

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

FOR THE FISCAL YEAR ENDED MARCH 31, 1998  
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 ( 0-21767 )

VIASAT, INC.

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of  
incorporation or organization)

33-0174996

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

2290 COSMOS COURT, CARLSBAD, CALIFORNIA 92009

(760) 438-8099

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

Securities registered pursuant to Section 12(b) of the Act:  
NONE

Securities registered pursuant to Section 12(g) of the Act:  
COMMON STOCK, \$.0001 PAR VALUE

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 past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the voting stock held by non-affiliates of the registrant, as of June 16, 1998 was approximately \$86,389,958 (based on the closing price for shares of the registrant's Common Stock as reported by the Nasdaq National Market for the last trading day prior to that date). Shares of Common Stock held by each officer, director and holder of 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares outstanding of the registrant's Common Stock, \$.0001 par value, as of June 16, 1998 was 7,925,526.

## DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A in connection with the 1998 Annual Meeting are incorporated herein by reference into Part III of this Report. Such Proxy Statement will be filed with the Securities and Exchange Commission not later than 120 days after the registrant's fiscal year ended March 31, 1998.

Certain exhibits filed with the registrant's Registration Statement on Form S-1 (File No. 333-13183), as amended, and Annual Report on Form 10-K for the fiscal year ended March 31, 1997, are incorporated by reference into Part IV of this Report.

## VIASAT, INC.

FORM 10-K

FOR THE FISCAL YEAR ENDED MARCH 31, 1998

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## PART I

## ITEM 1. BUSINESS

Except for the historical information contained herein, the following discussion contains forward-looking statements that involve risks and uncertainties. ViaSat, Inc. ("ViaSat" or the "Company") future results could differ materially from those discussed herein. Factors that could cause or contribute to such differences include, but are not specifically limited to, timely product development, variation of royalty, license and other revenues, failure to satisfy performance obligations, uncertainty regarding the Company's patents and property rights (including the risk that the Company may be forced to engage in costly litigation to protect such patents and rights and the material adverse consequences to the Company if there were an unfavorable outcome of any such litigation), difficulties in obtaining components needed for the production of wireless equipment and changes in economic conditions of various markets the Company serves, as well as the other risks detailed in this section, in particular under the heading Risk Factors. See "Glossary of Selected Terms" for definitions of certain terms used in this Report.

## INTRODUCTION

ViaSat designs, produces and markets advanced digital satellite telecommunications and wireless signal processing equipment. The Company has achieved twelve consecutive years of internally generated revenue growth and eleven consecutive years of profitability, primarily through defense-related applications. More recently, the Company has been developing and marketing its technology through strategic alliances for emerging commercial markets, such as rural telephony, alternative carrier access and Internet/Intranet access by satellite to multiple servers. ViaSat is a leading provider of Demand Assigned Multiple Access ("DAMA") technology, which allows a large number of Very Small Aperture Terminal ("VSAT") subscribers to economically share common satellite transponders for high-performance voice, fax or data communications.

The Company believes that DAMA satellite technology is superior to other existing VSAT networking technologies for many important applications. The existing Time Division Multiplex/Time Division Multiple Access ("TDM/TDMA") networking technology features a "hub and spoke" architecture which requires all transmissions to be routed through a central terrestrial hub. Unlike TDM/TDMA systems, DAMA provides direct, on-demand switched networking capabilities which do not require a terrestrial hub and allow faster and more efficient use of expensive satellite transponder resources. In addition, the Company believes that its DAMA products, commercially marketed under the tradename StarWire, offer greater network flexibility and permit up to 50% greater satellite capacity than competing DAMA systems. See "-- The ViaSat Advantage" and "-- Technology."

ViaSat's DAMA products include satellite modems, networking processors and network control systems for managing large numbers of network subscribers. The Company's DAMA technology consists of proprietary real-time firmware and software designed to run on industry-standard digital signal processors. The Company also has developed DAMA network control software that operates on Intel based personal computers running Windows NT(TM) operating systems. The Company's DAMA technology operates on satellites in the military UHF and SHF frequency bands, and commercial C and Ku bands. In addition to DAMA products, the Company offers network information security products, communications simulation and test equipment, and spread spectrum digital radios for satellite and terrestrial data networks.

## RECENT DEVELOPMENTS

During the fiscal year ended March 31, 1998, the Company executed existing critical government UHF satellite contracts, and also established significant milestones in other important government markets including TCP/IP-based network encryption, digital anti-jam radios, and communications simulation. In addition, the Company made considerable investments in commercial satellite networking and achieved significant revenue growth in that area, while capturing new applications and geographic markets. Some specific highlights follow:

- o Final installation, testing and commissioning of the worldwide 5 KHz UHF DAMA satellite network control system for the Department of Defense ("DOD"). The completion of the network control system enables deployment of UHF DAMA satellite terminals by ground, air, and sea forces.
- o First production deliveries of the QDC-100 UHF Satellite Antenna Processing units delivered to Lockheed Martin for installation on US Navy P3 Aircraft.
- o Initial DOD order for 600 copies of ViaSat eMail Messaging Software, a new program for sending email-like communications over satellite and wireless channels using the Windows(R) operating system.
- o First international orders for ViaSat UHF DAMA satellite modems from US allies -- Australia, Canada, New Zealand, and the UK.
- o Selection by the U.S. Navy as a candidate supplier of production quantities of Multifunction Information Distribution System (MIDS) terminals, via a \$5 million agreement for the MIDS Production Readiness Program.
- o Continued growth in our Communication Simulation business area with a \$15.4 million award from Lockheed Martin Aerospace Systems.
- o First production order, valued at \$2.5 million, for STAR portable satellite communication terminals.
- o Initial over-the-air satellite testing of ViaSat's patented Paired Carrier Multiple Access (PCMA) -- the company's new bandwidth re-use technology. Depending on the application, this technique can as much as double the bandwidth efficiency of two-way satellite links. The Company does not project any significant near-term financial benefit from this technology, but believes it can provide a meaningful competitive advantage once it is incorporated into the Company's products.
- o Introduction of new features for the Company's StarWire DAMA satellite networks, including integrated Demand Assigned Internet Protocol (IP) routing capabilities. The Company deployed a U.S. system for backup and congestion relief of a terrestrial frame-relay network.
- o The National Security Agency certified that ViaSat's Embeddable INFOSEC Product (EIP) can be used to secure U.S. Government classified data up through Top Secret. EIP enables users to securely transmit information through non-secure, packet networks such as the Internet.

#### INDUSTRY BACKGROUND

A broad array of new consumer, business and government markets, as well as the development of new technologies, have driven the significant expansion of the wireless communications industry. In addition to common consumer applications such as paging, cellular telephony and new Personal Communications Services ("PCS"), there is a wide range of other specialized terrestrial and space-based wireless applications. Such wireless applications include government fixed and mobile wireless networking and commercial fixed-site, switched satellite services, ViaSat's principal lines of business. The growth in software-intensive wireless equipment markets stems from, among other things, increasing dependence on voice and data networks of all types, regulatory reform, advances in technology, decreasing costs of equipment and services, economic growth in developing nations, the increasing importance of communications infrastructure as a catalyst of economic growth, and increasing user acceptance of and confidence in wireless solutions. This growth in wireless equipment markets corresponds to a transition away from mere point to point radio links connecting remote or mobile users towards offering more comprehensive wireless network services. Market demands for wireless services are being addressed by both terrestrial- and satellite-based systems.

GOVERNMENT APPLICATIONS. Historically, the military has driven development of many new wireless technologies -- pioneering applications of satellite communications, digital radios, spread spectrum and mobile wireless networks to connect widely dispersed operations. In many cases these technologies have been extended and increased in scale for broader non-defense use. Defense applications of wireless technologies also have evolved over the same time period. The break-up of the Soviet Union has caused a de-emphasis on strategic missions and a shift towards more localized tactical roles such as peace-keeping, counter-terrorism, counter-insurgency and drug enforcement. These missions create new demands for rapidly deployable, mobile connectivity. Overall reductions in the defense budget have led to a numerically smaller, more technologically-advanced force structure. As a result, defense networks increasingly build around real-time transmission of digital tactical data. Defense systems also are adopting and extending low cost commercial technologies to meet their needs.

There has been a constantly shifting flow of technology between government and commercial network applications. Both government and commercial users developed fixed-site, long-haul applications. The government pioneered mobile satellite terminals, as well as non-geosynchronous, high power and extremely high frequency satellites. Commercial users adopted elements of these technologies for Low Earth Orbit ("LEO") mobile telephony and high-powered Direct Broadcast Satellite ("DBS") television systems. Now government agencies are planning to integrate these technologies into still more advanced military networks. Often, companies with both government and commercial expertise have facilitated such technology transitions.

COMMERCIAL APPLICATIONS. The recent worldwide trend toward privatization of public telephone operators and deregulation of local telephone ("local loop") services has resulted in increased competition in the delivery of telephone services from alternative access providers. Many of these new access providers, such as long-distance telephone carriers, must install or upgrade infrastructure to support basic and enhanced services. In addition, worldwide demand for basic telephone service has grown, especially in developing countries. As new infrastructure is established to deliver local telephone service, the technology exists to provide cost-effective, satellite-based wireless transmission systems, instead of a traditional wired approach, to connect subscribers to the public telephone network.

A growing segment of the wireless communications industry involves VSATs, which are communications systems utilizing fixed-site satellite terminals. Historically, these systems were primarily designed for certain specific data applications. But recent improvements in VSAT technology for satellite-based wireless voice and data networks have led to their increasing use in a variety of broader, higher system throughput commercial applications such as mobile and rural telephony and more complicated data transmissions. Satellite telephony systems are being utilized by developing countries that lack a terrestrial-based telecommunication infrastructure, and which seek to provide telephone service for large areas fairly rapidly and on a cost-effective basis. Additionally, even where terrestrial systems exist, satellite systems are used to fill in coverage for remote areas.

EVOLUTION OF VSAT TECHNOLOGY. The commercial VSAT business began with U.S. customers who operated large, sophisticated private terrestrial networks using TDM/TDMA technology. Customers such as chain retailers, hotels and auto dealers operated private data networks with hundreds or thousands of sites and a high flow of transactions from remote terminals to host mainframe computers for credit card validations, point-of-sale data collection, reservations or similar applications. Customers who used VSATs for data networking still relied on terrestrial providers for telephone service and possibly other telecommunication needs for their sites. Sales of such VSAT systems are often quite sensitive to prices from telephone carriers for equivalent packet transaction services. Users with large networks generally are the only ones who can justify the significant one-time cost of a VSAT network management hub.

TDM/TDMA technology, while more established than DAMA technology, features a "hub and spoke" architecture which requires all transmissions to be routed through a central hub and is most useful for remote to mainframe network connections. Remote-to-remote TDM/TDMA connections require two satellite hops. DAMA is better suited for remote-to-remote connections than TDM/TDMA because the voice quality is better and DAMA networks use expensive satellite transponders more efficiently. DAMA

satellite technology allows individual subscribers to request links on demand directly to any other subscriber with a single satellite hop. DAMA allows users to make exactly the connections needed, lasting only for the duration of a voice call, fax, electronic mail or digital file transfer. DAMA technology has been under development for many years by the DOD to serve large networks of fixed and mobile subscribers sharing a limited amount of satellite capacity, but is only recently being deployed in significant quantities by the DOD.

The Company believes the opportunities for government and commercial ground station equipment sales are increasing. The government is planning over \$1.0 billion in total UHF space segment expenditures for tactical communications. DAMA is applicable to several different satellite bands, including government UHF and SHF and commercial C, Ku and Ka bands. DAMA is also being used by commercial customers who believe that it is better suited for their applications than the earlier VSAT technologies.

#### THE VIASAT ADVANTAGE

In light of the limitations of the TDM/TDMA architecture, and the magnitude of the potential market for primary telecommunications services compared to the more limited market for data transaction services, ViaSat believes that DAMA networks will better serve the emerging international market for VSAT, voice and data services. Virtually all of the VSAT equipment makers are now adding DAMA products to their line of products. This represents a discontinuity in the VSAT market. VSAT vendors are now developing new transmission waveforms, multiple access techniques, DAMA protocols, DAMA control software, subscriber terminals and interface protocols to support the targeted applications (voice, fax, dial-up data, video conferencing or others), which creates an opportunity for new equipment suppliers such as the Company.

The Company believes that its DAMA-based products have technological advantages over competing DAMA products in offering practical solutions for telecommunications applications through several means:

#### FLEXIBILITY

Since communications networks are evolving so quickly, a system such as the Company's that can be easily extended and configured has a competitive advantage.

- o REAL-TIME DIGITAL SIGNAL PROCESSING FIRMWARE. The Company's technology involves extensive use of real-time digital signal processing firmware to implement both signal processing and DAMA networking protocol functions. This approach was developed and proven under several government programs, especially UHF DAMA. The Company believes that digital signal processing firmware offers great flexibility in adding new features, because it allows modification without more expensive hardware changes, and that product costs should decrease if prices of Texas Instruments digital signal processing chips and associated peripherals continue to decline. The Company's digital signal processing design allows common hardware to be applied to both government and commercial markets.
- o WINDOWS NT(TM)-BASED NETWORK CONTROL. ViaSat believes that it is a leader in using an Intel PC/Windows NT(TM) computer platform for its network control system. ViaSat developed and proved Windows NT(TM) as a viable network control platform under government funded UHF and SHF DAMA programs.

#### CAPACITY

ViaSat's narrow-spacing technology, developed during the course of its government DAMA contracts, results in less unused bandwidth between voice channels than other DAMA systems.

## STRATEGY

ViaSat's objective is to become a leading developer and supplier of DAMA-based products to commercial markets and to retain a leadership position in developing and supplying DAMA-based products to the government market. The Company's strategy incorporates the following key elements:

**MAINTAIN AND ENHANCE TECHNOLOGY LEADERSHIP POSITION.** The Company's strategy is to maintain and enhance its leadership position in DAMA-based satellite technology by continuing its participation in selected DOD programs involving networking technology and other related real-time signal processing and networking software. The Company is also investing in proprietary research for commercial applications. The Company's objective is to continue to offer high-performance, software-oriented products which provide the most effective use of satellite power and bandwidth as well as offering the most flexible platform for continued growth.

**LEVERAGE TECHNOLOGICAL EXPERTISE INTO COMMERCIAL MARKETS.** The Company's strategy is to continue using its technological expertise developed in defense applications to develop and market products to respond to the increasing demand for DAMA-based VSAT solutions for commercial voice and data applications. The Company is targeting commercial markets which it believes will offer high growth potential and where it believes ViaSat's technology will have competitive advantages, such as rural telephony, alternative carrier access and Internet/Intranet access by satellite to multiple servers. The Company believes its products are competitive largely because of their technological advantages over competing products. The Company's strategy is to capitalize on these technological advantages by utilizing a "cost of ownership" marketing approach that emphasizes the overall lower cost to customers over the operating life of the Company's products because of the products' adaptability and more efficient use of limited satellite capacity.

**DEVELOP BROAD BASE OF INNOVATIVE PROPRIETARY PRODUCTS.** The Company's strategy is to continue to develop and market to both defense and commercial customers a broad variety of signal processing and networking software products. The Company has over 160 research engineers on staff and emphasizes offering technologically-superior products. The Company generally retains certain proprietary rights from the government-funded research and development of its defense products and is also devoting a significant amount of its own resources to independent product development.

**DEVELOP STRATEGIC ALLIANCES.** The Company's strategy is to develop strategic alliances with leading prime defense contractors and major international telecommunications companies and equipment suppliers. The Company targets those companies whose financial and technological resources and established customer bases allow them to jointly introduce new technologies and penetrate new markets sooner and at a lower cost than the Company could alone. The Company has entered into strategic alliances with defense companies, such as Raytheon Systems Company, formerly Hughes Defense Communications ("Raytheon Systems Company"), Lockheed Martin Corporation ("Lockheed Martin"), and ITT Industries, Inc., Aerospace/Communications Division, and commercial telecommunications companies, such as Hutchison Corporate Access (HK) Limited ("Hutchison Telecommunications"), and HCL Comnet Systems and Services Limited ("HCL Comnet").

**ESTABLISH GLOBAL PRESENCE.** The Company's strategy is to develop its products so that they may be marketed and used throughout the world. The Company is a market leader in DAMA-based defense products for the United States and its allies. The Company believes that the commercial market opportunities for the Company's products are greater internationally. The Company believes its focus on meeting applicable international communication standards and establishing key international strategic alliances will enable it to effectively penetrate foreign markets.

**ADDRESS RURAL TELEPHONY MARKET.** The Company believes there is a substantial unmet demand for rural telephony services, especially in developing countries. The Company's strategy is to capitalize on its networking software expertise to develop technology for establishing regional rural telephony network infrastructures of strategically located VSAT terminals capable of handling multiple satellite telephone calls ("Point-of-Entry Terminals"). The Company believes such an infrastructure would have a competitive



advantage over a single Point-of-Entry system by minimizing the ground transmission cost of each satellite telephone call by permitting such calls to enter the Public Switched Telephone Network (PSTN) through the Point-of-Entry Terminal closest to the call's destination. The Company's strategy also includes seeking partnerships with regional and local service providers to create distribution channels for rural telephony infrastructures and to provide related retail distribution services, including sales of Company-designed subscriber terminals, installation and maintenance, as well as customer service, billing and revenue collection.

#### TECHNOLOGY

The Company's VSAT technology is focused on DAMA which allows individual subscribers to request links on demand to any other subscriber through one satellite hop. TDM/TDMA technology, while more established than DAMA technology, features a "hub and spoke" architecture which requires all transmissions to be routed through a central hub and is most useful for remote to mainframe network connections. Remote-to-remote TDM/TDMA connections require two satellite hops. DAMA is better suited for remote-to-remote connections than TDM/TDMA because the voice quality is better and DAMA networks use expensive satellite transponders more efficiently.

DAMA technology has been under development for many years by the DOD, but is only recently being deployed in significant quantities. DAMA is applicable to several different satellite bands, including government UHF and SHF and commercial C, Ku and Ka bands. A major objective for the DOD is to improve capacity of extremely expensive government-owned satellite transponders. The government expects DAMA to increase capacity for UHF tactical users by as much as a factor of ten, depending on the application and traffic usage, compared to dedicated non-DAMA links.

A DAMA system consists of (i) a set of subscribers with DAMA-capable terminals, (ii) a network management terminal which orchestrates access to a shared satellite resource, and (iii) satellite transponder capacity managed by the network controller and shared by subscribers. DAMA subscribers use networking protocols to interact with the controller and each other. The essence of DAMA is that the network controller allocates a shared satellite resource to a particular combination of subscribers only when they request it, and then terminates the connection when they are finished.

DAMA protocols may be either "open" or "proprietary." Open standards are published so that multiple manufacturers can develop equipment that works together. The DOD has designated two different open DAMA standards defining over-the-air interfaces for narrowband UHF satellite communications channels. MIL-STD 188-182 defines an interoperable waveform for channels with 5 kHz bandwidth, and MIL-STD 188-183 defines the 25 kHz channel waveform. The DOD is currently defining open standards for SHF channels and for government DAMA use of commercial C and Ku band transponders. There are no widely accepted commercial open DAMA standards, and no open standards have evolved for TDM/TDMA VSATs.

