and Tenant hereby authorizes Landlord acting in good faith to execute any such documentation as Tenant's agent and attorney-in-fact). Tenant hereby waives the provisions of any Law (now or hereafter adopted) which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease or Tenant's obligations hereunder if foreclosure or power of sale proceedings are initiated, prosecuted or completed.

ARTICLE 19: ESTOPPEL CERTIFICATES

Tenant shall from time to time, within five (5) business days after written request from Landlord, execute, acknowledge and deliver a statement certifying: (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect (or specifying the ground for claiming that this Lease is not in force and effect), (ii) the dates to which the Rent has been paid, and the amount of any Security Deposit, (iii) that Tenant is in possession of the Premises, and paying Rent on a current basis with no offsets, defenses or claims, or specifying the same if any are claimed, (iv) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord or Tenant which are pertinent to the request, or specifying the same if any are claimed, and (v) certifying such other matters, and including such current financial statements, as Landlord may reasonably request, or as may be requested by Landlord's current or prospective Lenders, insurance carriers, auditors, and prospective purchasers (and including a comparable certification statement from any subtenant respecting its sublease). Any such statement may be relied upon by any such parties. If Tenant shall fail to execute and return such statement within the time required herein, Tenant shall be deemed to have agreed with the matters set forth therein, and Landlord acting in good faith shall be authorized as Tenant's agent and attorney-in-fact to execute such statement on behalf of Tenant (which shall not be in limitation of Landlord's other remedies).

ARTICLE 20: RIGHTS RESERVED BY LANDLORD

Except to the extent expressly limited herein, Landlord reserves full rights to control the Property (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages or other claims of any kind), including more particularly, but without limitation, the following rights:

A. General Matters. To: (i) change the name or street address of the Property or designation of the Premises, (ii) install and maintain signs on the exterior and interior of the Property, and grant any other Person the right to do so, (iii) retain at all times, and use in appropriate instances, keys to all doors within and into the Premises, except for secured areas identified to Landlord in writing (iv) grant to any Person the right to conduct any business or render any service at the Property, whether or not the same are similar to the use permitted Tenant by this Lease, (v) grant any Person the right to use separate security personnel and systems respecting access to their premises, (vi) have access for Landlord and other tenants of the Property to any mail chutes located on the Premises according to the rules of the United States Postal Service (and to install or remove such chutes), and (vii) in case of fire, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof: (a) limit or prevent access to the Property, (b) shut down elevator service, (c) activate elevator emergency controls, and (d) otherwise take such reasonable action or preventative measures deemed necessary by Landlord for the safety of tenants of the Property or the protection of the Property and other property located thereon or therein (but this provision shall impose no duty on Landlord to take such actions, and no liability for actions taken in good faith).

B. Access To Premises. To enter the Premises in order to: (i) inspect, (ii) supply cleaning service or other services to be provided Tenant hereunder, (iii) show the Premises to current and prospective Lenders, insurers, purchasers, tenants, brokers and governmental authorities, (iv) decorate, remodel or alter the Premises if Tenant shall abandon the Premises at any time, or shall vacate the same during the last 120 days of the Term (without thereby terminating this Lease), and (v) perform any work or take any other actions under Paragraph (C) below, or exercise other rights of Landlord under this Lease or applicable Laws. However, Landlord shall: (a) provide reasonable advance written or oral notice to Tenant's on-site manager or other appropriate person for matters which will involve a significant disruption to Tenant's business (except in emergencies), (b) take reasonable steps to minimize any significant disruption to Tenant's business, and following completion of any work, return Tenant's leasehold improvements, fixtures, property and equipment to the original locations and condition to the fullest extent reasonably possible, and (c) take reasonable steps to avoid materially changing the configuration or reducing the square footage of the Premises, unless required by Laws or other causes beyond Landlord's reasonable control (and in the event of any permanent material reduction, the Rent and other rights and obligations of the parties based on the square footage of the Premises shall be proportionately reduced). Tenant shall not place partitions, furniture or other obstructions in the Premises which may prevent or impair Landlord's access to the Systems and Equipment for the Property or the systems and equipment for the Premises. If Tenant requests that any such access occur before or after Landlord's regular business hours and Landlord approves, Tenant shall pay all overtime and other additional costs in connection therewith.

C. Changes To The Property. To: (i) paint and decorate, (ii) perform repairs or maintenance, and (iii) make replacements, restorations, renovations, alterations, additions and improvements, structural or otherwise (including freon retrofit work), in and to the Property or any part thereof, including any adjacent building, structure, facility, land, street or alley, or change the uses thereof (including changes, reductions or additions of corridors, entrances, doors, lobbies, parking facilities and other areas, structural support columns and shear walls, elevators, stairs, escalators, mezzanines, solar tint windows or film, kiosks, planters, sculptures, displays, and other amenities and features therein, and changes relating to the connection with or entrance into or use of the Property or any other adjoining or adjacent building or buildings, now existing or hereafter constructed). In connection with such matters, Landlord may among other things erect scaffolding, barricades and other structures, open ceilings, close entry ways, restrooms, elevators, stairways, corridors, parking and other areas and facilities, and take such other actions as Landlord deems appropriate. However, Landlord shall: (a) take reasonable steps to minimize or avoid any denial of access to the Premises except when necessary on a temporary basis, and (b) in connection with entering the Premises shall comply with Paragraph B above.

D. New Premises. To substitute for the Premises other premises (herein referred to as the "new premises") in the Property, provided: (i) the new premises shall be similar to the Premises in size (up to 10% larger or smaller with the Rent and any other rights and obligations of the parties based on the square footage of the Premises adjusted proportionately to reflect the any decrease), (ii) Landlord shall provide the new premises in a condition substantially comparable to the Premises at the time of the substitution (and Tenant shall diligently cooperate

in the preparation or approval of any plans or specifications for the new premises as requested by Landlord or Landlord's representatives), (iii) the parties shall execute an appropriate amendment to the Lease confirming the change within thirty (30) days after Landlord requests, and (iv) if Tenant shall already have taken possession of the Premises: (a) Landlord shall pay the direct, out-of-pocket, reasonable expenses of Tenant in moving from the Premises to the new premises, and (b) Landlord shall give Tenant at least thirty (30) days' notice before making such change, and such move shall be made during evenings, weekends, or otherwise so as to incur the least inconvenience to Tenant. Tenant shall surrender and vacate the Premises on the date required in Landlord's notice of substitution, in the condition and as required under Article 23, and any failure to do so shall be subject to Article 24.

ARTICLE 21: LANDLORD'S RIGHT TO CURE

If Landlord shall fail to perform any obligation under this Lease required to be performed by Landlord, Landlord shall not be deemed to be in default hereunder nor subject to any claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after notice thereof by Tenant (provided, if the nature of Landlord's failure is such that more time is reasonably required in order to cure, Landlord shall not be in default if Landlord commences to cure within such period and thereafter diligently seeks to cure such failure to completion). If Landlord shall default and failure to cure as provided herein, Tenant shall have such rights and remedies as may be available to Tenant under applicable Laws, subject to the other provisions of this Lease; provided, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord, and shall have no right to withhold, set-off, or abate Rent, or terminate this Lease, and Tenant hereby expressly waives the benefit of any Law to the contrary.

ARTICLE 22: INDEMNIFICATION

Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, demands, losses, penalties, fines, fees, charges, assessments, liabilities, damages, judgments, orders, decrees, actions, administrative or other proceedings, costs and expenses (including court costs, attorneys' fees, and expert witness fees), including consequential damages, and any diminution in value or loss or interference with the transfer, use or enjoyment of the Premises, Property or other property or business or affecting title thereto, howsoever caused, which directly or indirectly relate to or result wholly or in part from, or are alleged to relate to or arise wholly or in part from: (i) any violation or breach of this Lease or applicable Law by any Tenant Parties (as defined below), (ii) damage, loss or injury to persons, property or business occurring in, about or from the Premises, (iii) damage, loss or injury to persons, property or business directly or indirectly arising out of any Tenant Party's use of the Premises or Property, or out of any other act or omission of any Tenant Parties. For purposes of this provision, "Tenant Parties" shall mean Tenant, any other occupant of the Premises and any of their respective agents, employees, invitees, Transferees and contractors. Without limiting the generality of the foregoing, Tenant specifically acknowledges that the undertaking herein shall apply to claims in connection with or arising out of any "Work" as described in Article 9, the installation, maintenance, use or removal of any "Lines" as described in Article 29, the transportation, use, storage, maintenance, generation, manufacturing, handling, disposal, release, discharge, spill or leak of any "Hazardous Material" as described in Article 30, and violations of Tenant's responsibilities respecting the Disabilities Acts as described in Article 31 (whether or not any of such matters shall have been theretofore approved by Landlord). Notwithstanding the foregoing to the contrary, the foregoing indemnity shall not apply to claims finally determined by a court of competent jurisdiction to have been caused solely by the gross negligence or willful misconduct of the party seeking to be indemnified.

ARTICLE 23: RETURN OF POSSESSION

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall vacate and surrender possession of the entire Premises in the condition required under Article 8 and the Rules, ordinary wear and tear excepted, shall surrender all keys and key cards, and any parking transmitters, stickers or cards, to Landlord, and shall remove all personal property and office trade fixtures that may be readily removed without damage to the Premises or Property. All improvements, fixtures and other items, including ceiling light fixtures, HVAC equipment, plumbing fixtures, hot water heaters, fire suppression and sprinkler systems, "Lines"

under Article 29, interior stairs, wall coverings, carpeting and other flooring, blinds, drapes and window treatments, in or serving the Premises, whether installed by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant, unless Landlord elects otherwise as provided herein. If prior to such termination or within three (3) months thereafter Landlord so directs by notice, Tenant shall promptly remove such of the foregoing items as are designated in such notice and restore the Premises to the condition prior to the installation of such items in a good and workmanlike manner; provided, Landlord shall not require removal of customary office improvements installed with Landlord's written approval (except as expressly and reasonably required by Landlord in connection with granting such approval). If Tenant shall fail to perform any repairs or restoration, or fail to remove any items from the Premises required hereunder, Landlord may do so and Tenant shall pay Landlord's actual, reasonable charges therefor upon demand. All property removed from the Premises by Landlord pursuant to any provisions of this Lease or any Law may be handled or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. All property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after expiration or earlier termination of this Lease or Tenant's right to possession, shall at Landlord's option be conclusively deemed to have been conveyed by Tenant to Landlord as if by bill of sale without payment by Landlord. Unless prohibited by applicable Law, Landlord shall have a lien against such property for the costs incurred in removing and storing the same. Tenant hereby waives any statutory notices to vacate or quit the Premises upon expiration of this Lease.

ARTICLE 24: HOLDING OVER

Unless Landlord expressly agrees otherwise in writing, Tenant shall pay Landlord 200% of the amount of Rent then applicable prorated on a per diem basis for each day Tenant shall fail to vacate or surrender possession of the Premises or any part thereof after expiration or earlier termination of this Lease as required under Article 23, together with all damages (direct and consequential) sustained by Landlord on account thereof. Tenant shall pay such amounts on demand, and, in the absence of demand, monthly in advance. The foregoing provisions, and Landlord's acceptance of any such amounts, shall not serve as permission for Tenant to hold-over, nor serve to extend the Term (although Tenant shall remain a tenant-at-sufferance bound to comply with all provisions of this Lease until Tenant properly vacates the Premises, and shall be subject to the provisions of Article 23). Landlord shall have the right at any time after expiration or earlier termination of this Lease or Tenant's right to possession to reenter and possess the Premises and remove all property and persons therefrom, and Landlord shall have such other remedies for holdover as may be available to Landlord under other provisions of this Lease or applicable Laws.

ARTICLE 25: NOTICES

Except as expressly provided to the contrary in this Lease, every notice or other communication to be given by either party to the other with respect hereto or to the Premises or Property, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by national air courier service, or United States certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth in Article 1, or such other address or addresses as Tenant or Landlord may from time to time designate by notice given as above provided. Every notice or other communication hereunder shall be deemed to have been given as of the third business day following the date of such mailing (or as of any earlier date evidenced by a receipt from such national air courier service or the United States Postal Service) or immediately if personally delivered. Notices not sent in accordance with the foregoing shall be of no force or effect until received by the foregoing parties at such addresses required herein.

ARTICLE 26: REAL ESTATE BROKERS

Tenant represents that Tenant has dealt only with the broker, if any, designated in Article 1 (whose commission, if any, shall be paid by Landlord pursuant to separate agreement) as broker, agent or finder in connection with this Lease, and agrees to indemnify and hold Landlord harmless from all damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any other broker, agent or finder with whom Tenant

has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation with Tenant of this Lease.

ARTICLE 27: NO WAIVER

No provision of this Lease will be deemed waived by either party unless expressly waived in writing and signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and Landlord's consent or approval respecting any action by Tenant shall not constitute a waiver of the requirement for obtaining Landlord's consent or approval respecting any subsequent action. Acceptance of Rent by Landlord directly or through any agent or lockbox arrangement shall not constitute a waiver of any breach by Tenant of any term or provision of this Lease (and Landlord reserves the right to return or refund any untimely payments if necessary to preserve Landlord's remedies). No acceptance of a lesser amount of Rent shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. The acceptance of Rent or of the performance of any other term or provision from, or providing directory listings or services for, any Person other than Tenant shall not constitute a waiver of Landlord's right to approve any Transfer. No delivery to, or acceptance by, Landlord or its agents or employees of keys, nor any other act or omission of Tenant or Landlord or their agents or employees, shall be deemed a surrender, or acceptance of a surrender, of the Premises or a termination of this Lease, unless stated expressly in writing by Landlord.

ARTICLE 28: SAFETY AND SECURITY DEVICES, SERVICES AND PROGRAMS

The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses, as further described in Article 10. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by Law.

ARTICLE 29: TELECOMMUNICATION LINES

A. Telecommunication Lines. Subject to Landlord's continuing right of supervision and approval, and the other provisions hereof, Tenant may: (i) install telecommunication lines ("Lines") connecting the Premises to Landlord's terminal block on the floor or floors on which the Premises are located, or (ii) use such Lines as may currently exist and already connect the Premises to such terminal block. Landlord's predecessor or independent contractor has heretofore connected such terminal block through riser system Lines to Landlord's main distribution frame ("MDF") for the Property. Landlord disclaims any representations, warranties or understandings concerning the capacity, design or suitability of Landlord's riser Lines, MDF or related equipment. If there is, or will be, more than one tenant on any floor, at any time, Landlord may allocate, and periodically reallocate, connections to the terminal block based on the proportion of square feet each tenant occupies on such floor, or the type of business operations or requirements of such tenants, in Landlord's reasonable discretion. Landlord may arrange for an independent contractor to review Tenant's requests for approval hereunder, monitor or supervise Tenant's installation, connection and disconnection of Lines, and provide other such services, or Landlord may provide the same. In each case, Tenant shall pay Landlord's reasonable fees and costs therefor as provided in Article 9.

B. Installation. Tenant may install and use Tenant's Lines and make connections and disconnections at the terminal blocks as described above, provided Tenant shall: (i) obtain Landlord's prior written approval of all aspects thereof, (ii) use an experienced and qualified contractor designated or approved in writing in advance by Landlord (whom Landlord may require to enter an access and indemnity agreement on Landlord's then standard form of agreement therefor), (iii) comply with such inside wire standards as Landlord may adopt from time to time, and all other provisions of this Lease, including Article 9 respecting Work, and the Rules

respecting access to the wire closets, (iv) not install Lines in the same sleeve, chase way or other enclosure in close proximity with electrical wire, and not install PVC-coated Lines under any circumstances, (v) thoroughly test any riser Lines to which Tenant intends to connect any Lines to ensure that such riser Lines are available and are not then connected to or used for telephone, data transmission or any other purpose by any other party (whether or not Landlord has previously approved such connections), and not connect to any such unavailable or connected riser Lines, and (vi) not connect any equipment to the Lines which may create an electromagnetic field exceeding the normal insulation ratings of ordinary twisted pair riser cable or cause radiation higher than normal background radiation, unless the Lines therefor (including riser Lines) are appropriately insulated to prevent such excessive electromagnetic fields or radiation (and such insulation shall not be provided by the use of additional unused twisted pair Lines). As a condition to permitting installation of new Lines, Landlord may require that Tenant remove any existing Lines located in or serving the Premises.

C. Limitation of Liability. Unless due solely to Landlord's intentional misconduct or grossly negligent acts, Landlord shall have no liability for damages arising, and Landlord does not warrant that the Tenant's use of the Lines will be free, from the following (collectively called "Line Problems"):

- (i) any eavesdropping, wire-tapping or theft of long distance access codes by unauthorized parties, (ii) any failure of the Lines to satisfy Tenant's requirements, or (iii) any capacitance, attenuation, cross-talk or other problems with the Lines, any misdesignation of the Lines in the MDF room or wire closets, or any shortages, failures, variations, interruptions, disconnections, loss or damage caused by or in connection with the installation, maintenance, replacement, use or removal of any other Lines or equipment at the Property by or for other tenants at the Property, by any failure of the environmental conditions at or the power supply for the Property to conform to any requirements of the Lines or any other problems associated with any Lines or by any other cause. Under no circumstances shall any Line Problems be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of any Rent or other charges under the Lease, or relieve Tenant from performance of Tenant's obligations under the Lease as amended herein. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems.

ARTICLE 30: HAZARDOUS MATERIALS

A. Hazardous Materials Generally Prohibited. Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release, discharge, spill or leak any "Hazardous Material" (as defined below), or permit Tenant's employees, agents, contractors, or other occupants of the Premises to engage in such activities on or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Premises of substances customarily and lawfully used in the business which Tenant is permitted to conduct in the Premises under this Lease, but only as an incidental and minor part of such business, and provided: (i) such substances shall be properly labeled, contained, used and stored only in small quantities reasonably necessary for such permitted use of the Premises and the ordinary course of Tenant's business therein, strictly in accordance with applicable Laws, highest prevailing standards, and the manufacturers' instructions therefor, and as Landlord shall reasonably require, (ii) Tenant shall provide Landlord with ten (10) days advance notice and current Material Safety Data Sheets ("MSDSs") therefor, and Landlord reserves the right to prohibit or limit such substances in each such instance, (iii) such substances shall not be disposed of, released, discharged or permitted to spill or leak in or about the Premises or the Property (and under no circumstances shall any Hazardous Material be disposed of within the drains or plumbing facilities in or serving the Premises or Property or in any other public or private drain or sewer, regardless of quantity or concentration), (iv) if any applicable Law or Landlord's trash removal contractor requires that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal in approved containers directly with a qualified and licensed disposal company at a lawful disposal site, (v) any remaining such substances shall be completely, properly and lawfully removed from the Property upon expiration or earlier termination of this Lease, and (vi) for purposes of removal and disposal of any such substances, Tenant shall be named as the owner, operator and generator, shall obtain a waste generator identification number, and shall execute all permit applications, manifests, waste characterization documents and any other required forms,

B. Notifications and Records. Tenant shall immediately notify Landlord of: (i) any inspection, enforcement, cleanup or other regulatory action taken or threatened by any regulatory authority with respect to any Hazardous Material on or from the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party

relating to any loss or injury claimed to have resulted from any Hazardous Material on or from the Premises, (iii) any release, discharge, spill, leak, disposal or transportation of any Hazardous Material on or from the Premises in violation of this Article, and any damage, loss or injury to persons, property or business resulting or claimed to have resulted therefrom, and (iv) any matters where Tenant is required by Law to give a notice to any regulatory authority respecting any Hazardous Materials on or from the Premises. Landlord shall have the right (but not the obligation) to notify regulatory authorities concerning actual and claimed violations of this Article. Tenant shall immediately upon written request from time to time provide Landlord with copies of all MSDSs, permits, approvals, memos, reports, correspondence, complaints, demands, claims, subpoenas, requests, remediation and cleanup plans, and all papers of any kind filed with or by any regulatory authority and any other books, records or items pertaining to Hazardous Materials that are subject to the provisions of this Article (collectively referred to herein as "Tenant's Hazardous Materials Records").

C. Clean Up Responsibility. If any Hazardous Material is released, discharged or disposed of, or permitted to spill or leak, in violation of the foregoing provisions, Tenant shall immediately and properly clean up and remove the Hazardous Materials from the Premises, Property and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord) in compliance with applicable Laws and then prevailing industry practices and standards, at Tenant's expense (without limiting Landlord's other remedies therefor). Such clean up and removal work ("Tenant Remedial Work") shall be considered Work under Article 9 and subject to the provisions thereof, including Landlord's prior written approval (except in emergencies), and any testing, investigation, feasibility and impact studies, and the preparation and implementation of any remedial action plan required by any court or regulatory authority having jurisdiction or reasonably required by Landlord. In connection therewith, Tenant shall provide documentation evidencing that all Tenant Remedial Work or other action required hereunder has been properly and lawfully completed (including a certificate addressed to Landlord from an environmental consultant reasonably acceptable to Landlord, in such detail and form as Landlord may reasonably require). If any Hazardous Material is released, discharged, disposed of, or permitted to spill or leak on or about the Property and is not caused by Tenant or other occupants of the Premises, or their agents, employees, Transferees, or contractors, such release, discharge, disposal, spill or leak shall be deemed casualty damage under Article 11 to the extent that the Premises and Tenant's use thereof is affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under this Lease.

D. Hazardous Material Defined. The term "Hazardous Material" for purposes hereof shall include, but not be limited to: (i) any flammable, explosive, toxic, radioactive, biological, corrosive or otherwise hazardous chemical, substance, liquid, gas, device, form of energy, material or waste or component thereof, (ii) petroleum-based products, diesel fuel, paints, solvents, lead, radioactive materials, cyanide, biohazards, medical and infectious waste and "sharps", printing inks, acids, DDT, pesticides, ammonia compounds, and any other items which now or subsequently are found to have an adverse effect on the environment or the health and safety of persons or animals or the presence of which require investigation or remediation under any Law or governmental policy, and (iii) any item defined as a "hazardous substance", "hazardous material", "hazardous waste", "regulated substance" or "toxic substance" under any federal, state or local Laws, and all regulations, guidelines, directives and other requirements thereunder, all as may be amended or supplemented from time to time.

E. Fees, Taxes, Fines and Remedies. Tenant shall pay, prior to delinquency, any and all fees, taxes (including excise taxes), penalties and fines arising from or based on Tenant's activities involving Hazardous Material on or about the Premises or Property, and shall not allow such obligations to become a lien or charge against the Property or Landlord. If Tenant violates any provision of this Article with respect to any Hazardous Materials, Landlord may: (i) require that Tenant immediately remove all Hazardous Materials from the Premises and discontinue using, storing and handling Hazardous Materials in the Premises, and/or (ii) pursue such other remedies as may be available to Landlord under this Lease or applicable Law.

ARTICLE 31: DISABILITIES ACTS

The Parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder ("ADA"), and any similarly motivated state and local Laws ("Local Barriers Acts"), as the same may be amended and supplemented from time to time (collectively referred to herein as the "Disabilities Acts") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and Property depending on, among other

things: (i) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (ii) whether such requirements are "readily achievable", and (iii) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall perform any required ADA Title III and related Local Barriers Acts compliance in the common areas, except as provided below, (b) Tenant shall perform any required ADA Title III and related Local Barriers Acts compliance in the Premises, and (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III and related Local Barriers Acts "path of travel" and other requirements triggered by any public accommodation or other use of, or alterations in, the Premises. Tenant shall be responsible for ADA Title I and related Local Barriers Acts requirements relating to Tenant's employees, and Landlord shall be responsible for ADA Title I and related Local Barriers Acts requirements relating to Landlord's employees.

ARTICLE 32: DEFINITIONS

(A) "Building" shall mean the structure (or the portion thereof owned by Landlord) identified in Article 1.

(B) "Default Rate" shall mean eighteen percent (18%) per annum, or the highest rate permitted by applicable Law, whichever shall be less.