DAMA VS. TDM/TDMA. DAMA is being sought by customers who see that it is a better fit than TDM/TDMA VSATs for non-transaction applications such as voice and fax. The principal limitations of TDM/TDMA for non-transaction applications are:

#### CAPACITY LIMITATIONS AND COSTS

- o The TDM/TDMA hub and spoke architecture is primarily designed for rapid service for sporadic, short, burst transactions between a remote site and a mainframe computer. The hubs typically only support a maximum instantaneous aggregate data rate of 256 kbps to approximately 1 Mbps divided among the entire subscriber population (often several thousand terminals). This is a severe bottleneck for sustained circuit-type services like telephony, fax or peer-to-peer file transfers, which often dominate when the VSAT becomes the primary communication means for a site, as in telephony uses. In contrast, a comparable DAMA system has a much higher aggregate capacity. For small networks the TDM/TDMA hub performance is not a capacity bottleneck, but the typical hub price of approximately \$1.0 million, amortized over a small number of

subscribers, is usually prohibitively expensive. The equipment cost for a comparable DAMA system for voice use, in contrast, would be significantly less.

#### TRANSMISSION TIME

- o The hub and spoke architecture requires all calls (voice or data) between two remote nodes to be routed through the hub. This causes each call to traverse two separate satellite hops in each direction (remote A-to-satellite-to-hub and then hub-to-satellite-to-remote B, with the return path from remote B to remote A also traversing two satellite hops). The additional time delay due to the extra satellite hops is striking for voice communications and is unacceptable to many users. Plus, the two satellite hops consume more expensive transponder resources per call than a single hop DAMA connection.

DAMA VS. DEDICATED SCPC. In contrast to DAMA, which allows individual subscribers to request links to other subscribers on demand, dedicated Single Channel Per Carrier ("SCPC")-based systems maintain dedicated, unswitched links between subscribers, such as for long distance trunk lines. Dedicated links provide high quality transmissions, but only between particular subscriber sets. In order to provide connections among many sites, a SCPC-based system would require a dedicated link between each subscriber and each other subscriber, which would be prohibitively expensive. As a result, DAMA is a much more attractive solution for managing large numbers of network subscribers, as DAMA provides transmissions of equally high quality, without restricting the subscribers' ability to establish links on demand to any other subscriber.

MOBILE SATELLITE VS. FIXED-SITE DAMA. The obvious advantage of commercial mobile satellite systems, such as Iridium(TM) and GlobalStar(TM), is that they allow subscribers to be mobile. A mobile satellite terminal can be used by either a mobile or a fixed subscriber, while a fixed terminal cannot be used by a mobile subscriber. However, in order to gain mobility, mobile terminals employ an omni-directional antenna which operates at lower frequencies and provides less bandwidth than is available in the fixed-site DAMA satellite bands. Less bandwidth corresponds to less capacity and fewer voice circuits. Also, mobile satellite systems typically require a greater investment in unique space-based satellite resources than fixed-site DAMA systems which use existing capacity on general purpose communication satellites. The combination of lower capacity plus higher capital investments means that mobile service providers are projecting per-minute service costs that are five to ten times higher than that possible through fixed-site DAMA-based systems. Therefore, the Company believes that customers who require satellite telephony services at fixed locations will find fixed-site DAMA services to be much more economical than using mobile satellite phones -- even if they already own mobile satellite phones for mobile use.

NON-DAMA TECHNOLOGY. The Company offers products outside of DAMA and satellite communications that benefit from the Company's wireless networking software and related technology. Important non-DAMA applications include:

- o Spread spectrum digital radios for real-time tactical data networks among ground and airborne users. The MIDS radio system builds on the Company's software, firmware and hardware technology. The government is investing in "digitized battlefield" communications in an effort to obtain greater effectiveness from expensive tactical aircraft.
- o Information security modules that encrypt classified information that can be broadcasted and routed across unclassified wired or wireless networks. This technology allows the government to make better use of commercial networks for securely transmitting classified information.
- o Equipment that tests wireless receivers in the presence of complex, simulated radio wave environments. This technology allows the government to thoroughly test sophisticated airborne radio equipment without expensive flight exercises.

## GOVERNMENT MARKETS, PRODUCTS AND CUSTOMERS

GOVERNMENT MARKETS. The Company believes it has an opportunity to build on its government DAMA technology, software, hardware design and manufacturing base to capture significant revenues in the government markets.

UHF DAMA MARKETS. The Company is considered a leader in the UHF DAMA market. The Company believes its DAMA manpack subcontract is the largest outstanding DAMA contract in terms of quantity of units sold. The Company also believes that it was the first to develop and market a stand-alone airborne DAMA modem. The DOD requires all UHF satellite communications terminals to meet open DAMA standards. This mandate has helped stimulate the UHF DAMA market. ViaSat is active in the following business segments:

- o UHF DAMA NETWORK CONTROL INFRASTRUCTURE. Viasat has completed several contracts with the U.S. Air Force for development, production, installation and support for four global network control system sites. Each site serves as a primary controller for seven channels and as an alternate for seven channels. Each satellite has 38 channels, offering a potential market for additional production, installation and support services.
- o MANPACK TERMINALS. ViaSat has a contract with Raytheon Systems Company for over 7,000 DAMA modems for manpacks. As of March 31, 1998, the funded contract value was \$39.5 million, of which \$23.1 million had been delivered.
- o AIRBORNE DAMA TERMINALS. The 5 kHz channel DAMA protocols were designed to support U.S. Air Force aircraft. The U.S. Navy is also a major user of airborne UHF terminals. ViaSat equipment has been designed into a number of platforms, including P-3, S-3, Air Force One, ES-3, Tomahawk cruise missiles and others.
- o INTERNATIONAL UHF DAMA MARKET. Cooperative efforts among multiple nations, such as in the Gulf War and Bosnia, require that allies have a standard communications platform. There are requirements for some units of NATO and other allies to have UHF DAMA capable satellite terminals.

The Company's strategy includes actively working to expand the UHF DAMA market as a whole, while sustaining its leading market share. Increasing the market means extending UHF satellite communications capability to new users. UHF satellite communications access and market size is limited in the following ways:

- o AVAILABILITY OF SATELLITE CAPACITY. Without DAMA, many users are denied access because higher priorities consume all channels. DAMA expands capacity. The Company anticipates increases in the UHF market, versus pre-DAMA levels, over the next seven years due to pent-up demand for service.
- o EQUIPMENT SIZE AND WEIGHT. Most users are mobile and thus size and weight sensitive. They carry equipment in back-packs, or airframes where communication gear displaces weapons or mission critical payloads. Easier to carry, smaller, lighter equipment may expand the market beyond a core group who require DAMA to complete their mission.
- o EQUIPMENT PRICE. The Company believes that the UHF DAMA market can expand by reducing the price of DAMA equipment. Embedded DAMA radios are less expensive than stand-alone models, and offer reduced size and weight.
- o IMPROVED DAMA SUBSCRIBER SERVICES. The current DAMA system is a data "pipe." The Company anticipates that demand for DAMA can grow by increasing the value of the content

sent over the pipes. Several areas are being explored, including improved secure voice quality, increased message routing capability, higher data rates and improved service set-up times.

- o DAMA SIGNAL PROCESSING. Airborne DAMA is currently limited to large, slow aircraft for surveillance, airlift, command and control, or similar missions. High performance aircraft are excluded because current satellite communications antennas degrade mission performance or safety. A promising solution is to use low profile, conformal antennas with active antenna combiners. The Company has a contract for such active antenna combiners with Lockheed Martin which, if successful, opens the possibility of extending the UHF DAMA market to high performance aircraft, potentially resulting in an increase of up to 100% in the airborne DAMA market.

ViaSat is also applying the market expansion strategy to its Advanced Data Controller ("ADC") products. ADC conforms to MIL-STD 188-184 for packet processing. It provides error-free data transmission over noisy channels. ADC works for terrestrial and satellite communications wireless links. The Company is working to reduce size, weight and price for ADC products, and potentially licensing other manufacturers to embed ViaSat's ADC digital signal processing firmware directly into their radios.

TRI-BAND DAMA MARKETS. The U.S. government is a major consumer of leased commercial satellite capacity in the C and Ku bands. Since satellite availability is limited, the government has specified the purchase of "tri-band" terminals (i.e., terminals which can operate on any of three bands, SHF (X band), C or Ku band). This makes it easier for subscribers to use available capacity in any band, as a function of time and location. The government established the Commercial Satellite Communications Initiative program to manage:

- o Long term leases for commercial satellite transponders.
- o Contracts to purchase tri-band satellite terminals.
- o Bandwidth Management Centers to act as network controllers for the tri-band terminals.

The DOD is planning to define an "open" standard for DAMA in SHF and commercial satellite bands. The government owns and operates the Defense Satellite Communication System constellation at SHF. Bandwidth at SHF is much greater than at UHF -- over 200 MHz per satellite compared to less than 2 MHz at UHF. Still, SHF capacity is limited and could be improved via DAMA. More effective SHF use should reduce the government's monthly lease on commercial satellites used for overflow. The potential market for SHF DAMA capable terminals may be as large as that for UHF DAMA terminals.

Extending DAMA to commercial satellites increases the bandwidth available for government users. Increased bandwidth should support many more terminals, increasing the potential DAMA user equipment market.

In 1994, ViaSat was awarded a \$2.0 million contract by the U.S. Air Force for prototype demonstration of a draft SHF DAMA standard. In February 1996, the Company delivered and installed equipment which performs many, but not all, of the protocols in the draft. The DOD has not yet designated a final version of SHF DAMA, nor has the DOD yet issued a mandate for DAMA in SHF terminals.

The government tri-band DAMA market is very immature. This market will likely not grow substantially until the DOD adopts a final standard and mandates its use. However, there can be no assurance that the Company's products will be procured by the government or prime contractors, even if a final standard similar to the draft version is adopted. The Company is working to position its SHF DAMA products through participation in government-industry standards working groups. ViaSat also has been working with terminal manufacturers to help ensure that its DAMA equipment integrates easily into their products. Finally, the Company is working to maintain a prudent level of commonality between the government and commercial DAMA modem platforms. The benefit of commonality is that the larger

commercial market offers economies of scale that reduce manufacturing costs for the smaller government market. There is a potential disadvantage if unique government product requirements increase the cost of commercial products. The Company considers issues arising from this trade-off on a case-by-case basis.

#### GOVERNMENT PRODUCTS

ViaSat's DAMA products for the government market include:

- o EMUT (ENHANCED MANPACK UHF TERMINAL) is a battery-operated UHF satellite radio which Raytheon Systems Company builds for the U.S. Army. ViaSat provides a DAMA modem to Raytheon under subcontract. EMUT is used to send encrypted voice, electronic mail, fax or other data via satellite. The DAMA modem allows the operator to automatically request a portion of a satellite channel to a selected destination whenever the operator asks to send a message or make a call. The EMUT radio, combined with a portable satellite antenna, can be used to make a secure voice or data call almost anywhere in the world.
- o INCS (INITIAL NETWORK CONTROL SYSTEM) is the DAMA network management system for the U.S. Air Force. There are four sites worldwide (Guam, Hawaii, Naples and Virginia) that manage automatic DAMA access to 5 kHz bandwidth UHF satellite channels. The network control computer automatically allocates satellite resources to subscriber terminals (such as EMUT) whenever a subscriber requests a voice or data service. The INCS also keeps track of which satellite terminals are active, how much capacity is used and how much is available. ViaSat designs, installs and supports the whole system at each site.
- o VM-200 (Also CALLED MD-1324) is ViaSat's stand-alone UHF DAMA modem product. The modem can be used with many UHF satellite radios having an industry standard 70 MHz interface. The VM-200 enables a satellite radio to connect to a DAMA network. VM-200 modems also are used in the INCS to communicate with subscribers. The modems connect to external voice coders, computers or encryption equipment and provide network access for those devices.

ViaSat's other government wireless networking products include:

- o MIDS (MULTIFUNCTION INFORMATION DISTRIBUTION SYSTEM) is an anti-jam radio system which implements the Link-16 waveform, message, and networking protocols for communicating real-time tactical data among ships, aircraft and ground units. MIDS terminals connect to sensors (like radar), computers, and targeting systems and provides information used for navigation, target identification, tracking and fire control. Link-16 is currently being implemented as a key element of the wireless communication system for "digital battlefields." For example, it allows individual fighter planes to obtain a broad view of the battlefield that is synthesized from many different views from many different participants.
- o CES/JCS/CNIS (COMMUNICATION ENVIRONMENT SIMULATOR/JOINT COMMUNICATION SIMULATOR/ COMMUNICATIONS NAVIGATION AND IDENTIFICATION SIMULATOR) is used to simulate a realistic radio environment which can be used to test how well surveillance or other radio systems work in the presence of various and changing signals. It can simulate friendly military signals, neutral signals, commercial signals and enemy signals. The government uses the simulated total environment to verify that a system under test can correctly analyze specific target signals within a complicated and cluttered composite signal.
- o EIP (EMBEDDABLE INFOSEC PRODUCT) is a plug-in module that encrypts classified information so that it can be broadcast over wireless systems (terrestrial or satellite) or sent over unclassified wirelines. EIP is unique because it can work for packet data systems instead of on circuits. For instance, EIP can encrypt information for the Internet (or government equivalents). EIP also can separate the addressing and routing information from a packet and

allow such information to remain unencrypted so that the network can correctly route the packet to its destination.

- o QDC-100 (QUAD DIVERSITY COMBINER) is a unique product that combines four satellite antennas into one steerable high gain "virtual" antenna. Without the Combiner, an aircraft loses communications if its single fixed antenna is pointed away from the satellite by aircraft position changes. First production units were completed in March 1998, and are in use on US Navy P3 reconnaissance aircraft in the Anti Surface Warfare Improvement Program (AIP). Markets for the Combiner could potentially expand to international customers and shipboard applications. In addition to an order from the Royal Norwegian Air Force, the US and Royal New Zealand navies are evaluating the product for shipboard use, where it can replace heavy, mechanically driven antennas.
- o ADC (ADVANCED DATA CONTROLLER) is a packet processing system which provides error-free data transmission over noisy channels. ADC works for terrestrial and satellite communications wireless links. The ADC family of products include the VDC-200 which uses a serial PC interface, the VDC-300 which can be used in aircraft or vehicles, the VDC-400 which is packaged in a type II PCMCIA card for use with mobile PCs, and the VDC-500 which integrates Internet Protocol for communications from an Ethernet LAN to a wireless VDC network. The Company also offers two messaging applications which include DTS/WIN and ViaSat eMail(TM). Both applications give users a Windows(R) operating system interface to set up, control, manage, and log messages when communicating using VDCs.

#### GOVERNMENT CUSTOMERS

The Company's major customers in the government DAMA market include:

- o Raytheon Systems Company is the customer for the EMUT DAMA modem. Approximately 14% of the Company's fiscal 1998 revenues were derived from this contract
- o The U.S. Air Force Electronics System Center ("ESC") is the customer for the 5 kHz UHF DAMA Global Initial Network Control System. ESC also procures stand-alone DAMA modems and Control/Indicators for various user agencies.
- o Lockheed Martin is the customer for the airborne DAMA-capable UHF satellite communications antenna combiner.
- o The Company also has entered into a number of smaller contracts with the DOD for UHF DAMA and ADC satellite equipment.

The Company's major government customers for other wireless networking products include:

- o The U.S. Air Force, U.S. Navy, International Program Office and Logicon Tactical Systems Division are the customers for MIDS.
- o Lockheed Martin is the customer for CNIS which will become part of Lockheed's Integrated Hardware-in-the-loop Avionics Test Lab.
- o The U.S. Navy and U.S. Air Force are the customers for CES/JCS.
- o The U.S. Navy is the customer for EIP.

## COMMERCIAL MARKETS, PRODUCTS AND CUSTOMERS

## COMMERCIAL MARKETS

DAMA technology is increasingly being used in emerging commercial telecommunications markets. In contrast to "pre-assigned" or "hub and spoke" satellite networks, DAMA is well suited to primary "circuit-oriented" telecommunication because it routes connections in real-time on a call-by-call basis from any subscriber to any other subscriber with only one satellite hop. See "-- Industry Background" and "-- Technology." DAMA commercial markets can be segmented as follows:

- o TURN-KEY PRIVATE NETWORK EQUIPMENT SALES for corporations and government agencies in developing nations. These customers require voice and/or data services. Users manage their own networks and/or contract for management services. They lease satellite capacity in bulk. DAMA equipment is selected based primarily on purchase and operating costs for specific needs. Customers typically need to operate ten or more sites for a turn-key private network to be economical.
- o "SHARED HUB" PRIVATE NETWORK SERVICE PROVIDERS. Customers with small networks may use a satellite service provider. The provider purchases a DAMA network and obtains transponder capacity at wholesale rates. The provider manages small "virtual" nets for its customers. Customers buy capacity from the provider at retail daily, hourly or minute rates. Service providers have different priorities than turn-key operators. Breadth and depth of service offerings are more important to providers since they must attract a broad base of customers. DAMA terminals must support a range of telephone and data equipment. Providers generally prefer flexible user terminal configurations to meet varying customer needs. They profit from the spread between wholesale transponder lease costs and retail prices, so DAMA performance is important. Efficiency advantages (measured, for example, by voice circuits per unit bandwidth) can offset a higher initial terminal purchase price over the term of a service contract.
- o PUBLIC NETWORK CARRIER SERVICE PROVIDERS. Many telecommunications carriers use satellite links as part of their long distance networks. However, the satellite segment usually consists of a pre-planned link establishing a particular geographic connection at a fixed capacity. A satellite DAMA network can reduce costs for independent carriers by bypassing transit switching charges through a telecommunications hub city. Satellite DAMA can serve as either a primary link or as a back-up when terrestrial links are congested. DAMA satellite technology provides an economical secondary connection because the satellite pool of trunk lines can be quickly applied to any of the primary terrestrial routes. The DAMA network's ability to reach many different destinations offers a competitive advantage to a DAMA operator whose business is selling wholesale minutes of long distance service to national or regional carriers.
- o PUBLIC NETWORK "LOCAL LOOP" SUBSCRIBER SERVICE PROVIDERS. Subscriber services differ from the carrier services in that there is a local loop interface between the DAMA satellite switch and a subscriber telephone. This allows a subscriber with a small VSAT terminal to connect directly into the public switched telephone network by using a single dial-tone to call to other satellite subscribers or to terrestrial phones through national (and/or international) switches. While the Company believes the local loop subscriber service has, by far, the greatest potential market volume for equipment manufacturers and also represents the greatest opportunity for service providers, there are numerous technical, regulatory and business management hurdles to implementing this service.

## COMMERCIAL PRODUCTS

STARWIRE is a satellite networking system consisting of two major elements, a network control system and a subscriber terminal. The network control system sends and receives messages over the satellite, while the subscriber terminal switches all user interface ports (voice and data) individually and connects them call-by-call to an available satellite modem. StarWire provides toll-quality voice circuits on a demand basis, efficiently sharing satellite resources and thereby reducing costs to the end-user and the network service provider.