(C) "Expenses" shall mean all expenses, costs and amounts (other than Taxes) of every kind and nature relating to the ownership, management, repair, maintenance, replacement, insurance and operation of the Property, including any amounts paid for: (i) utilities for the Property, including electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, (ii) permits, licenses, inspections, warrants and certificates necessary to operate, manage and lease the Property, (iii) costs of complying with Laws, including any freon retrofitting and compliance with the "Disabilities Acts" (as described in Article 31), (iv) Insurance Applicable to the Property, not limited to that required under this Lease, and which may include earthquake, boiler, rent loss, workers' compensation and employers' liability, builders' risk, automobile and other coverages, including a reasonable allocation of costs under any blanket policies, (v) supplies, materials, tools, equipment, uniforms, and vehicles used in the operation, repair, maintenance, security, and other services for the Property, including rental, installment purchase and financing agreements therefor and interest thereunder, (vi) accounting, legal, inspection, consulting, concierge, alarm monitoring, security, janitorial, trash removal, snow and ice removal, and other services, (vii) management company fees (which shall not be in excess of those fees charged by comparable on-site management companies in competing Class A buildings in comparable locations in Seattle Central Business District), (viii) wages, salaries and other compensation and benefits (including health, life and disability insurance, savings, retirement and pension programs, and the fair value of any parking privileges, including those provided through collective bargaining agreements) for any manager and other personnel or parties engaged in the operation, repair, maintenance, security or other services for the Property, and employer's FICA contributions, unemployment taxes or insurance, any other taxes which may be levied on such wages, salaries, compensation and benefits, and data or payroll processing expenses relating thereto (if the manager or other personnel handle other properties, the foregoing expenses shall be allocated appropriately between the Property and such other properties), (ix) payments pursuant to any easement, cross or reciprocal easement, operating agreement, development and/or parking rights agreement, declaration, covenant, or other agreement or instrument pertaining to the payment or sharing of costs for common or parking areas or other matters (except to the extent Included in Taxes hereunder), (x) parking surcharges or fees that may result from any environmental or other Law or guideline, and any sales, use, value-added or other taxes on supplies or services for the Property, (xi) the costs of operating and maintaining any on-site office at the Property or an adjoining property (such costs to be appropriately allocated between the Property and any such adjoining property served by such office), including the fair rental value thereof, telephone charges, postage, stationery and Photocopying expenses, and telephone directory listings, (xii) the amount of insurance premiums saved by electing higher than customary deductibles, if Landlord does not also include in Expenses the losses incurred as a result of having such higher deductibles, (xiii) the Cost of auditing, assessing and implementing Year 2000 Performance solutions under Article 34, and (xiv) operation, maintenance, repair, installation, replacement, inspection, testing, painting, decorating and cleaning of the Property, and any items located off-site but installed for the benefit of the Property, including: (a) Property identification and pylon signs, directional signs, traffic signals and markers, flagpoles and canopies, (b) sidewalks, curbs, stairways, parking structures, lots, loading and service areas and driveways, (c) storm and sanitary drainage systems, including disposal plants, lift stations and detention ponds and basins, (d) irrigation systems, (e) elevators, escalators, "Lines" under Article 29, and other Systems and Equipment,

(f) interior and exterior flowers and landscaping, and (g) all other portions, facilities, features and amenities of the Property, including common area fixtures, equipment and other items therein or thereon, floors, floor coverings, corridors, ceilings, foundations, walls, wall-coverings, restrooms, lobbies, trash compactors, doors, locks and hardware, windows, gutters, downspouts, roof flashings and roofs. The foregoing provision is for definitional purposes only and shall not be construed to impose any obligation upon Landlord to incur such expenses. Landlord may retain independent contractors (or affiliated contractors at market rates) to provide any services or perform any work, in which case the costs thereof shall be deemed Expenses. Expenses shall not, however, include:

(1) costs relating to non-office rentable areas of the Property to the extent that Landlord deducts Such rentable areas in determining Tenant's Share of Expenses under Article 4; and costs relating solely to any parking garage for the Property (such as utilities, attendants, cashiers, scavenger and janitorial services), except to the extent that Landlord elects to credit parking revenues, if any, derived from such garage against Expenses;

(2) depreciation, interest and amortization on any Mortgages and other debt costs or ground lease payments (except interest on the cost of capital expenditures to the extent permitted below, and ground lease payments for Taxes and Expenses); legal fees in connection with leasing, tenant disputes or enforcement of leases; real estate brokers' leasing commissions; improvements or alterations to tenant spaces; the cost of providing any service directly to, and paid directly by, any tenant; costs of any items to the extent Landlord receives reimbursement from insurance proceeds or from a third party (excluding payments by tenants for Taxes and Expenses); and

(3) capital expenditures, except those: (i) made primarily to reduce Expenses, or to comply with Laws or insurance requirements imposed after the Property was constructed, or (ii) for replacements or upgrades of nonstructural items located in the common areas of the Property required to keep such areas in first class condition. To the extent that any such permitted capital expenditure exceeds \$5,000, such excess shall be amortized for purposes of this Lease over the shorter of: (x) the period during which the reasonably estimated savings in Expenses equals the expenditure, (y) the shortest period over which Landlord may depreciate such item under the Federal Tax Code then in effect, or (z) the useful life of the item, but in no event more than ten (10) years; provided, Landlord may elect any longer period in Landlord's discretion. In each such case, Landlord may include interest on the unamortized amount at the prevailing loan rate available to Landlord when the cost was incurred. Expenses shall include any remaining amortization of such permitted capital expenditures made prior to the date of this Lease.

(D) "Holidays" shall mean all federal holidays, and holidays observed by the State of Washington, including New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, and to the extent of utilities or services provided by union members engaged at the Property, such other holidays observed by such unions.

(E) "Landlord" shall mean only the landlord from time to time, except for purposes of any provisions defending, indemnifying and holding Landlord harmless hereunder, "Landlord" shall include past, present and future landlords and their respective partners, beneficiaries, trustees, officers, directors, employees, shareholders, principals, agents, affiliates, successors and assigns.

(F) "Law" or "Laws" shall mean all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are considered binding precedents in the State of Washington, and decisions of federal Courts applying the Laws of such State, at the time in question. This Lease shall be interpreted and governed by the Laws of the State of Washington.

(G) "Lender" shall mean the holder of any Mortgage at the time in question, and where such Mortgage is a ground lease, such term shall refer to the ground lessor (and the term "ground lease" although not separately capitalized is intended through out this Lease to include any superior or master lease).

(H) "Mortgage" shall mean all mortgages, deeds of trust, ground leases and other such encumbrances now or hereafter placed upon the Property or Building, or any part thereof, and all renewals, modifications, consolidations, replacements or extensions thereof, and all indebtedness now or hereafter secured thereby and all interest thereon.

(I) "Person" shall mean an individual, trust, partnership, limited liability company, joint venture, association, corporation and any other entity.

(J) "Premises" shall mean the area within the Building identified in Article 1 and Exhibit A. Possession of areas necessary for utilities, services, safety and operation of the Property, including the Systems and Equipment, fire stairways, perimeter walls, space between the finished ceiling of the Premises and the slab of the floor or roof of the Property thereabove, and the use thereof together with the right to install, maintain, operate, repair and replace the Systems and Equipment, including any of the same in, through, under or above the Premises in locations that will not materially interfere with Tenant's use of the Premises, are hereby excepted and reserved by Landlord, and not demised to Tenant.

(K) "Property" shall mean the Building, and any common or public areas or facilities, easements, corridors, lobbies, sidewalks, loading areas, driveways, landscaped areas, air rights, development rights, parking rights, skywalks, parking garages and lots, and any and all other rights, structures or facilities operated or maintained in connection with or for the benefit of the Building, and all parcels or tracts of land on which all or any portion of the Building or any of the other foregoing items are located, and any fixtures, machinery, apparatus, Systems and Equipment, furniture and other personal property located thereon or therein and used in connection therewith.

(L) "Rent" shall have the meaning specified therefor in Article 4.

(M) "Systems and Equipment" shall mean any plant, machinery, transformers, duct work, cable, wires, and other equipment, facilities, and systems designed to supply light, heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life/safety systems or equipment, or any elevators, escalators or other mechanical, electrical, electronic, computer or other systems or equipment for the Property, except to the extent that any of the same serves particular tenants exclusively (and "systems and equipment" without capitalization shall refer to such of the foregoing items serving particular tenants exclusively).

(N) "Taxes" shall mean all amounts (unless required by Landlord to be paid under Article 14) for federal, state, county, or local governmental, special district, improvement district, municipal or other political subdivision taxes, fees, levies, assessments, charges or other impositions of every kind and nature in connection with the ownership, leasing and operation of the Property, whether foreseen or unforeseen, general, special, ordinary or extraordinary (including real estate and ad valorem taxes, general and special assessments, interest on special assessments paid in installments, transit taxes, water and sewer rents, license and business license fees, use or occupancy taxes, taxes based upon the receipt of rent including gross receipts or sales taxes applicable to the receipt of rent or service or value added taxes, personal property taxes, taxes on fees for property management services, and taxes or charges for fire protection, streets, sidewalks, road maintenance, refuse or other services). If the method of taxation of real estate prevailing at the time of execution hereof shall be, or has been, altered so as to cause the whole or any part of the Taxes now, hereafter or heretofore levied, assessed or imposed on real estate to be levied, assessed or imposed on Landlord, wholly or partially, as a capital stock levy or otherwise, or on or measured by the rents, income or gross receipts received therefrom, then such new or altered taxes attributable to the Property shall be included within the term "Taxes," except that the same shall not include any portion of such tax attributable to other income of Landlord not relating to the Property. Tenant shall pay increased Taxes whether Taxes are increased as a result of increases in the assessment or valuation of the Property (whether based on a sale, change in ownership or refinancing of the Property or otherwise), increases in tax rates, reduction or elimination of any rollbacks or other deductions available under current law, scheduled reductions of any tax abatement, as a result of the elimination, invalidity or withdrawal of any tax abatement, or for any other cause whatsoever. If Taxes are reduced by, or credited with, any abatement or exemption issued by a taxing authority to help finance or reimburse Landlord for costs incurred to comply with Laws or otherwise, Taxes hereunder shall be computed without regard to such abatement or exemption (Tenant hereby acknowledging that Landlord, having incurred such costs, is solely entitled to such abatement or exemption), except to the extent that Landlord includes such costs in Expenses under this Lease. Notwithstanding the foregoing, there shall be excluded from Taxes all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Property).

(O) "Tenant" shall be applicable to one or more Persons as the case may be, the singular shall include the plural, and if there be more than one Tenant, the obligations thereof shall be joint and several. When used in the lower case, "tenant" shall mean any other tenant, subtenant or occupant of the Property.

(P) "Tenant's Share" of Taxes and Expenses shall be the percentage set forth in Article 1, but if the rentable area of the Premises or Property shall change, Tenant's Share shall thereupon become the rentable area of the Premises divided by the rentable area of the Property, excluding any parking facilities, subject at all times to adjustment under Article 4. Tenant acknowledges that the "rentable area of the Premises" under this Lease includes the usable area, without deduction for columns or projections, multiplied by a load or conversion factor, to reflect a share of certain areas, which may include lobbies, corridors, mechanical, utility, janitorial, boiler and service rooms and closets, restrooms, and other public, common and service areas. Except as provided expressly to the contrary herein, the "rentable area of the Property" shall include all rentable area of all space leased or available for lease at the Property, which Landlord may reasonably re-determine from time to time, to reflect re-configurations, additions or modifications to the Property.

ARTICLE 33: OFFER

The submission and negotiation of this Lease shall not be deemed an offer to enter the same by Landlord (nor an option or reservation for the Premises), but the solicitation of such an offer by Tenant. Tenant agrees that its execution of this Lease constitutes a firm offer to enter the same which may not be withdrawn for a period of thirty (30) days after delivery to Landlord. During such period and in reliance on the foregoing, Landlord may, at Landlord's option, deposit any Security Deposit and Rent, proceed with any plans, specifications, alterations or improvements, and permit Tenant to enter the Premises, but such acts shall not be deemed an acceptance of Tenant's offer to enter this Lease, and such acceptance shall be evidenced only by Landlord signing and delivering this Lease to Tenant.

ARTICLE 34: YEAR 2000 PERFORMANCE

Landlord is in the process of performing a readiness audit with respect to Year 2000 Performance. As used herein, the term "Year 2000 Performance" means that the Systems and Equipment under Landlord's control which are material to proper Building operations can reasonably be expected to perform without material adverse effect despite the change of century from 1999 to 2000 and the leap year. The parties acknowledge that the process of auditing, assessing and implementing Year 2000 Performance solutions is time consuming and uncertain, and dependent in part on the performance of third parties not under Landlord's control. Thus, Landlord makes no representations or warranties with respect to Year 2000 Performance of the Systems and Equipment, and interruptions of services as a result of Year 2000 Performance problems will be deemed to be interruptions out of Landlord's reasonable control. Landlord will inform Tenant promptly after Landlord gains actual knowledge of any significant Year 2000 performance problem which Landlord reasonably believes may adversely impact building operations, and will use commercially reasonable efforts to audit, assess and implement programs to meet the goal of Year 2000 performance. The cost of such efforts shall be included in Expenses in the year incurred, provided, however, that capital replacement costs, if any, shall be amortized over the useful life of the replacement. Some information may be obtained from third parties, and may not have been independently verified. Any information which Landlord provides will be subject to and made in reliance on the Year 2000 Information Readiness and Disclosure Act.

ARTICLE 35: MISCELLANEOUS

A. Captions and Interpretation. The captions of the Articles and Paragraphs of this Lease, and any computer highlighting of changes from earlier drafts, are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. Tenant acknowledges that it has read this Lease and that it has had the opportunity to confer with counsel in negotiating this Lease; accordingly, this Lease shall be construed neither for nor against Landlord or Tenant, but shall be given a fair and reasonable interpretation in accordance

with the meaning of its terms. The nouter shall include the masculine and feminine, and the singular shall include the plural. The term “including” shall be interpreted to mean “including, but not limited to.”

B. Survival of Provisions. All obligations (including indemnity, Rent and other payment obligations) or rights of either party arising during or attributable to the period prior to expiration or earlier termination of this Lease shall survive such expiration or earlier termination.

C. Severability. If any term or provision of this Lease or portion thereof shall be found invalid, void, illegal, or unenforceable generally or with respect to any particular party, by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions or the remaining portion thereof, or its enforceability with respect to any other party.

D. Failure to Commence. If the Commencement Date is delayed in accordance with Article 3 for more than nine (9) months, Landlord may declare this Lease terminated by notice to Tenant, and if the Commencement Date is so delayed for more than three years, this Lease shall thereupon be deemed terminated without further action by either party.

E. Short Form Lease. Neither this Lease nor any memorandum of lease or short form lease shall be recorded by Tenant, but Landlord or any Lender may elect to record a short form of this Lease, in which case Tenant shall promptly execute, acknowledge and deliver the same on a form prepared by Landlord or such Lender.

F. Light, Air and Other Interests. This Lease does not grant any legal rights to “light and air” outside the Premises nor any particular view visible from the Premises, nor any easements, licenses or other interests unless expressly contained in this Lease.

G. Authority. If Landlord or Tenant is any form of corporation, partnership, limited liability company or partnership, association or other organization, such party below hereby represent that this Lease has been fully authorized and no further approvals are required, and such party is duly organized, in good standing and legally qualified to do business in the Premises (and has any required certificates, licenses, permits and other such items).

H. Partnership Tenant. If Tenant is a partnership, all current and new general partners shall be jointly and severally liable for all obligations of Tenant hereunder and as this Lease may hereafter be modified, whether such obligations accrue before or after admission of future partners or after any partners die or leave the partnership. Tenant shall cause each new partner to sign and deliver to Landlord written confirmation of such liability, in form and content satisfactory to Landlord, but failure to do so shall not avoid such liability.

I. Financial Statements. Tenant shall, within ten (10) days after requested from time to time, deliver to Landlord financial statements (including balance sheets and income/expense statements) for Tenant’s then most recent full and partial fiscal year preceding such request, certified by an independent certified public accountant or Tenant’s chief financial officer, in form reasonably satisfactory to Landlord. Landlord shall keep such information confidential in the manner consistent with Landlord’s normal course of business.

J. Successors and Assigns; Transfer of Property and Security Deposit. Each of the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties’ respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to Article 13 respecting Transfers and Article 18 respecting rights of Lenders. Subject to Article 18, if Landlord shall convey or transfer the Property or any portion thereof in which the Premises are contained to another party, such party shall thereupon be and become landlord hereunder and shall be deemed to have fully assumed all of Landlord’s obligations under this Lease accruing during such party’s ownership, including the return of any Security Deposit (provided Landlord shall have turned over such Security Deposit to such party), and Landlord shall be free of all such obligations accruing from and after the date of conveyance or transfer.

K. Limitation of Landlord’s Liability. Tenant agrees to look solely to Landlord’s interest in the Property for the enforcement of any judgment, award, order or other remedy under or in connection with this Lease or any related agreement, instrument or document or for any other matter whatsoever relating thereto or to the Property or Premises. Under no circumstances shall any present or future, direct or indirect, principals or investors, general or limited partners, officers, directors, shareholders, trustees, beneficiaries, participants, advisors, managers, employees, agents or affiliates of Landlord, or of any of the other foregoing parties, or any of their heirs, successors or assigns have any liability for any of the foregoing matters.

L. Confidentiality. Tenant shall keep the content and all copies of this Lease, related documents or amendments now or hereafter entered, and all proposals, materials, information and matters relating thereto strictly confidential, and shall not disclose, disseminate or distribute any of the same, or permit the same to occur, except to the extent reasonably required for proper business purposes by Tenant's employees, attorneys, insurers, auditors, lenders and Transferees (and Tenant shall obligate any such parties to whom disclosure is permitted to honor the confidentiality provisions hereof), and except as may be required by Law or court proceedings.

ARTICLE 36: ENTIRE AGREEMENT

This Lease, together with the Riders, Exhibits and other documents listed in Article 1 (**WHICH COLLECTIVELY ARE HEREBY INCORPORATED WHERE REFERRED TO HEREIN AND MADE A PART HEREOF AS THOUGH FULLY SET FORTH**), contains all the terms and provisions between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect, except any such contemporaneous agreement specifically referring to and modifying this Lease, signed by both parties. Without limitation as to the generality of the foregoing, Tenant hereby acknowledges and agrees that Landlord's leasing agents and field personnel are only authorized to show the Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to make any agreements, representations, understandings or obligations, binding upon Landlord, respecting the condition of the Premises or Property, suitability of the same for Tenant's business, the current or future amount of Taxes or Expenses or any component thereof, the amount of rent or other terms applicable under other leases at the Property, whether Landlord is furnishing the same utilities or services to other tenants at all, on the same level or on the same basis, or any other matter, and no such agreements, representations, understandings or obligations not expressly contained herein or in such contemporaneous agreement shall be of any force or effect. **TENANT HAS RELIED ON TENANT'S INSPECTIONS AND DUE DILIGENCE IN ENTERING THIS LEASE, AND NOT ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE HABITABILITY, CONDITION OR SUITABILITY OF THE PREMISES OR PROPERTY FOR ANY PARTICULAR PURPOSE OR ANY OTHER MATTER NOT EXPRESSLY CONTAINED HEREIN.** Neither this Lease, nor any Riders or Exhibits referred to above may be modified, except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

LANDLORD: PIKE STREET DELAWARE, INC.,
a Delaware corporation

BY: /s/ Allison Delong

TITLE: Authorized Signatory

BY: /s/ [ILLEGIBLE]

TITLE: Authorized Signatory

TENANT: EQUATOR TECHNOLOGIES, INC.,
a California corporation

BY: /s/ Brian T. McGee

NAME TYPED: Brian T. McGee

TITLE: CFO

CERTIFICATE

I, Brian T. McGee, as CFO of the aforesaid Tenant, hereby certify that the individual(s) executing the foregoing Lease on behalf of Tenant was/were duly authorized to act in his/their capacities as set forth above, and his/their action(s) are the action of Tenant.

(Corporate Seal)

/s/ Brian T. McGee

LANDLORD ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss.:
COUNTY OF KING)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that Allison Delong, personally known to me to be the Authorized Signatory of Pike Street Delaware, Inc., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that in such capacity of said corporation being authorized so to do, (s)he executed the foregoing instrument on behalf of said corporation, by subscribing the name of such corporation by himself /herself as such officer, as a free and voluntary act, and as the free and voluntary act and deed of said corporation, as partner or agent for the Landlord designated in the foregoing instrument, for the uses and purposes therein set forth.

Given under my hand and official seal this 19th day of April, 2001.

/s/ Sherri L. Pruett
Notary Public

Residing in King County

My Commission Expires: 12-19-02

[SEAL]

SHERRI L. PRUETT
COMMISSION EXPIRES
NOTARY PUBLIC
12-19-02
STATE OF WASHINGTON

TENANT ACKNOWLEDGMENTS

Corporation

STATE OF: CALIF)
) ss.:
COUNTY OF: SANTA CLARA)

On this the 12 day of April, 2001, before me a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments personally appeared Brian T. Mcgee known to me to be Vice President of Equator Technologies one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Jo Ann Chaney
Notary Public

Residing in Santacruz County

My Commission Expires: May 31, 2003

[SEAL]

JO ANN CHANEY
Commission # 1219986
Notary Public - California
Santa Cruz County
My Comm. Expires May 31, 2003

EXHIBIT A-1

PROPERTY LEGAL DESCRIPTION

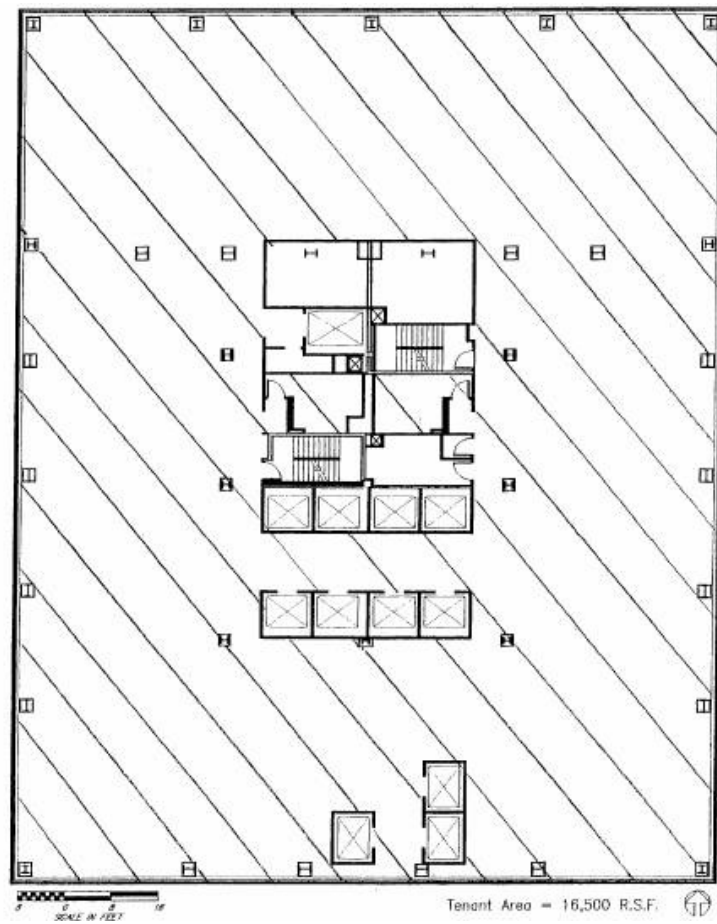
520 PIKE TOWER

Lots 10 and 11, Block 18, Addition to the Town of Seattle, as laid out by A.A. Denny (commonly known as A.A. Denny's 3rd Addition to the City of Seattle), according to the plat thereof recorded in Volume 1 of Plats, page 33, in King County, Washington, EXCEPT the southerly 10 feet of said Lot 11, condemned in King County Superior Court Cause No. 41394 for the widening of Pike Street, as provided by Ordinance No. 10051 of the City of Seattle.

SUBJECT TO AND TOGETHER WITH all rights and obligations granted and undertaken pursuant to: (a) Development and Parking Rights Agreement dated April 8, 1982 recorded under King County, Washington recording number 8204080464, as amended by agreements recorded under King County, Washington recording numbers 8208240318 and 8208240316, and as it may be further amended from time to time, and (b) Development Rights Agreement dated May 30, 1982 recorded under King County, Washington recording number 8208240314, as amended by agreement recorded under King County, Washington recording number 8208240316, and a Memorandum dated December 5, 1988 recorded under King County, Washington recording number 8812051221, and as it may be further amended from time to time

EXHIBIT A-2

(Floor Plate Showing Premises Cross-Hatched)



520 Pike Street

Seattle, Washington

Level 09

RIDER ONE

RULES

(1) **Access to Property.** On Saturdays, Sundays and Holidays, and on other days between the hours of 6:00 P.M. and 8:00 A.M. the following day, or such other hours as Landlord shall determine from time to time, access to and within the Property and/or to the passageways, lobbies, entrances, exits, loading areas, corridors, elevators or stairways and other areas in the Property may be restricted and access gained by use of a key to the outside doors of the Property, or pursuant to such security procedures Landlord may from time to time impose. Landlord shall in all cases retain the right to control and prevent access to such areas by Persons engaged in activities which are illegal or violate these Rules, or whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Property and its tenants (and Landlord shall have no liability in damages for such actions taken in good faith). No Tenant and no employee or invitee of Tenant shall enter areas reserved for the exclusive use of Landlord, its employees or invitees or other Persons. Tenant shall keep doors to corridors and lobbies closed except when persons are entering or leaving.

(2) **Signs.** Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction on any part of the outside or inside of the Property, or on any part of the inside of the Premises which can be seen from the outside of the Premises without the prior consent of Landlord, and then only such name or names or matter and in such color, size, style, character and material, and with professional designers, fabricators and installers as may be first approved or designated by Landlord in writing. Landlord shall prescribe the suite number and identification sign for the Premises (which shall be prepared and installed by Landlord at Tenant's expense). Landlord reserves the right to remove at Tenant's expense all matter not so installed or approved without notice to Tenant.