StarWire products include:

- o AURORA TERMINAL is a ten slot rack mountable chassis configured with one VMM-101 and one TIM-201 (described below). The terminal is expandable to six user traffic channels by inserting additional VMM modems and TIM modules. Expansion beyond six channels is possible by using additional Aurora chassis with VMM modems and TIM modules installed.
- o VMM-101 is a DAMA modem module designed for the Aurora. The VMM-101 is a single modem used for both user-data transmission and order-wire control channels.
- o TIM-201 is a dual channel voice encoder/decoder module designed for the Aurora. The TIM-201 has a fax modem on board, along with an integrated echo canceller.
- o TMC-101 is a terminal monitor and control card designed for the Aurora. The "EIP" version has an integrated LAN Ethernet port and supports multiple daughter-cards for data communications and additional external equipment control support.
- o STARWIRE NETWORK CONTROL TERMINAL (NCT) is a ten slot rack mountable Aurora chassis with one Network Control Computer (NCC) interface card and two VMM-101 modems (operating as DAMA system control channel modems).
- o STARWIRE DAMA NETWORK CONTROL SOFTWARE (NCS) provides the real-time network control and monitoring functions of the StarWire DAMA networking system. The NCS software acts as a switch to route calls through the network. In addition, the StarWire NCS monitors all aspects of system operation as well as collecting historical information about calls and maintaining detailed call records for billing purposes.
- o STARWIRE NETWORK CONTROL COMPUTER (NCC) is computing and networking equipment designed to support the operation of the NCS software. The non-redundant configuration (NCC-100) provides for one operator workstation/server, Ethernet interface, Windows NT(TM) operating system and back-up media. The redundant configuration (NCC-200) provides two operator workstations/servers, Ethernet adapter cards, Windows NT(TM) operating system and back-up media.
- o EXTERNAL DEVICE INTERFACE DRIVER (EDID) supports third party modem and RF terminal equipment.

## COMMERCIAL CUSTOMERS

The Company is in the early stages of establishing sales for its StarWire commercial DAMA product. Activities to date have primarily focused on establishing distribution agreements with "in-country" service providers, distributors and original equipment manufacturers ("OEMs"). The Company also has delivered several test versions of the StarWire product for customer evaluation and demonstration purposes. The Company's major customers in the commercial DAMA market include:



- o HUTCHISON TELECOMMUNICATIONS -- ViaSat and Hutchison Telecommunications have entered into a contract for intranational and international carrier satellite telephony equipment. The contract also provides for advanced digital data capabilities for public and private networks. The contract was awarded after competition from many other DAMA vendors.
- o HCL COMNET -- HCL Comnet, ViaSat's exclusive distributor in India, operates the largest single VSAT network for India's national stock exchange. HCL Comnet selected ViaSat's StarWire system for HCL Comnet's DAMA private network products and services.
- o SATELLITE COMMUNICATIONS SYSTEMS INCORPORATED ("SCSI") -- SCSI has inaugurated a network serving the International Civil Aviation Organization, an agency of the United Nations that is responsible for worldwide air traffic control. This network uses StarWire terminals to establish voice, data, and radar communications among air traffic control sites in the Caribbean and Central America.
- o ViaSat also has executed distribution agreements and purchase contracts with companies operating VSAT networks in Mexico, Africa, South America, and other regions.

#### RESEARCH AND DEVELOPMENT

The Company believes that its future success depends on its ability to adapt to the rapidly changing satellite communications and related real-time signal processing and networking software environment, and to continue to meet its customers' needs. Therefore, the continued timely development and introduction of new products is essential in maintaining its competitive position. The Company develops most of its products in-house and currently has a research and development staff which includes over 160 engineers. A significant portion of the Company's research and development efforts in the defense industry have generally been conducted in direct response to the specific requirements of a customer's order and, accordingly, such amounts are included in the cost of sales when incurred and the related funding (which includes a profit component) is included in revenues at such time. Revenues for funded research and development during the fiscal years ended March 31, 1998, 1997 and 1996 were approximately \$25.6 million, \$21.3 million, and \$19.5 million, respectively. In addition, the Company invested \$7.6 million, \$5.1 million and \$2.8 million, respectively, during the fiscal years ended March 31, 1998, 1997 and 1996 on independent research and development, which is not directly funded by a third party. Funded research and development contains a profit component and is therefore not directly comparable to independent research and development. As a government contractor, the Company also is able to recover a portion of its independent research and development expenses, consisting primarily of salaries and other personnel-related expenses, supplies and prototype materials related to research and development programs, pursuant to its government contracts.

The Company has benefited and continues to benefit from the Small Business Innovation Research ("SBIR") program, through which the government provides research and development funding for companies with fewer than 500 employees. While the Company has already harvested significant benefits from the SBIR program throughout the initial developmental stages of its core technology base, the Company believes that its business, financial condition and results of operations would not be materially adversely affected if the Company were to lose its SBIR funding status. The Company plans to leverage from this technology base to further develop products for commercial applications.

#### MANUFACTURING

The Company's manufacturing objective is to produce products that conform to its specifications at the lowest possible manufacturing cost. The Company is engaged in an effort to increase the standardization of its manufacturing process in order to permit it to more fully utilize contract manufacturers. As part of its program to reduce the cost of its manufacturing and to support an increase in the volume of orders, the Company primarily utilizes contract manufacturers in its manufacturing process. The Company conducts extensive testing and quality control procedures for all products before they are delivered to customers.

The Company also relies on outside vendors to manufacture certain components and subassemblies used in the production of the Company's products. Certain components, subassemblies and services necessary for the manufacture of the Company's products are obtained from a sole supplier or a limited group of suppliers. In particular, Texas Instruments is a sole source supplier of digital signal processing chips, which are critical components used by the Company in substantially all of its products. The Company intends to reserve its limited internal manufacturing capacity for new products and products manufactured in accordance with a customer's custom specifications or expected delivery schedule. Therefore, the Company's internal manufacturing capability for standard products has been, and is expected to continue to be, very limited, and the Company intends to rely on contract manufacturers for large scale manufacturing. There can be no assurance that the Company's internal manufacturing capacity and that of its contract manufacturers and suppliers will be sufficient to fulfill the Company's orders in a timely manner. Failure to manufacture, assemble and deliver products and meet customer demands on a timely and cost effective basis could damage relationships with customers and have a material adverse effect on the Company's business, financial condition and operating results.

#### SALES AND MARKETING

The Company markets its products to the DOD and to commercial customers worldwide primarily through the Company's internal sales and marketing staff. After the Company has identified key potential customers in its market segments, the Company makes sales calls with its sales, management and engineering personnel. In order to promote widespread acceptance of its products and provide customers with support for their wireless transmission needs, the Company's sales and engineering teams work closely with its customers to develop tailored solutions to their wireless transmission needs. The Company believes that its customer engineering support provides it with a key competitive advantage.

During the fiscal year ended March 31, 1998, ViaSat sold products to approximately 60 customers, of which DOD related contracts accounted for approximately 91% of total revenues.

#### BACKLOG

At March 31, 1998, the Company had firm backlog of \$72.7 million, of which \$48.0 million was funded, not including options of \$24.3 million. Of the \$72.7 million in firm backlog, approximately \$46.6 million is expected to be delivered in the fiscal year ending March 31, 1999, \$15.2 million is expected to be delivered in the fiscal year ending March 31, 2000 and the balance is expected to be delivered in the fiscal year ending March 31, 2001 and thereafter. The Company had firm backlog of \$78.4 million, not including options of \$24.9 million, at March 31, 1997, compared to firm backlog of \$28.7 million, not including options of \$28.0 million, at March 31, 1996. The Company includes in its backlog only those orders for which it has accepted purchase orders. However, backlog is not necessarily indicative of future sales. A majority of the Company's backlog scheduled for delivery can be terminated at the convenience of the government since orders are often made substantially in advance of delivery, and the Company's contracts typically provide that orders may be terminated with limited or no penalties. In addition, purchase orders may set forth product specifications that would require the Company to complete additional product development. A failure to develop products meeting such specifications could lead to a termination of the related purchase order.

The backlog amounts as presented are comprised of funded and unfunded components. Funded backlog represents the sum of contract amounts for which funds have been specifically obligated by customers to contracts. Unfunded backlog represents future contract or option amounts that customers may obligate over the specified contract performance periods. The Company's customers allocate funds for expenditures on long-term contracts on a periodic basis. The Company is committed to produce products under its contracts to the extent funds are provided. The funded component of the Company's backlog at March 31, 1998 was approximately \$48.0 million, and the funded components of the Company's backlog at March 31, 1997 and 1996 were \$67.6 million and \$26.3 million, respectively. The ability of the Company to realize revenues from government contracts in backlog is dependent upon adequate funding for such contracts. Although funding of its government contracts is not within the Company's control, the Company's

experience indicates that actual contract fundings have ultimately been approximately equal to the aggregate amounts of the contracts.

#### GOVERNMENT CONTRACTS

A substantial portion of the Company's revenues are derived from contracts and subcontracts with the DOD and other federal government agencies. Many of the Company's contracts are competitively bid and awarded on the basis of technical merit, personnel qualifications, experience and price. The Company also receives some contract awards involving special technical capabilities on a negotiated, noncompetitive basis due to the Company's unique technical capabilities in special areas. Future revenues and income of the Company could be materially affected by changes in procurement policies, a reduction in expenditures for the products and services provided by the Company, and other risks generally associated with federal government contracts. See "Risk Factors - -- Dependence on Defense Market" and "-- Government Regulations."

The Company provides products under federal government contracts that usually require performance over a period of one to five years. Long-term contracts may be conditioned upon continued availability of Congressional appropriations. Variances between anticipated budget and Congressional appropriations may result in a delay, reduction or termination of such contracts. Contractors often experience revenue uncertainties with respect to available contract funding during the first quarter of the government's fiscal year beginning October 1, until differences between budget requests and appropriations are resolved.

The Company's federal government contracts are performed under cost-reimbursement contracts, time-and-materials contracts and fixed-price contracts. Cost-reimbursement contracts provide for reimbursement of costs (to the extent allowable, allocable and reasonable under Federal Acquisition Regulations) and for payment of a fee. The fee may be either fixed by the contract (cost-plus-fixed fee) or variable, based upon cost control, quality, delivery and the customer's subjective evaluation of the work (cost-plus-award fee). Under time-and-materials contracts, the Company receives a fixed amount by labor category for services performed and is reimbursed (without fee) for the cost of materials purchased to perform the contract. Under a fixed-price contract, the Company agrees to perform certain work for a fixed price and, accordingly, realizes the benefit or detriment to the extent that the actual cost of performing the work differs from the contract price. Revenues generated from contracts with the federal government or its prime contractors for the fiscal year ended March 31, 1998 were approximately 22.6% from cost-reimbursement contracts, approximately 4.0% from time-and-materials contracts and approximately 64.1% from fixed-price contracts of total revenues. See "Risk Factors -- Contract Profit Exposure."

The Company's allowable federal government contract costs and fees are subject to audit by the Defense Contract Audit Agency. Audits may result in non-reimbursement of some contract costs and fees. While the government reserves the right to conduct further audits, audits conducted for periods through fiscal 1995 have resulted in no material cost recovery disallowances for the Company.

The Company's federal government contracts may be terminated, in whole or in part, at the convenience of the government. If a termination for convenience occurs, the government generally is obligated to pay the cost incurred by the Company under the contract plus a pro rata fee based upon the work completed. When the Company participates as a subcontractor, the Company is at risk if the prime contractor does not perform its contract. Similarly, when the Company as a prime contractor employs subcontractors, the Company is at risk if a subcontractor does not perform its subcontract.

Some of the Company's federal government contracts contain options which are exercisable at the discretion of the customer. An option may extend the period of performance for one or more years for additional consideration on terms and conditions similar to those contained in the original contract. An option may also increase the level of effort and assign new tasks to the Company. In the Company's experience, options are usually exercised.

The Company's eligibility to perform under its federal government contracts requires the Company to maintain adequate security measures. The Company has implemented security procedures which it believes are adequate to satisfy the requirements of its federal government contracts.

#### GOVERNMENT REGULATIONS

Certain of the Company's products are incorporated into wireless telecommunications systems that are subject to regulation domestically by the Federal Communications Commission and internationally by other government agencies. Although the equipment operators and not the Company are responsible for compliance with such regulations, regulatory changes, including changes in the allocation of available frequency spectrum and in the military standards which define the current networking environment, could materially adversely affect the Company's operations by restricting development efforts by the Company's customers, making current products obsolete or increasing the opportunity for additional competition. Changes in, or the failure by the Company to manufacture products in compliance with, applicable domestic and international regulations could have a material adverse effect on the Company's business, financial condition and results of operations. In addition, the increasing demand for wireless telecommunications has exerted pressure on regulatory bodies worldwide to adopt new standards for such products, generally following extensive investigation and deliberation over competing technologies. The delays inherent in this governmental approval process have in the past caused and may in the future cause the cancellation, postponement or rescheduling of the installation of communication systems by the Company's customers, which in turn may have a material adverse effect on the sale of products by the Company to such customers.

The Company is also subject to a variety of local, state and federal governmental regulations relating to the storage, discharge, handling, emission, generation, manufacture and disposal of toxic or other hazardous substances used to manufacture the Company's products. The failure to comply with current or future regulations could result in the imposition of substantial fines on the Company, suspension of production, alteration of its manufacturing processes or cessation of operations. To date, these regulations have not had a material effect on the Company, as the Company has neither incurred significant costs to maintain compliance nor to remedy past noncompliance.

The Company believes that it operates its business in material compliance with applicable government regulations. The Company is not aware of any pending legislation which if enacted could have a material adverse effect on the Company's business, financial condition and results of operations.

#### COMPETITION

The markets for the Company's products and services are extremely competitive, and the Company expects that competition will increase in such markets. See "Risk Factors -- Competition." The Company faces intense competition in both government and commercial wireless networking markets.

**Government DAMA Competition.** Competition in the government DAMA market consists primarily of other companies offering DAMA capable modem, radio or network control equipment that is compatible with the open MIL-STD protocols. The government DAMA competitors are significantly larger companies than ViaSat and include Titan Corporation, Rockwell International, Raytheon Corporation and GEC (UK). The Company believes that it is well-positioned among these competitors because of its significant backlog of DAMA modem orders, its market lead time with respect to DAMA product certification and its participation in both the network control and subscriber terminal markets.

**Government Non-DAMA Competition.** There is also intense competition in other wireless networking markets. The MIDS market, in particular, is dominated by two very large competitors (Rockwell and GEC- Marconi).

The Company's simulation and test equipment and information security products represent relatively new technologies in markets that are still small. Most of the Company's competition in these markets stems from alternative technologies that may or may not be applicable to any particular customer.

Commercial DAMA Competition. There is intense competition in the commercial DAMA market from companies that have strong positions in the TDM/TDMA VSAT business, as well as from other companies using DAMA technology. Most of the leading TDM/TDMA VSAT companies are offering DAMA products, including Hughes Network Systems, (see "Risk Factors -- Dependence on Defense Market"), Scientific Atlanta Inc., Gilat Satellite Networks Ltd., STM Wireless Inc. and NEC. In addition, there are also other types of competing DAMA technologies being developed.

In different situations, DAMA products may be evaluated in comparison with either TDM/TDMA technology, DAMA technology from other companies, dedicated SCPC technology, mobile satellite technology or possibly terrestrial wireless solutions. The Company believes that it has a good understanding of those situations where DAMA systems in general, and its technology in particular, offer the best overall value to its customers, and tends to focus its marketing and selling efforts on those applications. DAMA technology is most attractive for customers with telephone, fax or other circuit-oriented applications. DAMA technology also allows networks to achieve much higher total capacity, with better voice quality than TDM/TDMA networks.

The Company seeks to establish strategic alliances with satellite service providers which would most benefit from its particular technological advantages. The Company has established such relationships with a few key companies, including HCL Comnet in India. The Company believes that its products offer the lowest total cost of ownership for service providers considering the flexibility of its equipment, its transponder capacity advantages and the breadth of its service offerings.

#### INTELLECTUAL PROPERTY

The Company relies on a combination of trade secrets, copyrights, trademarks, service marks and contractual rights to protect its intellectual property. The Company attempts to protect its trade secrets and other proprietary information through agreements with its customers, suppliers, employees and consultants, and through other security measures. Although the Company intends to protect its rights vigorously, there can be no assurance that these measures will be successful. In addition, the laws of certain countries in which the Company's products are or may be developed, manufactured or sold may not protect the Company's products and intellectual property rights to the same extent as the laws of the United States.

While the Company's ability to compete may be affected by its ability to protect its intellectual property, the Company believes that, because of the rapid pace of technological change in the wireless personal communications industry, its technical expertise and ability to introduce new products on a timely basis will be more important in maintaining its competitive position than protection of its intellectual property and that patent, trade secret and copyright protections are important but must be supported by other factors such as the expanding knowledge, ability and experience of the Company's personnel, new product introductions and frequent product enhancements. Although the Company continues to implement protective measures and intends to defend vigorously its intellectual property rights, there can be no assurance that these measures will be successful. See "Risk Factors -- Limited Protection of the Company's Intellectual Property."

There can be no assurance that third parties will not assert claims against the Company with respect to existing and future products. In the event of litigation to determine the validity of any third party's claims, such litigation could result in significant expense to the Company and divert the efforts of the Company's technical and management personnel, whether or not such litigation is determined in favor of the Company. The wireless communications industry has been subject to frequent litigation regarding patent and other intellectual property rights. Leading companies and organizations in the industry have numerous patents that protect their intellectual property rights in these areas. In the event of an adverse result of any such litigation, the Company could be required to expend significant resources to develop non-infringing technology or to obtain licenses to the technology which is the subject of the litigation. There can be no assurance that the Company would be successful in such development or that any such license would be available on commercially reasonable terms.

## EMPLOYEES

As of March 31, 1998, the Company had 345 employees (24 of which were temporary employees), including over 180 in research and development, 11 in marketing and sales, 81 in production, and 64 in corporate, administration and production coordination. The Company believes that its future prospects will depend, in part, on its ability to continue to attract and retain skilled engineering, marketing and management personnel, who are in great demand. In particular, there is a limited supply of highly qualified engineers with appropriate experience. See "Risk Factors -- Dependence on Key Personnel." Each of the Company's employees is required to sign an Invention and Confidential Disclosure Agreement upon joining the Company. Under such agreement, each employee agrees that any inventions developed by such employee during the term of employment are the exclusive property of the Company and that such employee will not disclose or use in any way information related to the Company's business or products, either during the term of such employee's employment or at any time thereafter. The Company currently employs over 160 engineers, including 72 engineers who have masters degrees and six engineers who have doctorate degrees. None of the Company's employees are covered by a collective bargaining agreement and the Company has never experienced any strike or work stoppage. The Company believes that its relations with its employees are good.

## RISK FACTORS

## DEPENDENCE ON DEFENSE MARKET

Approximately 91% of the Company's revenues for the fiscal year ended March 31, 1998 were derived from U.S. government defense applications. Although the Company has invested heavily in developing commercial satellite products, there can be no assurance that the percentage of the Company's commercial business will increase. In addition, there can be no assurance that the Company's revenues from its government business will continue to increase at historical rates or at all. U.S. government business is subject to various risks including (i) unpredictable contract or project terminations, reductions in funds available for the Company's projects due to government policy changes, budget cuts and contract adjustments and penalties arising from post-award contract audits, and incurred cost audits in which the value of the contract may be reduced, (ii) risks of underestimating ultimate costs, particularly with respect to software and hardware development, for work performed pursuant to fixed-price contracts where the Company commits to achieve specified deliveries for a predetermined fixed price, (iii) limited profitability from cost-reimbursement contracts under which the amount of profit attainable is limited to a specified negotiated amount and (iv) unpredictable timing of cash collections of certain unbilled receivables as they may be subject to acceptance of contract deliverables by the customer and contract close-out procedures, including government approval of final indirect rates. See "Business -- Government Contracts." In addition, substantially all of the Company's backlog scheduled for delivery can be terminated at the convenience of the government since orders are often made well in advance of delivery, and the Company's contracts typically provide that orders may be terminated with limited or no penalties. See "Business -- Backlog."

Certain of the Company's contracts individually contribute a significant percentage of the Company's revenues. For the fiscal year ended March 31, 1998, the Company's largest contracts (by revenues) were contracts related to the Company's UHF DAMA technology, which generated approximately 61% of the Company's total revenues, including a contract with Raytheon Systems Company which generated approximately 14% of the Company's total revenues. Scheduled deliveries pursuant to firm purchase orders under this contract are scheduled to be completed during the fiscal year ending March 31, 2000. Raytheon Systems Company is an affiliate of Raytheon Corporation, which is the Company's principal competitor in the government DAMA market. See "Business -- Competition."

The Company's five largest contracts (by revenues) generated approximately 65% of the Company's total revenues for the fiscal year ended March 31, 1998. The Company expects revenues to continue to be concentrated in a relatively small number of large U.S. government contracts. Termination or disruption of such contracts, especially the Company's largest contract, or the Company's inability to renew or replace such contracts when they expire, could have a material adverse effect on the Company's business, financial condition and results of operations.

## PENETRATION OF COMMERCIAL MARKETS; NEW PRODUCT INTRODUCTIONS

The Company's ability to grow will depend substantially on its and its customers' ability to apply its expertise and technologies to existing and emerging commercial wireless communications markets. The Company's efforts to penetrate commercial markets has resulted, and the Company anticipates that it will continue to result, in increased sales and marketing and research and development expenses. If the Company's net revenues do not correspondingly increase, the Company's business, financial condition and results of operations could be materially adversely affected. The Company's success in penetrating commercial markets also depends upon the success of new product introductions by the Company, which will be dependent upon several factors, including timely completion and introduction of new product designs, achievement of acceptable product costs, establishment of close working relationships with major customers for the design of their new wireless communications systems incorporating the Company's products and market acceptance. Sales of the Company's commercial StarWire products (see "Business -- Commercial Markets, Products and Customers - -- Commercial Products") have not yet achieved profitability. The Company believes that as the market expands for the StarWire products, average production costs for such products should decrease and sales of such products should become profitable. However, there can be no assurance that the market for such products will expand or that average production costs will decrease. If the Company is unable to design, manufacture and market profitable new products for existing or emerging commercial markets, its business, financial condition and results of operations will be adversely affected. No assurance can be given that the Company's product development efforts for commercial products will be successful or that any new commercial products it develops will achieve market acceptance. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business -- Commercial Markets, Products and Customers."

## DEVELOPMENT CONTRACTS

The telecommunications industry is characterized by rapid technological change. As a result, many companies involved in the telecommunications industry, including the Company, are often parties to governmental and commercial contracts which involve development of various products. Pursuant to such contracts, the company performing the development services typically must agree to meet strict performance covenants and project milestones which there is a risk it may not be able to satisfy. Under the terms of such contracts, the failure by a company to meet such performance covenants and milestones permit the other party to terminate the contract and, under certain circumstances, recover liquidated damages or other penalties from the breaching party. The Company is not currently or in the past has not been in compliance with every outstanding performance covenant and project milestone. While the Company's past experience has been that in situations where the Company has not met all performance covenants and project milestones generally the other party has not elected to terminate such contracts or seek liquidated damages from the Company, there can be no assurance that this will not occur in the future with respect to current or future contracts and that such termination or damages would not have a material adverse effect on the Company.

## FLUCTUATIONS IN RESULTS OF OPERATIONS

The Company has experienced and expects to continue to experience significant fluctuations in quarterly and annual revenues, gross margins and operating results. The procurement process for most of the Company's current and potential customers is complex and lengthy, and the timing and amount of revenues is difficult to predict reliably. The Company recognizes a majority of its revenues under the percentage of completion method which requires estimates regarding costs that will be incurred over the life of a specific contract. Actual results may differ from those estimates. In such event, the Company has been and may in the future be required to adjust revenues in subsequent periods relating to revisions of prior period estimates, resulting in fluctuations in the Company's results of operations from period to period. See "Management's Discussion and Analysis of Financial Condition and Results of Operations." In addition, a single customer's order scheduled for delivery in a quarter can represent a significant portion of the Company's potential revenues for such quarter. The Company has at times failed to receive expected orders, and delivery schedules have been deferred as a result of, among other factors, changes in customer

requirements or parts shortages. In fiscal 1998, approximately 14% of the Company's revenues were derived from one contract. Any disruption with respect to this contract could have a material adverse effect on the Company in any period where such a disruption occurs. See "Business -- Government Markets, Products and Customers -- Government Customers." As a result of the foregoing and other factors, the Company's operating results for particular periods have in the past been and may in the future be materially adversely affected by a delay, rescheduling or cancellation of even one purchase order. Moreover, purchase orders are often received and accepted substantially in advance of delivery, and the failure to reduce actual costs to the extent anticipated or an increase in anticipated costs before delivery could materially adversely affect the gross margins for such orders, and as a result, the Company's results of operations. There can be no assurance that the Company will continue to realize positive gross margins or operating results in the future, and even if so realized, there can be no assurance as to the level of such gross margins and operating results.

A large portion of the Company's expenses are fixed and difficult to reduce should revenues not meet the Company's expectations, thus magnifying the material adverse effect of any revenue shortfall. Furthermore, announcements by the Company or its competitors of new products and technologies could cause customers to defer or cancel purchases of the Company's products and services, which could materially adversely affect the Company's business, financial condition and results of operations or result in fluctuations in the Company's results of operations from period to period. Additional factors that may cause the Company's revenues, gross margins and results of operations to vary significantly from period to period include mix of products and services sold; manufacturing efficiencies, costs and capacity; price discounts; market acceptance and the timing of availability of new products by the Company or its customers; usage of different distribution and sales channels; warranty and customer support expenses; customization of products and services; and general economic and political conditions. In addition, the Company's results of operations are influenced by competitive factors, including the pricing and availability of, and demand for, competitive products. All of the above factors are difficult for the Company to forecast, and these and other factors could materially adversely affect the Company's business, financial condition and results of operations or result in fluctuations in the Company's results of operations from period to period. As a result, the Company believes that period-to-period comparisons are not necessarily meaningful and should not be relied upon as indications of future performance. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

#### CONTRACT PROFIT EXPOSURE

The Company's products and services are provided primarily through three types of contracts: fixed-price, time-and-materials and cost-reimbursement contracts. Approximately 72.8% of the Company's total revenues for the fiscal year ended March 31, 1998, were derived from fixed-price contracts which require the Company to provide products and services under a contract at a stipulated price. The Company derived approximately 4.6% of its revenues during the year from time-and-materials contracts which reimburse the Company for the number of labor hours expended at an established hourly rate negotiated in the contract, plus the cost of materials utilized in providing such products or services. Approximately 22.6% of the Company's revenues for the fiscal year ended March 31, 1998 were derived from cost-reimbursement contracts under which the Company is reimbursed for actual costs incurred in performing the contract to the extent that such costs are within the contract ceiling and allowable, allocable and reasonable under the terms of the contract, plus a fee or profit. See "Business -- Government Contracts."

The Company assumes greater financial risk on fixed-price contracts than on either time-and-materials or cost-reimbursement contracts. As the Company increases its manufacturing business, it believes that an increasing percentage of its contracts will be fixed-priced. Failure to anticipate technical problems, estimate costs accurately or control costs during performance of a fixed-price contract may reduce the Company's profit or cause a loss. In addition, greater risks are involved under time-and-materials contracts than under cost-reimbursement contracts because the Company assumes the responsibility for the delivery of specified products or services at a fixed hourly rate. Although management believes that it adequately estimates costs for fixed-price and time-and-materials contracts, no assurance can be given that such estimates are adequate or that losses on fixed-price and time-and-materials contracts will not occur in the future.



To compete successfully for business, the Company must satisfy client requirements at competitive rates. Although the Company continually attempts to lower its costs, there are other companies that may provide the same or similar products or services at comparable or lower prices than the Company. There can be no assurance that the Company will be able to compete effectively on pricing or other requirements, and as a result, the Company could lose clients or be unable to maintain historic gross margin levels or to operate profitably. See "Business -- Competition."

#### DECLINING AVERAGE SELLING PRICES; FLUCTUATIONS IN GROSS MARGINS

Average selling prices for the Company's products may fluctuate from period to period due to a number of factors, including product mix, competition and unit volumes. In particular, the average selling prices of a specific product tend to decrease over that product's life. To offset such decreases, the Company intends to rely primarily on obtaining yield improvements and corresponding cost reductions in the manufacture of existing products and on introducing new products that incorporate advanced features and therefore can be sold at higher average selling prices. However, there can be no assurance that the Company will be able to obtain any such yield improvements or cost reductions or introduce any such new products in the future. To the extent that such cost reductions and new product introductions do not occur in a timely manner or the Company's or its customers' products do not achieve market acceptance, the Company's business, financial condition and results of operations could be materially adversely affected. See "Business -- Manufacturing."

The Company's gross margins in any period are affected by a number of different factors. Because of the different gross margins on various products, changes in product mix can impact gross margins in any particular period. In addition, in the event that the Company is not able to adequately respond to pricing pressures, the Company's current customers may decrease, postpone or cancel current or planned orders, and the Company may not be able to secure new customers or orders. As a result, the Company may not be able to achieve desired production volumes or gross margins.

#### GOVERNMENT REGULATIONS

The Company's products are incorporated into wireless communications systems that are subject to various government regulations. Regulatory changes, including changes in the allocation of available frequency spectrum and in the military standards and specifications which define the current satellite networking environment, could significantly impact the Company's operations by restricting development efforts by the Company's customers, making current products obsolete or increasing the opportunity for additional competition. There can be no assurance that regulatory bodies will not promulgate new regulations that could have a material adverse effect on the Company's business, financial condition and results of operations. Changes in, or the failure by the Company to comply with, applicable domestic and international regulations could have a material adverse effect on the Company's business, financial condition and results of operations. In addition, the increasing demand for wireless communications has exerted pressure on regulatory bodies worldwide to adopt new standards for such products and services, generally following extensive investigation of and deliberation over competing technologies. The delays inherent in this governmental approval process have caused and may continue to cause the cancellation, postponement or rescheduling of the installation of communications systems by the Company's customers, which in turn may have a material adverse effect on the sale of products by the Company to such customers. See "Business -- Government Regulations."

The Company has benefitted and continues to benefit from the SBIR program, through which the government provides research and development funding for companies with fewer than 500 employees. While the Company has already harvested significant benefits from the SBIR program throughout the initial developmental stages of its core technology base, the Company believes that its business, financial condition and results of operations would not be materially adversely affected if the Company were to lose its SBIR funding status. See "Business -- Research and Development."

## EMERGING MARKETS IN WIRELESS COMMUNICATIONS

A number of the commercial markets for the Company's products in the wireless communications area, including its DAMA products, have only recently begun to develop. Because these markets are relatively new, it is difficult to predict the rate at which these markets will grow, if at all. If the markets for the Company's products in the commercial wireless communications area fail to grow, or grow more slowly than anticipated, the Company's business, financial condition and results of operations could be materially adversely affected. Conversely, to the extent that growth in these markets results in capacity limitations in the wireless communications area, the Company's business, financial condition and results of operations could also be materially adversely affected. See "Business -- Commercial Markets, Products and Customers."

## FIXED SITE SATELLITE TELEPHONY MARKET

The Company's strategy includes establishing satellite telephony networking infrastructure for developing countries through strategic alliances with regional and local service providers (see "Business -- Strategy -- Address Rural Telephony Market"). There can be no assurance that a substantial market for fixed site telephony equipment in developing countries will ever develop, or if such a market does develop that fixed-site DAMA VSAT-based equipment will capture a significant portion of that market. The Company's ability to penetrate such markets will be dependent upon its ability to develop equipment and software which can be utilized by the regional and local service providers to develop and implement such infrastructure and for such service providers to market and sell the use of such systems. Furthermore, there can be no assurance that the regional and local service providers will be able to successfully market subscriber terminals to subscribers. The development and implementation of such satellite telephony systems will be dependent upon, among other things, the continued development of the necessary hardware and software technologies (including the necessary expenditures of a large amount of funds and resources), the implementation of cost-effective systems, market acceptance for such systems and approval by the appropriate regulatory agencies. There can be no assurance that the Company will be able to develop equipment and software which can be utilized in such telephony systems and accepted by regional and local service providers or that any regional or local service providers will be able to develop, implement and market satellite telephony systems. Furthermore, if the Company successfully introduces such products and the regional and local service providers successfully develop and implement such systems, there is no assurance that the Company will generate enough revenues to cover the Company expenditures in the development and marketing of such products. Even if the Company is able to realize sales of such products, the Company believes it is not likely that the Company will realize any significant revenues from rural telephony applications any time in the foreseeable future, including at least the next two years.

## DEPENDENCE ON CONTRACT MANUFACTURERS; RELIANCE ON SOLE OR LIMITED SOURCES OF SUPPLY

The Company's internal manufacturing capacity is limited. The Company has recently begun to utilize contract manufacturers to produce its products and expects to rely increasingly on such manufacturers in the future. The Company also relies on outside vendors to manufacture certain components and subassemblies, including printed wiring boards. Certain components, subassemblies and services necessary for the manufacture of the Company's products are obtained from a sole supplier or a limited group of suppliers. In particular, Texas Instruments is a sole source supplier of digital signal processing chips, which are critical components used by the Company in substantially all of its products. There can be no assurance that the Company's internal manufacturing capacity and that of its contract manufacturers and suppliers will be sufficient to timely fulfill the Company's orders. See "Business -- Manufacturing."

The Company's reliance on contract manufacturers and on sole suppliers or a limited group of suppliers involves several risks, including a potential inability to obtain an adequate supply of required components, and reduced control over the price, timely delivery, reliability and quality of finished products. From time to time, the Company enters into long-term supply agreements with its manufacturers and suppliers. Manufacture of the Company's products and certain of its components and subassemblies is an extremely complex process, and the Company has from time to time experienced and may in the future experience delays in the delivery of and quality problems with products and certain components and subassemblies from vendors. Certain of the Company's suppliers have relatively limited financial and other resources. Any inability to obtain timely deliveries of components and

subassemblies of acceptable quality or any other circumstance that would require the Company to seek alternative sources of supply, or to manufacture its finished products or such components and subassemblies internally, could delay or prevent the Company from timely delivery of its systems or raise issues regarding quality, which could damage relationships with current or prospective customers and have a material adverse effect on the Company's business, financial condition and results of operations.

#### COMPETITION

The markets for the Company's products and services are extremely competitive, and the Company expects that competition will increase in such markets. Many of the Company's competitors have entrenched market positions, established patents, copyrights, tradenames, trademarks, service marks and intellectual property rights and substantial technological capabilities. The Company's existing and potential competitors include large and emerging domestic and international companies, many of which have significantly greater financial, technical, manufacturing, marketing, sales and distribution resources and management expertise than the Company. The Company believes that its ability to compete successfully in the markets for its products and services depends upon a number of factors within and outside its control, including price, quality, availability, product performance and features, timing of new product introductions by the Company, its customers and competitors, and customer service and technical support. The Company's customers continuously evaluate whether to develop and manufacture their own products and could elect to compete with the Company at any time. Price competition in the markets in which the Company currently competes is likely to increase, which could have a material adverse effect on the Company's business, financial condition and results of operations. See "Business -- Competition."

#### LIMITED PROTECTION OF THE COMPANY'S INTELLECTUAL PROPERTY

The Company's ability to compete may depend, in part, on its ability to obtain and enforce intellectual property protection for its technology in the United States and internationally. The Company relies on a combination of patents, trade secrets, copyrights, trademarks, service marks and contractual rights to protect its intellectual property. There can be no assurance that the steps taken by the Company will be adequate to deter misappropriation or impede third party development of the Company's technology. In addition, the laws of certain foreign countries in which the Company's products are or may be sold do not protect the Company's intellectual property rights to the same extent as do the laws of the United States. The failure of the Company to protect its proprietary information could have a material adverse effect on the Company's business, financial condition and results of operations. See "Business -- Intellectual Property."

Litigation may be necessary to protect the Company's intellectual property rights and trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on the Company's business, financial condition and results of operations. There can be no assurance that infringement, invalidity, right to use or ownership claims by third parties or claims for indemnification resulting from infringement claims will not be asserted against the Company in the future. If any claims or actions are asserted against the Company, the Company may seek to obtain a license under a third party's intellectual property rights. There can be no assurance, however, that a license will be available under reasonable terms or at all. In addition, should the Company decide to litigate such claims, such litigation could be extremely expensive and time consuming and could materially adversely affect the Company's business, financial condition and results of operations, regardless of the outcome of the litigation. If the Company's products are found to infringe upon the rights of third parties, the Company may be forced to incur substantial costs to develop alternative products. There can be no assurance that the Company would be able to develop such alternative products or that if such alternative products were developed, they would perform as required or be accepted in the applicable markets.

#### REQUIREMENT FOR RESPONSE TO RAPID TECHNOLOGICAL CHANGE AND REQUIREMENT FOR FREQUENT NEW PRODUCT INTRODUCTIONS

The wireless communications market is subject to rapid technological change, frequent new product introductions and enhancements, product obsolescence and changes in end-user requirements. The Company's ability to be competitive in this market will depend in significant part upon its ability to successfully develop, introduce and sell new products and enhancements on a timely and cost-effective basis that respond to changing customer requirements. Any success of the Company in developing new and enhanced products will depend upon a variety of factors, including new product selection, integration of the various elements of its complex technology, timely and efficient completion of product design, timely and efficient implementation of manufacturing and assembly processes and its cost reduction efforts, development and completion of related software tools, product performance, quality and reliability and development of competitive products by competitors. The Company may experience delays from time to time in completing development and introduction of new products. Moreover, there can be no assurance that the Company will be successful in selecting, developing, manufacturing and marketing new products or enhancements. There can be no assurance that errors will not be found in the Company's products after commencement of deliveries, which could result in the loss of or delay in market acceptance. The inability of the Company to introduce in a timely manner new products that achieve market acceptance and thereby contribute to revenues could have a material adverse effect on the Company's business, financial condition and results of operations. See "Business -- Research and Development."

#### INTERNATIONAL OPERATIONS; RISKS OF DOING BUSINESS IN DEVELOPING COUNTRIES

The Company anticipates that international sales will account for an increasing percentage of its revenues for the foreseeable future. The Company's international sales may be denominated in foreign or U.S. currencies. The Company does not currently engage in foreign currency hedging transactions. As a result, a decrease in the value of foreign currencies relative to the U.S. dollar could result in losses from transactions denominated in foreign currencies. With respect to the Company's international sales that are U.S. dollar-denominated, such a decrease could make the Company's products less price-competitive. Additional risks inherent in the Company's international business activities include various and changing regulatory requirements, cost and risks of localizing systems in foreign countries, increased sales and marketing and research and development expenses, availability of suitable export financing, timing and availability of export licenses, tariffs and other trade barriers, political and economic instability, difficulties in staffing and managing foreign operations, difficulties in managing distributors, potentially adverse taxes, complex foreign laws and treaties and the possibility of difficulty in accounts receivable collections. Certain of the Company's customer purchase agreements are governed by foreign laws, which may differ significantly from U.S. laws. Therefore, the Company may be limited in its ability to enforce its rights under such agreements and to collect damages, if awarded. There can be no assurance that any of these factors will not have a material adverse effect on the Company's business, financial condition and results of operations.