(3) **Window and Door Treatments.** Tenant shall not place anything or allow anything to be placed in the Premises near the glass of any door, partition, wall or window which may be unsightly from outside the Premises, and Tenant shall not place or permit to be placed any article of any kind on any window ledge or on the exterior walls. Blinds, shades, awnings or other forms of inside or outside window ventilators or similar devices, shall not be placed in or about the outside windows or doors in the Premises except to the extent, if any, that the design, character, shape, color, material and make thereof is first approved or designated by the Landlord. Tenant shall not install or remove any solar tint film from the windows.

(4) **Lighting and General Appearance of Premises.** Landlord reserves the right to designate and/or approve in writing all internal lighting that may be visible from the public, common or exterior areas. The design, arrangement, style, color, character, quality and general appearance of the portion of the Premises visible from public, common and exterior areas, and contents of such portion of the Premises, including furniture, fixtures, signs, art work, wall coverings, carpet and decorations, and all changes, additions and replacements thereto shall at all times have a neat, professional, attractive, first class office appearance.

(5) **Property Tradename, Likeness, Trademarks.** Tenant shall not in any manner use the name of the Property for any purpose, or use any tradenames or trademarks used by Landlord, any other tenant, or its affiliates, or any picture or likeness of the Property for any purpose other than that of the business address of Tenant, in any letterheads, envelopes, circulars, notices, advertisements, containers, wrapping or other material.

(6) **Deliveries and Removals.** Furniture, freight and other large or heavy articles, and all other deliveries may be brought into the Property only at times and in the manner designated by Landlord, and always at the Tenant's sole responsibility and risk. Landlord may inspect items brought into the Property or Premises with respect to weight or dangerous nature or compliance with this Lease or Laws. Landlord may (but shall have no obligation to) require that all furniture, equipment, cartons and other articles removed from the Premises or the Property be listed and a removal permit therefor first be obtained from Landlord. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Property, any item normally taken, or which Landlord otherwise reasonably requires to be taken, in or out through service doors or on freight elevators. Landlord may impose reasonable charges and requirements for the use of freight elevators and loading areas, and reserves the right to alter schedules without notice. Any hand-carts used at the Property shall have rubber wheels and sideguards, and no other material handling equipment may be brought upon the Property without Landlord's prior written approval.

(7) **Outside Vendors.** Tenant shall not obtain for use upon the Premises ice, drinking water, vending machine, towel, janitor and other services, except from Persons designated or approved by Landlord. Any Person engaged by Tenant to provide any other services shall be subject to scheduling and direction by the manager or security personnel of the Property. Vendors must use freight elevators and service entrances.

(8) **Overloading Floors; Vaults.** Tenant shall not overload any floor or part thereof in the Premises, or Property, including any public corridors or elevators therein bringing in or removing any

large or heavy articles, and Landlord may prohibit, or direct and control the location and size of, safes and all other heavy articles and require at Tenant's expense supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight.

(9) **Locks and Keys.** Tenant shall use such standard key system designated by Landlord on all keyed doors to and within the Premises, excluding any permitted vaults or safes (but Landlord's designation shall not be deemed a representation of adequacy to prevent unlawful entry or criminal acts, and Tenant shall maintain such additional insurance as Tenant deems advisable for such events). Tenant shall not attach or permit to be attached additional locks or similar devices to any door or window, change existing locks or the mechanism thereof, or make or permit to be made any keys for any door other than those provided by Landlord. If more than two keys for one lock are desired, Landlord will provide them upon payment of Landlord's charges. In the event of loss of any keys furnished by Landlord, Tenant shall pay Landlord's reasonable charges therefor. The term "key" shall include mechanical, electronic or other keys, cards and passes.

(10) **Utility Closets and Connections.** Landlord reserves the right to control access to and use of, and monitor and supervise any work in or affecting, the "wire" or telephone, electrical, plumbing or other utility closets, the Systems and Equipment, and any changes, connections, new installations, and wiring work relating thereto (or Landlord may engage or designate an independent contractor to provide such services). Tenant shall obtain Landlord's prior written consent for any such access, use and work in each instance, and shall comply with such requirements as Landlord may impose, and the other provisions of Article 6 respecting electric installations and connections, Article 29 respecting telephone Lines and connections, and Article 9 respecting Work in general. Tenant shall have no right to use any broom closets, storage closets, janitorial closets, or other such closets, rooms and areas whatsoever. Tenant shall not install in or for the Premises any equipment which requires more electric current than Landlord is required to provide under this Lease, without Landlord's prior written approval, and Tenant shall ascertain from Landlord the maximum amount of load or demand for or use of electrical current which can safely be permitted in and for the Premises, taking into account the capacity of electric wiring in the Property and the Premises and the needs of tenants of the Property, and shall not in any event connect a greater load than such safe capacity.

(11) **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains, sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein.

(12) **Trash.** All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to Article 30 respecting Hazardous Materials. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord.

(13) **Alcohol, Drugs, Food and Smoking.** Landlord reserves the right to exclude or expel from the Property any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules. Tenant shall not at any time manufacture, sell, use or give away, any spirituous, fermented, intoxicating or alcoholic liquors on the Premises, nor permit any of the same to occur. Tenant shall not at any time cook, sell, purchase or give away, food in any form by or to any of Tenant's agents or employees or any other parties on the Premises, nor permit any of the same to occur (other than in microwave ovens and coffee makers properly maintained in good and safe working order and repair in lunch rooms or kitchens for employees as may be permitted or installed by Landlord, which does not violate any Laws or bother or annoy any other tenant). Tenant and its employees shall not smoke tobacco on any part of the Property (including exterior areas) except those areas, if any, that are designated or approved as smoking areas by Landlord.

(14) **Use of Common Areas; No Soliciting.** Tenant shall not use the common areas, including areas adjacent to the Premises, for any purpose other than ingress and egress, and any such use thereof shall be subject to the other provisions of this Lease, including these Rules. Without limiting the generality of the foregoing, Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, parking or shipping area, or other area outside the Premises. Tenant shall not use the common areas to canvass, solicit business or information from, or distribute any article or material to, other tenants or invitees of the Property. Tenant shall not make any room-to-room canvass to solicit business or information or to distribute any article or material to or from other tenants of the Property and shall not exhibit, sell or offer to sell, use, rent or exchange any products or services in or from the Premise unless ordinarily embraced within the Tenant's use of the Premises expressly permitted in the Lease.

(15) **Energy and Utility Conservation.** Tenant shall not waste electricity, water, heat or air conditioning or other utilities or services, and agrees to cooperate fully with Landlord to assure the most effective and energy efficient operation of the Property and shall not allow the adjustment (except by Landlord's authorized Property personnel) of any controls. Tenant shall not obstruct, alter or impair the efficient operation of the Systems and Equipment, and shall not place any item so as to interfere with air flow. Tenant shall keep corridor doors closed and shall not open any windows,

except that if the air circulation shall not be in operation, windows which are openable may be opened with Landlord's consent. If reasonably requested by Landlord (and as a condition to claiming any deficiency in the air-conditioning or ventilation services provided by Landlord), Tenant shall close any blinds or drapes in the Premises to prevent or minimize direct sunlight.

(16) Unattended Premises. Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights and water faucets in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes).

(17) Going-Out-Of-Business Sales and Auctions. Tenant shall not use, or permit any other party to use, the Premises for any distress, fire, bankruptcy, close-out, "lost our lease" or going-out-of-business sale or auction. Tenant shall not display any signs advertising the foregoing anywhere in or about the Premises. This prohibition shall also apply to Tenant's creditors.

(18) Labor Harmony. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment, or labor and employment practices that, in Landlord's good faith judgment, may cause strikes, picketing or boycotts or disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Property.

(19) Prohibited Activities. Tenant shall not: (i) use strobe or flashing lights in or on the Premises, (ii) install or operate any internal combustion engine, boiler, machinery, refrigerating, heating or air conditioning equipment in or about the Premises, (iii) use the Premises for housing, lodging or sleeping purposes or for the washing of clothes, (iv) place any radio or television antennae other than inside of the Premises, (v) operate or permit to be operated any musical or sound producing instrument or device which may be heard outside the Premises, (vi) use any source of power other than electricity, (vii) operate any electrical or other device from which may emanate electrical, electromagnetic, energy, microwave, radiation or other waves or fields which may interfere with or impair radio, television, microwave, or other broadcasting or reception from or in the Property or elsewhere, or impair or interfere with computers, faxes or telecommunication lines or equipment at the Property or elsewhere, or create a health hazard, (viii) bring or permit any bicycle or other vehicle, or dog (except in the company of a blind person or except where specifically permitted) or other animal or bird in the Property, (ix) make or permit objectionable noise, vibration or odor to emanate from the Premises, (x) do anything in or about the Premises or Property that is illegal, immoral, obscene, pornographic, or anything that may in Landlord's good faith opinion create or maintain a nuisance, cause physical damage to the Premises or Property, interfere with the normal operation of the Systems and Equipment, impair the appearance, character or reputation of the Premises or Property, create waste to the Premises or Property, cause demonstrations, protests, loitering, bomb threats or other events that may require evacuation of the Building, (xi) advertise or engage in any activities which violate the spirit or letter of any code of ethics or licensing requirements of any professional or business organization, (xii) throw or permit to be thrown or dropped any article from any window or other opening in the Property, (xiii) use the Premises for any purpose, or permit upon the Premises or Property anything, that may be dangerous to persons or property (including firearms or other weapons (whether or not licensed or used by security guards) or any explosive or combustible articles or materials) (xiv) place vending or game machines in the Premises, except vending machines for employees, (xv) adversely affect the indoor air quality of the Premises or Property, or (xvi) do or permit anything to be done upon the Premises or Property in any way tending to disturb, bother, annoy or interfere with Landlord or any other tenant at the Property or the tenants of neighboring property, or otherwise disrupt orderly and quiet use and occupancy of the Property.

(20) Transportation Management. Tenant shall comply with all present or future programs intended to manage parking, transportation or traffic in and around the Property, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

(21) Responsibility for Compliance. Tenant shall be responsible for ensuring compliance with these Rules, as they may be amended, by Tenant's employees and as applicable, by Tenant's agents, invitees, contractors, subcontractors, and suppliers. Tenant shall cooperate with any reasonable program or requests by Landlord to monitor and enforce the Rules, including providing vehicle numbers and taking appropriate action against such of the foregoing parties who violate these provisions.

**EXHIBIT B
WORK LETTER**

This Exhibit is a "Work Letter" to the foregoing document captioned Office Lease (referred to herein for convenience as the "Lease") between PIKE STREET DELAWARE, INC. ("Landlord"), a Delaware corporation, and EQUATOR TECHNOLOGIES, INC. a California corporation ("Tenant") relating to Suite 900 (referred to herein for convenience as the Premises") in the property known as 520 Pike Tower (the "Property").

I. Tenant's Work. Under the Lease to which this Exhibit is attached, Tenant has agreed to accept the Premises "as is," without any obligation for the performance of improvements or other work by Landlord, and Tenant desires to perform certain improvements thereto (the "Work," as further described below). Such Work shall be planned and performed strictly in accordance with the provisions of this Exhibit and applicable provisions of the Lease. Tenant shall take all actions necessary to cause Tenant's Planners to prepare the Approved Plans, and to cause Tenant's Contractors to obtain permits or other approvals, diligently prosecute the Work to completion, and obtain any inspections and occupancy certificates for Tenant's occupancy of the Premises by the Commencement Date. Any delays in the foregoing shall not serve to abate or extend the time for the commencement of Rent under the Lease, except to the extent of one (1) day for each day that Landlord delays approvals required hereunder beyond the times permitted herein without good cause, provided substantial completion of the Work and Tenant's ability to reasonably use the Premises by the Commencement Date (or by such later date when Tenant would otherwise have substantially completed the Work) is actually delayed thereby. Tenant shall notify Landlord upon completion of the Work (and record any notice of completion contemplated by law).

II. Planning. The term "Plans" herein shall refer to the "Space Plan" and "Construction Drawings" collectively (as such terms are further defined in Section IX). The term "Approved Plans" shall refer to the Plans as approved by Landlord in writing in accordance with this Section.

a. Tenant's Space Planner, Architect and Engineer. Tenant shall engage an interior office space planner ("Space Planner"), a licensed architect ("Architect," who may be the same as the Space Planner), each subject to Landlord's prior written approval. Tenant shall also engage such licensed engineering firms ("Engineers") as may be required or appropriate in connection with preparing the Plans (e.g. mechanical, electrical, plumbing, structural, HVAC or other), all of whom shall be designated or approved by Landlord in writing. Landlord may require that Tenant select each of Tenant's Planners from a list of such parties. The term "Tenant's Planners" herein shall refer collectively or individually, as the context requires, to the Space Planner, Architect or Engineers, as appropriate, engaged by Tenant, and approved or designated by Landlord in writing in accordance with this Exhibit. Tenant has sole responsibility to provide all information concerning its space requirements to Tenant's Planners, to cause Tenant's Planners to prepare the Plans, and to obtain Landlord's final approval thereof (including all revisions). Tenant and Tenant's Planners may review such existing drawings as Landlord may provide relating to the Premises or Property, but shall not rely thereon (and shall perform independent verifications of all field conditions, dimensions and other such matters), and Landlord shall have no liability for any errors, omissions or other deficiencies therein.

b. Space Plan.

i. Tenant shall promptly hereafter cause the Space Planner to submit three (3) sets of a "Space Plan" (as defined in Section IX) to Landlord for approval.

ii. Landlord shall, within ten (10) working days after receipt thereof, either approve said Space Plan, or disapprove the same advising Tenant of the reasons for such disapproval. In the event Landlord disapproves said Space Plan, Tenant shall modify the same, taking into account the reasons given by Landlord for said disapproval, and shall submit three (3) sets of the revised Space Plan to Landlord within five (5) working days after receipt of Landlord's initial disapproval.

iii. The parties shall continue such process in the same time frames until Landlord grants approval.

c. Construction Drawings and Engineering Report.

i. No later than ten (10) working days after receipt of Landlord's approval of the Space Plan, Tenant shall cause the Architect to submit to Landlord for approval three (3) sets of mylar sepia "Construction Drawings" (as defined in Section IX), and cause the Engineers to Submit for Landlord's approval a report (the "Engineering Report") from Tenant's mechanical, structural and electrical engineers indicating any special heating, cooling, ventilation, electrical, heavy load or other special or unusual requirements of Tenant, including calculations.

ii. Landlord shall, within fifteen (15) working days after receipt thereof (or such longer time as may be reasonably required in order to obtain any additional architectural, engineering or HVAC report or due to other special or unusual features of the Work or Plans), either approve the Construction Drawings and Engineering Report, or disapprove the same advising Tenant of the reasons for disapproval. If Landlord disapproves of the Construction Drawings or Engineering Report, Tenant shall modify and submit three (3) sets of revised mylar sepia Construction Drawings, and a revised Engineering Report, taking into account the reasons given by Landlord for disapproval, within five (5) working days after receipt of Landlord's initial disapproval.

iii. The parties shall continue such process in the same time frames until Landlord grants approval.

d. Landlord's Approval. Landlord shall not unreasonably withhold approval of any Space Plans, Construction Drawings, or Engineering Report submitted hereunder, if they provide for a customary office layout, with finishes and materials generally conforming to building standard finishes and materials currently being used by Landlord at the Property, are compatible with the Property's shell and core construction, and if no modifications will be required for the Property electrical, heating, air-conditioning, ventilation, plumbing, fire protection, life safety, or other systems or equipment, and will not require any structural modifications to the Property, whether required by heavy loads or otherwise, and will not create any potentially dangerous conditions, potentially violate any codes or other governmental requirements, potentially interfere with any other occupant's use of its premises, or potentially increase the cost of operating the Property. Construction Drawings approved by Landlord in writing (including approved revisions) are referred to herein as the "Approved Plans."

e. Governmental Approval of Plans; Building Permits. Tenant shall cause Tenant's Contractors (as defined in Section III.a) to apply for any building permits, inspections and occupancy certificates required for or in connection with the Work. If the Plans must be revised in order to obtain such building permits, Tenant shall promptly notify Landlord, promptly arrange for the Plans to be revised to satisfy the building permit requirements, and shall submit the revised Plans to Landlord for approval as a Change Order under Section II.f. Landlord shall have no obligation to apply for any zoning, parking or sign code amendments, approvals, permits or variances, or any other governmental approval, permit or action. If any such other matters are required, Tenant shall promptly seek to satisfy such requirements (if Landlord first approves in writing), or shall revise the Plans to eliminate such requirements and submit such revised Plans to Landlord for approval in the manner described above. Delays in substantially completing the Work by the Commencement Date as a result of requirements for building permits or other governmental approvals, permits or actions shall not affect the Commencement Date and commencement of Rent.

f. Changes After Plans Are Approved. If Tenant shall desire, or any governmental body shall require, any changes, alterations, or additions to the Approved Plans, Tenant shall submit a detailed written request or revised Plans (the "Change Order") to Landlord for approval. If reasonable and practicable and generally consistent with the Plans theretofore approved, Landlord shall not unreasonably withhold approval. All costs in connection therewith, including, without limitation, construction costs, permit fees, and any additional plans, drawings and engineering reports or other studies or tests, or revisions of such existing items, shall be included in the Cost of the Work under Section IV. No delays resulting from any Change Orders or requests therefor shall delay the Commencement Date or Commencement of Rent. In the event that the Premises are not constructed in accordance with the Approved Plans, Tenant shall not be permitted to occupy the Premises until the Premises reasonably comply in all respects therewith; in such case, the Rent shall nevertheless commence to accrue and be payable as otherwise provided in the Lease.

III. Contractors, Bids and Contracts.

a. Contractors. Tenant shall engage to perform the Work such contractors, subcontractors and suppliers ("Tenant's Contractors") as Landlord customarily engages or recommends for use at the Property; provided, Tenant may substitute other licensed, bonded, reputable and qualified parties capable of performing quality workmanship who have good labor relations and will be able to work in harmony with each other and those of Landlord and other occupants of the Property so as to ensure proper maintenance of good labor relationships, and in compliance with all applicable labor agreements existing between trade unions and the relevant chapter of the Association of General Contractors of America. Such substitutions may be made only with Landlord's prior written approval. Such approval shall be granted, subject to specified conditions, or denied within fifteen (15) days after Landlord receives from Tenant a written request for such substitution, containing a reasonable description of the proposed party's background, finances, references, qualifications, and other such information as Landlord may request. Landlord may require that Tenant select Tenant's Contractors from a list of such parties for Work involving any mechanical, electrical, plumbing, structural, demolition or HVAC matters, or any Work required to be performed outside the Premises or involving Tenant's entrance.

b. Contracts and Guaranties. Tenant shall promptly submit to Landlord for approval, prior to entering any contracts for the Work, an itemized statement of the estimated Cost of the Work, including all bids and quotes, and copies of proposed contracts. All contracts shall contain insurance, indemnity and other provisions consistent herewith. All contracts involving progress payments shall include appropriate retention provisions, liquidated damages for delays (if desired by Tenant), and payment application requirements consistent with this Exhibit. Each Tenant Contractor shall guarantee that the portion of the Work for which it is responsible shall be free from any defects or deficiencies in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Every such party shall be responsible for the replacement or repair, without additional charge, of all such defects or deficiencies in accordance with its contract within one (1) year after completion of such work or the correction thereof. The correction of such work shall include, without additional charge, all additional expenses and damages in connection with such removal or replacement of all or any part of Tenant's Work, and/or the Property and/or common areas, or work which may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to Tenant's Work shall be contained in the contract or subcontract which shall be written such that said warranties or guarantees shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give Landlord any assignment or other assurances necessary to effect such right of direct enforcement. Copies of all contracts and subcontracts shall be furnished to Landlord promptly after the same are entered.

IV. Cost of the Work and Allowance.

a. Cost of the Work. Except for the Allowance to be provided by Landlord hereunder, Tenant shall pay all costs (the "Costs of the Work") associated with the Work whatsoever, including without limitation, all costs for or related to: (1) the so-called "hard costs" of the Work, including, without limitation, costs of labor, hardware, equipment and materials, contractors' charges for overhead and fees, and so-called "general conditions" (including rubbish removal, utilities, freight elevators, hoisting, field supervision, building permits, occupancy certificates, inspection fees, utility connections, bonds, insurance, sales taxes, and the like), (2) the so-called "soft costs" of the Plans, including, without limitation, all revisions thereto, and engineering reports, or other studies, reports or tests, air balancing or related work in connection therewith, and (3) Landlord's costs and administrative fee described below. "Work" herein means: (i) the improvements and items of work shown on the final Approved Plans (including changes thereto), and (ii) any demolition, preparation or other work required in connection therewith, including without limitation, structural or mechanical work, additional HVAC equipment or sprinkler heads, or modifications to any building mechanical, electrical, plumbing or other systems and equipment or relocation of any existing sprinkler heads, either within or outside the Premises required as a result of the layout, design, or construction of the Work or in order to extend any mechanical distribution, fire protection or other systems from existing points of distribution or connection, or in order to obtain building permits for the work to be performed within the Premises (unless Landlord requires that the Plans be revised to eliminate the necessity for such work).

b. Allowance. Landlord shall provide a construction allowance (the "Allowance") of up to \$133,500.00 towards: (i) costs of the Space Plan and Construction Drawings, provided such costs, as a share of the Allowance, shall not exceed \$2.00 per square foot, (ii) costs of permanent leasehold improvements included in the Work, including labor, hardware, equipment and materials, contractors' charges for overhead and fees, and general conditions, and (iii)

Landlord's costs and administrative fee, as described below. The Allowance shall not be used for any other purpose, such as, but not limited to, furniture, trade fixtures, or personal property. The Allowance also covers Work that began in December 1, 2000 and is scheduled to finish by the end of March, 2001. If all or any portion of the Allowance shall not be used, Landlord shall be entitled to the savings and Tenant shall receive no credit therefor. If Landlord terminates the Lease or Tenant's right to possession based on a Default by Tenant, Tenant shall repay Landlord on demand for the amount of the Allowance provided hereunder, as additional damages, without in any way limiting Landlord's other rights or remedies.

c. Tenant's Cost Deposit. Any portion of the Cost of the Work exceeding the Allowance is referred to herein as "Tenant's Cost." Landlord may at any time estimate Tenant's Cost in advance, or revise any such estimate, in which case, Tenant shall deposit ("Tenant's Deposit") the estimated amount (or the increase reflected in any revised estimate) with Landlord within three (3) days after Landlord so requests. If the Work involves progress payments, Landlord shall apply the amounts deposited by Tenant first. If, after final completion and payment for the Work, the actual amount of Tenant's Cost exceeds the estimated amount, Tenant shall pay the difference to Landlord within three (3) days after Landlord so requests. If such estimated amount exceeds the actual amount of Tenant's Cost, Landlord shall provide a refund or credit of the difference. Tenant's Cost shall be deemed "Rent" under the Lease (and all remedies for the non-payment of Rent shall be available to Landlord therefor), and Tenant's obligations under the Lease to keep the Premises and Property free of liens shall apply to any liens arising from any failure to pay Tenant's Cost hereunder.

d. Funding and Disbursement. Landlord shall fund and disburse the Allowance (and any Tenant's Deposit hereunder) within thirty (30) days after the Work has been completed in accordance with the "Space Plan" and "Construction Drawings" approved by Landlord in writing in accordance with the provisions hereof, and Tenant has submitted all invoices, architect's certificates, a Tenant's affidavit, partial or complete lien waivers (depending on whether progress payments are involved) and affidavits of payment by all Tenant's Contractors, and such other evidence as Landlord may reasonably require that the cost of the Work has been paid and that no architect's, mechanic's, materialmen's or other such liens have been or may be filed against the Property or the Premises arising out of the design or performance of such Work. Landlord may issue checks to fund the Allowance jointly or separately to Tenant, its general contractor, and any other of Tenant's Contractors. At Landlord's option, Landlord may fund the Allowance (and any Tenant's Deposit hereunder) in monthly progress payment installments, based on the submission of the foregoing items, subject to withholding 10% of each draw as retention (at Landlord's option). In such event, Landlord shall disburse Tenant's Deposit before disbursing the Allowance. If all or any portion of the Allowance shall not be used, Landlord shall be entitled to the savings and Tenant shall receive no credit therefor.

e. Landlord's Costs and Administrative Fee. Tenant shall pay Landlord's costs for architectural and engineering review of Tenant's Space Plan, Construction Drawings and Engineering Report, and all revisions thereof, together with an administrative fee equal to ten percent (10%) of the cost of the Plans and Work. Landlord may also charge Tenant for services (including, but not limited to, security and freight elevator charges) and utilities for the Work or otherwise consumed in or for the Premises during the Work (whether based on meters or estimates by Landlord's engineer).