#### VOLATILITY OF STOCK PRICE

Historically, the Company's stock price has been volatile. The sales price for the Company's Common Stock has ranged from \$8.88 to \$24.38 per share during the 52-week period ended March 31, 1998. The Company believes that factors such as announcements of developments related to the Company's business, announcements of technological innovations or new products or enhancements by the Company or its competitors, developments in the Company's relationships with its customers, partners, distributors and suppliers, changes in analysts' estimates, regulatory developments, fluctuations in results of operations and general conditions in the Company's market or the markets served by the Company's customers or the economy could cause the price of the Common Stock to fluctuate, perhaps substantially. In addition, in recent years the stock market in general, and technology companies in particular have been subject to significant price fluctuations, which have often been unrelated to the operating performance of affected companies. Such fluctuations could adversely affect the market price of the Common Stock. There can be no assurance that the market price of the Common Stock will not experience significant fluctuations in the future, including fluctuations that are unrelated to the Company's performance.

## CONTROL BY EXISTING STOCKHOLDERS

As of March 31, 1998, members of the Board of Directors and the executive officers of the Company, together with members of their families and entities that may be deemed affiliates of or related to such persons or entities, beneficially owned approximately 36% of the outstanding shares of the Company's Common Stock. Accordingly, these stockholders may be able to elect all members of the Company's Board of Directors and determine the outcome of corporate actions requiring stockholder approval, such as mergers and acquisitions. This level of ownership may have a significant effect in delaying, deferring or preventing a change in control of the Company and may adversely affect the voting and other rights of other holders of the Common Stock.

## ANTI-TAKEOVER EFFECTS OF CERTAIN CHARTER PROVISIONS

Certain provisions of the Company's Amended and Restated Certificate of Incorporation and Bylaws could discourage potential acquisition proposals, could delay or prevent a change in control of the Company and could make removal of management more difficult. Such provisions could diminish the opportunities for a stockholder to participate in tender offers, including tender offers that are priced above the then current market value of the Company's Common Stock. The provisions also may inhibit increases in the market price of the Common Stock that could result from takeover attempts. Additionally, the Board of Directors of the Company, without further stockholder approval, may issue up to 5,000,000 shares of Preferred Stock, in one or more series, with such terms as the Board of Directors may determine, including rights such as voting, dividend and conversion rights which could adversely affect the voting power and other rights of the holders of Common Stock. Preferred Stock may be issued quickly with terms which delay or prevent a change in control of the Company or make removal of management more difficult. Also, the issuance of Preferred Stock may have the effect of decreasing the market price of the Common Stock.

## DEPENDENCE ON KEY PERSONNEL

The Company's future success depends in large part on the continued service of its key technical, marketing and management personnel and on its ability to continue to attract and retain qualified employees, particularly its Chief Executive Officer, Mark D. Dankberg, and those highly skilled design, process and test engineers involved in the manufacture of existing products and the development of new products and processes. The competition for such personnel is intense, and the loss of key employees could have a material adverse effect on the Company's business, financial condition and results of operations. The Company does not have employment agreements with any of its officers or employees. The Company has obtained, however, a key man insurance policy on the life of Mr. Dankberg in the amount of \$500,000, for which the Company is the sole beneficiary. See "Business -- Employees."

## ITEM 2. PROPERTIES

The Company's headquarters are located in an approximately 37,000 square foot leased facility in Carlsbad, California. This facility houses the Company's management, marketing and sales personnel. The lease for this facility terminates in November 1998. The Company leases two other facilities in Carlsbad, California containing approximately 56,000 and 26,000 square feet for research and development, application engineering and manufacturing coordination activities. The first facility lease terminates in July 1999 with options to renew for two additional periods of two years each. The second facility lease terminates in November 1998 with options to renew for two additional periods of one year each. In addition, the Company leases three smaller sales facilities aggregating approximately 3,000 square feet located in Acton, Massachusetts, Marietta, Georgia, and Durango, Colorado. The Massachusetts lease terminates in April 1999 with an option to renew for a period of one year. The Georgia lease terminates in June 1998. The Colorado lease terminates in January 1999. Annual leasing costs of the Company totaled \$1.1 million, \$793,000 and \$608,000 for the fiscal years ended March 31, 1998, 1997 and 1996, respectively.

In April 1998, the Company entered into a long-term agreement to lease a facility in Carlsbad, California which will house the Company's entire California based operations. The facility will contain approximately 180,000 square feet and is expected to be completed in September 1999. The term of the lease is 10 years with two three-year option periods. The initial minimum lease payments are \$2.3 million per year and will be payable commencing upon completion of the facility.

## ITEM 3. LEGAL PROCEEDINGS

The Company is not a party to any legal proceedings other than various claims and lawsuits arising in the ordinary course of its business which, in the opinion of the Company's management, are not individually or in the aggregate material to its business.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the quarter ended March 31, 1998.

## PART II

## ITEM 5. MARKET FOR REGISTRANT'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS

The Common Stock of the Company is traded on the Nasdaq National Market under the symbol "VSAT." The Common Stock was initially offered to the public on December 3, 1996 at \$9.00 per share. The following table sets forth the range of high and low sales prices on the Nasdaq National Market of the Company's Common Stock for the periods indicated, as reported by Nasdaq. Such quotations represent inter-dealer prices without retail markup, markdown or commission and may not necessarily represent actual transactions.

FISCAL 1997	HIGH	LOW
	-----	-----
Third Quarter(a)	\$ 9.63	\$ 8.38
Fourth Quarter	12.25	8.75

  

FISCAL 1998	HIGH	LOW
	-----	-----
First Quarter	\$ 16.13	\$ 8.88
Second Quarter	23.50	11.00
Third Quarter	24.38	10.00
Fourth Quarter	19.13	12.81

To date, the Company has neither declared nor paid any dividends on the Common Stock. The Company currently intends to retain all future earnings, if any, for use in the operation and development of its business and, therefore, does not expect to declare or pay any cash dividends on the Common Stock in the foreseeable future. In addition, an equipment financing agreement of the Company prohibits the payment of any cash dividends on the Company's capital stock. As of June 16, 1998, there were 294 holders of record of the Common Stock.

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(a) Subsequent to December 3, 1996.

## ITEM 6. SELECTED FINANCIAL DATA

The following data has been derived from the Company's audited financial statements. The balance sheet at March 31, 1998 and 1997 and the related statements of income, of cash flows and of stockholders' equity of the Company for the three years ended March 31, 1998 and notes thereto appear elsewhere herein. The data should be read in conjunction with such financial statements and other financial information appearing elsewhere herein. All amounts shown are in thousands, except per share data.

	YEARS ENDED MARCH 31,				
	1998	1997	1996	1995	1994
STATEMENT OF INCOME DATA:					
Revenues	\$ 64,197	\$ 47,715	\$ 29,017	\$ 22,341	\$ 11,579
Cost of revenues	40,899	33,102	20,983	16,855	9,033
Gross profit	23,298	14,613	8,034	5,486	2,546
Operating expenses:					
Selling, general and administrative	7,862	4,752	3,400	2,416	1,554
Independent research and development	7,631	5,087	2,820	788	134
Income from operations	7,805	4,774	1,814	2,282	858
Net interest income (expense)	586	100	(231)	(87)	(45)
Income before income taxes	8,391	4,874	1,583	2,195	813
Provision (benefit) for income taxes	3,104	1,702	(50)	888	328
Net income	\$ 5,287	\$ 3,172	\$ 1,633	\$ 1,307	\$ 485
Basic net income per share(1)	\$ 0.68	\$ 0.66	\$ 0.50	\$ 0.42	\$ 0.16
Diluted net income per share(1)	\$ 0.65	\$ 0.48	\$ 0.28	\$ 0.24	\$ 0.09
Shares used in Basic per share calculations (1)	7,801	4,810	3,267	3,080	2,957
Shares used in Diluted per share calculations (1)	8,175	6,642	5,735	5,479	5,323

	MARCH 31,				
	1998	1997	1996	1995	1994
BALANCE SHEET DATA:					
Cash and short-term investments	\$ 9,208	\$12,673	\$ 2,297	\$ 2,731	\$ 9
Working capital	24,276	20,406	4,651	2,808	1,486
Total assets	42,793	35,674	13,262	9,377	4,986
Long-term debt, less current portion	1,544	1,428	1,747	1,220	297
Total stockholders' equity	29,610	23,619	5,217	3,413	1,956

(1) Earnings per share calculations have been restated to comply with Statement of Financial Accounting Standards (SFAS) No. 128. For an explanation of the determination of the number of shares used in computing net income per share, see Note 1 and Note 7 of the Notes to Financial Statements.



ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

Historically, the Company's revenues have been principally derived from contracts with the DOD. The Company's DOD revenues have continued to grow despite government budgetary constraints. Since 1992, the Company's total revenues have grown at a compounded annual growth rate of approximately 58%. DOD revenues amounted to \$58.2 million and \$46.3 million for the fiscal years ended March 31, 1998 and 1997, respectively. The Company has achieved this growth rate entirely through internal growth, and not through acquisitions. See "Risk Factors -- Fluctuations in Results of Operations."

The Company's products and services are provided primarily through three types of contracts: fixed-price, time-and-materials and cost-reimbursement contracts. Approximately 72.8% and 63.3% of the Company's total revenues for the fiscal years ended March 31, 1998 and 1997, respectively, were derived from fixed-price contracts which require the Company to provide products and services under a contract at a stipulated price. The Company derived approximately 4.6% and 6.0% of its revenues during such periods from time-and-materials contracts which reimburse the Company for the number of labor hours expended at an established hourly rate negotiated in the contract, plus the cost of materials utilized in providing such products or services. The remaining 22.6% and 30.7% of the Company's revenues for the fiscal years ended March 31, 1998 and 1997, respectively, were derived from cost-reimbursement contracts under which the Company is reimbursed for all actual costs incurred in performing the contract to the extent that such costs are within the contract ceiling and allowable under the terms of the contract, plus a fee or profit. See "Risk Factors -- Contract Profit Exposure."

As of March 31, 1998, the Company had firm backlog of \$72.7 million, of which \$48.0 million was funded. Of the \$72.7 million in firm backlog, approximately \$46.6 million is expected to be delivered in the fiscal year ending March 31, 1999, approximately \$15.2 million is expected to be delivered in the fiscal year ending March 31, 2000 and the balance is expected to be delivered in the fiscal years ending March 31, 2001 and thereafter. The Company received \$58.0 million in awards during the year ended March 31, 1998, consisting of \$19.6 million in UHF DAMA satellite communications awards, \$15.8 million in awards for the defense simulator business, \$18.4 million in other defense awards and \$4.2 million in commercial satellite communications awards. The Company's \$72.7 million in firm backlog at March 31, 1998 excludes an additional \$24.3 million of customer options. See "Business -- Backlog."

Historically, a significant portion of the Company's revenue has been derived from research and development contracts with the DOD. The research and development efforts are conducted in direct response to the specific requirements of a customer's order and, accordingly, expenditures related to such efforts are included in cost of sales when incurred and the related funding (which includes a profit component) is included in net revenues at such time. Revenues are recognized using the percentage of completion method on these long-term development contracts. Revenues for funded research and development during the fiscal years ended March 31, 1998 and 1997 were approximately \$25.6 million and \$21.3 million, respectively. See "Business -- Research and Development."

Beginning in fiscal 1995, production contracts for delivery of previously developed equipment became a more significant percentage of total revenues. Production contracts amounted to approximately 52.6% and 35.3% of fiscal 1998 and 1997 total revenues, respectively.

The Company invests in independent research and development ("IR&D"), which is not directly funded by a third party. The Company expenses IR&D costs as they are incurred. IR&D expenses consist primarily of salaries and other personnel-related expenses, supplies and prototype materials related to research and development programs. IR&D expenses for governmental and commercial applications were minimal prior to fiscal 1995. In the fourth quarter of fiscal 1995, the Company began investing a significant amount of IR&D funds primarily in the development of satellite telephony and other satellite DAMA products. The Company expended 11.9% and 10.6% of revenues in IR&D during the fiscal years ended

March 31, 1998 and 1997, respectively. As a government contractor, the Company is able to recover a portion of its IR&D expenses pursuant to its government contracts.

#### RESULTS OF OPERATIONS

The following table sets forth, as a percentage of total revenues, certain income data for the periods indicated.

	FISCAL YEARS ENDED MARCH 31,		
	1998	1997	1996
Revenues	100.0%	100.0%	100.0%
Cost of revenues	63.7	69.4	72.3
Gross profit	36.3	30.6	27.7
Operating expenses:			
Selling, general and administrative	12.2	10.0	11.7
Independent research and development	11.9	10.6	9.7
Income from operations	12.2	10.0	6.3
Income before income taxes	13.1	10.2	5.5
Net income	8.2	6.6	5.6

#### FISCAL YEAR ENDED MARCH 31, 1998 VS. FISCAL YEAR ENDED MARCH 31, 1997

**Revenues.** The Company's revenues increased 34.5% from \$47.7 million in fiscal 1997 to \$64.2 million in fiscal 1998. This increase was primarily due to increases in revenues generated by MD-1324s (UHF DAMA stand-alone modems), StarWire satellite networking systems and Joint Communication Simulator ("JCS") products. These increases were partially offset by a decrease in revenues derived from UHF DAMA network control stations and modems and Enhanced Manpack UHF Terminal ("EMUT") production.

Revenue from commercial customers grew from \$1.5 million in fiscal 1997 to \$5.9 million in fiscal 1998. Simulator product revenues grew from \$4.8 million in fiscal 1997 to \$11.5 million in fiscal 1998. UHF DAMA business area revenues grew from \$32.8 million (68.8% of revenues) in fiscal 1997 to \$35.0 million (54.5% of revenues) in fiscal 1998.

**Gross Profit.** Gross profit increased 59.4% from \$14.6 million (30.6% of revenues) in fiscal 1997 to \$23.3 million (36.3% of revenues) in fiscal 1998. The increase in gross profit was primarily the result of a larger content of higher margin products in the Company's sales for the year ended March 31, 1998 relative to the same period of the prior year. In addition, certain long-term contracts realized higher profits than initial estimates.

**Selling, General and Administrative Expenses.** Selling, general and administrative ("SG&A") expenses increased 65.5% from \$4.8 million (10.0% of revenues) in fiscal 1997 to \$7.9 million (12.2% of revenues) in fiscal 1998. The Company increased its business development and administrative staffing in support of both defense and commercial programs. Bid and proposal efforts increased from \$1.2 million in fiscal 1997 to \$1.5 million in fiscal 1998.

**Independent Research and Development.** IR&D expenses increased 50.0% from \$5.1 million (10.6% of revenues) in fiscal 1997 to \$7.6 million (11.9% of revenues) in fiscal 1998. This increase resulted primarily from higher IR&D expenses related to the Company's StarWire DAMA product, which represented approximately 88% of total IR&D for fiscal 1998.

Interest Expense. Interest expense decreased 16.9% from \$254,000 in fiscal 1997 to \$211,000 in fiscal 1998. Interest expense relates to loans for the purchase of capital equipment and to short-term borrowings under the Company's line of credit to cover working capital requirements. Total outstanding equipment loans were \$2.6 million at March 31, 1997 and 1998. There were no outstanding borrowings under the Company's line of credit at the end of each fiscal year.

Interest Income. Interest income increased 125.1% from \$354,000 in fiscal 1997 to \$797,000 in fiscal 1998. Interest income relates to interest earned on cash and short-term investments.

Provision (Benefit) for Income Taxes. The Company's effective income tax rate increased from 35% in fiscal 1997 to 37% in fiscal 1998. The Company's effective income tax rate increased due to a limitation on qualified research and development expenditures used to calculate the Company's research and development tax credit.

#### FISCAL YEAR ENDED MARCH 31, 1997 VS. FISCAL YEAR ENDED MARCH 31, 1996

Revenues. The Company's revenues increased 64.4% from \$29.0 million in fiscal 1996 to \$47.7 million in fiscal 1997. This increase was primarily due to a \$13.0 million increase in revenues generated by contracts with the U.S. Air Force for UHF DAMA network control stations, and a revenue increase of \$8.7 million generated by EMUT modem production, offset in part by reduced activity in other product lines and the completion of certain contracts. UHF DAMA business area revenues grew from \$12.4 million (42.8% of revenues) in fiscal 1996 to \$32.8 million (68.8% of revenues) in fiscal 1997.

Gross Profit. Gross profit increased 81.9% from \$8.0 million (27.7% of revenues) in fiscal 1996 to \$14.6 million (30.6% of revenues) in fiscal 1997. This increase primarily reflects improved contract profitability and higher prices related to the recovery of allowable IR&D costs under certain government contracts.

Selling, General and Administrative Expenses. SG&A expenses increased 39.8% from \$3.4 million (11.7% of revenues) in fiscal 1996 to \$4.8 million (10.0% of revenues) in fiscal 1997. The Company continued to increase administrative staff to support IR&D related to its StarWire DAMA product, increased its business development staff for defense programs, and added to finance and administrative staffing. Bid and proposal efforts increased from \$1.0 million in fiscal 1996 to \$1.2 million in fiscal 1997.

Independent Research and Development. IR&D expenses increased 80.4% from \$2.8 million (9.7% of revenues) in fiscal 1996 to \$5.1 million (10.6% of revenues) in fiscal 1997. Expenditures on the development of the Company's StarWire DAMA product began in the last quarter of fiscal 1995 and have steadily increased.

Interest Expense. Interest expense decreased 2.3% from \$260,000 in fiscal 1996 to \$254,000 in fiscal 1997. Total outstanding equipment loans were \$2.5 million at the end of fiscal 1996 and \$2.6 million at the end of fiscal 1997. There were no outstanding borrowings under the Company's line of credit at the end of each fiscal year.

Interest Income. Interest income increased from \$29,000 in fiscal 1996 to \$354,000 in fiscal 1997. Interest income relates to interest earned on short-term deposits of cash.

Provision (Benefit) for Income Taxes. The income tax benefit in fiscal 1996 was primarily attributable to the utilization of research and development credits generated during the current period and the impact of a United States Federal judicial decision which clarified the tax law related to the utilization of research and development credits generated from funded research and development. The income tax provision in fiscal 1997 was less than the combined federal and state statutory rate due to the utilization of research and development credits.

## LIQUIDITY AND CAPITAL RESOURCES

The Company has financed its operations to date primarily from cash flows from operations, bank line of credit financing, equity financing and loans for the purchase of capital equipment. Cash used in operating activities for the fiscal years ended March 31, 1998 and 1997 was \$127,000 and \$1.2 million, respectively. The relative decrease in cash used for operating activities for the year ended March 31, 1998 compared to the prior year was primarily due to an increase in net income of \$2.1 million, relatively flat inventory growth and a reduction in other assets, which was offset by an increase in accounts receivable and a decrease in accounts payable. Other assets decreased primarily due to the collection of a non-trade receivable. The increase in accounts receivable resulted from an increase in the Company's revenues and the timing of customer payments.

Cash used in investing activities for the fiscal years ended March 31, 1998 and 1997 was \$10.0 million and \$3.7 million, respectively. This increase was the result of purchasing \$5.9 million in short-term, investment grade, debt securities and purchases of property and equipment, primarily consisting of test equipment and computers.

Cash provided by financing activities for the fiscal years ended March 31, 1998 and 1997 was \$745,000 and \$15.3 million, respectively. This decrease was primarily the result of \$14.8 million of capital raised in the Company's initial public offering which closed in December 1996.

At March 31, 1998, the Company had \$3.3 million in cash and cash equivalents, \$5.9 million in short-term investments, \$24.3 million in working capital and \$2.6 million in long-term debt which consists of equipment financing. The Company had a zero balance under its line of credit at March 31, 1998 and 1997.