V. Performance of the Work.

- a. Conditions to Performing Work. Before commencing any Work, Tenant shall:
- i. Obtain Landlord's written approval of Tenant's Planners and the Plans, as described in Section II.
 - ii. Obtain, provide copies and post all necessary governmental approvals and permits as described in Section II.e.
 - iii. Obtain Landlord's written approval of an itemization of the Costs of the Work, Tenant's Contractors, and the proposed contracts as described in Section III.
 - iv. Provide Tenant's Deposit, if required under Section IV.
 - v. Provide evidence of insurance to Landlord as described in Section VI.
 - vi. Provide such performance and payment bonds as Landlord may reasonably require, in form and content and issued by a company acceptable to Landlord, and showing Landlord as a dual obligee.

b. Compliance and Standards. Tenant shall cause the Work to comply in all respects with the following: (a) the Approved Plans, (b) the Property Code of the City and State in which the Property is located and Federal, State, County, City or other laws, codes, ordinances, rules, regulations and guidance, including the Disabilities Acts as described in Section X, below, as each may apply according to the rulings of the controlling public official, agent or other such person, (c) applicable standards of the National Board of Fire Underwriters (or successor organization) and National Electrical Code, (d) applicable manufacturer's specifications, (e) any work rules and regulations as Landlord or its agent may have adopted for the Property, and the Rules attached as Rider One to this Lease. Tenant shall use only new, first-class materials in the Work, except where explicitly shown in the Approved Plans. Tenant's Work shall be performed in a thoroughly safe, first-class and workmanlike manner, and shall be in good and usable condition at the date of completion. In case of inconsistency, the requirement with the highest standard protecting or favoring Landlord shall govern.

c. Labor Harmony. Tenant shall conduct its labor relations and relations with employees so as to avoid strikes, picketing, and boycotts of, on or about the Premises or Property. If any employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant, its employees, agents, contractors, subcontractors or suppliers, in or about the Premises or Property, Tenant shall immediately close the Premises and remove or cause to be removed all such employees, agents, contractors, subcontractors and suppliers until the dispute has been settled.

d. Property Operations, Dirt, Debris and Noise. Tenant and Tenant's Contractors shall make all efforts and take all steps appropriate to assure that all construction activities do not interfere with the operation of the Property or with other occupants of the Property. Tenant's Work shall be coordinated under Landlord's direction with the work being done or to be performed, and other activities, for or by other occupants in the Property so that Tenant's Work will not interfere with or delay the completion of any other construction work or other activity in the Property. Construction equipment and materials are to be kept within the Premises, and delivery and loading of equipment and materials shall be done at such locations and at such time as Landlord shall direct so as not to burden the construction or operation of the Property. Tenant's contractors shall comply with any work rules of the Property and Landlord's requirements respecting the hours of availability of elevators and manner of handling materials, equipment and debris. Demolition must be performed after 6:00 p.m. and on weekends, or as otherwise required by Landlord or the work rules for the Property. Construction which creates noise, odors or other matters that may bother other occupants may be rescheduled by Landlord at Landlord's sole discretion. Delivery of materials, equipment and removal of debris must be arranged to avoid any inconvenience or annoyance to other occupants. The Work and all cleaning in the Premises must be controlled to prevent dirt, dust or other matter from infiltrating into adjacent occupant, common or mechanical areas. Tenant and Tenant's Contractors shall take all precautionary steps to minimize dust, dirt, odors, noise and construction traffic, and to protect their facilities and the facilities of others affected by the Work and to properly police the same. If and as required by Landlord, the Premises shall be sealed off from the balance of the space on the floor(s) containing the Premises (and from other floors or areas of the Property) so as to minimize the disbursement or infiltration of dust, dirt, odors, debris and noise.

e. Removal of Debris. The contractors and subcontractors shall be required to remove from the Premises and dispose of, at least once a week and more frequently as Landlord may direct, all debris and rubbish caused by or resulting from the Work, and shall not place debris in the Property's waste containers. If required by Landlord, Tenant shall sort and separate its waste and debris for recycling and/or environmental law compliance purposes. Upon completion of Tenant's Work, Tenant's Contractors shall remove all surplus materials, debris and rubbish of whatever kind remaining within the Property which has been brought in or created by the contractors and subcontractors in the performance of Tenant's Work. If any contractor or subcontractor shall neglect, refuse or fail to remove any such debris, rubbish, surplus material or temporary structures within 48 hours after notice to Tenant from Landlord with respect thereto, Landlord may cause the same to be removed by contract or otherwise as Landlord may determine expedient, and charge the cost thereof to Tenant as additional Rent under the Lease.

f. Utilities and Services. Utility costs or charges for any service (including electricity, HVAC, security hoisting or freight elevator and the like) to the Premises or for the Work shall be the responsibility of Tenant from the date Tenant is obligated to commence or commences the Work and shall be paid for by Tenant at Landlord's standard rates then in effect. Tenant shall apply and pay for all utility meters required, and in the absence of meters shall pay for usage reasonably estimated by Landlord's engineer. Tenant shall pay for all support services or work provided by Landlord's contractors at Tenant's request or at Landlord's discretion resulting from

breaches or defaults by Tenant under this Exhibit. All use of freight elevators is subject to scheduling by Landlord and the rules and regulations of the Property, as described above.

g. **Landlord Rights.** Tenant shall permit access to the Premises, and inspection of the Work, by Landlord and Landlord's architects, engineers, contractors and other representatives, at all times during the period in which the Work is being planned, constructed and installed and following completion of the Work. Landlord shall have the right, but not the obligation, to order Tenant or any of Tenant's Contractors who violate the requirements imposed on Tenant or Tenant's Contractors in performing Work to cease the Work and remove its equipment and employees from the Property. Landlord shall have the right, but not the obligation, to perform, on behalf of and for the account of Tenant, subject to reimbursement by Tenant, any work required to cure or complete any Work which has violated this Exhibit, or which pertains to patching of the Work and other work in the Property, or involves Work outside the Premises, or affects the base building core or structure or systems or equipment for the Property. No such action by Landlord shall delay the commencement of the Lease or the obligation to pay Rent or any other obligations therein set forth.

h. **General Requirements.** Tenant shall impose on and enforce all applicable terms of this Exhibit against Tenant's Planners and Tenant's Contractors. Landlord shall have the right to require Tenant to furnish bonds or other security in form and amount reasonably satisfactory to Landlord for the prompt and faithful performance and payment for Tenant's Work. Landlord shall have the right to run utility lines, pipes, conduits, duct work and component parts of all mechanical and electrical systems where necessary or desirable through the Premises, to repair, alter, replace or remove the same, and to require Tenant to install and maintain proper access panels thereto. If an expansion joint occurs within the Premises, Tenant shall install finish floor covering to or covering such joint in a workmanlike manner, and Landlord shall not accept responsibility for any finish floor covering applied to or installed over the expansion joint. Landlord may impose reasonable additional requirements from time to time in order to ensure that the Work, and the construction thereof does not disturb or interfere with any other occupants of the Property, or their visitors, contractors or agents, nor interfere with the efficient, safe and secure operation of the Property. Tenant shall provide Landlord with "as built" drawings no later than thirty (30) days after completion of the Work.

VI. Insurance. In addition to any insurance which may be required under the Lease, Tenant shall secure, pay for and maintain or cause Tenant's Contractors to secure, pay for and maintain during the continuance of construction and fixturing work within the Property or Premises, insurance in the following minimum coverages and the following minimum limits of liability:

a. Worker's compensation and employer's liability insurance with limits of not less than \$2,000,000.00, or such higher amounts as may be required from time to time by any employee benefit acts or other statutes applicable where the work is to be performed, and, in any event sufficient to protect Tenant's Contractors from liability under the aforementioned acts.

b. Comprehensive General Liability Insurance (including Contractors' Protective Liability) in an amount not less than \$1,000,000.00 per occurrence, whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof, with a minimum aggregate limit of \$2,000,000.00, and with umbrella coverage with limits not less than \$5,000,000.00. Such insurance shall contain an endorsement covering Tenant's and Tenant's Contractors' indemnity obligations under the contracts and the Lease. Such insurance shall provide for explosion and collapse, completed operations coverage and broad form blanket contractual liability coverage and shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others and arising from its operations under the contracts whether such operations are performed by Tenant's Contractors or by anyone directly or indirectly employed by any of them.

c. Comprehensive Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, or non-owned in an amount not less than \$500,000.00 for each person in one accident, and \$1,000,000.00 for injuries sustained by two or more persons in any one accident and property damage liability in an amount not less than \$1,000,000.00 for each accident. Such insurance shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others arising from its operations under the contracts, whether such operations are performed by Tenant's Contractors, or by anyone directly or indirectly employed by any of them.

d. "All-risk" builder's risk insurance upon the entire Work to the full insurable value thereof. This insurance shall include the interests of Landlord and Tenant (and their respective

contractors and subcontractors of any tier to the extent of any insurable interest therein) in the Work and shall insure against the perils of fire and extended coverage and shall include "all-risk" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft vandalism and malicious mischief. If portions of the Work are stored off the site of the Property or in transit to said site are not covered under said "all-risk" builder's risk insurance, then Tenant shall effect and maintain similar property insurance on such portions of the Work. Any loss insured under said "all-risk" builder's risk insurance is to be adjusted with Landlord and Tenant and made payable to Landlord, as trustee for the insureds, as their interests may appear.

e. All policies (except the worker's compensation policy) shall be endorsed to include as additional insured parties, Landlord, the property management company for the Property, the parties listed on, or required by, the Lease, Landlord's contractors, Landlord's architects, and their respective beneficiaries, partners, directors, officers, employees and agents, and such additional persons as Landlord may designate. The waiver of subrogation provisions contained in the Lease shall apply to all insurance policies (except the workmen's compensation policy) to be obtained by Tenant pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (except that ten (10) days' notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause. All insurance carriers hereunder shall be rated at least A and X in Best's Insurance Guide. Certificates for all such insurance shall be delivered to Landlord before the construction is commenced or contractor's equipment is moved onto the Property. In the event that during the course of Tenant's Work any damage shall occur to the construction and improvements being made by Tenant, then Tenant shall repair the same at Tenant's cost.

VII. Signage, Window Blinds and HVAC Balancing. Notwithstanding anything contained herein to the contrary, in connection with or following the Work, Landlord shall install building standard suite identification signage, and may install building standard window blinds (to the extent not already existing). Tenant shall promptly advise Landlord of the name Tenant wishes for said signage. The content of all signage shall be subject to Landlord's prior written approval. No other signage may be installed or placed outside the Premises by Tenant. Landlord may also cause a contractor to perform air balancing tests on the Premises and adjust the HVAC system as a result thereof. Landlord shall not be responsible for any disturbance or deficiency created in the air conditioning or other mechanical, electrical or structural facilities within the Property or Premises as a result of the Work. If such disturbances or deficiencies result, and Landlord does not elect to correct the same for Tenant, Tenant shall correct the same and restore the services to Landlord's reasonable satisfaction, within a reasonable time. The costs of such signage, blinds and HVAC tests and work may be charged against the Allowance, and if the Allowance shall be insufficient, Tenant shall pay Landlord for such costs as additional Rent within five (5) days after billed.

VIII. Asbestos. If the Property was constructed at a time when asbestos was commonly used in construction, Tenant acknowledges that asbestos-containing materials ("ACM") may be present at the Property, and that airborne asbestos fibers may involve a potential health hazard unless proper procedures are followed. In such case, before commencing the Work, Tenant and its contractor shall consult with Landlord and Landlord's asbestos consultant concerning appropriate procedures to be followed.

IX. Certain Definitions.

a. Space Plan. "Space Plan" herein means a floor plan, drawn to scale, showing (i) demising walls, interior walls and other partitions, including type of wall or partition and height, (ii) doors and other openings in such walls or partitions, including type of door and hardware, (iii) any floor or ceiling openings, and any variations to building standard floor or ceiling heights, (iv) electrical outlets, and any restrooms, kitchens, computer rooms, file cabinets, file rooms and other special purpose rooms, and any sinks or other plumbing facilities, or other special electrical, HVAC, plumbing or other facilities or equipment, including all special loading, (v) communications system, including location and dimensions of equipment rooms, and telephone and computer outlet locations, (vi) special cabinet work or other millwork items, (vii) any space planning considerations under the Disabilities Acts, (viii) finish selections (i.e. color selection of painted areas, and selection of floor and any special wall coverings from Landlord's available building standard selections (which selections Tenant may defer and include with the Construction Drawings), and (ix) any other details or features requested by Architect, Engineer or Landlord in order for the Space Plan to serve as a basis for preparing the Construction Drawings.

b. Construction Drawings. "Construction Drawings" herein means fully dimensioned architectural construction drawings and specifications, and any required engineering drawings (including mechanical, electrical, plumbing, structural, air-conditioning, ventilation and heating), and shall include any applicable items described above for the Space Plan, and to the extent applicable: (i) electrical outlet locations, circuits and anticipated usage therefor, (ii) reflected ceiling plan, including lighting, switching, and any special ceiling specifications, (iii) duct locations for heating, ventilating and air-conditioning equipment, (iv) details of all millwork, (v) dimensions of all equipment and cabinets to be built in, (vi) furniture plan showing details of space occupancy, (vii) keying schedule, (viii) lighting arrangement, (ix) location of print machines, equipment in lunch rooms, concentrated file and library loadings and any other equipment or systems (with brand names wherever possible) which require special consideration relative to air-conditioning, ventilation, electrical, plumbing, structural, fire protection, life-fire-safety system, or mechanical systems, (x) special heating, ventilating and air conditioning equipment and requirements, (xi) weight and location of heavy equipment, and anticipated loads for special usage rooms, (xii) demolition plan, (xiii) partition construction plan, (xiv) all requirements under the Disabilities Acts and other governmental requirements, and (xv) final finish selections, and any other details or features requested by Architect, Engineer or Landlord in order for the Construction Drawings to serve as a basis for contracting the Work.

X. Taxes. Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions (including without limitation, any real estate taxes or assessments, sales tax or value added tax) assessed against or levied upon Tenant's fixtures, furnishings, equipment and personal property located in the Premises and the Work to the Premises under this Exhibit. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord. In the event any such items shall be assessed and billed with the property of Landlord, Tenant shall pay its share of such taxes, charges or other governmental impositions to Landlord within ten (10) days after Landlord delivers a statement and a copy of the assessment or other documentation showing the amount of such impositions applicable to Tenant.

XI. Disabilities Acts. Tenant shall be responsible for matters under any laws or governmental regulations, rules or guidance materials pertaining to persons with disabilities (referred to herein as the "Disabilities Acts") relating to the Premises or Work hereunder. Without limiting the generality of the foregoing, Tenant shall: (a) provide complete and accurate information such that the Plans will comply with the Disabilities Acts, and update such information as needed, and (b) be responsible for any changes to the Work or Premises resulting from changes in Tenant's employees, business operations or the Disabilities Acts. Without limitation as to other provisions, Tenant hereby expressly acknowledges that Tenant's indemnity and related obligations under the Lease shall apply to violations of this provision.

XII. Miscellaneous.

a. Interpretation. If this Work Letter is attached as an Exhibit to an amendment to an existing lease ("Original Lease"), whether such amendment adds space, relocates the Premises or makes any other modifications, the term "Lease" herein shall refer to such amendment, or the Original Lease as amended, as the context implies. By way of example, in such case, references to the "Premises" and "Commencement Date" herein shall refer, respectively, to such additional or relocated space and the effective date for delivery thereof under such amendment, unless expressly provided to the contrary herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Lease.

b. Application. This Exhibit shall not apply to any additional space added to the Premises at any time, whether by any options or rights under the Lease or otherwise, or to any portion of the Premises in the event of a renewal or extension of the Term of the Lease, whether by any options or rights under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement thereto.

c. Lease Provisions and Modification. This Exhibit is intended to supplement and be subject to the provisions of the Lease, including, without limitation, those provisions requiring that any modification or amendment be in writing and signed by authorized representatives of both parties.

d. Limitation of Landlord's Liability. Landlord shall not be liable in any way for any injury, loss or damage which may occur to any decorations, fixtures, personal property, installations or other improvements or items of work installed, constructed or brought upon the Premises by or for Tenant or Tenant's Contractors prior to completion of the Work and commencement of Tenant's occupancy, all of the same being at Tenant's sole risk, and Tenant hereby agrees to protect, defend, indemnify and hold Landlord and its employees, agents, and

affiliates harmless from all liabilities, losses, damages, claims, demands, and expenses (including attorneys' fees). The parties acknowledge that neither Landlord nor its managing agent is an architect or engineer, and that the Work will be designed and performed by independent architects, engineers and contractors. Landlord and its managing agent shall have no responsibility for construction means, methods or techniques or safety precautions in connection with the Work, and do not guarantee that the Plans or Work will be free from errors, omissions or defects, and shall have no liability therefor. Landlord's approval of Tenant's Plans and contracts, and Landlord's designations, lists, recommendations or approvals concerning Tenant's Planners and Contractors shall not be deemed a warranty as to the quality or adequacy thereof or of the Plans or the Work, or the design thereof, or of its compliance with laws, codes and other legal requirements.

e. No Third-Party Beneficiaries. The Lease and this Exhibit are not intended to create any third-party beneficiaries. Without limiting the generality of the foregoing, no Tenant Contractors or Tenant Planners shall have any legal or beneficial interest in the Allowance.

PARKING AGREEMENT

THIS AGREEMENT made as of the 12th day of April 2001 between Pike Street Delaware, Inc. ("Landlord") and Equator Technologies, Inc. ("Tenant").

1. The parties hereby acknowledge that they have heretofore entered, or are contemporaneously herewith entering, a certain lease dated April 12, 2001 (the "Lease") for premises known as Suite 900 (the "Premises") located in the property known as 520 Pike Tower (the "Property"). In the event of any conflict between the Lease and this Agreement, the latter shall control.

2. Landlord hereby grants to Tenant and persons designated by Tenant a license to use eleven (11) parking spaces in the Property Parking Garage (the "Garage") at then current rates which Landlord may adjust from time to time. The Term of such license shall commence on the Commencement Date under the Lease and shall continue until the earlier to occur of the Expiration Date under the Lease; termination of the Lease or Tenant's abandonment of the Premises thereunder. Tenant may, from time to time, request additional parking spaces, and if Landlord shall provide the same, such spaces shall be provided and used on a month-to-month basis, and otherwise on the foregoing terms and provisions, and such monthly parking charges as Landlord shall establish from time to time.

3. Tenant shall at all times comply with all applicable ordinances, rules, regulations, codes, laws, statutes and requirements of all federal, state, county and municipal governmental bodies or their subdivisions respecting the use of the Garage. Landlord reserves the right to adopt, modify and enforce reasonable Rules governing the use of the Garage from time to time, including any key card, parking sticker or other identification or entrance system, and hours of operation. The Rules set forth hereinafter are currently in effect. Landlord may refuse to permit any person who violates such Rules to park in the Garage, and any violation of the Rules shall subject the car to removal from the Garage.

4. The parking spaces hereunder shall be provided on an unreserved "first-come, first served" basis. Tenant acknowledges that Landlord has arranged or may arrange from time to time for the Garage to be operated by an independent contractor, not affiliated with Landlord (the "Parking Operator"). In such event, Tenant acknowledges that Landlord shall have no liability for claims arising through acts or omissions of the Parking Operator. Except for its intentional acts or gross negligence, Landlord shall have no liability whatsoever for (a) any damage to property or any other items located in the Garage, (b) theft or vandalism to any vehicle or property or other items located in the Garage, or (c) any personal injuries or death arising out of any matter relating to the Garage, and in all events, Tenant agrees to look first to its insurance carrier and to require that Tenant's employees look first to their respective insurance carriers for payment of any losses sustained in connection with any use of the Garage. Tenant hereby waives on behalf of its insurance carriers all rights of subrogation against Landlord or Landlord's agents. Landlord reserves the right to assign specific spaces, and to reserve space for visitors, small cars, handicapped persons and for other tenants, guests of tenants or other parties, and Tenant and persons designated by Tenant hereunder shall not park in any such assigned or reserved spaces. Landlord also reserves the right to close all or any portion of the Garage in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the Garage, or if required by casualty, strike, condemnation, act of God, governmental law or requirement or other reason beyond Landlord's reasonable control.

5. If Tenant shall default under this Agreement, Landlord shall have the right to remove from the Garage any vehicles hereunder which shall have been involved or shall have been owned or driven by parties involved in causing such default, without any liability therefor whatsoever. In addition, if Tenant shall default under this Agreement, Landlord shall have the right to cancel this Agreement on ten days' written notice, unless within such ten day period, Tenant cures such default. If Tenant defaults under this Agreement more than three times during any twelve month period, and Landlord notifies Tenant thereof promptly after each such default, the next default during the succeeding twelve month period, shall, at Landlord's election, constitute an incurable default. Such cancellation right shall be cumulative and in addition to any other rights or remedies available to Landlord at law or equity, or provided under the Lease **(all of which rights and remedies under the Lease are hereby incorporated herein, as though fully set forth)**. Any default by Tenant under the Lease shall be a default under this Agreement, and any default under this Agreement shall be a default under the Lease. Tenant shall comply with the following Rules governing the use of the Garage:

(i) Garage hours shall be as posted in the Garage from time to time. Landlord shall have the right to change hours of operation of the Garage from time to time.

- (ii) Cars must be parked entirely within the stall lines painted on the floor, and only small cars may be parked in areas reserved for small cars.
- (iii) All directional signs, arrows and lane markings must be strictly observed.
- (iv) The speed limit shall be 5 miles per hour.
- (v) Spaces reserved for handicapped parking must be used only by vehicles properly designated.
- (vi) Parking is prohibited in all areas not expressly designated for parking, including without limitation:

- (a) areas not striped for parking
- (b) aisles
- (c) where "no parking" signs are posted
- (d) ramps
- (e) loading zones
- (f) cross hatched areas
- (g) such other areas as may be designated by Landlord or the Parking Operator

(vii) Landlord shall have the right to establish, and Tenant shall cooperate with, a parking system in order to allow for use of the Garage by all of the tenants of the Property. Such system may include key cards and gates, parking stickers, designated parking stalls, or any other reasonable system. Key cards, parking stickers or any other devices or forms of identification or entry supplied by Landlord, if any, shall remain the property of Landlord. Such devices must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable and any device in the possession of an unauthorized holder will be void.

(viii) The monthly parking charge or rent for parking spaces is as posted in the Garage and subject to adjustment periodically at the discretion of the Landlord. Notice of such adjustments will be sent at least 30 days prior to the effective date of the adjustment. Monthly parking charges or rent for parking spaces is payable in advance on the first day of each month and must be paid on or before the fifth day of each month. No statement or invoice will be sent. Failure to pay such parking charge or rent for parking spaces on or before the fifth of each month will automatically cancel parking privileges and a charge at the prevailing daily rate will be charged. No deduction or allowances from the monthly rate will be made for days user does not use the Garage.

(ix) Parking Operator or its attendants are not authorized to make or allow any exceptions to these Rules and Regulations.

(x) Every parker is required to park and lock his/her own car.

(xi) Loss or theft of key cards, parking stickers or other identification, or other such devices must be reported to Landlord or any Garage manager immediately. Any parking devices reported lost or stolen found on any unauthorized car will be confiscated and the illegal holder will be subject to prosecution. Lost or stolen parking devices found by Tenant or its employees must be reported to the office of the Garage immediately.

(xii) Washing, waxing, cleaning or servicing of any vehicle by the customer and/or his/her agents is prohibited. Parking spaces may be used only for parking automobiles.

(xiii) Landlord or the Parking Operator reserves the right to refuse the sale of monthly stickers or other parking identification devices to any Tenant or person and/or his agents or representatives who refuse to comply with this Agreement and these Rules and all posted City, State or Federal ordinances, laws or agreements.

(xiv) By signing this Parking Agreement, Tenant agrees to acquaint all persons to whom Tenant assigns parking spaces with this Agreement and these Rules.

(xv) If a cardholder takes a ticket to gain access to the Garage, that ticket must be presented for validation to the Parking Operator the same day prior to exiting the Garage, otherwise the posted daily parking rate will apply.

(xvi) Except as otherwise provided in the Lease, parking privileges under this Parking Agreement are granted on a month-to-month basis and are revocable by Landlord on thirty (30) days prior written notice.

(xvii) Parking privileges may be on an unassigned or executive valet basis as designated by Landlord or the Parking Operator from time to time.

TENANT:

Equator Technologies, Inc

By: _____

Its: CFO _____

LANDLORD:

Pike Street Delaware, Inc.

By: _____

Its: Authorized Signatory

By: _____

Its: Authorized Signatory

**WHITE OAKS BUSINESS PARK
STANDARD NNN LEASE – Multi-Tenant Business Park**

W I T N E S S E T H

This lease (“**Lease**”) is entered into by and between Limar Realty Corp. #30, a California corporation (“**Landlord**”) and Equator Technologies, Inc., a Delaware corporation (“**Tenant**”). For and in consideration of the payment of rents and the performance of the covenants herein set forth by Tenant, Landlord does lease to Tenant and Tenant accepts the Premises described below subject to the agreements herein contained.

1. BASIC LEASE TERMS

- a. **DATE OF LEASE:** March 19, 2001
- b. **TENANT:** Equator Technologies, Inc., a Delaware corporation
Address (of the Premises): 1300 White Oaks Road, Campbell, California
Address (for Notices): *(Please provide if other than Premises.)*
- c. **LANDLORD:** Limar Realty Corp. #30
Address (for Notices): 1730 S. El Camino Real
Suite 400
San Mateo, California 94402
Attn: Thomas A. Numainville
- d. **TENANT’S USE OF PREMISES:** Office, research and development
- e. **PREMISES AREA:** 30,000 Rentable Square Feet
- f. **INSURING PARTY:** Landlord is the “**Insuring Party**” unless otherwise stated herein.
- g. **BUILDING:** 1300 White Oaks Road, Campbell, California
- h. **BUSINESS PARK:** White Oaks Business Park
- i. **TERM (inclusive):** Commencement Date: November 1, 2001 (“**Commencement Date**”)
This Lease shall automatically commence upon the expiration of that certain lease dated April 25, 1997, as amended, between Landlord and Tenant.

Expiration Date: October 31, 2006 (“**Expiration Date**”)

Number of Months: Sixty (60)
- j. **TENANT’S SHARE OF BUILDING:** 75% (30,000 sq. ft./40,000 sq. ft.)
- k. **TENANT’S SHARE OF BUSINESS PARK:** 75% (30,000 sq. ft./40,000 sq. ft.)
- l. **TENANT’S NUMBER OF NON-RESERVED PARKING SPACES:** 104 spaces
- m. **INITIAL BASE RENT:** Seventy Seven Thousand Two Hundred Eighty-Two & 88/100 Dollars (\$77,282.88) per month.

n. **BASE RENT ADJUSTMENT**

Step Increase. The step adjustment provisions of ¶4.b. apply for the periods shown below:

Periods (inclusive)	Monthly Base Rent Amount
11/01/02–10/31/03	\$ 79,214.95
11/01/03–10/31/04	81,195.32
11/01/04–10/31/05	83,225.21
11/01/05–10/31/06	85,305.84

- o. **TOTAL TERM BASE RENT:** \$4,874,690.40

- p. **PREPAID BASE RENT:** N/A
- q. **SECURITY DEPOSIT:** \$240,000.00
- r. **BROKER(S):** None
- s. **GUARANTOR(S):** None
- t. **EXHIBITS:** Exhibits lettered "A" through "D" are attached hereto and made a part hereof.

2. PREMISES, PARKING AND COMMON AREAS

- a. **Premises.** The Premises as described in ¶1. and Exhibit A, are a portion of a building, herein sometimes referred to as the "**Building**" identified in ¶1. The Premises, the Building, the Common Areas, the land upon which the same are located, along with all other buildings and improvements thereon or thereunder, are herein collectively referred to as the "**Business Park**" as described in ¶1. and Exhibit B. Landlord hereby leases to Tenant and Tenant leases from Landlord for the Term (as defined below), at the rental, and upon all of the conditions set forth herein, the real property referred to in the Basic Lease Terms, ¶1. as the "**Premises**", including rights to the Common Areas as hereinafter specified. Subject to any additional work Landlord has agreed herein to do, Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant agrees with the square footage specified for the Premises in ¶1. and will not hereafter challenge such determination and agreement. The rental payable by Tenant pursuant to this Lease is not subject to revision in the event of any discrepancy in the rentable square footage for the Premises.
- b. **Vehicle Parking.** So long as Tenant is not in default, and subject to the Rules and Regulations attached hereto as Exhibit C, and as reasonably established by Landlord from time to time, Tenant shall be entitled to use the number of parking spaces set forth in ¶1. If Tenant commits, permits or allows any of the prohibited activities described in the Lease or the Rules and Regulations then in effect, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.
- c. **Common Areas — Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Business Park that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and of other tenants of the Business Park and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, parking areas to the extent not otherwise prohibited by this Lease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls.
- d. **Common Areas — Rules and Regulations.** Tenant agrees to abide by and conform to the Rules and Regulations attached hereto as Exhibit C with respect to the Business Park and Common Areas, and to cause its employees, suppliers, shippers, customers and invitees to so abide and conform. Landlord, or such other person(s) as Landlord may appoint, shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to reasonably modify, amend and enforce said rules and regulations. Landlord shall not be responsible to Tenant for the non-compliance with said rules and regulations by other tenants, their agents, employees and invitees.
- e. **Building and Common Areas — Changes.** Landlord shall have the right, in Landlord's reasonable discretion, from time to time:
- 1) To make changes to the Building interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number and appearance thereof, including but not limited to the lobbies, windows, stairways, air shafts, elevators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways so long as Tenant's use and occupancy is not unreasonably impaired thereby;
 - 2) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
 - 3) To designate other land and improvements outside the boundaries of the Business Park to be a part of the Common Areas, provided that such other land and improvements have a reasonable and functional relationship to the Business Park;
 - 4) To add additional buildings and improvements to the Common Areas;
 - 5) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Business Park or any portion thereof; and

- 6) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Business Park as Landlord may, in the exercise of sound business judgment deem to be appropriate so long as Tenant's use and occupancy is not unreasonably impaired thereby.

f. **Acceptance; Quiet Enjoyment.** Landlord represents that it is the fee simple owner of the Premises and has full right and authority to make this Lease. Landlord hereby leases the Premises to Tenant and Tenant hereby accepts the same from Landlord, in accordance with the provisions of this Lease. Landlord covenants that Tenant shall have peaceful and quiet enjoyment of the Premises during the Term (as defined below) of this Lease. Tenant covenants that it will not interfere with other tenants' quiet enjoyment of their premises.

3. **TERM.** The term ("Term") of this Lease is for the period that commences at 12:01 a.m. on the Commencement Date and expires at 11:59 p.m. on the Expiration Date. If Landlord, for any reason, cannot deliver possession of the Premises to Tenant on or before the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from such delay. In that event, however, there shall be an abatement of Rent (as defined below) covering the period between the Commencement Date and the date when Landlord delivers possession to Tenant, all other terms and conditions of this Lease shall remain in full force and effect. If a delay in possession is caused by Tenant's failure to perform any obligation in accordance with this Lease, the Term shall commence as of the Commencement Date, and there shall be no reduction of Rent between the Commencement Date and the time Tenant takes possession.

4. **RENT**

a. **Base Rent.** Tenant shall pay Landlord in lawful money of the United States, without notice, demand, offset or deduction, rent in the amount(s) set forth in ¶1, which shall be payable in advance on the first day of each and every calendar month ("**Base Rent**") provided, however, the first month's Base Rent is due and payable upon execution of this Lease. Unless otherwise specified in writing by Landlord, all installments of Base Rent shall be payable to Limar Realty Corp. #30, Department #44294, P.O. Box 44000, San Francisco, California 94144-4294. Base Rent for any partial month at the beginning or end of this Lease will be prorated in accordance with the number of days in the subject month. If the Term of this Lease contains any rental abatement period, other than in accordance with ¶3, hereof. Tenant hereby agrees that if Tenant breaches the Lease and/or abandons the Premises before the end of the Term, or if Tenant's right to possession is terminated by Landlord because of Tenant's breach of the Lease, Landlord may, at its option, (1) void the rental abatement period, or (2) recover from Tenant, in addition to any damages due Landlord under the terms and conditions of the Lease, Base Rent prorated for the entirety of the rental abatement period at a rental rate equivalent to two (2) times the Base Rent at such time of proration.

For purposes of Section 467 of the Internal Revenue Code, the parties to this Lease hereby agree to allocate the stated Base Rent provided herein to the periods which correspond to the actual Base Rent payments as provided under the terms and conditions of this Agreement.

b. **Step Increase.** The Base Rent shall be increased periodically to the amounts and at the times set forth in ¶1.

c. **Rent Without Offset and Late Charge.** All Rent shall be paid without prior demand or notice and without any deduction or offset whatsoever. All Rent shall be paid in lawful currency of the United States of America. Tenant acknowledges that late payment by Tenant to Landlord of any Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any encumbrance or note secured by the Premises. Therefor, if any Rent is not received by Landlord within five (5) days of its due date, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue payment. Landlord and Tenant hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment and that the late charge is in addition to any and all remedies available to the Landlord and that the assessment and/or collection of the late charge shall not be deemed a waiver of any other default. Additionally, all such delinquent Rent or other sums, plus this late charge, shall bear interest from the due date thereof at the lesser of ten percent (10%) per annum or the maximum legal interest rate permitted by law. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of \$25.00, and thereafter for the remainder of the Term hereof, Landlord may require Tenant to pay all future payments of Rent or other sums due by cashier's check.

d. **Prepaid Base Rent.** Upon the execution of this Lease, Tenant shall pay to Landlord the Prepaid Base Rent set forth in ¶1, and such Prepaid Base Rent shall be applied toward the Base Rent due for the first month of the Term for which Base Rent is due. Landlord shall be entitled to immediately endorse and cash Tenant's Prepaid Base Rent.

e. **Rent.** The term "**Rent**" as used in this Lease shall refer to Base Rent, Prepaid Base Rent, Real Property Taxes, Operating Expenses, Insurance Costs, repairs and maintenance costs, utilities, late charges and other similar charges payable by Tenant pursuant to this Lease either directly to Landlord or otherwise.

OPERATING EXPENSES.

- a. **Payment by Tenant.** During the Term of this Lease, Tenant shall pay to Landlord, as additional Rent, on a monthly basis Tenant's Share of the Operating Expenses. To the extent that Operating Expenses are accounted for on a building by building basis, the Tenant's Share of Building shall apply. To the extent that Operating Expenses are accounted for on an overall Business Park basis, then Tenant's Share of Business Park shall apply.
- b. **Operating Expenses.** The term "Operating Expenses" shall mean all expenses, costs and disbursements (not specifically excluded from the definition of Operating Expenses below) of every kind and nature which Landlord shall pay or become obligated to pay because of or in connection with the ownership, maintenance, repair and operation of the Business Park or any portion thereof (including all Buildings and Common Areas of the Business Park). Operating Expenses shall include, but not be limited to, the following:
- 1) Wages and salaries of all employees engaged in the operation, maintenance and security of the Business Park, including taxes, insurance and benefits relating thereto; and the rental cost and overhead of any office and storage space used to provide such services.
 - 2) All supplies and materials used in the operation, repair or maintenance of the Business Park.
 - 3) Cost of all utilities, including surcharges, for the Business Park, including the cost of water, power and lighting which are not separately billed to and paid for by Tenant.
 - 4) Cost of all maintenance and service agreements for the Business Park and the equipment thereon, including but not limited to, security services, exterior window cleaning, janitorial service, engineers, gardeners and trash removal services.
 - 5) All Insurance Costs, as such term is defined in ¶16.
 - 6) Cost of all repairs and general maintenance (excluding repairs and general maintenance paid by proceeds of insurance or by Tenant or other third parties, and alterations attributable solely to the other tenants of the Business Park).
 - 7) A reasonable management fee for the property management of the Business Park.
 - 8) The costs of any additional services not provided to the Business Park at the Commencement Date but thereafter provided by Landlord in its management of the Business Park.
 - 9) The cost of any capital improvements to the Business Park or any part thereof which are made during the Term hereof with such cost to be amortized over the useful life of the improvement as reasonably determined by Landlord.
 - 10) Real Property Taxes, as that term is defined in ¶11.
 - 11) All costs to maintain, repair and replace the heating, ventilation and air conditioning systems ("HVAC") serving the Building and/or the Premises, including the cost of maintenance contracts.
- c. **Operating Expenses shall not include:**
- 1) Costs paid for directly by Tenant or other tenants;
 - 2) Costs incurred in connection with the financing, sale or acquisition of the Business Park or any portion thereof;
 - 3) Costs incurred in leasing or procuring tenants (including without limitation, lease commissions, advertising expenses, attorneys' fees and expenses of renovating space for tenants);
 - 4) Executive salaries of off-site personnel employed by Landlord except for the charge (or pro rata share) of the property manager of the Business Park;
 - 5) Subject to the provisions of ¶5.b.9) above, depreciation on the Building or other improvements on the Business Park;
 - 6) Legal expenses for disputes with tenants and any other professional fees of attorneys, auditors or consultants not incurred in connection with the normal maintenance and operation of the Business Park;
 - 7) Expenses which relate to the preparation of rental space for tenants, including without limitation building permit, license and inspection costs incurred with respect to the installation or improvements made for occupants of the Business Park or incurred in renovating or otherwise improving, decorating, painting or decorating vacant tenant space for the Business Park or other occupants of the Business Park;
 - 8) Costs incurred that are reimbursed by tenants of the Business Park, including Tenant, or third parties, including insurers;

- 9) Expenses for repair or replacement covered by warranties, and any costs due to casualty that are covered by insurance carried by Landlord;
 - 10) Rentals and other payments by Landlord under any ground lease or other lease underlying the Lease, and interest, principal, points and other fees on debt or amortization of any debt secured in whole or part by all or any portion of the Business Park;
 - 11) Repairs or replacements caused by Landlord's gross negligence or the gross negligence of Landlord's employees or agents;
 - 12) Net income, franchise, capital stock, estate or inheritance taxes or taxes which are the personal obligation of Landlord or another tenant of the Business Park;
 - 13) Landlord's charitable or political contributions;
 - 14) Payments to subsidiaries and affiliates of Landlord for services to the Business Park for supplies or other materials to the extent that the cost of such services, supplies or materials exceed the cost which would have been paid had the services, supplies or materials been provided by unaffiliated parties on a competitive basis (provided, however, any fee for management services paid to an affiliate of Landlord shall be in the amount set forth in ¶5.b.7);
 - 15) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;
 - 16) Advertising and promotional expenditures;
 - 17) Costs or repairs and other work occasioned by fire, windstorm or other casualty of an insurable nature to the extent covered by insurance; or
 - 18) Costs for sculpture, paintings or other objects of art other than for normal and customary lobby furnishings (nor insurance thereon or extraordinary security in connection therewith).
- d. **Extraordinary Services.** Tenant shall pay within twenty (20) days of receipt of an invoice from Landlord the cost of additional or extraordinary services provided to Tenant at Tenant's request and not paid or payable by Tenant pursuant to other provisions of this Lease.
- e. **Impound.** Landlord reserves the right, at Landlord's option, to estimate the annual cost of Operating Expenses performed by Landlord ("**Projected Operating Expenses**") and to require same to be paid in advance. Tenant shall pay to Landlord, monthly in advance as additional Rent, one-twelfth (1/12) of the Projected Operating Expenses.
- f. **Adjustment.**
- 1) **Accounting.** Within ninety (90) days (or as soon thereafter as possible) after the close of each calendar year or portion thereof of occupancy, Landlord shall provide Tenant a statement of such year's actual Operating Expenses compared to the Projected Operating Expenses. If the actual Operating Expenses are more than the Projected Operating Expenses then Tenant shall pay Landlord, within twenty (20) days of receipt of a bill therefor, the difference. If the actual Operating Expenses are less than the Projected Operating Expenses, then Tenant shall receive a credit against future Operating Expenses payments equal to the difference; provided, that in the case of an overpayment for the final lease year of the Term, Landlord shall credit the difference against any sums due from Tenant to Landlord in accordance with the terms of this Lease; and if no sums are due and unpaid, shall promptly refund the net amount to Tenant.
 - 2) **Tenant's Right to Audit.** Within sixty (60) days after receipt of Landlord's statement setting forth actual Operating Expenses (the "**Statement**"), Tenant shall have the right to audit at Landlord's local offices, at Tenant's expense, Landlord's accounts and records relating to Operating Expenses. Such audit shall be conducted by a certified public accountant approved by Landlord, which approval shall not be unreasonably withheld. If such audit reveals that Landlord has overcharged Tenant, the amount overcharged shall be paid to Tenant within thirty (30) days after the audit is concluded. If such audit reveals that Landlord has undercharged Tenant, the amount of undercharge shall be paid by Tenant to Landlord within 30 days after the audit is conducted. In addition, if the Statement exceeds the actual Operating Expenses which should have been charged to Tenant by more than ten percent (10%), the cost of the audit shall be paid by Landlord.
 - 3) **Proration.** Tenant's liability to pay Operating Expenses shall be prorated on the basis of a 365 (or 366, as the case may be) day year to account for any fractional portion of a year included at the commencement or expiration of the Term of this Lease.
 - 4) **Survival.** Landlord and Tenant's obligations to pay for or credit any increase or decrease in payments pursuant to this ¶5. shall survive this Lease.
- g. **Failure to Pay.** Failure of Tenant to pay any of the charges required to be paid under this ¶5. shall constitute a material default and breach of this Lease and Landlord's remedies shall be as specified in ¶21.

SECURITY DEPOSIT. Tenant has previously provided a cash security deposit (“**Security Deposit**”) held by Landlord in the amount set forth in ¶1. with Landlord. If Tenant is in default beyond applicable notice and cure periods, Landlord can (but without any requirement to do so) use the Security Deposit or any portion of it to cure the default or to compensate Landlord for any damages sustained by Landlord resulting from Tenant’s default. Upon demand, Tenant shall immediately pay to Landlord a sum equal to the portion of the Security Deposit expended or applied by Landlord to restore the Security Deposit to its full amount. In no event will Tenant have the right to apply any part of the Security Deposit to any Rent due under this Lease. Landlord’s obligations with respect to the Security Deposit are those of a debtor and not a trustee, and Landlord can commingle the Security Deposit with Landlord’s general funds. Landlord shall not be required to pay Tenant interest on the Security Deposit. Each time the Base Rent is increased, Tenant shall deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the Base Rent as the initial Security Deposit bore to the initial Base Rent. If Tenant is not in default at the expiration or termination of this Lease and has fully complied with the provisions of ¶9., ¶13.d.6) and ¶26., Landlord shall return the Security Deposit to Tenant.

USE OF PREMISES

- a. **Tenant’s Use.** Tenant shall use the Premises solely for the purposes stated in ¶1. and for no other purposes without obtaining the prior written consent of Landlord. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or with respect to the suitability of the Premises to the conduct of Tenant’s business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises, except as provided in writing in this Lease. Tenant shall promptly comply with all laws, statutes, ordinances, orders and governmental regulations now or hereafter existing affecting the Premises. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything in the Premises that will in any way increase the premiums paid by Landlord on its insurance related to the Premises. Tenant will not perform any act or carry on any practices that may injure the Premises. Tenant shall not use the Premises for sleeping, washing clothes, or the preparation, manufacture or mixing of anything that emits any objectionable odor, noises, vibrations or lights onto such other tenants. If, in Landlord’s reasonable judgment, sound insulation is required to muffle noise produced by Tenant on the Premises. Tenant at its own cost shall provide all necessary insulation. Tenant shall not do anything on the Premises which will overload any existing parking or service to the Premises. Pets and/or animals of any type (other than seeing eye dogs) shall not be kept on or about the Premises. Tenant covenants that it will not interfere with other tenants’ quiet enjoyment of their premises.
- b. **Rules and Regulations.** Tenant shall comply with and use the Premises in accordance with the Rules and Regulations attached hereto as Exhibit C and to any reasonable modifications to such Rules and Regulations as Landlord may adopt from time to time, provided however that if any rule or regulation is in conflict with any term, covenant or condition of this Lease, this Lease shall prevail. In addition, no such rule or regulation, or any subsequent amendment thereto adopted by Landlord, shall in any material way alter, reduce or adversely affect any of Tenant’s rights or materially enlarge Tenant’s obligations under this Lease.

EMISSIONS; STORAGE, USE AND DISPOSAL OF WASTE

- a. **Emissions.** Tenant shall not:
 - 1) Knowingly permit any vehicle on the Premises or in the Commons Areas to emit exhaust which is in violation of any governmental law, rule, regulation or requirement;
 - 2) Discharge, emit or permit to be discharged or emitted, any liquid, solid or gaseous matter, or any combination thereof, into the atmosphere or on, into or under the Premises, any building or other improvements of which the Premises are a part, or the ground or any body of water which matter, as reasonably determined by Landlord or any governmental entity to be in violation of law or regulation, and does or may pollute or contaminate the same, or is, or may become, radioactive or does, or may, adversely affect (a) the health or safety of persons, wherever located, whether on the Premises or anywhere else, (b) the condition, use or enjoyment of the Premises or any other real or personal property, whether on the Premises or anywhere else, or (c) the Premises or any of the improvements thereto including buildings, foundations, pipes, utility lines, landscaping or parking areas;
 - 3) Produce, or permit to be produced, any intense glare, light or heat in violation of law or regulations;
 - 4) Create, or permit to be created, any sound pressure level which will interfere with the quiet enjoyment of any real property outside the Premises, or which will create a nuisance or violate any governmental law, rule, regulation or requirement;
 - 5) Create, or permit to be created, any vibration that is discernible outside the Premises; or
 - 6) Transmit, receive or permit to be transmitted or received from or to the Premises, any electromagnetic, microwave or other radiation which is or may be harmful or hazardous to any person or property in, or about the Premises, or anywhere else.

- b. **Storage and Use.**
- 1) **Storage.** Subject to the uses permitted and prohibited to Tenant under this Lease, Tenant shall store in appropriate leak proof containers all solid, liquid or gaseous matter, or any combination thereof, which matter, if discharged or emitted into the atmosphere, the ground or any body of water would be in violation of law or regulation and does or may (a) pollute or contaminate the same, or (b) adversely affect the (i) health or safety of persons, whether on the Premises or anywhere else, (ii) condition, use or enjoyment of the Premises or any real or personal property, whether on the Premises or anywhere else, or (iii) Premises.
 - 2) **Use.** In addition, without Landlord's prior written consent, Tenant shall not use, store or permit to remain on or about the Premises any solid, liquid or gaseous matter which is, or may become dangerously radioactive. If Landlord does give its consent, Tenant shall use the materials in such a manner that (a) no real or personal property outside the designated storage area shall become contaminated thereby and (b) there are and shall be no adverse effects on the (i) health or safety of persons, whether on the Premises or anywhere else, (ii) condition, use or enjoyment of the Premises or any real or personal property thereon or therein, or (iii) Premises or any of the improvements thereto or thereon.
 - 3) **Hazardous Materials.** Subject to the uses permitted and prohibited to Tenant under this Lease, Tenant shall store, use, employ, transport and otherwise deal with all Hazardous Materials (as defined below) employed on or about the Premises in accordance with all federal, state, or local law, ordinances, rules or regulations applicable to Hazardous Materials in connection with or respect to the Premises.
- c. **Disposal of Waste.**
- 1) **Refuse Disposal.** Tenant shall not keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and shall regularly and frequently remove same from the Premises. Tenant shall keep all incinerators, containers or other equipment used for storage or disposal of such materials in a clean and sanitary condition.
 - 2) **Sewage Disposal.** Tenant shall properly dispose of all sanitary sewage and shall not use the sewage disposal system (a) for the disposal of anything except sanitary sewage or (b) amounts in excess of the lesser of: (i) that reasonably contemplated by the uses permitted under this Lease or (ii) that permitted by any governmental entity. Tenant shall keep the sewage disposal system free of all obstructions and in good operating condition.
 - 3) **Disposal of Other Waste.** Tenant shall properly dispose of all other waste or other matter delivered to, stored upon, located upon or within, used on, or removed from, the Premises in such a manner that it does not, and will not, violate any law or regulation and adversely affect the (a) health or safety of persons, wherever located, whether on the Premises or elsewhere, (b) condition, use or enjoyment of the Premises or any other real or personal property, wherever located, whether on the Premises or anywhere else, or (c) Premises or any of the improvements thereto or thereon including buildings, foundations, pipes, utility lines, landscaping or parking areas.
- d. **Information.** Tenant shall provide Landlord with any and all information regarding Hazardous Materials in the Premises, including copies of all filings and reports to governmental entities at the time they are originated, and any other information requested by Landlord. In the event of any accident, spill or other incident involving Hazardous Materials, Tenant shall immediately report the same to Landlord and supply Landlord with all information and reports with respect to the same. All information described herein shall be provided to Landlord regardless of any claim by Tenant that it is confidential or privileged.
- e. **Compliance with Law.** Notwithstanding any other provision in this Lease to the contrary, Tenant shall comply with all laws, statutes, ordinances, regulations, rules and other governmental requirements now or hereafter existing in complying with its obligations under this Lease, and in particular, relating to the storage, use and disposal of Hazardous Materials.
- f. **Indemnity.** Tenant hereby agrees to indemnify, defend and hold Landlord, its agents, employees, lenders, shareholders, directors, representatives, successors and assigns harmless from and against any and all actions, causes of action, losses, damages, costs, claims, expenses, penalties, obligations or liabilities of any kind whatsoever (including but not limited to reasonable attorneys' fees) arising out of or relating to any Hazardous Materials employed, used, transported across, or otherwise dealt with by Tenant (or invitees, or persons or entities under the control of Tenant) in connection with or with respect to the Premises and the Business Park. Notwithstanding any of the provisions of this Lease, the indemnity obligation of Tenant pursuant to this ¶8.f. shall survive the termination of this Lease and shall relate to any occurrence as described in this ¶8.f. occurring in connection with this Lease. Landlord hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all actions, causes of action, losses, damages, costs, claims, expenses, penalties, obligations or liabilities of any kind whatsoever (including reasonable attorneys' fees) arising out of or relating to (i) Hazardous Materials employed, used, transported to the Premises, for which the Premises are a part thereof, by Landlord, its agents or employees or (ii) Hazardous Materials existing on, in or under the Premises as of the date of this Lease. For purposes of this Lease the term "**Hazardous Materials**" shall mean any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections

9601 et seq.), as amended, or the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), as amended, or any other federal, state, or local law, ordinance, rule or regulation applicable to the Premises, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCB's), or radon gas, urea formaldehyde, asbestos or lead.