The Company's credit facility with Union Bank includes a \$6.0 million line of credit and \$4.5 million in commitments for equipment financing. The line of credit allows the Company to borrow, for general working capital purposes, the greater of \$2.0 million or 80% of eligible accounts receivable plus 50% of the Company's eligible inventory. At the Company's option, interest accrues either at the bank's prime rate (8.5% at March 31, 1998) or at the bank's LIBOR rate plus 1.75% (7.44% at March 31, 1998). The credit facility expires on September 15, 1998. The Company is required to pay a fee equal to 0.09% of the unused portion of the line of credit on a quarterly basis.

The equipment line consists of three loans, each of which limits borrowings to an 80.0% advance against the purchase price, net of sales tax, delivery and insurance. The first and second loans have been converted into fully amortizing loans which mature on September 15, 1999 and 2000, respectively. All borrowings under the third loan, which may not exceed \$2.5 million, must be made before September 15, 1998, at which time all unpaid principal under such loan will be converted into a fully amortizing loan for a period of 36 months with a maturity date of September 15, 2001.

The Company has commenced the evaluation of computer systems and products to insure its operations will not be adversely effected by the year 2000 software problems. Presently, the Company does not believe that year 2000 compliance will result in additional material investments by the Company, nor does the Company anticipate that the year 2000 problem will have a material adverse effect on the business operations or financial performance of the Company. There can be no assurances, however, that the year 2000 problem will not adversely effect the Company and its business.

The Company's future capital requirements, which management anticipates will not exceed \$10.0 million over the next 12 months, will depend upon many factors, including the progress of the Company's research and development efforts, expansion of the Company's marketing efforts, and the nature and timing of commercial orders. The Company believes that its current cash and short-term investment balances, amounts available under its credit facilities and net cash expected to be provided by operating activities, will be sufficient to meet its working capital and capital expenditure requirements for at least the next 12 months. Management intends to invest the Company's cash in excess of current operating requirements in short-term, interest-bearing, investment-grade securities.

## SUMMARIZED QUARTERLY DATA (UNAUDITED)

The following financial information reflects all normal recurring adjustments which are, in the opinion of management, necessary for the fair statement of the results for the interim periods. Summarized quarterly data for fiscal 1998 and 1997 is as follows (in thousands, except per share data):

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	-----	-----	-----	-----
1998				
Revenues	\$14,476	\$15,931	\$15,991	\$17,799
Gross profit	5,117	5,418	5,757	7,006
Income from operations	1,706	1,760	2,006	2,333
Net income	1,175	1,203	1,351	1,558
Basic net income per share (1)	0.15	0.15	0.17	0.20
Diluted net income per share (1)	0.15	0.15	0.16	0.19
1997				
Revenues	\$ 9,732	\$11,850	\$12,079	\$14,054
Gross profit	2,870	3,379	3,832	4,532
Income from operations	772	947	1,288	1,767
Net income	478	604	853	1,237
Basic net income per share (1)	0.14	0.18	0.18	0.16
Diluted net income per share (1)	0.08	0.10	0.13	0.15

(1) Earnings per share calculations have been restated to comply with Statement of Financial Accounting Standards (SFAS) No. 128. Basic and diluted net income per share computations for each quarter are independent and may not add up to the net income per share computation for the respective year. See Note 1 and Note 7 of Notes to the Financial Statements for an explanation of the determination of basic and diluted net income per share.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Not applicable.

## ITEM 8 FINANCIAL STATEMENTS

The Company's financial statements at March 31, 1998 and 1997, and for each of the three years in the period ended March 31, 1998, and the Report of Price Waterhouse LLP, Independent Accountants, are included in this Report on pages F-1 through F-14.

## ITEM 9 CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## PART III

## ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this item will be set forth under the captions "Election of Directors" and "Executive Officers" in the Company's definitive Proxy Statement to be filed with the Securities and Exchange Commission in connection with the 1998 Annual Meeting of Stockholders (the "Proxy Statement"), which is incorporated by reference herein.

## ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to the Proxy Statement under the heading "Executive Compensation."

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this item is incorporated by reference to the Proxy Statement under the heading "Security Ownership of Certain Beneficial Owners and Management ."

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this item is incorporated by reference to the Proxy Statement under the heading "Certain Transactions."

## PART IV

## ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

PAGE  
NUMBER  
-----

## (a) Documents filed as part of the report:

(1) Report of Independent Accountants	F-1
Balance Sheets at March 31, 1998 and 1997	F-2
Statements of Income for Fiscal 1998, 1997 and 1996	F-3
Statements of Cash Flow for Fiscal 1998, 1997 and 1996	F-4
Statements of Stockholders' Equity for Fiscal 1998, 1997 and 1996	F-5
Notes to Financial Statements	F-6

Financial statement schedules have been omitted because they are either not required, not applicable or the information is otherwise included.

## (2) Exhibits

EXHIBIT NUMBERS -----	DESCRIPTION OF EXHIBIT -----
3.1	Amended and Restated Certificate of Incorporation.(1)
3.2	Bylaws.(1)
4.1	Form of Common Stock Certificate.(1)
10.1	Preferred Stock Purchase Agreement, dated as of June 11, 1986, by and among the Company, Southern California Ventures, Robert W. Johnson and Thomas A. Tisch.(1)
10.2	Shareholders' Agreement, dated June 11, 1986, by and among Southern California Ventures, Robert W. Johnson, Thomas A. Tisch, the Company, Mark D. Dankberg, Steven R. Hart and Mark J. Miller.(1)
10.3	Form of Stock Restriction Agreement by and between the Company and each stockholder of the Company.(1)
10.4	Form of Invention and Confidential Disclosure Agreement by and between the Company and each employee of the Company.(1)
10.5	ViaSat, Inc. 1993 Stock Option Plan (the "1993 Stock Option Plan").(1)
10.6	First Amendment to the 1993 Stock Option Plan.(2)
10.7	Form of Incentive Stock Option Agreement under the 1993 Stock Option Plan.(1)
10.8	Form of Nonqualified Stock Option Agreement under the 1993 Stock Option Plan.(1)
10.9	The 1996 Equity Participation Plan of ViaSat, Inc. (the "1996 Equity Participation Plan").(1)
10.10	Form of Incentive Stock Option Agreement under the 1996 Equity Participation Plan.(1)
10.11	Form of Nonqualified Stock Option Agreement under the 1996 Equity Participation Plan.(1)
10.12	The ViaSat, Inc. Employee Stock Purchase Plan.(1)
10.13	ViaSat, Inc. 401(k) Profit Sharing Plan.(1)
10.14	Loan Agreement, dated as of September 15, 1995, by and between the Company and Union Bank.(1)
10.15	Waiver and First Amendment to Loan Agreement, dated as of March 31, 1997, by and between the Company and Union Bank.(2)
10.16	Business Loan Agreement, dated as of April 5, 1994, as amended, by and between the Company and Scripps Bank.(1)

- 10.17 Equipment Financing Agreement, dated April 28, 1994, by and between the Company and Heritage Leasing Capital.(1)
- 10.18 Equipment Financing Agreement, dated May 13, 1994, by and between the Company and Heritage Leasing Capital.(1)



EXHIBIT NUMBERS -----	DESCRIPTION OF EXHIBIT -----
10.19	Equipment Financing Agreement, dated September 19, 1994, by and between the Company and Heritage Leasing Capital.(1)
10.20	Equipment Financing Agreement, dated December 6, 1994, by and between the Company and Heritage Leasing Capital.(1)
10.21	Sublease, dated as of August 20, 1993, by and between Whittaker Corporation and the Company (2290 Cosmos Court, Carlsbad, California).(1)
10.22	Lease Agreement, dated December 8, 1994, by and between The Campus, LLC and the Company (The Campus, Carlsbad, California).(1)
10.23	Lease, dated March 21, 1995, by and between Nagog Development Co. and the Company (125 Nagog Park, Acton, Massachusetts).(1)
10.24	Lease, dated March 8, 1996, by and between Harry and Wendy Brandon and the Company(1900 S. Harbor City Blvd., Melbourne, Florida).(1)
10.25	Lease, dated December 9, 1997, by and between Newport National Corporation and the Company(5962 La Place Court, Carlsbad, California).(3)
10.26	Lease, dated April 22, 1997, by and between Onimac Corporation and the Company (2320 Camino Vida Roble, Carlsbad, California).(3)
10.27	Lease, dated March 24, 1998, by and between W9/LNP Real Estate Limited Partnership and the Company (6155 El Camino Real, Carlsbad, California).(3)
10.28	Basic Ordering Agreement, dated November 8, 1994, as amended, by and between the Company and AT&T acting through its Tridom division.(1)
10.29	Supply & Services Contract, dated June 2, 1996, by and between HCL Comnet Systems and Services Limited and the Company.(1)
10.30	Basic Ordering Agreement Subcontract, dated March 4, 1994, by and between Magnavox Electronic Systems Company and the Company.(1)
10.31	Purchase Order Change to Basic Ordering Agreement Subcontract, dated February 25, 1997, by and between Hughes Defense Communications (formerly Magnavox Electronic Systems Company) and the Company.(2)
10.32	Award/Contract, effective March 29, 1996, as amended, issued by Electronic Systems Center/MCK Air Force Materiel Command, USAF to the Company.(1)
10.33	Amendment of Award/Contract, effective February 24, 1997, issued by Electronic Systems Center/MCK Air Force Materiel Command, USAF to the Company.(2)
10.34	Award/Contract, effective October 2, 1995, issued by Electronic Systems Center/MCK Air Force Materiel Command, USAF to the Company.(1)
10.35	Award/Contract, effective September 29, 1993, as amended, issued by Information Technology Acquisition Center to the Company.(1)
10.36	Turnkey Agreement, dated August 9, 1996, by and between Hutchison Corporate Access (HK) Limited and the Company.(1)
10.37	Award/Contract, effective July 30, 1991, issued by Electronic Systems Division Air Force Systems Command, USAF to the Company.(1)
10.38	Award/Contract, effective September 27, 1993, as amended, issued by Contracting Officer Naval Research Laboratory to the Company.(1)
10.39	Award Contract, effective September 21, 1994, as amended, issued by Technical Contract Management Office to the Company.(1)
10.40	Fixed Price Contract, dated as of October 18, 1995, by and between the Company and Spectragraphics.(1)
21.1	Subsidiaries.(1)
23.1	Consent of Independent Accountants.(3)

- 27.1 Financial Data Schedule.(3)
- 27.2 Restated Financial Data Schedule for the six months ended September 30, 1997.(3)
- 27.3 Restated Financial Data Schedule for the nine months ended December 31, 1996.(3)
- 27.4 Restated Financial Data Schedule for the year ended March 31, 1997.(3)

- -----

- (1) Incorporated by reference to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission (the "Commission") on October 1, 1996 (File No. 333-13183), as amended by Amendment No 1 filed with the Commission on November 5, 1996, Amendment No. 2 filed with the Commission on November 20, 1996, and Amendment No. 3 filed with the Commission on November 22, 1996.

(2) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 1997.

(3) Filed herewith.

(b) REPORTS ON FORM 8-K

There were no reports on Form 8-K filed by the registrant during the fourth quarter of the fiscal year ended March 31, 1998.

(c) EXHIBITS

The exhibits required by this Item are listed under Item 14(a)(2).

## GLOSSARY OF SELECTED TERMS

DAMA .....	Demand Assigned Multiple Access. A protocol for assigning a communication channel to a user only upon request.
DOD.....	Department of Defense.
Downlink .....	A radio transmission from a satellite back down toward the earth.
EMUT .....	Enhanced Manpack UHF Terminal. A small, portable satellite terminal for DOD that operates in the UHF frequency band.
FDMA.....	Frequency Division Multiple Access. A protocol that assigns each communication channel to a different transmission frequency.
GHZ.....	Giga Hertz. One billion cycles per second. A measure of frequency or bandwidth.
LEO.....	Low Earth Orbit.
Local Loop Services.....	Local telephony service.
MHZ.....	Mega Hertz. One million cycles per second. A measure of frequency or bandwidth.
MIL-STD.....	Military standard.
NCS.....	Network Control System. The satellite terminal and computer that manages channel assignments in a DAMA network.
Network.....	A collection of user terminals linked together by a satellite.
PSTN.....	Public Switched Telephone Network.
RF.....	Radio Frequency.
SCPC.....	Single Channel Per Carrier. A signalling technique that transmits one voice or data circuit per radio channel.
SHF.....	Super High Frequency radio transmissions.
TDM.....	Time Division Multiplexing. A protocol for combining several different circuits into a single, continuous transmission.
TDMA.....	Time Division Multiple Access. A protocol for time sharing a single communication channel among a number of different users.
Transponder.....	A receiving and transmitting device on board a satellite that relays an uplink transmission from a satellite terminal back down to earth.
UHF.....	Ultra High Frequency radio transmissions.

Uplink.....A radio transmission from a satellite terminal that is sent up to a satellite.

VSAT.....Very Small Aperture Terminal. A satellite terminal with a very small antenna. A VSAT antenna is typically considered to be less than 3.7 meters in diameter.

Wireless Local Loop .....Wireless switched local telephony service.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

Date: June 26, 1998.

ViaSat, Inc.

By: /s/ MARK D. DANKBERG

-----  
 Mark D. Dankberg  
 Chairman, President and Chief  
 Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE -----
/s/ MARK D. DANKBERG ----- Mark D. Dankberg	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	June 26, 1998
/s/ GREGORY D. MONAHAN ----- Gregory D. Monahan	Vice President, Chief Financial Officer and General Counsel (Principal Financial Officer and Principal Accounting Officer)	June 26, 1998
/s/ ROBERT W. JOHNSON ----- Robert W. Johnson	Director	June 26, 1998
/s/ JEFFREY M. NASH ----- Jeffrey M. Nash	Director	June 26, 1998
/s/ B. ALLEN LAY ----- B. Allen Lay	Director	June 26, 1998
/s/ JAMES F. BUNKER ----- James F. Bunker	Director	June 26, 1998

## REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Stockholders of ViaSat, Inc.

In our opinion, the financial statements listed in the index appearing under item 14(a)(1) on page 36 present fairly, in all material respects, the financial position of ViaSat, Inc. at March 31, 1998 and 1997, and the results of its operations and its cash flows for each of the three years in the period ended March 31, 1998, in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with generally accepted auditing standards which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

PRICE WATERHOUSE LLP

San Diego, California  
May 13, 1998

VIASAT, INC.  
BALANCE SHEET

	MARCH 31, 1998	MARCH 31, 1997
	-----	-----
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 3,290,000	\$ 12,673,000
Short-term investments	5,918,000	--
Accounts receivable	19,056,000	10,315,000
Inventory	4,687,000	4,478,000
Deferred income taxes	1,548,000	863,000
Other current assets	479,000	1,825,000
	-----	-----
Total current assets	34,978,000	30,154,000
Property and equipment, net	6,986,000	5,085,000
Other assets	829,000	435,000
	-----	-----
Total assets	\$ 42,793,000	\$ 35,674,000
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 4,555,000	\$ 4,844,000
Accrued liabilities	5,087,000	3,769,000
Current portion of notes payable	1,060,000	1,135,000
	-----	-----
Total current liabilities	10,702,000	9,748,000
	-----	-----
Notes payable	1,544,000	1,428,000
Other liabilities	937,000	879,000
	-----	-----
Total long-term liabilities	2,481,000	2,307,000
	-----	-----
Commitments and contingencies (Notes 11 & 12)		
Stockholders' equity:		
Series A, convertible preferred stock, \$.0001 par value; 5,000,000 shares authorized; no shares issued and outstanding at March 31, 1998 and 1997, respectively		
Common stock, \$.0001 par value, 25,000,000 shares authorized; 7,920,639 and 7,742,274 shares issued and outstanding at March 31, 1998 and 1997, respectively	81,000	81,000
Paid in capital	16,668,000	16,044,000
Stockholders' notes receivable	--	(80,000)
Retained earnings	12,861,000	7,574,000
	-----	-----
Total stockholders' equity	29,610,000	23,619,000
	-----	-----
Total liabilities and stockholders' equity	\$ 42,793,000	\$ 35,674,000
	=====	=====

See accompanying notes to financial statements.



VIASAT, INC.  
STATEMENT OF INCOME

	YEAR ENDED MARCH 31,		
	1998	1997	1996
Revenues	\$ 64,197,000	\$ 47,715,000	\$ 29,017,000
Cost of revenues	40,899,000	33,102,000	20,983,000
Gross profit	23,298,000	14,613,000	8,034,000
Operating expenses:			
Selling, general and administrative	7,862,000	4,752,000	3,400,000
Independent research and development	7,631,000	5,087,000	2,820,000
Income from operations	7,805,000	4,774,000	1,814,000
Other income (expense):			
Interest income	797,000	354,000	29,000
Interest expense	(211,000)	(254,000)	(260,000)
Income before income taxes	8,391,000	4,874,000	1,583,000
Provision (benefit) for income taxes	3,104,000	1,702,000	(50,000)
Net income	\$ 5,287,000	\$ 3,172,000	\$ 1,633,000
Basic net income per share	\$ 0.68	\$ 0.66	\$ 0.50
Diluted net income per share	\$ 0.65	\$ 0.48	\$ 0.28
Shares used in computing basic net income per share	7,801,212	4,810,472	3,267,141
Shares used in computing diluted net income per share	8,174,994	6,641,805	5,734,637

See accompanying notes to financial statements.

VIASAT, INC.  
STATEMENT OF CASH FLOWS

	YEAR ENDED MARCH 31,		
	1998	1997	1996
Cash flows from operating activities:			
Net income	\$ 5,287,000	\$ 3,172,000	\$ 1,633,000
Adjustments to reconcile net income to net cash (used in) provided by operating activities:			
Depreciation	2,182,000	1,389,000	982,000
Deferred income taxes	(811,000)	(721,000)	(350,000)
Increase (decrease) in cash resulting from changes in:			
Accounts receivable	(8,741,000)	(4,144,000)	(1,871,000)
Inventory	(209,000)	(3,255,000)	(1,019,000)
Other assets	1,078,000	(1,620,000)	(186,000)
Accounts payable	(289,000)	2,070,000	1,294,000
Accrued liabilities	1,318,000	1,612,000	(512,000)
Other liabilities	58,000	275,000	485,000
Net cash (used in) provided by operating activities	(127,000)	(1,222,000)	456,000
Cash flows from investing activities:			
Purchases of short-term investments	(5,918,000)	--	--
Purchases of property and equipment	(4,083,000)	(3,685,000)	(1,875,000)
Net cash used in investing activities	(10,001,000)	(3,685,000)	(1,875,000)
Cash flows from financing activities:			
Proceeds from short-term bank borrowings	--	2,600,000	1,400,000
Repayment of short-term bank borrowings	--	(2,600,000)	(1,400,000)
Proceeds from issuance of notes payable	1,448,000	889,000	2,778,000
Repayment of notes payable	(1,407,000)	(836,000)	(1,964,000)
Proceeds from issuance of common stock	704,000	15,230,000	171,000
Net cash provided by financing activities	745,000	15,283,000	985,000
Net (decrease) increase in cash and cash equivalents	(9,383,000)	10,376,000	(434,000)
Cash and cash equivalents at beginning of year	12,673,000	2,297,000	2,731,000
Cash and cash equivalents at end of year	\$ 3,290,000	\$ 12,673,000	\$ 2,297,000
Supplemental information:			
Cash paid for interest	\$ 211,000	\$ 254,000	\$ 260,000
Cash paid for income taxes	\$ 3,857,000	\$ 2,293,000	\$ 468,000

See accompanying notes to financial statements.