9. **SIGNS AND COMMUNICATIONS ANTENNAE.** Tenant shall not place any sign or communications antennae upon or adjacent to the Premises, except that Tenant may, with Landlord's prior written consent*, install (but not on the roof) such signs as are reasonably required to indicate Tenant's company name or logo provided such signs are in compliance with Landlord's standard sign criteria or install communications antennae used exclusively by Tenant provided such signs and/or communications antennae are in compliance with all applicable governmental requirements. The installation of any sign or communications antennae on or adjacent to the Premises by or for Tenant shall be subject to the provisions of ¶13. (Repairs and Maintenance). Tenant shall remove any sign or communications antennae placed on or adjacent to the Premises by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises caused thereby, all at Tenant's expense. If any signs or communications antennae are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs or communications antennae and repair any damage or injury to the Premises at Tenant's sole cost and expense. Notwithstanding any other provision of this Lease to the contrary, Landlord reserves all rights to the use of the roof and the right to install and receive all revenues from the installation of such other signs or communications antennae (including related equipment which is currently installed within the Premises) on the Premises as do not unreasonably interfere with the conduct of Tenant's business within the Premises.

* Landlord hereby approves existing exterior signage.

10. **PERSONAL PROPERTY TAXES.** Tenant shall pay at least ten (10) days prior to delinquency all taxes assessed against and levied upon Tenant owned leasehold improvements, trade fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause its leasehold improvements, trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.
11. **REAL PROPERTY TAXES**
- a. **Payment of Taxes.** Landlord shall pay the Building's Real Property Taxes, as defined in ¶11.c., during the Term of this Lease. Subject to ¶11.b., Tenant shall promptly reimburse Landlord according to ¶5. for Tenant's Share of Business Park of such Real Property Taxes paid by Landlord.
- b. **Advance Payment.** In order to ensure payment when due and before delinquency of any or all Real Property Taxes, Landlord shall estimate the current Real Property Taxes applicable to the Premises, and require Tenant to pay monthly in advance with the payment of the Base Rent an amount which, over the number of months remaining before the month in which the applicable tax installment would become delinquent, would provide a fund large enough to fully discharge before delinquency the estimated installment of Real Property Taxes to be paid. When the actual amount of the applicable tax bill is known, Landlord may, but is not required to, adjust the amount of such equal monthly advance payment so as to provide the funds needed to pay the applicable Real Property Taxes before delinquency. If the amounts paid to Landlord by Tenant under the provisions of this ¶11. are insufficient to discharge the obligations of Tenant to pay such Real Property Taxes as the same become due. Tenant shall pay to Landlord, upon Landlord's demand, such additional sums as are necessary to pay such obligations. All moneys paid to Landlord under this ¶11. may be intermingled with other moneys of Landlord and shall not bear interest.
- c. **Definition of "Real Property Taxes".** As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax or other fee, charge, or excise which may be imposed as a substitute for any of the foregoing (other than inheritance, personal income or estate taxes) imposed upon the Business Park by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Business Park, Landlord's right to rent or other income therefrom, and/or Landlord's business of leasing the Business Park. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the Term of this Lease, including but not limited to a change in the ownership of the Business Park or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the parties hereto.
12. **UTILITIES.** Tenant shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion, to be determined by Landlord, of all charges jointly metered with other premises.
13. **REPAIRS AND MAINTENANCE**
- a. **Landlord's Obligations.** Landlord shall keep the Business Park, including the foundation, exterior walls, roof, and common area of the Business Park, and the equipment whether used exclusively for the Premises or in common with other premises, in good condition and repair subject to reimbursement by Tenant in accordance with ¶5. There shall be no abatement of Rent or liability to Tenant on account of any injury or interference with Tenant's business with respect to any improvements, alterations or repairs

made by Landlord to the Business Park or any part thereof. Notwithstanding the above, Landlord, at Landlord's cost, shall repair and maintain the structural parts of the Premises which structural parts include only the foundation, exterior walls (excluding the surfaces of all walls and the exterior and interior of all windows, doors, plate glass, showcases and interior ceiling), roof structure (but not roof membrane), columns and foundations of the Premises unless such maintenance and repairs are caused in part or in whole by the act, neglect, fault of or omission of any duty by Tenant, its agents, servants, employees or invitees, in which case Tenant shall pay to Landlord, as additional Rent, the reasonable cost of such maintenance and repairs to the extent such cost is not covered by insurance proceeds received Landlord. Landlord shall not be liable for any failure to make any such repairs or to perform any maintenance unless Landlord shall fail to commence to make such repairs or perform such maintenance within thirty (30) days after written notice of the need for such repairs or maintenance is given to Landlord by Tenant, except in the event of an emergency in which case Landlord shall commence to perform as soon as practicable possible. In event Landlord fails to perform such maintenance or commence such repairs within the time period set forth above. Tenant shall have the right, after five (5) days written notice to Landlord, to perform the repairs or maintenance which are the subject of the notice at Landlord's cost and Landlord shall reimburse Tenant for the reasonable costs Tenant incurred in performing Landlord's obligations under this ¶13.a.; provided, however, that in no event shall Tenant have the right to offset against Rent or other sums owing under this Lease, any amount so incurred by Tenant. There shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to or maintenance of any portion of the Premises or in or to fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs at Landlord's expense under California Civil Code Section 1942 or any other law, statute or ordinance now or hereafter in effect. Except for the cost of repairing and maintaining those structural portions of the Premises as described in the first sentence of this ¶13.a., the cost of any repair, maintenance, alteration or improvement provided for herein and which is paid for by Landlord shall be included in the Operating Expenses as defined in ¶5.

b. **Tenant's Obligations.**

- 1) **General.** Tenant shall, at Tenant's sole cost and expense and at all times, contract for janitorial services and supplies, keep the Premises in good order, condition and repair, including, without limiting the generality of the foregoing, all equipment or facilities serving the Premises, (except for HVAC which shall be part of the Operating Expenses as set forth in ¶5.b. hereof) such as electrical, lighting facilities, boilers, fired or unfired pressure vessels, fixtures, interior walls, ceilings, floors, windows, window frames, interior and exterior doors and door frames, plate glass and skylights. Tenant shall not cause or permit any Hazardous Material to be spilled or released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises, the elements surrounding same, or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Materials and/or storage tank brought onto the Premises by or for Tenant or under its control. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.
- 2) **Contracts.** Tenant shall, at Tenant's sole cost and expense, procure and maintain contracts, with copies to Landlord, in customary form and substance for, and with contractors specializing and experienced in, the inspection, maintenance and service of mechanical, electrical and other systems serving the Premises (except the HVAC system), if any, servicing the Premises. Tenant shall keep a detailed preventative maintenance schedule and log showing the frequency of maintenance on all mechanical, electrical and other systems, (excluding HVAC) servicing the Premises and provide Landlord with a copy of same quarterly.
- 3) **As-is Condition.** The parties affirm that Landlord, its subsidiaries, officers, shareholders, directors, agents and/or employees have made no representations to Tenant respecting the condition of the Premises except as specifically stated herein.
- 4) **ADA.** Tenant acknowledges that as of the Commencement Date, the Premises may not comply with the accessibility provisions of Title 24 of the California Code of Regulations as interpreted by the Office of the State Architect, and that Landlord shall have no obligation with respect to any such failure of the Premises to so comply. Tenant shall, at its cost, at any time during the Term as required by any applicable governmental agency having jurisdiction over the Premises, make such modifications and alterations to the Premises as may be required in order to fully comply with the provisions of the ADA, as from time to time amended, and any and all regulations issued pursuant to or in connection with the ADA in such a manner as to satisfy the applicable governmental agency or agencies requiring remediation. Tenant shall at least thirty (30) days prior to the commencement of any construction in connection with satisfaction of the ADA, give written notice to Landlord of its intended commencement of construction together with sufficient details so as to reasonably disclose to Landlord the nature of the proposed construction, copies of any notices received by Tenant from applicable governmental agencies in connection with the ADA and such other documents or information as Landlord may reasonably request. In any event, notwithstanding anything to the contrary contained in this Lease, prior to the termination of the Term, Tenant shall, at its cost, make such modifications and alterations to the Premises as

may be required to comply fully with the ADA as from time to time amended and any and all regulations issued thereunder. Tenant shall give the Landlord thirty (30) days prior written notice as described above in connection with any such construction. Any and all construction required to so comply with the ADA shall be completed by Tenant prior to the expiration of the Term.

- c. **Compliance with Governmental Regulations.** Tenant shall, at its own cost and expense, promptly and properly observe and comply with all present and future orders, regulations, directions, rules, laws, ordinances, and requirements of all governmental authorities (including but not limited to state, municipal, county and federal governments and their departments, bureaus, boards and officials) arising from the use or occupancy of, or applicable to, the Premises or privileges appurtenant to or in connection with the enjoyment of the Premises. Tenant shall also comply with all such rules, laws, ordinances and requirements at the time Tenant makes any alteration, addition or change to the Premises.
- d. **Miscellaneous.**
- 1) Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances and rules of any public authority relating to their respective maintenance obligations as set forth herein.
 - 2) Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford the Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises and the Business Park in good order, condition and repair. Specifically, Tenant waives the provisions of California Civil Code Sections 1941 and 1942 with respect to Landlord's obligations for Tenant tenability of the Premises and Tenant's right to make repairs and deduct the expenses of such repairs from Rent.
 - 3) Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand.
 - 4) Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord making any repairs or changes which Landlord is required to make or is permitted to make by this Lease or by any tenant's lease or is required by law to make in or to any portion of the Premises. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.
 - 5) Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Premises' mechanical, electrical, plumbing, HVAC or other systems serving, located in or passing through the Premises. Upon request by Landlord, Tenant shall provide Landlord with evidence reasonably acceptable to Landlord of service contracts on such systems.
 - 6) Upon the expiration or early termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment shall be repaired by Tenant prior to the end of the Term at Tenant's expense.
 - 7) Landlord may, at Landlord's option, choose to perform any of the Tenant's obligations in this ¶13. The cost of any such Tenant's obligations so performed by Landlord shall be at Tenant's sole cost and expense. Tenant shall reimburse Landlord for any such costs incurred by Landlord in the performance of such Tenant's obligations within ten (10) days of receipt of a billing from Landlord.

ALTERATIONS. Tenant shall not make any alterations to the Premises or the Business Park without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant may make non-structural alterations costing less than \$15,000 per event without Landlord's consent. Regardless of whether Landlord's consent for alteration is required, Tenant must provide Landlord at least fifteen (15) business days prior to the commencement of any alteration with a complete description of each such alteration including any building permit drawing(s) and specifications. Landlord may post notices regarding non-responsibility in accordance with the laws of the state in which the Premises are located. All alterations made by Tenant, whether or not subject to the approval of Landlord, shall be performed by Tenant and its contractors in a first class workmanlike manner and permits and inspections shall be obtained from all required governmental entities. Any alterations made shall remain on and be surrendered with the Premises upon expiration or termination of this Lease, except that Landlord may, within thirty (30) days before or thirty (30) days after expiration of the Term, elect to require Tenant to remove some or all some or all of the alterations which Tenant may have made to the Premises. If Landlord so elects, Tenant shall at its own cost restore the Premises to the condition designated by Landlord in its election, before the last day of the Term or within thirty (30) days after notice of its election is given, whichever is later. If requested by Tenant at the time of Tenant's request for approval of alterations or improvements, Landlord shall advise Tenant in writing whether Landlord shall require Tenant to remove some or all of said alterations or improvements upon expiration or termination of the Lease. Should Landlord consent in writing to Tenant's alteration of the Premises, Tenant shall contract with a contractor approved by Landlord for the construction of such alterations, shall secure all appropriate governmental approvals and permits, and shall complete such alterations with due diligence in compliance with plans and specifications approved by Landlord. Tenant shall pay all costs for such construction and shall keep the Premises free and clear of all mechanics' liens which may result from construction by Tenant.

15. **RELEASE AND INDEMNITY.** As material consideration to Landlord, Tenant agrees that Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, except for damages resulting from Landlord's gross negligence or willful misconduct, and Tenant waives all claims against Landlord for damage to persons or property arising for any reason, except for damage resulting directly from Landlord's breach of its express obligations under this Lease which Landlord has not cured within a reasonable time after written notice of such breach from Tenant. Tenant shall indemnify and hold Landlord harmless from all damages including attorneys' fees and costs arising out of any damage to any person or property occurring in, on or about the Premises or Tenant's use of the Premises or Tenant's breach of any term of this Lease.
16. **INSURANCE**
- a. **Payment For Insurance.** Regardless of whether the Landlord or Tenant is the Insuring Party, Tenant shall pay for its proportionate share of all insurance required under this ¶16, ("**Insurance Costs**") either directly or by reimbursement to Landlord as specified in this ¶16. Premiums for policy periods commencing prior to or extending beyond the Lease Term shall be prorated to correspond to the Lease Term. Payment shall be made by Tenant to Landlord within thirty (30) days following receipt of an invoice for any amount due.
- b. **Liability Insurance.**
- 1) **Carried by Tenant.** Whether or not Tenant is the Insuring Party, Tenant shall obtain and keep in force during the Term of this Lease a commercial general liability policy of insurance protecting Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$13,000,000 per occurrence with an "Additional Insured-Managers or Landlords of Premises" endorsement and contain an "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be earned by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. All insurance coverage required pursuant to this ¶16, which is to name Landlord as a named insured shall also name Landlord's subsidiaries, directors, agents, officers and employees as named insureds.
- 2) **Carried by Landlord.** In the event Landlord is the Insuring Party, Landlord shall also maintain liability insurance as described in ¶16.b.1), in addition to, and not in lieu of the insurance required to be maintained by Tenant. In the event Tenant is the Insuring Party, Landlord shall in addition carry Landlord's Risk Coverage and insure the Premises on Landlord's umbrella policy and Tenant shall reimburse Landlord the cost thereof. Tenant shall not be named as an additional insured therein under any insurance obtained by Landlord in accordance with this ¶16.b.2).
- c. **Property Insurance - Building, Improvements and Rental Value.**
- 1) **Building and Improvements.** The Insuring Party shall obtain and keep in force during the Term of this Lease a policy or policies in the name of Landlord, with loss payable to Landlord and to the holders of any mortgages, deeds of trust or ground leases on the Business Park ("**Lender(s)**"), insuring loss or damage to the Business Park. The amount of such insurance shall be equal to the full replacement cost of the Business Park, as the same shall exist from time to time, or the amount required by Lender(s), but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. Such policy or policies shall insure against all risks of direct physical loss or damage (including Boiler and Machinery coverage and the perils of flood and earthquake), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Business Park required to be demolished shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Business Park is located. If such insurance coverage has a deductible clause, then Tenant shall be liable for its proportionate share of such deductible amount. Even if Landlord is the Insuring Party, Tenant's personal property shall be insured by Tenant under ¶16.d. rather than by Landlord.
- 2) **Rental Value.** The Insuring Party shall, in addition, obtain and keep in force during the term of this Lease a policy or policies in the name of Landlord, with loss payable to Landlord and Lender(s), insuring the loss of the full rental and other charges payable by Tenant to Landlord under this Lease for one (1) year (including all Real Property Taxes, Insurance Costs and any scheduled Rent increases). Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of Rent from the date of any such loss. Said insurance shall contain an

agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent, Real Property Taxes, Insurance Costs and other expenses, if any, otherwise payable by Tenant, for the next twelve (12) month period. Tenant shall be liable for any deductible amount in the event of such loss.

- 3) **Adjacent Premises.** If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Landlord which are adjacent to the Premises, the Tenant shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Tenant's acts, omissions, use or occupancy of the Premises.
 - 4) **Tenant's Improvements.** If the Landlord is the Insuring Party, the Landlord shall not be required to insure Tenant's personal property and leasehold improvements unless the item in question has become the property of Landlord under the terms of this Lease. If Tenant is the Insuring Party the policy carried by Tenant under this ¶16.c. shall insure Tenant's personal property and leasehold improvements.
- d. **Tenant's Property Insurance.** Subject to the requirements of ¶16.e., Tenant at its cost shall either by separate policy or by endorsement to a policy already carried, maintain insurance coverage on all of Tenant's personal property and Tenant's leasehold improvements in, on or about the Premises similar in coverage to that carried by the Insuring Party under ¶16.c. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$10,000 per occurrence. The proceeds from any such insurance shall be used by Tenant for the replacement of personal property or the restoration of Tenant owned leasehold improvements. Tenant shall be the Insuring Party with respect to the insurance required by this ¶16.d. and shall provide Landlord with written evidence that such insurance is in force.
- e. **Insurance Policies.** If Tenant is the Insuring Party, insurance required per this ¶16. shall be with companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-X, or such other minimal rating as may be required by Lender(s) as set forth in the most current issue of "Best's Insurance Guide." Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this ¶16. If Tenant is the Insuring Party, Tenant shall cause to be delivered to Landlord certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Lease. No such policy shall be cancelable or subject to modification or lapse except after thirty (30) days prior written notice to Landlord. Tenant shall at least thirty (30) days prior to the expiration of such policies, furnish Landlord with evidence of renewals or "insurance binders" evidencing renewal thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand. If the Insuring Party shall fail to procure and maintain the insurance required to be carried by the Insuring Party under this ¶16., the other Party may, but shall not be required to, procure and maintain the same, but at Tenant's expense.
- f. **Mutual Waiver.** Notwithstanding anything to the contrary contained in this Lease, to the extent that this release and waiver does not invalidate or impair their respective insurance policies, the parties hereto release each other and their respective agents, employees, officers, directors, shareholders, successors, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk which is actually insured against pursuant to the provisions of this Lease without regard to the negligence or willful misconduct of the parties so released. Each party shall use its best efforts to cause each insurance policy it obtains to provide that the insurer thereunder waives all right of recovery by way of subrogation as required herein in connection with any injury or damage covered by the policy. If such insurance policy cannot be obtained with such waiver of subrogation, or if such waiver of subrogation is only available at additional cost and the party for whose benefit the waiver is not obtained does not pay such additional costs after reasonable notice, then the party obtaining such insurance shall promptly notify the other party of the inability to obtain insurance coverage with the waiver of subrogation.

DAMAGE AND DESTRUCTION

- a. **Damage - Restoration Required.** In the event that the Building containing the Premises is damaged by fire or other casualty which is covered under insurance pursuant to the provisions of ¶16. above, Landlord shall restore such damage provided that: (i) the destruction of the Building containing the Premises does not exceed sixty percent (60%) of the then replacement value of the Building containing the Premises; (ii) the insurance proceeds are available (inclusive of any deductible amounts) to pay one hundred percent (100%) of the cost of restoration; and (iii) in the reasonable judgment of Landlord, the restoration can be completed within two hundred and seventy (270) days after the date of the damage or casualty under the laws and regulations of the state, federal, county and municipal authorities having jurisdiction. The deductible amount of any insurance coverage for damage to the Premises shall be paid by Tenant. If such conditions apply so as to require Landlord to restore such damage pursuant to this ¶17.a., this Lease shall continue in full force and effect, unless otherwise agreed to in writing by Landlord and Tenant. Tenant shall be entitled to a proportionate reduction of Rent while such restoration takes place, such proportionate reduction to be based on the extent to which the damage and restoration efforts interfere with Tenant's business in the Premises. Tenant's right to a reduction of Rent hereunder shall be Tenant's sole and exclusive remedy in connection with any such damage.
- b. **Damage - Restoration Not Required.** In the event that the Building containing the Premises is damaged by a fire or other casualty and Landlord is not required to restore such damage in accordance with the provisions of ¶17.a. immediately above, Landlord shall have the option to either (i) repair or restore such damage, with the Lease continuing in full force and effect, but Rent to be proportionately abated as

provided in ¶17.a. above; or (ii) give notice to Tenant at any time within thirty (30) days after the occurrence of such damage terminating this Lease as of a date to be specified in such notice which date shall not be less than thirty (30) nor more than sixty (60) days after the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date, so specified in such notice and the Rent, reduced by any proportionate reduction in Rent as provided for in ¶17.a. above, shall be paid to the date of such termination. Notwithstanding the foregoing, if Tenant delivers to Landlord the funds necessary to make up the shortage (or absence) in insurance proceeds and the restoration can be completed in a two hundred seventy (270) day period, as reasonably determined by Landlord, and the destruction of the Building containing the Premises does not exceed sixty percent (60%) of the then replacement value, Landlord shall restore the Premises as provided in ¶17.a. above.

- c. **End of Term Casualty.** Notwithstanding the provisions of ¶17.a. and ¶17.b. above, either Landlord or Tenant may terminate this Lease if the Building containing the Premises is damaged by fire or other casualty, Landlord's reasonably estimated cost of restoration of the Building containing the Premises exceeds ten percent (10%) of the then replacement value of the Building containing the Premises and such damage or casualty occurs during the last twelve (12) months of the Term of this Lease (or the Term of any renewal option, if applicable) by giving the other notice thereof at any time within thirty (30) days following the occurrence of such damage or casualty. Such notice shall specify the date of such termination which date shall not be less than thirty (30) nor more than sixty (60) days following the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent shall be paid to the date of such termination.
- d. **Termination by Tenant.** In the event that the destruction to the Building containing the Premises cannot be restored as required herein under applicable laws and regulations within two hundred seventy (270) days of the damage or casualty, notwithstanding the availability of insurance proceeds. Tenant shall have the right to terminate this Lease by giving the Landlord notice thereof within thirty (30) days of date of the occurrence of such casualty specifying the date of termination which shall not be less than thirty (30) days nor more than sixty (60) days following the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent, reduced by any proportionate reduction in Rent as provided for in ¶17.a. above, shall be paid to the date of such termination.
- e. **Restoration.** Landlord agrees that, in any case in which Landlord is required to, or otherwise agrees to restore the Building containing the Premises, Landlord shall proceed with due diligence to make all appropriate claims and applications for the proceeds of insurance and to apply for and obtain all permits necessary for the restoration of the Building containing the Premises. Landlord shall use reasonable efforts to enforce any and all provisions in any mortgage, deed of trust or other encumbrance on the Building containing the Premises requiring Landlord and Lender to permit insurance proceeds to be used for restoration. Landlord shall restore the Premises at least equal to the condition existing prior to the date of the damage if permitted by applicable law. Landlord shall not be required to restore alterations made by Tenant, Tenant's improvements, Tenant's trade fixtures and Tenant's personal property, such excluded items being the sole responsibility of Tenant to restore provided, however, that Landlord shall, to the extent of available insurance proceeds, restore Tenant Improvements to the Premises made by Tenant such as interior offices, lab and production improvements and other like improvements.
- f. **Waiver.** Tenant waives the provisions of Civil Code § 1932(2) and Civil Code § 1933(4) with respect to any destruction of the Premises.

8. CONDEMNATION

- a. **Definitions.** The following definitions shall apply: (1) **"Condemnation"** means (a) the exercise of any governmental power of eminent domain, whether by legal proceedings or otherwise by condemnor, or (b) the voluntary sale or transfer by Landlord to any condemnor either under threat of condemnation or while legal proceedings for condemnation are proceeding; (2) **"Date of Taking"** means the date the condemnor has right to possession of the property being condemned; (3) **"Award"** means all compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation; and (4) **"Condemnor"** means any public or quasi-public authority, or private corporation or individual, having power of Condemnation.
- b. **Obligations to be Governed by Lease.** If during the Term of the Lease there is any taking of all or any part of the Building containing the Premises, the rights and obligations of the parties shall be determined strictly pursuant to this Lease. Each party waives the provisions of Code of Civil Procedure § 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial condemnation of the Premises.
- c. **Total or Partial Taking.** If the Building containing the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking. If any portion of the Building containing the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving notice to Landlord within thirty (30) days after the nature and extent of the Condemnation have been finally determined. If Tenant elects to terminate this Lease, Tenant shall also notify Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the

Date of Taking if the Date of Taking falls on a date before the date of termination as designated by Tenant. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect, on the Date of Taking the Base Rent shall be reduced by an amount in the same ratio as the total number of square feet in the Premises taken bears to the total number of square feet in the Premises immediately before the Date of Taking. Any Award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such Award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any compensation separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenant's trade fixtures.

19. **ASSIGNMENT OR SUBLEASE**

- a. Tenant shall not assign or encumber its interest in this Lease or the Premises or sublease all or any part of the Premises or allow any other person or entity (except Tenant's authorized representatives, employees, invitees or guests) to occupy or use all or any part of the Premises without first obtaining Landlord's consent, which consent shall not be unreasonably withheld. Any assignment, encumbrance or sublease without Landlord's prior written consent shall be voidable and at Landlord's election, shall constitute a default. If Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of any partner, or the dissolution of the partnership, shall be deemed a voluntary assignment. If Tenant consists of more than one person, a purported assignment, voluntary or involuntary or by operation of law from one person to the other shall be deemed a voluntary assignment. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of at least fifty percent (50%) of the value of the assets of Tenant shall be deemed a voluntary assignment. Notwithstanding the sentence immediately above, if the Tenant is a corporation, the Tenant shall be entitled to assign this Lease without Landlord's prior written consent in the event of a reorganization of Tenant through the sale of all or a portion of Tenant's Capital Stock by Initial Public Offering (such event shall be referred to as a transfer to a "**Permitted Transferee**"). In connection with any assignment, Landlord shall be entitled to require an increase in the Security Deposit to the extent that such increase should be commercially reasonable in Landlord's discretion given the financial condition of Tenant and the assignee following such event. In connection with any Sublease, Landlord shall be entitled to hold any Security Deposit paid by Sublessee to Sublessor, which Security Deposit shall be held by Landlord in accordance with the provisions of the Sublease. Tenant shall give Landlord at least sixty (60) days prior written notice of any intended transfer to a Permitted Transferee and in connection with such transfer shall provide to Landlord copies of any documents or other information as Landlord may reasonably request. Unless otherwise expressly agreed in writing by Landlord, no assignment shall relieve Tenant of any of its obligations pursuant to this Lease.

In the event of a sublease all Sublease Rent received by Tenant in excess of the Rent payable by Tenant to Landlord under this Lease applicable to the portion of the Premises subleased shall be deemed the "**Bonus Amount**", after deducting therefrom the "**Subleasing Costs**" which shall include (i) commercially reasonable brokerage commissions, (ii) tenant improvements made at the request of a subtenant and (iii) attorneys' fees incurred by Tenant in negotiating and documenting the sublease not to exceed One Thousand Dollars (\$1,000.00) per request, which Subleasing Costs shall be amortized over the Term of the Sublease for the purpose of determining the Bonus Amount. Fifty percent (50%) of the Bonus Amount shall be promptly paid to Landlord following receipt by Tenant. If the Subleasing Costs are not known at the commencement of the sublease, the 50% of Bonus Amount due Landlord will be computed without deduction of Subleasing Costs and promptly paid to Landlord. Once the Subleasing Costs are presented to and verified by Landlord, the Bonus Amount paid by Tenant to date will be adjusted and Landlord shall give Tenant a credit against the next payment(s) due to Landlord from Tenant. The term "**Sublease Rent**" as used herein shall include any consideration of any kind received by Tenant from or on behalf of any subtenant, if the sums are related in any manner to the Premises, including, without limitation Rent, operating expense payments, bonus money and payments for the purchase of or usage of Tenant's furniture, fixtures, inventory, equipment, accounts, goodwill, general intangibles and other assets. Each sublease approved by Landlord shall stand alone as to the computation of the Bonus Amount

In the event of an assignment all Transfer Payments received by Tenant shall be deemed the "**Bonus Amount**", after deducting therefrom the "**Assignment Costs**" which shall include (i) commercially reasonable brokerage commissions and (ii) attorneys' fees incurred by Tenant in negotiating and documenting the assignment not to exceed One Thousand Dollars (\$1,000.00) per request. Seventy-five percent (75%) of the Bonus Amount shall be promptly paid to Landlord following receipt by Tenant. If the Assignment Costs are not known at the commencement of the Assignment, the 75% of Bonus Amount due Landlord will be computed without deduction of Assignment Costs and promptly paid to Landlord. Once the Assignment Costs are presented to and verified by Landlord, the Bonus Amount paid by Tenant to date will be adjusted and Landlord shall give Tenant a credit against the next payment(s) due to Landlord from Tenant. The term "**Transfer Payments**" as used herein shall include any consideration of any kind received by Tenant from or on behalf of any assignee, if the sums are related in any manner to the Premises, including, without limitation assignment consideration, Rent, operating expense payments, bonus money and payments for the purchase of or usage of Tenant's furniture, fixtures, inventory, equipment, accounts, goodwill, general intangibles and other assets.

If Tenant requests Landlord to consent to a proposed assignment or subletting, Tenant shall pay to Landlord, whether or not consent is ultimately given, an amount equal to Landlord's reasonable attorneys' fees and costs incurred in connection with such request. Each request for consent to an assignment or subletting shall be in writing, and shall be accompanied by information as may be relevant to Landlord's

determination as to the financial and operational responsibility and stability of the proposed assignee or sublessee and the appropriateness of the proposed use by such assignee or sublessee. Such information shall include a summary of the proposed use of, and any proposed modifications to, the Premises. Tenant shall provide Landlord with such other or additional information and/or documentation as may reasonably be requested by Landlord. Tenant shall, upon completion of any assignment or subletting of all or any portion of the Premises, immediately and irrevocably assign to Landlord as security for Tenant's obligations under the Lease, all Sublease Rent and/or Transfer Payments from any such subletting or assignment. Landlord, as assignee and attorney in fact for Tenant, shall have the right to collect all rent and other revenues collectable pursuant to any such sublet or assignment and apply such rent and other revenues towards Tenant's obligations under the Lease.

- b. No interest of Tenant in this Lease shall be assignable by involuntary assignment through operation of law (including without limitation the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes proceedings under the Bankruptcy Act in which Tenant is the bankrupt; or if Tenant is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; or (b) if a writ of attachment or execution is levied on this Lease; or (c) if in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.
- c. Notwithstanding any provision to this Lease to the contrary, in any event where Landlord's consent is required for assignment or sublease, Landlord may, at its option, elect to terminate the Lease instead of approving the requested assignment or sublease. Should Landlord so elect to terminate this Lease, all of the obligations of the parties thereunder shall terminate on the later of sixty (60) days following Landlord's notice to Tenant of its election hereunder, or the effective date of the proposed assignment or subletting sought by the Tenant, but in no event later than one hundred twenty (120) days following the date of Landlord's election under this ¶19.c. At the time of termination, all obligations of both parties hereunder shall terminate as to obligations thereafter accruing except as otherwise expressly provided in this Lease.

DEFAULT. The occurrence of any of the following shall constitute a default by Tenant: (a) a failure of Tenant to pay Rent within ten (10) days of its due date or a failure of Tenant to pay Operating Expenses and all other charges within ten (10) days of Tenant's receipt of Landlord's billing for same; (b) abandonment of the Premises; or (c) failure to timely perform any other provision of this Lease where such failure continues for a period in excess of thirty days following notice of such failure, provided however, that if the nature of such failure is such that it cannot reasonably be cured within thirty days, then Tenant shall not be in default if Tenant commences to cure such failure within thirty days and thereafter diligently prosecutes the cure to completion. Tenant shall give written notice to Landlord of any default by Landlord of its obligations pursuant to this Lease asserted by Tenant (with a copy of such notice to any lender ("**Lender**") against the Premises). Landlord and Landlord's Lender shall be afforded a reasonable opportunity to cure any claimed default by Landlord and Landlord shall not be considered in default so long as Landlord (or Landlord's Lender) commences such cure within a reasonable period of time and thereafter, continues to attempt to complete such cure. Landlord, from time to time, shall provide Tenant with the name and address of its Lender.

LANDLORD'S REMEDIES. Landlord shall have the following remedies if Tenant is in default. (These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law):

- a. Landlord may continue this Lease in full force and effect, and this Lease will continue in effect so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet the Premises, or any part of the Premises, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the Rent Landlord receives from any reletting. No act by Landlord allowed by this ¶21.a. shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant's default and for so long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability. Landlord's consent to such a proposed assignment or subletting shall not be unreasonably withheld. If Landlord elects to relet the Premises as provided in this ¶21.a., Rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than Rent due from Tenant; second, all costs, including for maintenance incurred by Landlord in reletting; and third, Rent due and unpaid under this Lease. After deducting the payments referred to in this ¶21.a., any sum remaining from the Rent Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess Rent received by Landlord. If, on the date Rent is due under this Lease, the Rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs including for maintenance Landlord incurred in reletting that remain after applying the Rent received from the reletting as provided in this ¶21.a.; and
- b. Landlord may terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving express written notice thereof to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to

protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. Upon termination of Tenant's right to possession, Landlord has the right to recover from Tenant: (1) the Worth of the unpaid Rent that had been earned at the time of termination of Tenant's right to possession; (2) the Worth of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (3) the Worth of the amount of the unpaid Rent that would have been earned after the award throughout the remaining Term of the Lease to the extent such unpaid Rent exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (4) any other amount, including but not limited to, reasonable expenses incurred to relet the Premises, court costs, attorneys' fees and collection costs necessary to compensate Landlord for all detriment caused by Tenant's default. The "Worth", as used above in (1) and (2) in this ¶21.b. is to be computed by allowing interest at the lesser of 18 percent per annum or the maximum legal interest rate permitted by law. The "Worth", as used above in (3) in this ¶21.b., is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

22. **ENTRY OF PREMISES.** Landlord and/or its authorized representatives shall have the right after twenty-four (24) hour prior notice except for emergencies to enter the Premises at all reasonable times for any of the following purposes: (a) to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease; (b) to do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform; (c) to post "for sale" signs at any time during the Term, or to post "for rent" or "for lease" signs during the last one hundred eighty (180) days of the Term or during any period while Tenant is in default; (d) to show the Premises to prospective brokers, agents, buyers, tenants or persons interested in leasing or purchasing the Premises, at any time during the Term; or (e) to repair, maintain or improve the Premises and to erect scaffolding and protective barricades around and about the Premises but not so as to prevent entry to the Premises or to unreasonably interfere with Tenant's use of the Premises and to do any other act or thing necessary for the safety or preservation of the Premises. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry onto the Premises as provided in this ¶22. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this ¶22. Landlord shall conduct its activities on the Premises as provided herein in a commercially reasonable manner that will lessen the inconvenience, annoyance or disturbance to Tenant.
23. **SUBORDINATION.**
- a. **Automatic Subordination.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or Landlord's Lender, this Lease shall be subject and subordinate at all times to (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises, (ii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed affecting the Premises, and (iii) the lien of any mortgage or deed of trust which may hereafter be executed in any amount for which the Premises, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest (including without limitation to Lender) to Landlord ("**Successor**"). In connection with any such termination of a ground lease or underlying lease or any foreclosure or conveyance in lieu of foreclosure made in connection with any mortgage or deed of trust, then so long as Tenant is not in default after all applicable notice and cure periods pursuant to this Lease, Tenant shall not be disturbed in its possession of the Premises or in the enjoyment of its rights pursuant to this Lease during the Term of this Lease or any extension or renewal thereof. Notwithstanding any subordination of this Lease to the lien of any mortgage or deed of trust, the Lender, at any time shall be entitled to subordinate the lien of its mortgage or deed of trust to this Lease by filing a notice of subordination in the County in which the Premises are located, and Lender shall agree in connection with any such filing, that Tenant shall not be disturbed in its possession of the Premises so long as Tenant is not in default pursuant to this Lease. In connection with any such filing, Tenant shall be obligated to attorn to and to become a Tenant of any Successor.
- b. **Additional Subordination.** From time to time at the request of Landlord, Tenant covenants and agrees to execute and deliver within ten (10) days following the date of written request from Landlord, documents evidencing the priority or subordination of this Lease with respect to any ground lease or underlying lease or the lien of any mortgage or deed of trust in connection with the Premises. Any and all such documents shall be in such form as is reasonably acceptable to the Lender(s). Any subordination agreement so requested by Landlord shall provide for Tenant to attorn to the Successor and shall further provide that Tenant shall not be disturbed in its possession of the Premises or in the enjoyment of its rights pursuant to this Lease so long as Tenant is not in default after all applicable notice and cure periods with respect to its obligations pursuant to the Lease. Any such Subordination, Non-disturbance and Attornment Agreement shall be recorded in the official records of the office of the County Recorder in the County in which the Premises is located.
- c. **Notice from Lender.** Tenant shall be entitled to rely upon any notice given by a Lender in connection with the Premises requesting that Tenant make all future Rent payments to such Lender, and Tenant shall not be liable to Landlord for any payment made to such Lender in accordance with such notice. Notwithstanding any provision to the contrary of this Lease, a Successor shall not be (i) obligated to recognize the payment of Rent for a period of more than one month in advance; (ii) responsible for liabilities accrued pursuant to this Lease prior to the date ("**Succession Date**") upon which the Successor becomes the "Landlord" hereunder; (iii) responsible to cure defaults of the Landlord pursuant to this Lease existing as of the Succession Date, except for defaults of a continuing nature of which Successor received notice (as provided in Paragraph 20) and in respect of which Tenant afforded Successor a

reasonable cure period following such notice; (iv) responsible for any Security Deposit delivered by Tenant pursuant to this Lease not actually received by the Successor; or (v) bound by any execution, modification, termination or extension of this Lease or any grant of a purchase option or right of first refusal or any other action taken by the Landlord pursuant to this Lease, except in accordance with the provisions of an assignment of leases executed by Landlord in favor of a Lender.

24. **ESTOPPEL CERTIFICATE; TENANT FINANCIAL STATEMENTS.** Tenant, at any time and from time to time, upon not less than ten (10) days written notice from Landlord, will execute, acknowledge and deliver to Landlord and, at Landlord's request, to any existing or prospective purchaser, ground lessor or mortgagee of any part of the Premises, a certificate of Tenant stating: (a) that Tenant has accepted the Premises (or, if Tenant has not done so, Tenant has not accepted the Premises and specifying the reasons therefor); (b) the Commencement and Expiration Dates of this Lease; (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that same is in full force and effect as modified and stating the modifications); (d) whether or not to the best of Tenant's knowledge there are then existing any defenses against the enforcement of any of the obligations of Tenant under this Lease (and, if so, specifying same); (e) whether or not to the best of Tenant's knowledge there are then existing any defaults by Landlord in the performance of its obligations under this Lease (and, if so, specifying same); (f) the dates, if any, to which the Rent and other charges under this Lease have been paid; (g) whether or not there are Rent increases during the Lease Term and if so the amount of same; (h) whether or not the Lease contains any options or rights of first offer or first refusal; (i) the amount of any Security Deposit or other sums due Tenant; (j) the current notice address for Tenant; and (k) any other information that may reasonably be required by any of such persons. It is intended that any such certificate of Tenant delivered pursuant to this ¶24, may be relied upon by Landlord and any existing or prospective purchaser, ground lessor or mortgagee of the Building containing the Premises. Tenant agrees, at any time upon request by Landlord, to deliver to Landlord the most recent financial statements of Tenant with an opinion from a certified public accountant, if available, including a balance sheet and profit and loss statement for the most recent prior three years, all prepared in accordance with generally accepted accounting principles consistently applied. Landlord agrees to hold such financial statements confidential and to share them only with prospective lenders and purchasers of the Premises. Other than for prospective lenders and purchasers, Landlord shall not request financial statements more often than twice in any calendar year.
25. **WAIVER.** No delay or omission in the exercise of any right or remedy by Landlord shall impair such right or remedy or be construed as a waiver. No act or conduct of Landlord, including without limitation, acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish termination of the Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provision of the Lease.
26. **SURRENDER OF PREMISES.** Upon expiration of the Term, Tenant shall surrender to Landlord the Premises and all tenant improvements and alterations in the same condition as existed at the Commencement Date, except for ordinary wear and tear and alterations which Tenant has the right or is obligated to remove under the provisions of ¶14. herein. Tenant shall remove all personal property including, without limitation, all wallpaper, paneling and other decorative improvements or fixtures and shall perform all restoration made necessary by the removal of any alterations or Tenant's personal property before the expiration of the Term, including, for example, restoring all wall surfaces to their condition as of the Commencement Date. In any event, Tenant shall cause the following to be done prior to the expiration or the sooner termination of this Lease: (i) all interior walls shall be painted or cleaned so that they appear freshly painted; (ii) all tiled floors shall be cleaned and waxed; (iii) all carpets shall be cleaned and shampooed; (iv) all broken, marred, stained or nonconforming acoustical ceiling tile shall be replaced; (v) all exterior and interior windows shall be washed; (vi) the HVAC system shall be serviced by a reputable and licensed service firm and left in good operating condition and repair as so certified by such firm; and (vii) the plumbing and electrical systems and lighting shall be placed in good order and repair (including replacement of any burned out, discolored or broken light bulbs, ballasts, or lenses). Landlord can elect to retain or dispose of in any manner Tenant's personal property not removed from the Premises by Tenant prior to the expiration of the Term. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of Tenant's personal property. Tenant shall be liable to Landlord for Landlord's cost for storage, removal and disposal of Tenant's personal property.
27. **HOLDOVER.** If Tenant with Landlord's consent remains in possession of the Premises after expiration of the Term or after the date in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall be deemed to be a month to month tenancy cancelable by either party on thirty (30) days written notice given at any time by either party and all provisions of this Lease, except those pertaining to Term, renewal options and Base Rent, shall apply and Tenant shall thereafter pay monthly Base Rent computed on a per-month basis, for each month or part thereof (without reduction for any partial month) that Tenant remains in possession, in an amount equal to one hundred fifty percent (150%) of the Base Rent that was in effect for the last full calendar month immediately preceding expiration of the Term.

If Tenant holds over after the expiration or earlier termination of the Term hereof, without the consent of Landlord, Tenant shall become a Tenant at sufferance only with a continuing obligation to pay Rent provided that the Base Rent shall be one hundred fifty percent (150%) of the Base Rent that was in effect for the last full calendar month immediately preceding expiration of the Term for the first thirty (30) days of such holdover, and two hundred percent (200%) of such Base Rent thereafter during the pendency of such holdover. Acceptance by Landlord of Rent after expiration or earlier termination of the Term shall not constitute a consent to a holdover hereunder or result in a renewal. The foregoing provisions of this ¶27, are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability arising out of such failure, including without limitation, any claim made

by any succeeding tenant founded on or resulting from such failure to surrender. No provision of this ¶27. shall be construed as implied consent by Landlord to any holding over by Tenant. Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon expiration or other termination of this Lease. The provisions of this ¶27. shall not be considered to limit or constitute a waiver of any other rights or remedies of Landlord provided in this Lease or at law.

28. **NOTICES.** All notices, demands, or other communications required or contemplated under this Lease, including any notice delivered to Tenant by the Lender, shall be in writing and shall be deemed to have been duly given 48 hours from the time of mailing if mailed by registered or certified mail, return receipt requested, postage prepaid, or 24 hours from the time of shipping by overnight carrier, or the actual time of delivery if delivered by personal service to the parties at the addresses specified in ¶1. Either Tenant or Landlord may change the address to which notices are to be given to such party hereunder by giving written notice of such change of address to the other in accordance with the notice provisions hereof.
29. **TENANT IMPROVEMENTS.** Landlord shall deliver the Premises to Tenant in its “as is” condition as of the Commencement Date. Within a reasonable period of time following the mutual execution of this Lease, Landlord shall perform the repairs to the Premises as set forth in Tenant’s Estimate of Repair Costs attached hereto as Exhibit D. Within thirty (30) days of Landlord’s billing, Tenant shall reimburse Landlord for the cost, if any, of said repairs in excess of \$65,377.00.
30. **FIRST RIGHT TO NEGOTIATE ON AVAILABLE EXPANSION SPACE.** Tenant shall have the First Right to Negotiate on any space that becomes vacant and available in the Building in which the Premises is located which is not subject to any then existing renewal, expansion or extension rights of other tenant(s) in the Project (the “**Available Expansion Space**”) at any time during the initial Term of the Lease. Should Landlord receive either a proposal to lease or a request for proposal on behalf of a prospective tenant for all or part of the Available Expansion Space (the “**Offered Space**”), Landlord will so notify Tenant. If Tenant wishes to lease the Offered Space, Tenant shall so notify Landlord in writing within five (5) business days and diligently proceed with negotiations on the Offered Space. If the negotiations do not result in Tenant and Landlord executing a letter of intent for the Offered Space within ten (10) days of Tenant’s notice to Landlord or if Tenant and Landlord do not execute a lease for the Offered Space within thirty (30) days of Tenant’s notice to Landlord, Tenant’s First Right to Negotiate on the Offered Space shall terminate.
31. **MISCELLANEOUS PROVISIONS.**
- a. **Time of Essence.** Time is of the essence of each provision of this Lease.
 - b. **Successor.** This Lease shall be binding on and inure to the benefit of the parties and their successors, except as provided in ¶19.
 - c. **Landlord’s Consent.** Any consent required by Landlord under this Lease must be granted in writing and may be withheld or conditioned by Landlord in its sole and absolute discretion unless otherwise provided.
 - d. **Personal Rights.** Notwithstanding any other provision(s) of this Lease to the contrary, any provisions of this Lease providing for the renewal, extension or early termination of the Lease and/or for the expansion of the Premises (to include without limitation rights to negotiate, rights of first refusal, etc.) shall be (i) personal to the original Tenant and shall not be assignable or otherwise transferable other than to a Permitted Transferee (either voluntarily or involuntarily) to any third party for any reason whatsoever, and (ii) conditioned upon Tenant not then being in default under this Lease.
 - e. **Commissions.** Each party represents that it has not had dealings with any real estate broker, finder or other person with respect to this Lease in any manner, except for the Broker(s) identified in ¶1., who shall be compensated by Landlord in accordance with the separate agreement between Landlord and the Broker(s).
 - f. **Other Charges; Legal Fees.** If Landlord becomes a party to any litigation concerning this Lease or the Premises by reason of any act or omission of Tenant or Tenant’s authorized representatives, Tenant shall be liable to Landlord for reasonable attorneys’ fees and court costs incurred by Landlord in the litigation. Should the court render a decision which is thereafter appealed by any party thereto Tenant shall be liable to Landlord for reasonable attorneys’ fees and court costs incurred by Landlord in connection with such appeal.