## VIASAT, INC.

## STATEMENT OF STOCKHOLDERS' EQUITY

	PREFERRED STOCK		COMMON STOCK		PAID IN CAPITAL	STOCKHOLDERS' NOTES RECEIVABLE	RETAINED EARNINGS
	NUMBER OF SHARES	AMOUNT	NUMBER OF SHARES	AMOUNT			
Balance at March 31, 1995	3,225,000	\$ 32,000	3,207,339	\$ 44,000	\$ 568,000		\$ 2,769,000
Issuance of common stock			134,762	2,000	169,000		
Net income							1,633,000
Balance at March 31, 1996	3,225,000	32,000	3,342,101	46,000	737,000		4,402,000
Issuance of common stock			2,034,635	3,000	15,307,000		
Conversion of preferred stock to common stock	(3,225,000)	\$ (32,000)	2,365,538	32,000			
Shares subscribed						\$ (80,000)	
Net income							3,172,000
Balance at March 31, 1997			7,742,274	81,000	16,044,000	(80,000)	7,574,000
Exercise of stock options			126,273		149,000		
Issuance for Employee Stock Purchase Plan			52,092		475,000		
Payment for shares subscribed						\$ 80,000	
Net income							5,287,000
Balance at March 31, 1998			7,920,639	\$ 81,000	\$ 16,668,000		\$12,861,000

See accompanying notes to financial statements.

## VIASAT, INC.

## NOTES TO FINANCIAL STATEMENTS

## NOTE 1 - THE COMPANY AND A SUMMARY OF ITS SIGNIFICANT ACCOUNTING POLICIES

## The Company

ViaSat, Inc. (the "Company") designs, produces and markets advanced digital satellite telecommunications and wireless signal processing equipment.

## Management Estimates and Assumptions

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Estimates have been prepared on the basis of the most current and best available information and actual results could differ from those estimates.

## Cash Equivalents

Cash equivalents consist of highly liquid investments with original maturities of 90 days or less.

## Investments

At March 31, 1998, the Company held investments in investment grade debt securities with various maturities. Management determines the appropriate classification of its investments in debt securities at the time of purchase and reevaluates such designation as of each balance sheet date. The Company's total investments in these securities as of March 31, 1998 and 1997 totaled \$9,176,000 and \$8,979,000, respectively. The Company has included \$3,258,000 and \$8,979,000 of these securities in cash and cash equivalents, as of March 31, 1998 and 1997, respectively, as they have maturities of less than 90 days. The remaining \$5,918,000 as of March 31, 1998 has been classified as short-term investments. The Company has designated all of its investments as held to maturity.

## Revenue Recognition

The majority of the Company's revenues are derived from services performed for the United States Government and its prime contractors under a variety of contracts including cost-plus-fixed fee, fixed-price, and time and materials contracts. Such sales amounted to \$58,249,000, \$46,292,000, and \$28,305,000 for the years ended March 31, 1998, 1997 and 1996, respectively. Included in these revenues are sales to a significant customer under various subcontracts totaling \$8,964,000, \$12,830,000 and \$5,269,000 during the years ended March 31, 1998, 1997 and 1996, respectively. The Company's five largest contracts (by revenues) generated approximately 65%, 58% and 37% of the Company's total revenues for the fiscal year ended March 31, 1998, 1997 and 1996, respectively.

Generally, revenues are recognized as services are performed using the percentage of completion method, measured primarily by costs incurred to date compared with total estimated costs at completion or based on the number of units delivered. The Company provides for anticipated losses on contracts by a charge to income during the period in which they are first identified.

Contract costs, including indirect costs, are subject to audit and negotiations with Government representatives. These audits have been completed and agreed upon through fiscal year 1995. Contract revenues and accounts receivable are stated at amounts which are expected to be realized upon final settlement.

#### Unbilled Accounts Receivable

Unbilled receivables consist of costs and fees earned and billable on contract completion or other specified events. The majority of unbilled receivables is expected to be collected within one year.

#### Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash equivalents, short-term investments, and trade accounts receivable which are generally not collateralized. The Company limits its exposure to credit loss by placing its cash equivalents and short-term investments with high credit quality financial institutions which invest in high quality short-term debt instruments. Concentrations of credit risk with respect to receivables are generally limited because the Company's principal customers are various agencies of the United States Government and its prime contractors.

#### Inventory

Inventories are valued at the lower of cost or market, cost being determined by the first-in, first-out method.

#### Software Costs

Software product development costs incurred from the time technological feasibility is reached until the product is available for general release to customers are capitalized and reported at the lower of cost or net realizable value. Through March 31, 1998, no significant amounts were expended subsequent to reaching technological feasibility.

#### Property and Equipment

Equipment, computers, and furniture and fixtures are recorded at cost, and depreciated over estimated useful lives of 3 to 7 years under the straight-line method. Additions to property and equipment together with major renewals and betterments are capitalized. Maintenance, repairs and minor renewals and betterments are charged to expense. When assets are sold or otherwise disposed of, the cost and related accumulated depreciation or amortization are removed from the accounts and any resulting gain or loss is recognized.

#### Long-lived Assets

The Company assesses potential impairments to its long-lived assets when there is evidence that events or changes in circumstances have made recovery of the asset's carrying value unlikely. An impairment loss would be recognized when the sum of the expected future undiscounted net cash flows is less than the carrying amount of the asset. No such impairment losses have been identified by the Company.

#### Warranty Reserves

The Company provides limited warranties on certain of its products for periods of up to three years. The Company recognizes warranty reserves when products are shipped based upon an estimate of total warranty costs, with amounts expected to be incurred within twelve months classified as a current liability.

#### Income Taxes

Current income tax expense is the amount of income taxes expected to be payable for the current year. A deferred income tax asset or liability is established for the expected future tax consequences resulting from differences in the financial reporting and tax bases of assets and liabilities. Deferred income tax expense (benefit) is the net change during the year in the deferred income tax asset or liability.

### Stock Based Compensation

The Company measures compensation expense for its stock-based employee compensation plans using the intrinsic value method and provides pro forma disclosures of net income and earnings per share as if the fair value method had been applied in measuring compensation expense (Note 8).

### Earnings Per Share

In February 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards (SFAS) No. 128, "Earnings Per Share", which establishes new standards for computing earnings per share. Under the new requirements, historically reported "primary" and "fully diluted" earnings per share have been replaced with "basic" and "diluted" earnings per share. Basic earnings per share is computed based upon the weighted average number of common shares outstanding during the period. Diluted earnings per share is based upon the weighted average number of common shares outstanding and dilutive common stock equivalents during the period. Common stock equivalents include options granted under the Company's stock option plans which are included in the earnings per share calculations using the treasury stock method and common shares expected to be issued under the Company's employee stock purchase plan. All earnings per share data reported in prior years has been restated in accordance with SFAS No. 128.

### Fair Value of Financial Instruments

At March 31, 1998, the carrying amounts of the Company's financial instruments, including cash equivalents, short-term investments, trade receivables and accounts payable, approximated their fair values due to their short-term maturities. At March 31, 1998, the estimated fair value of the Company's long-term debt approximated its carrying value, as a majority of the related borrowing rates are variable.

### Recapitalization

In November 1996, the Company filed an Amended and Restated Certificate of Incorporation to effect a .7335 for 1 reverse stock split of all outstanding shares of common stock and stock options. All shares and per share data in the accompanying financial statements have been adjusted retroactively to give effect to the reverse stock split. The Amended and Restated Certificate of Incorporation increases the authorized stock of the Company such that the Company is authorized to issue 5,000,000 shares of \$0.0001 par value preferred stock, and 25,000,000 shares of \$0.0001 par value common stock. Concurrently, the conversion ratio of the Company's preferred stock was changed to .7335 for 1.

### NOTE 2 - COMPLETION OF INITIAL PUBLIC OFFERING

On December 3, 1996, the Company completed its initial public offering for the sale of 2,400,000 shares of common stock (of which 1,850,000 shares were sold by the Company and 550,000 shares were sold by certain stockholders) at a price to the public of \$9 per share, which resulted in net proceeds to the Company of \$15,485,000 after payment of the underwriters' commissions but before deduction of offering expenses.

## NOTE 3 - COMPOSITION OF CERTAIN BALANCE SHEET CAPTIONS

	MARCH 31,	
	1998	1997
Cash and cash equivalents:		
Investments in debt securities	\$ 3,258,000	\$ 8,979,000
Certificates of deposit	--	1,500,000
Cash	32,000	2,194,000
	-----	-----
	\$ 3,290,000	\$ 12,673,000
	=====	=====
Accounts receivable:		
Billed	\$ 12,077,000	\$ 6,860,000
Unbilled, less progress payments of \$3,092,000 and \$7,399,000 at March 31, 1998 and 1997, respectively	6,979,000	3,455,000
	-----	-----
	\$ 19,056,000	\$ 10,315,000
	=====	=====
Inventory:		
Raw materials	\$ 1,564,000	\$ 1,418,000
Work in process	2,372,000	2,662,000
Finished goods	751,000	398,000
	-----	-----
	\$ 4,687,000	\$ 4,478,000
	=====	=====
Property and equipment:		
Machinery and equipment	\$ 8,224,000	\$ 5,320,000
Computer equipment	4,108,000	3,012,000
Furniture and fixtures	339,000	256,000
	-----	-----
	12,671,000	8,588,000
Less accumulated depreciation	(5,685,000)	(3,503,000)
	-----	-----
	\$ 6,986,000	\$ 5,085,000
	=====	=====
Accrued liabilities:		
Current portion of warranty reserve	\$ 1,279,000	\$ 806,000
Accrued vacation	974,000	821,000
Collections in excess of revenues	930,000	355,000
Accrued 401(k) matching contribution	671,000	553,000
Accrued bonus	500,000	762,000
Income taxes payable	309,000	252,000
Other	424,000	220,000
	-----	-----
	\$ 5,087,000	\$ 3,769,000
	=====	=====

## NOTE 4 - SHORT-TERM BANK BORROWINGS

The Company has a \$6,000,000 line of credit with a bank which allows it to borrow the greater of \$2,000,000 or 80% of eligible accounts receivable plus 50% of the Company's eligible inventory. At the Company's option, interest accrues either at the bank's prime rate (8.5% at March 31, 1998) or at the bank's LIBOR rate plus 1.75% (7.44% at March 31, 1998). There were no borrowings outstanding as of March 31, 1998 and 1997. The Company is required to pay a fee equal to 0.09% of the unused portion of the line of credit on a quarterly basis. The credit agreement includes covenants which, among other things, require the Company to maintain stated net worth amounts plus specific liquidity and long-term solvency ratios as well as a minimum net income level. The line of credit expires on September 15, 1998. Amounts borrowed are secured by substantially all of the Company's assets.

## NOTE 5 - NOTES PAYABLE

	MARCH 31,	
	----- 1998 -----	----- 1997 -----
Bank installment loans, with various maturity dates through September 2001, total monthly payments of \$89,000 with interest rates ranging between 8% and 12%, collateralized by equipment	\$ 2,485,000	\$ 2,232,000
Finance company installment loans, with various maturity dates through April 1999, total monthly payments of \$20,000 with interest rates ranging between 10.23% and 11.81%, collateralized by equipment	119,000	331,000
	-----	-----
	2,604,000	2,563,000
Less current portion	(1,060,000)	(1,135,000)
	-----	-----
	\$ 1,544,000	\$ 1,428,000
	=====	=====

Principal maturities of notes payable as of March 31, 1998 are summarized as follows:

YEAR ENDING MARCH 31,	
-----	
1999	1,060,000
2000	873,000
2001	517,000
2002	154,000
	-----
	\$ 2,604,000
	=====

## NOTE 6 - COMMON STOCK AND OPTIONS

In July 1993, the Company adopted the 1993 Stock Option Plan (the "Plan") which authorizes 733,500 shares to be granted no later than July 2003. The Plan provides for the grant of both incentive stock options and non-qualified stock options which are subject to a three year vesting period. The exercise prices of the options represent the estimated fair value of the Company's common stock as determined by the Company's Board of Directors. In November 1996, the Plan was terminated and replaced by the 1996 Equity Participation Plan. No options have been issued under the Plan since July 1996.

In November 1996, the Company adopted the ViaSat, Inc. 1996 Equity Participation Plan (the "1996 Equity Participation Plan") designed to update and replace the 1993 Stock Option Plan. The 1996 Equity Participation Plan provides for the grant to executive officers, other key employees, consultants and non-employee directors of the Company a broad variety of stock-based compensation alternatives such as nonqualified stock options, incentive stock options, restricted stock and performance awards. A maximum of 750,000 shares are reserved for issuance under the 1996 Equity Participation Plan. As of March 31, 1998, the Company has granted 438,000 options to purchase shares of common stock under this plan with vesting terms of 3 to 5 years.

In November 1996, the Company adopted the ViaSat, Inc. Employee Stock Purchase Plan (the "Employee Stock Purchase Plan") to assist employees in acquiring a stock ownership interest in the Company and to encourage them to remain in the employment of the Company. The Employee Stock Purchase Plan is intended to qualify under Section 423 of the Internal Revenue Code. A maximum of 250,000 shares of common stock are reserved for issuance under the Employee Stock Purchase Plan. The Employee Stock Purchase Plan permits eligible employees to purchase common stock at a discount through payroll deductions during specified six-month offering periods. No employee may purchase more than \$25,000 worth of stock in any calendar year. The price of shares purchased under the Employee Stock Purchase Plan is equal to 85% of the fair market value of the common stock on the first or last day of the offering period, whichever is lower. As of March 31, 1998, the Company has issued 52,092 shares of common stock under this plan.



Transactions under the Company's stock option plans are summarized as follows:

	NUMBER OF SHARES -----	EXERCISE PRICE PER SHARE -----
Outstanding at March 31, 1995	190,416	\$.34- .82
Options granted	128,033	1.36
Options canceled	(147)	.82
Options exercised	(8,215)	.34- .82
	-----	
Outstanding at March 31, 1996	310,087	.34-1.36
Options granted	295,673	4.09-10.75
Options canceled	(5,284)	.82-4.09
Options exercised	(73,458)	.34-1.36
	-----	
Outstanding at March 31, 1997	527,018	.34-10.75
Options granted	269,450	12.25- 19.81
Options canceled	(13,511)	.48- 12.75
Options exercised	(126,273)	.34-4.09
	-----	
Outstanding at March 31, 1998	656,684	\$.34-19.81
	=====	

The Company also granted certain officers and employees the opportunity to purchase at fair value 118,607 and 124,805 shares of the Company's common stock in fiscal 1997 and 1996, respectively.

The following table summarizes all options outstanding and exercisable by price range as of March 31, 1998:

RANGE OF EXERCISE PRICES -----	NUMBER OUTSTANDING -----	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE-YEARS -----	WEIGHTED AVERAGE EXERCISE PRICE -----	NUMBER EXERCISABLE -----	WEIGHTED AVERAGE EXERCISE PRICE -----
\$ 0.34-1.50	119,812	1.99	\$ 1.13	74,242	\$ 1.07
4.09-4.50	98,031	3.25	4.17	25,936	4.19
9.00-12.75	355,341	9.01	11.31	40,002	9.77
14.03-15.31	54,500	9.37	14.42	--	--
17.13-19.81	29,000	9.50	17.89	--	--
	-----			-----	
\$ 0.34-19.81	656,684	6.92	\$ 8.93	140,180	\$ 4.13
	=====			=====	

NOTE 7 - SHARES USED IN EARNINGS PER SHARE CALCULATIONS

	YEAR ENDED MARCH 31,		
	1998	1997	1996
	-----	-----	-----
Weighted average common shares outstanding used in calculating basic net income per share	7,801,212	4,810,472	3,267,141
Weighted average options to purchase common stock as determined by application of the treasury stock method	360,118	226,840	101,958
Incremental shares for assumed conversion of convertible preferred stock	--	1,600,788	2,365,538
Employee Stock Purchase Plan equivalents	13,664	3,705	--
	-----	-----	-----
Shares used in computing diluted net income per share	8,174,994	6,641,805	5,734,637
	=====	=====	=====

All outstanding shares of the Company's preferred stock automatically converted into shares of common stock upon the closing of the Company's initial public offering on December 3, 1996. Shares used in computing diluted net income per share for 1997 and 1996 assume the conversion of all outstanding shares of the convertible preferred stock at the beginning of those years.

NOTE 8 - PRO FORMA EARNINGS PER SHARE

The Company has elected to follow APB Opinion No. 25, "Accounting for Stock Issued to Employees," to account for its employee stock options because, as discussed below, the alternative fair value based accounting provided for under SFAS No. 123 "Accounting for Stock-Based Compensation," requires the use of option valuation models that were not developed for use in valuing employee stock options. These valuation models were developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions, including the expected stock price volatility. Under APB No. 25, when the exercise price of the Company's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized in the Company's financial statements.

As the Company continues to follow APB Opinion No. 25 it presents pro forma information regarding net income and earnings per share as if the Company had accounted for its employee stock options and shares issued under the Employee Stock Purchase Plan (hereafter referred to as "options") granted subsequent to March 31, 1995 using the fair value methodology.

The fair values of options granted during the years ended as reported below were estimated at the date of grant using a Black-Scholes option pricing model with the following weighted average assumptions:

	EMPLOYEE STOCK OPTIONS			EMPLOYEE STOCK PURCHASE PLAN	
	1998	1997	1996	1998	1997
Expected life (in years)	3.50 - 5.50	3.50 - 5.00	3.50	0.50	0.50
Risk-free interest rate	5.65 - 5.68%	6.45%	5.93%	5.54%	5.97%
Expected volatility	50.00%	50.00%	50.00%	50.00%	50.00%
Expected dividend yield	0.00%	0.00%	0.00%	0.00%	0.00%

The weighted average estimated fair value of employee stock options granted during 1998, 1997 and 1996 was \$6.30, \$3.55 and \$0.57 per share, respectively. The weighted average estimated fair value of shares granted under the Employee Stock Purchase Plan during 1998 and 1997 was \$4.00 and \$2.78 per share, respectively.

For purposes of pro forma disclosures, the estimated fair value of options is amortized to expense over the vesting period. Because SFAS No. 123 is applicable only to options granted subsequent to March 31, 1995, the pro forma effect will not be fully reflected until the options granted in fiscal 1996 are fully vested in fiscal 2000. The Company's pro forma information for the years ended March 31, 1998, 1997 and 1996 are as follows:

	1998	1997	1996
Net income as reported	\$ 5,287,000	\$3,172,000	\$ 1,633,000
Pro forma net income	4,489,000	3,016,000	1,615,000
Pro forma basic earnings per share	0.58	0.63	0.49
Pro forma diluted earnings per share	0.56	0.46	0.28

## NOTE 9 - INCOME TAXES

The provision (benefit) for income taxes includes the following:

	YEAR ENDED MARCH 31,		
	1998	1997	1996
Current tax provision			
Federal	\$ 3,200,000	\$ 1,954,000	\$ 344,000
State	715,000	469,000	9,000
	3,915,000	2,423,000	353,000
Deferred tax provision:			
Federal	(683,000)	(563,000)	(310,000)
State	(128,000)	(158,000)	(93,000)
	(811,000)	(721,000)	(403,000)
Total provision (benefit) for income taxes	\$ 3,104,000	\$ 1,702,000	\$ (50,000)

Significant components of the Company's deferred tax assets and liabilities are as follows:

	MARCH 31,	
	1998	1997
Deferred tax assets:		
Warranty reserve	\$ 738,000	\$ 528,000
Inventory reserve	383,000	280,000
Accrued vacation	328,000	247,000
State income taxes	243,000	58,000
Other	377,000	145,000
Total deferred tax assets	\$2,069,000	\$1,258,000

A reconciliation of the provision for income taxes to the amount computed by applying the statutory federal income tax rate to income before income taxes is as follows:

	YEAR ENDED MARCH 31,		
	1998	1997	1996
Tax expense at statutory rate	\$ 2,853,000	\$ 1,657,000	\$ 538,000
State tax provision (benefit), net of federal benefit	388,000	205,000	(60,000)
Research tax credit	(179,000)	(181,000)	(480,000)
Other	42,000	21,000	(48,000)
	\$ 3,104,000	\$ 1,702,000	\$ (50,000)

The Company's income tax benefit for the fiscal year ended March 31, 1996 was primarily attributable to the utilization of research and development credits generated in the period and the impact of a favorable United States Federal judicial decision which clarified the tax law related to the utilization of research and development credits generated from the Company's funded research and development.