If either party commences any litigation against the other party or files an appeal of a decision arising out of or in connection with the Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys’ fees and costs of suit. If Landlord employs a collection agency to recover delinquent charges, Tenant agrees to pay all collection agency and attorneys’ fees charged to Landlord in addition to Rent, late charges, interest and other sums payable under this Lease.
 - g. **Landlord’s Successors.** In the event of a sale or conveyance by Landlord of the Building containing the Premises, the same shall operate to release Landlord from any liability under this Lease, including as to any Security Deposit to the extent transferred to Landlord’s successor-in-interest, and in such event Landlord’s successor in interest shall be solely responsible for all obligations of Landlord under this Lease.
 - h. **Interpretation.** This Lease shall be construed and interpreted in accordance with the laws of the state in which the Premises are located. This Lease constitutes the entire agreement between the parties with respect to the Premises, except for such guarantees or modifications as may be executed in writing by the parties from time to time. When required by the context of this Lease, the singular shall include the

plural, and the masculine shall include the feminine and/or neuter. "Party" shall mean Landlord or Tenant. If more than one person or entity constitutes Landlord or Tenant, the obligations imposed upon that party shall be joint and several. The enforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

- i. **Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Landlord's prior written consent. Notwithstanding anything to the contrary in this Lease, Landlord shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.
- j. **Quiet Possession.** Upon payment by Tenant of the Rent for the Premises and the observance and performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession of the Premises for the entire Term hereof subject to all of the provisions of this Lease.
- k. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.
- l. **Offer.** Preparation of this Lease by Landlord or Landlord's agent and submission of same to Tenant shall not be deemed an offer to lease to Tenant. This Lease is not intended to be binding until executed by all Parties hereto.
- m. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other Rent payable under this Lease. As long as they do not materially change Tenant's obligations hereunder, Tenant agrees to make reasonable non-monetary modifications to this Lease as may be reasonably required by Lender(s) in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.
- n. **Construction.** The Landlord and Tenant acknowledge that each has had its counsel review this Lease, and hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or in any amendments or exhibits hereto.
- o. **Captions.** Article, section and paragraph captions are not a part hereof.
- p. **Exhibits.** For reference purposes the Exhibits are listed below:

Exhibit A: The Premises
Exhibit B: Business Park
Exhibit C: Rules and Regulations
Exhibit D: Tenant's Estimate of Repair Costs

Limar Realty Corp. #30, a California corporation

By: /s/ Theodore H. Kruttschnitt
Name: Theodore H. Kruttschnitt
Title: President
Date: 7/25/11

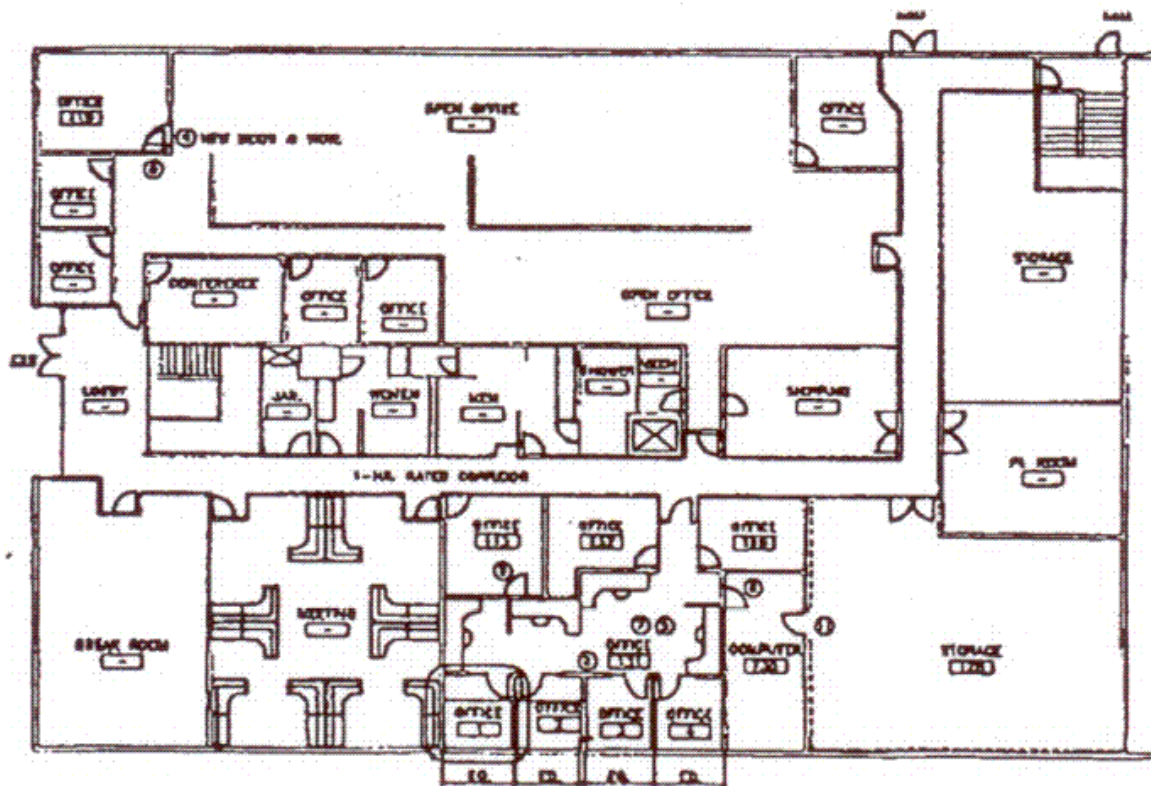
Equator Technologies, Inc., a Delaware corporation

By: /s/ Brian T. McGee
Name: Brian T. McGee
Title: CFO
Date: 25 July 2001

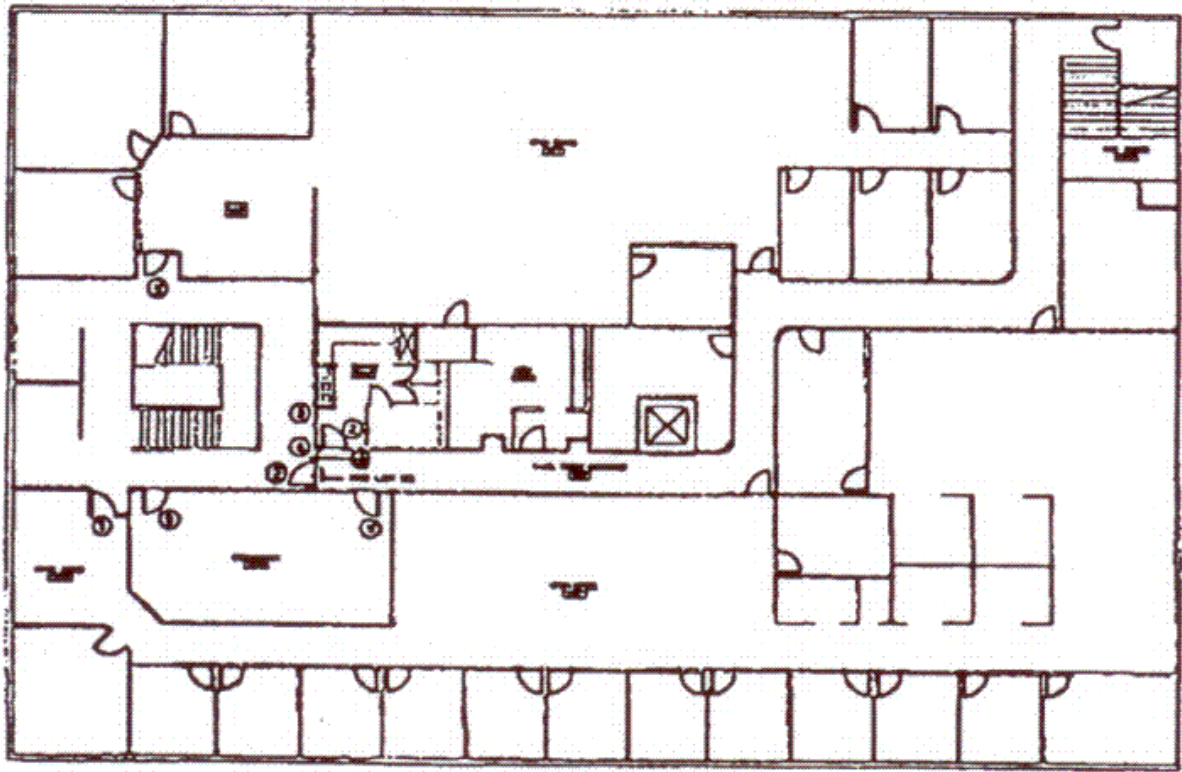
This Exhibit A is attached to and made a part of that certain Lease (the “Lease”) dated March 19, 2001, by and between Limar Realty Corp. #30 as Landlord and Equator Technologies, Inc. as Tenant.

1300 White Oaks Avenue
Campbell, California

FIRST FLOOR

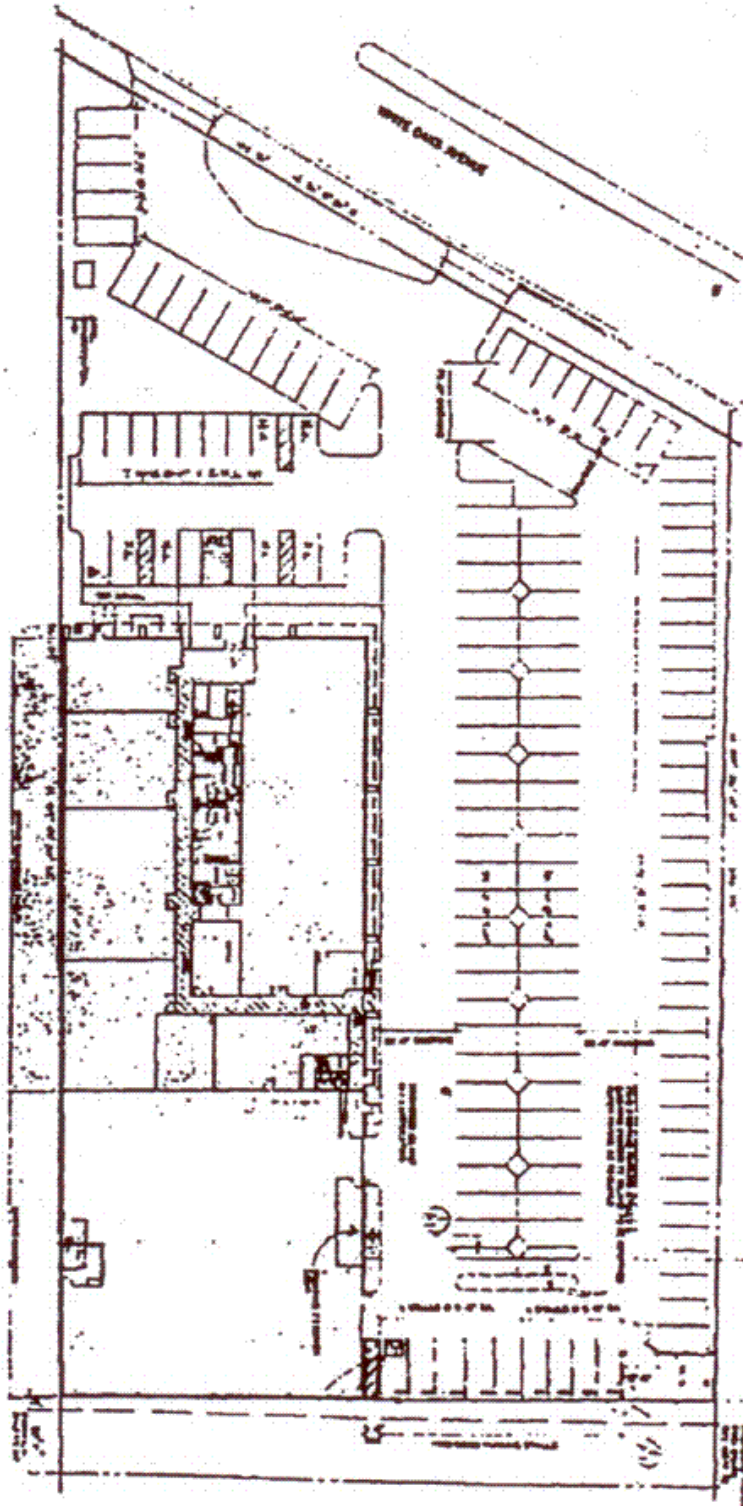


SECOND FLOOR



This Exhibit B is attached to and made a part of that certain Lease (the "Lease") dated March 19, 2001, by and bet Limar Realty Corp. #30 as Landlord and Equator Technologies, Inc. as Tenant.

1300 White Oaks Avenue
Campbell, California



Legal description

All that certain Real Property in the City of Campbell, County of Santa Clara, State of California, described as follows:

PARCEL NO. 1:

Beginning at a 1 inch pipe at the Northwest corner of that certain 80 foot strip of land conveyed by Jessie L. Lewis to A. G. Peterson by Deed recorded in Volume 287 of Official Records, Page 247, said point of beginning being the Northeast corner of that certain tract of land conveyed by Jessie L. Lewis to Anna R. Toepfer by Deed recorded April 22, 1932 in Vol. 614 of Official Records, Page 79, and running thence from said point of beginning, along the West line of said 80 foot strip of land South 216.00 feet to a 1/2 inch pipe; thence West 322.31 feet to a point in the center line of an irrigation ditch on the Westerly line of said tract of land so conveyed to Anna R. Toepfer above referred to; thence along said West line North 30 deg. 11' East 249 88 feet to a 1 inch pipe at the Northeast corner of said land so conveyed to Anna R. Toepfer; thence along the North line of land so conveyed to Anna R. Toepfer, East 196.70 feet to the point of beginning and being a portion of Lots 4 and 3, as shown upon the Map of the Redding Farm Tract, which said Map was recorded September 28, 1891 in the Office of the County Recorder of the County of Santa Clara, State of California in Volume "E" of Maps, at Page 115.

Excepting therefrom so much thereof described as follows:

All of that Parcel of Land described in the Deed to Quintilio Quintarelli, et ux, recorded on October 13, 1954 in Volume 2980, at page 644, Official Records of Santa Clara County, which lies westerly of the following described line:

Beginning for reference at the Southeasterly corner of that Parcel of Land described in the Deed to Charles Ferroni, at alias, dated on December 4, 1959 in Volume 4628 at Page 700, Official Records of Santa Clara County; thence along the Southerly line of last said parcel North 88 deg. 55' 17" West 335.52 feet to the True Point of Commencement; thence South 23 deg. 09' 48" West 96.17 feet to the general Easterly line of that right of way now known as White Oaks Avenue. conveyed in the Deed to Santa Clara County, recorded on April 18, 1924 in Volume 79, at Page 448 Official Records of Santa Clara County; thence along last said line South 10 deg. 29' 24" West 102.35 feet and South 32 deg. 08' 24" West 35.97 feet to the Southerly line of said Quintarelli Parcel.

Also excepting therefrom that portion thereof as conveyed to the City of Campbell, a municipal corporation by Deed recorded September 18, 1998 as Instrument No. 14399524, of Official Records and being more particularly described as follows:

Beginning at the Northeast corner of that Parcel of Land granted to the State of California by that certain Grant Deed recorded March 5, 1970 in Book 8849, Page 221 of the Official Records of Santa Clara County; thence from said point of beginning along the easterly line of said land of the State of California South 22 deg. 32' 20" West 96.17 feet and South 09 deg. 51' 56" West 2.76 feet; thence leaving said easterly line. North 25 deg. 47' 55" East to the easterly extension of the northerly line of said lands of the State of California; thence along last said line, North 89 deg. 32' 45" West 6.89 feet to the said point of beginning of this description.

PARCEL NO. 2:

Beginning at a point in the Northerly line of Lot 3, as shown upon the Map hereinafter referred to; at the Northwest corner of that certain 9 acre tract of land conveyed by Katie Hamilton to Antonio Catarina, by Deed dated February 18, 1935 and recorded March 18, 1935 in Book 721 of Official Records, at Page 392, in the Office of the County Recorder of the County of Santa Clara, State of California; thence from said point of beginning. South along the Westerly line of said 9 acre tract so conveyed by Katie Hamilton to Antonio Catarina, a distance of 265.205 feet; thence East and parallel to said Northerly line of said lot 3, at shown on the Map hereinafter referred to, 164.25 feet to the Easterly line of that certain Parcel of land conveyed by Anna C. Jolls to Adela Le Bord, by Deed

This Exhibit A is attached to and made a part of that certain Lease (the “Lease”) dated March 19, 2001, by and between Limar Realty Corp. #30 as Landlord and Equator Technologies, Inc. as Tenant.

dated February 11, 1946 and recorded February 21, 1946 in Book 1333 of Official Records, at Page 92, County of Santa Clara, State of California; thence Northerly along said Easterly line, said line being the center line of a 40 foot right of way hereinafter described, 265.205 feet to the said Northerly line of said Lot 3; thence West along said Northerly line 164.25 feet to the point of beginning and being a portion of Lot 3, as shown on the Map entitled, “Redding Farm Tract, being a part of the South 1/2 of the Northwest 1/4 of Section 2, T. 8 S.R. 1 w.”, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on September 28, 1891 in Book of the County of Santa Clara, State of California on September 28, 1891 in Book “E” of Maps, at Page 115.

Excepting therefrom so much thereof described as follows:

Beginning at a point on the westerly line of that certain 9.0 acre tract of land conveyed by Katie Hamilton to Antonio Catarina by Deed dated February 18, 1935 and recorded March 18, 1935 in Book 721 of Official Records, Page 392, Santa Clara County Records, distant Southerly thereon 215.205 feet from the intersection with the Northerly line of Lot 3, as said Northerly line is shown on the Map hereinafter referred to; running thence Southerly along said westerly line of the 9.0 acre tract of land 50.0 feet; thence Easterly and parallel to said Northerly line of Lot 3, a distance of 164.25 feet to a point on the Easterly line of that certain tract of land conveyed by Anna G. Jolls to Adela Le Bord, by Deed dated February 11, 1946 and recorded February 21, 1946 in Book 1333 of Official Records, Page 92, Santa Clara County Records; thence Northerly along said Easterly line, said line also being the center line of the 40 foot right of way hereinafter described, 50.00 feet; running thence Westerly and parallel to said Northerly line of Lot 3 a distance of 165.25 feet to the point of beginning, being a portion of Lot 3, as shown on that certain Map entitled, “Redding Farm Tract being a part of the South 1/2 of the Northwest 1/4 of Section 2, T. 8 S.R. 1 w.”, filed record September 28, 1891 in Book “E” of Maps, at Page 115, Santa Clara County Records.

PARCEL NO. 3:

Beginning at the Northeast corner of that certain Parcel of Land granted to the state of California by that certain Grant Deed recorded on March 5, 1970 in Book 8849, Page 221 of the Official Records of Santa Clara County; thence from said point of beginning along the easterly line of said lands of the State of California South 22 deg. 32’ 20” West 96.17 feet and South 09 deg. 51’ 56” West 2.76 feet; to the True Point of Beginning of this description; thence continuing along said easterly line, South 09 deg. 51’ 56” West 99.59 feet and South 31 deg. 30. 56” West 30.25 feet to the southerly line of said land of the State of California; thence along said southerly line, North 89 deg. 32’ 45” West 26.92 feet; thence leaving said southerly line, North 25 deg. 47’ 55” East 137.38 feet to the said true point of beginning of this description.

PARCEL NO. 4:

A non-exclusive easement for street purposes including the purpose of ingress, egress and regress, the laying out, construction and maintenance of a street, sidewalks, curbs, gutters, sewage pipes, lines, connection and system water pipes, lines, connections and systems, gas pipes, lines, connection and systems, hot air and/or steam pipes, lines, connection and systems, power and light conduits, lines, connections and systems, electrolies, telephone conduits, lines, connections and systems and similar purposes upon, over, across and/or through that certain parcel of real property 40 feet wide, situate lying and being in the County of Santa Clara, State of California, the middle line of which is described as follows:

Beginning at a point in the center line of Redding Road and the Southerly line of lot 3 as shown on the Map of Redding Farm Tract, recorded in Volume “E” of Maps, at Page 115, distant thereon, 120. 88 feet Westerly of the Southeasterly corner of said Lot 3; thence along the center line of a 40 foot right of way and parallel with the Easterly line of said Lot 3, Northerly 474.10 feet; thence continuing along the center line of said 40 foot right of way, North 23 deg. 12’ West 109 feet; thence continuing along said center line and parallel with the Easterly line of said Lot 3, Northerly 745.90 feet to the Northerly line of said Lot 3 and being a portion of said Lot 3, as shown on the Map herein above referred to.

EXHIBIT C

Rules & Regulations

This Exhibit C is attached to and made a part of that certain Lease (the “Lease”) dated March 19, 2001, by and between Limar Realty Corp. #30 as Landlord and Equator Technologies, Inc. as Tenant.

For the purpose of these Rules & Regulations the word Premises shall refer to the Premises Tenant is leasing and the Property containing the Premises as described in the Lease.

1. No sign, placard, picture, advertisement, name or notice (collectively “Signs”) shall be installed or displayed on any part of the Premises without the prior written consent of Landlord* except that Tenant may post Signs inside the Building which are not visible from the exterior of the Building. Landlord shall have the right to remove, at Tenant’s expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant.

* Landlord hereby approves existing exterior signage.

2. Except as consented to in writing by Landlord, no draperies, curtains, blinds, shades, screens or other devices shall be hung at or used in connection with any window or exterior door or doors of the Premises and no awning shall be permitted on any part of the Premises. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises.
 3. Neither Tenant nor any employee or invitee of Tenant, shall make any structural roof or terrace penetrations.
 4. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, or for any damage to any Tenant’s property.
 5. Landlord will furnish Tenant, free of charge, with six (6) keys to the Premises. Tenant shall not make or have made additional keys without Landlord’s prior written consent, and Tenant shall not alter any lock or install a new additional lock or bolt on any door of its Premises without Landlord’s prior written consent. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys of all locks for doors on the Premises, and in the event of loss of any keys furnished by Landlord, shall pay Landlord therefor.
 6. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain, and comply with, Landlord’s reasonable instructions in their installation.
 7. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall have the reasonable right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Premises. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Premises to such a degree as to be objectionable to Landlord, shall be placed and maintained by Tenant, at Tenant’s expense, on vibration eliminators or other devices sufficient to eliminate noise or vibrations. Landlord will not be responsible for loss of or damage to, any such equipment or other property from any cause, and all damage done to the Premises by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.
 8. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors or vibrations not bring or keep or permit to be brought or kept in the Premises any animal life form, other than human, except seeing eye dogs when in the company of their masters.
 9. Tenant shall not waste electricity, water or air-conditioning and agrees to cooperate fully with Landlord to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice.
 10. Landlord reserves the right, exercisable with one hundred twenty (120) days prior written notice but without liability to Tenant, to change the name and street address of the Premises.
 11. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus, and other equipment which is not required to be continuously run.
 12. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting for the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.
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EXHIBIT C

13. Tenant shall not sell, or permit the retail sale of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the Business Park. Tenant shall not use the Premises for any business or activity other than that specifically provided for in Tenants Lease. Notwithstanding the above. Tenant shall have the right to install vending machines for use by Tenant, its employees and invitees.
 14. Tenant shall not interfere with radio or television broadcasting or reception from or in neighboring areas.
 15. Canvassing, soliciting and distribution of handbills or any other written materials, and peddling in the Business Park are prohibited, and Tenant shall cooperate to prevent same.
 16. Landlord reserves the right to exclude or expel from the Premises any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Premises or in violation of the CC&R's.
 17. Tenant shall store all its trash and garbage within its Premises or in reasonable locations specifically identified by Landlord for such purposes. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with reasonable directions issued from time to time by Landlord.
 18. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging nor shall the Premises be used for any improper, illegal or objectionable purpose. No cooking (other than customary heating or ordinary lunchroom items for Tenant's employees) shall be done or permitted by any tenant on the Premises, except that use by Tenant in its kitchen, if any, located in the Premises and Underwriters Laboratory's approved equipment for brewing coffee, tea, hot chocolate and similar beverages and microwaving food shall be permitted, provided that such kitchen, equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.
 19. Tenant shall not use in any part of the Premises any hand truck except those equipped with rubber tires and side guards or such other reasonable material-handling equipment as Landlord may approve.
 20. Without the written consent of Landlord, Tenant shall not use the name of the Business Park in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
 21. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.
 22. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes locking doors and securing other means of entry to the Premises closed.
 23. The requirements of Tenant will be attended to only upon appropriate application to the office of Landlord by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.
 24. Tenant shall not park its vehicles in any parking areas outside the Business Park. Tenant shall not store or abandon vehicles in the Business Park parking areas nor park any vehicles in the Business Park parking areas other than automobiles, motorcycles, motor driven or non-motor driven bicycles, four-wheeled trucks, or other equipment used in the operation of Tenant's business. Tenant, its agents, employees and invitees shall not park any one (1) vehicle in more than one (1) parking space.
 25. Landlord reserves the right to make such other reasonable Rules and Regulations as, in its judgment, may from time to time be appropriate for safety and security, for care and cleanliness of the Premises and for the preservation of good order therein. Tenant agrees to abide for all such Rules and Regulations hereinabove stated and any additional Rules and Regulations which are adopted.
 26. Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.
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Tenant's Estimate of Repair Costs

This Exhibit C is attached to and made a part of that certain Lease (the "**Lease**") dated March 19, 2001, by and between Limar Realty Corp. #30 as Landlord and Equator Technologies, Inc. as Tenant.

Estimate for Equator Technologies, Inc
1300 White Oaks Rd
Campbell, CA 95008

Repairs	Location	Estimate Cost
Handicap parking stalls does not comply with ADA and must be corrected.	Outside the building, parking lot area	\$ 8,000
Complete parking lot needs to be re-coated with paint and the striping redone		
Complete building needs a fresh coat of paint.	Outside the building	\$ 15,000
The back wall by Survey.com needs to be fixed. Trespassers are using it for a shortcut.		
The door in the electric room needs to be painted and the faded sign replace		
Needs a better landscaping company, to actually clean up and remove dead trees through out the parking lot. Better quality	Outside the building, parking lot area	
The insulation on the refrigeration lines serving the smaller package units need to be replace	The roof	\$ 3,255
The gas main line and its branches, as well as other piping and conduits need to have the blocking supporting their length and the stapping replace to avoid a serious safety situation.	The roof	\$ 5,892
A roofing contractor needs to perform a through inspection of the roof. One hose bib is leaking and both need to be re-plumbed	The roof	\$ 35,800.00
	Total	\$ 65,377

CERTIFICATION

I, Allen H. Alley, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Pixelworks, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2005

/s/ Allen H. Alley

Allen H. Alley
Chairman of the Board, President and
Chief Executive Officer

CERTIFICATION

I, Jeffrey B. Bouchard, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Pixelworks, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2005

/s/ Jeffrey B. Bouchard
Jeffrey B. Bouchard
Vice President, Finance and
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Pixelworks, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Allen H. Alley, Chairman of the Board, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Allen H. Alley
Allen H. Alley
*Chairman of the Board, President and
Chief Executive Officer*

Date: August 9, 2005

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Pixelworks, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey B. Bouchard, Vice President, Finance and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Jeffrey B. Bouchard
Jeffrey B. Bouchard
*Vice President, Finance and
Chief Financial Officer*

Date: August 9, 2005