## NOTE 10 - EMPLOYEE BENEFITS

The Company has a voluntary deferred compensation plan under Section 401(k) of the Internal Revenue Code. The Company may make discretionary contributions to the plan which vest equally over six years. Employees who have completed 90 days of service and are at least 21 years of age are eligible to participate in the plan. Participants are entitled, upon termination or retirement, to their vested portion of the plan assets which are held by an independent trustee. Discretionary contributions accrued by the Company



during fiscal years 1998, 1997 and 1996 amounted to \$671,000, \$553,000 and \$444,000, respectively. The cost of administering the plan is not significant.

NOTE 11 - COMMITMENTS

The Company leases office facilities under noncancelable operating leases with initial terms ranging from one to five years which expire between December 1998 and July 1999. Certain of the Company's facilities leases contain option provisions which allow for extension of the lease terms. Rent expense was \$1,079,000, \$793,000 and \$608,000 in fiscal years 1998, 1997 and 1996, respectively.

Future minimum lease payments are as follows:

YEAR ENDING MARCH 31,	
1999	\$ 1,041,000
2000	177,000
	-----
	\$ 1,218,000
	=====

NOTE 12 - CONTINGENCIES

The Company is currently a party to various government and commercial contracts which require the Company to meet performance covenants and project milestones. Under the terms of these contracts, failure by the Company to meet such performance covenants and milestones permit the other party to terminate the contract and, under certain circumstances, recover liquidated damages or other penalties. The Company is currently not in compliance (or in the past was not in compliance) with the performance or milestone requirements of certain of these contracts. Historically, the Company's customers have not elected to terminate such contracts or seek liquidated damages from the Company and management does not believe that its existing customers will do so; therefore, the Company has not accrued for any potential liquidated damages or penalties.

NOTE 13 - SUBSEQUENT EVENT

In April 1998, the Company entered into a long-term agreement to lease a facility in Carlsbad, California which will house the Company's entire California based operations. The facility is expected to be completed in September 1999. The term of the lease is 10 years with two three-year option periods. The initial minimum lease payments are \$2,300,000 per year.

## OFFICE BUILDING LEASE

This Office Building Lease ("Lease") is made November 11, 1997 between The Campus, LLC, a California Limited Liability Company, ("Landlord") and Viasat, Inc., a California corporation, ("Tenant").

## 1. DEFINITIONS.

As used in this Lease, the following items shall have the following meanings:

- 1.1. Annual Base Rent. One Hundred Twenty Thousand Two Hundred Sixty Four and 40/100 Dollars (\$120,264.40), computed at the rate of \$19.80 per rentable square foot per year (Subject to adjustment in Addendum, Paragraph 41).
- 1.2. Base Year. The Base Year for this Lease is the 1997 calendar year.
- 1.3. Building. The two (2) story office building within which the Premises is located known as The Campus Office Building, located at 5962 La Place Court, Carlsbad, California and consisting of approximately 45,173 rentable square feet.
- 1.4. Commencement Date.
 

Suite 225 ("Original Premises"):	December 1, 1997.
Suite 260 ("First Expansion Premises"):	The date that the existing tenant vacates Suite 260, which will not be later than January 12, 1998.
Suite 230 ("Second Expansion Premises"):	March 1, 1998.
- 1.5. Common Areas. All areas within the Project which now or at any time hereafter are available for the common use of tenants and which are not leased or held for the exclusive use of any such tenants, including, but not limited to, building lobbies, building conference rooms, common corridors and hallways, restrooms and shower rooms (other than those for full floor tenants), parking and landscaped areas, swimming pools, picnic areas, sidewalks, stairways, elevators, and other generally understood public or common areas. Landlord may, from time to time, change the size, location, nature and use of the common areas, so long as such changes do not materially affect Tenant's use of the Premises.
- 1.6. Comparison Year. Comparison Year is defined as each calendar year during the Lease Term subsequent to the Base Year.
- 1.7. Expiration Date. May 31, 1999.
- 1.8. Consumer Price Index. United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside Metropolitan Area, Subgroup "All Items" (1982-84=100).
- 1.9. Landlord's Mailing Address for Notice. The Campus, LLC, c/o Newport National Corporation; Attn.: Jeffry A. Brusseau, 5050 Avenida Encinas, Suite 356, Carlsbad, California 92008.
- 1.10. Lease Term. The term of this Lease shall be for One (1) year and Six (6) months.
- 1.11. Tenant's Mailing Address for Notice. 2290 Cosmos Court, Carlsbad, CA 92009-1585, Attention: Greg Monahan.
- 1.12. Monthly Installments of Annual Base Rent. Three Thousand Seven Hundred Forty Eight and 00/100 Dollars (\$3,748.00). (Subject to adjustment in Addendum Paragraph 41).
- 1.13. Premises. The cross-hatched area shown on the attached floor plans (Exhibits "B" through "B-3") consisting of the approximate 2,272 rentable square feet comprising Suite 225 ("Original Premises"), the approximate 2,724 rentable square feet comprising Suite 260 ("First Expansion Premises"), and the approximate 1,740 rentable square feet comprising Suite 230 ("Second Expansion Premises"), for a total of approximately 6,736 rentable square feet ("Premises'), located on the second floor of the Building.
- 1.14. Project. The real property upon which the Building is located as more particularly described in Exhibit "A" attached hereto, together with all easements and appurtenances pertaining thereto, improvements, fixtures, and equipment used in the general operation of such improvements. The Project contains a total Rentable Area of approximately 157,886 rentable square feet.

- 1.15. Security Deposit. Ten Thousand Six Hundred Seventy Nine and 40/100 Dollars (\$10,679.40).
- 1.16. Tenant's Building Proportionate Share. 14.91%. Such share is a fraction, the numerator of which is the rentable square footage of the Premises, and the denominator of which is the rentable square footage of the Building.
- 1.17. Tenant's Project Proportionate Share. 4.27%. Such share is a fraction, the numerator of which is the rentable square footage of the Premises, and the denominator of which is the rentable square footage of the Project.

## 2. LEASE OF PREMISES.

- 2.1. Lease of Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises described in Section 1.13 above. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants and invitees, to use of the Common Areas (as defined in Section 1.5), subject to such rules and regulations as Landlord may establish from time to time.
- 2.2. Delivery of Possession. If Landlord, for any reason, cannot deliver possession of the Premises to Tenant on or before the Commencement Date (as defined in Section 1.4), all other terms and conditions of this Lease shall remain in full force and effect, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from such delay.

## 3. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are attached hereto and incorporated by reference in this Lease:

Exhibit A: Site Plan of the Project

Exhibit B: Premises

Exhibit C: Tenant Improvements

Exhibit D: Rules and Regulations

Exhibit E: Parking Rules and Regulations

Exhibit E-1: Pool and Spa Rules and Regulations

Exhibit F: Sign Criteria

Exhibit F-1: Sign Dimensions

Exhibit G: [Deleted]

Exhibit H: Standard Hazardous Materials Addendum to Office Building Lease

Addenda

## 4. TERM.

- 4.1. Term. The term of this lease shall begin as of the Commencement Date as defined in Sections 1.4 and 2.2 shall continue thereafter during the Lease Term as specified in Section 1.10 unless sooner terminated as hereinafter provided in this Lease.

## 5. PARKING.

During the Lease Term and in connection with its use and occupancy of the Premises, Tenant shall have the right to lease on a non-reserved or allocated basis Twenty Four (24) parking spaces in the designated parking areas in the Project. All such spaces shall be available at the same rates as established from time to time by Landlord for other spaces in the same location. The use by Tenant, its employees and invitees, of the parking facilities of the Project shall be on the terms and conditions set forth in Exhibit "E" attached hereto and as may be established by Landlord from time to time during the Lease Term. (See also Addendum Paragraph 50.)

The parking authorized by this Section shall be for the personal transportation of Tenant and its employees only, to and from the Building, and is not for Tenant's invitees and guests. Tenant's invitees and guests may use parking spaces in the Building garage or parking lot which are not allocated or reserved for Tenant or other occupants of the Building on a first-come first-served basis, at the then current parking rates charged by Landlord. The parking spaces allocated to Tenant are not for long-term (i.e., more than 24 hours) storage of automobiles or for short-term or long-term storage of boats, trailers, recreational vehicles, motorcycles or other vehicles or equipment. Landlord shall have the right to designate where parking spaces allocated to Tenant shall be located and may reserve certain spaces from Tenant's use as, in Landlord's sole discretion, Landlord may determine.

## 6. RENT.

- 6.1. Payment of Annual Base Rent. Tenant agrees to pay the Annual Base Rent for the Premises (as specified in Section 1.1) in twelve (12) equal monthly installments (as specified in Section 1.12) payable in advance, on the first day of each calendar month of the Lease Term, without prior notice, offset, demand or deduction, commencing on the Commencement Date. If the Lease Term begins or ends on other than the first or last day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis.



6.2. Annual Base Rent Adjustment. (See also Addendum Paragraph 41.)

The amount of Annual Base Rent (and the corresponding Monthly installments of Base Rent) payable hereunder shall be adjusted according to the schedule in Addendum Paragraph 41.

6.3. Project Operating Costs. Tenant shall pay to Landlord as additional Rent during the Lease Term hereof, in addition to the Annual Base Rent (i) Tenant's Project Proportionate Share of the amount by which all Project Operating Costs (as hereinafter defined) for each Comparison Year (as defined in Section 1.6) exceed the amount of all Project Operating Costs for the Base Year (as defined in Section 1.2), such excess being hereinafter referred to as the "Project Operating Costs Increase," and (ii) Tenant's Building Proportionate Share of the amount by which Project Operating Costs specifically allocated to the Building for each Comparison Year exceed the amount of Project Operating Costs specifically allocated to the Building for the Base Year, such excess being hereinafter referred to as the "Building Operating Costs Increase." The Project Operating Costs Increase and Building Operating Costs Increase are sometimes referred to collectively as the "Operating Costs Increase."

- a. The term "Project Operating Costs" shall include, but not be limited to, the sum of all those operating costs and expenses incurred by Landlord in maintaining, repairing, managing and operating the Project, including without limitation the following: (1) electricity, gas, and other utilities (except those separately metered to tenants); (2) supplies and tools; (3) water and sewer charges and other similar governmental or quasi-governmental charges attributable to the Project or its operations; (4) services of independent contractors including trash removal, janitorial and all other cleaning services, refurbishing and repainting, air conditioning, heating and elevator service, pest control, resurfacing, lighting systems, fire detection and security services, landscape maintenance, road, sidewalk and driveway maintenance; (5) compensation (including employment, employer tax liabilities; and fringe benefits) of all persons who perform on-site duties connected with the operation, maintenance, repair or overhaul of the Project and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for substantially all Project tenants); (6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Project, if required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); (7) any charges under any declarations of covenants, conditions and restrictions applicable to the Project for repair and maintenance of, property taxes with respect to, special assessments, or other charges on property controlled by the declarations; (8) management of the Project, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office); (9) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Project; (10) costs, expenditures -or charges relating to the maintenance and repair of the Common Areas, (11) amortization over its useful life of any capital improvements (including financing costs) provided such improvements are (i) required by a governmental or quasigovernmental entity or any change in laws, rules, or regulations of any governmental authority, or (ii) made by Landlord to reduce Project Operating Costs; and which actually do reduce Project Operating Costs; and (12) any other operating costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project.
- b. As soon as possible after the beginning' of each calendar year, Landlord shall give to Tenant a statement of the amount of the Operating Costs Increase and any other additional rent payable by Tenant hereunder for the previous year, all of which shall be due and payable upon receipt of the statement. In addition, for each year after the Base Year, or portion thereof, Tenant shall pay Tenant's Project Proportionate Share and Tenant's Building Proportionate Share of Landlord's good faith estimate of the Operating Costs Increase for the following year. This estimated amount shall be divided into twelve equal monthly installments. Tenant shall pay to Landlord, concurrently with the regular monthly

rent payment next due following the receipt of such statement, an amount equal to one monthly installment multiplied by the number of months from January in the calendar year in which said statement is submitted to the month of such payment, both months inclusive. Subsequent installments shall be payable concurrently with the regular monthly rent payments for the balance of that calendar year and shall continue until the next calendar year's statement is rendered.. If; in any calendar year, the actual amount of the Operating Costs Increase Tenant owes is less than the estimate for that year, then upon receipt of Landlord's statement, any overpayment made by Tenant shall be credited towards all payments thereafter due under this Article 6.3, and the estimated monthly installments of Tenant's share of Operating Costs Increase shall be adjusted to reflect such lower Project Operating Costs for the most recent year. If the actual amount of the Operating Costs Increase Tenant owes is more than the estimate for that year, Tenant shall immediately pay any such increase to Landlord.

- c. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of the amount Tenant owes under this Section for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated expenses paid and, conversely, provided Tenant is not in default under this Lease, any overpayment made in the event said expenses decrease shall be rebated by Landlord to Tenant.
- d. All increases in Project Operating Costs shall be determined separately and without regard to changes or adjustments in Property Taxes or Insurance Charges for the Project.
- e. Project Operating Costs shall not include (i) costs incurred because the Landlord or another tenant violated the terms of any lease; (ii) interest on debt or amortization payments on mortgages or deeds of trust or any other debt for borrowed money; (iii) advertising, promotional and public relations expenditures; (iv) repairs or other work needed because of fire, windstorm, or other

casualty or cause insured against by Landlord or to the extent Landlord's insurance required under Section 38 would have provided insurance, whichever is greater coverage, except that the cost of the deductible for said insurance shall be included in the project operating costs; (v) any costs, fines, or penalties incurred because Landlord violated any law, governmental rule or authority; (vi) costs incurred to test, survey, cleanup, contain, abate, remove, or otherwise remove hazardous waste or asbestos containing materials from the Property unless the waste or asbestos containing materials were in or on the Property because of tenant's negligence or intentional acts; and (vii) other expenses that under generally accepted accounting principles consistently applied would not be considered normal maintenance, repair, management, or operation expenses.

- 6.4. Property Taxes. Tenant agrees to pay to Landlord, as additional rent, Tenant's Project Proportionate Share of the amount by which all taxes, assessments and other similar governmental charges levied on or attributable to the Project or its operation for each Comparison Year exceed the amount of all Property Taxes for the Base Year, including without limitation, (1) real property taxes or assessments levied or assessed against the Project, (2) assessments or charges levied or assessed against the Project by any redevelopment agency, and (3) any tax measured by gross rental received from the leasing of the Project, excluding any net income, franchise, capital stock estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments, such taxes, assessments and charges being hereinafter referred to as "Property Taxes". If at any time during the Lease Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this Lease or on the rent received under any other leases of space in the Building or Project, or (2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or part, upon such rent, or (3) any transfer, transaction, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Property Taxes. Tenant shall pay the amount of Property Taxes owed by Tenant in accordance with the requirements of Section 6.3 of this Lease. All increases in Property Taxes for each year of this Lease shall be determined separately and without regard to changes or adjustments in Project Operating Costs or Insurance Charges for the Project.
- 6.5. Insurance Charges. Tenant agrees to pay to Landlord, as additional rent, Tenant's Project Proportionate Share of the amount by which all premiums for insurance for each Comparison Year exceed the amount of Premiums for the Base Year including, without limitation, public liability, property damage, loss of rents, earthquake and fire and extended coverage insurance for the full replacement value of the Project as required by Landlord or its lenders for the Project. Tenant shall pay the amount of Premiums owed by Tenant in accordance with the requirements of Section 6.3 of this Lease. All increases in Premiums for each year of this Lease shall be determined separately and without regard to changes or adjustments in Project Operating Costs or Property Taxes for the Project.
- 6.6. Definition of Rent. All costs and expenses which tenant assumes or agrees to pay to Landlord under this Lease shall be deemed additional rent (which, together with the Annual Base Rent is sometimes referred to as the "Rent"). The Rent shall be paid to the Landlord (or other person that Landlord may designate), and at such place as Landlord may from time to time designate in writing, without any prior notice or demand therefor and without deduction or offset, in lawful money of the United States of America.
- 6.7. Taxes Payable by Tenant. In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease pursuant to Section 6.4 hereof, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (i) the costs or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the

cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than Tenant Improvements made by Landlord, regardless of whether title to such improvements is held by Tenant or Landlord; (ii) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts, tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (iii) the possession, leasing, operation, management, maintenance or alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, or (iv) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

- 6.8. Audit. Landlord shall retain its records regarding Common Area Maintenance Charges for a period of at least one (1) year following the final billing for the calendar year in question. At any time during such one (1) year period, upon reasonable advance written notice to Landlord, but not more frequently than once in any calendar year, Tenant shall have the right to audit all of Landlord's or Landlord's agent's records pertaining to Common Area Maintenance Charges by a representative of Tenant's choice. If such audit reveals that Landlord's annual statement was incorrect, any over-billing discovered in the course of such audit shall be refunded to Tenant within thirty (30) days of Landlord's receipt of a copy of the audit, unless Landlord disputes the audit, and any underbilling shall be paid by Tenant to Landlord within thirty (30) days of the audit. In the event that any overbilling exceeds the amount actually due from Tenant for the year by

three percent (3%) or more, then Landlord shall reimburse Tenant for the reasonable costs of the audit. If Landlord disputes the results of Tenant's audit, Landlord and Tenant shall attempt to resolve such dispute in good faith. If Landlord and Tenant are unable to do so within thirty (30) days, then Landlord shall commission a second audit by an accounting firm selected by Landlord. The results of such second audit shall be deemed conclusive as to any such dispute. Landlord shall pay the cost of such second audit unless such second audit confirms amounts actually due from Tenant for the year are within the three percent (3%) noted above, in which event Tenant shall pay for the second audit. In any event, Tenant shall continue to pay all Rent and Excess Operating Costs, Additional Rent, as otherwise provided by this Lease until the dispute is resolved or the results of the second audit are available.

7. INTEREST AND LATE CHARGES.

If Tenant fails to pay, when due, any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest from the due date until the date paid at the prime rate then established by Bank Of America plus two percent per annum, but not to exceed the maximum rate then allowed by law. Tenant acknowledges that the late payment of any installment of Rent or other charges will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. By affixing their initials where indicated below, Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such late payment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's defaults with respect to such late payment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

8. SECURITY DEPOSIT.

Tenant agrees to deposit with Landlord a Security Deposit equal to one Monthly Installment of Annual Base Rent upon execution of this Lease as security for Tenant's faithful performance of its obligations under this Lease. Tenant may not credit the Security Deposit to any rent, or additional rent, due under the lease, including rent due during the last month of the Term of this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord, and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord, and any attempt by Tenant to do so shall be void, without full force or effect and shall not be binding upon Landlord.

If Tenant fails to pay any Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all, or any portion, of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, or for any loss or damage sustained by Landlord as a result of Tenant's default under or breach of any term of this Lease. Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten days after written demand therefor, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an event of default hereunder and Landlord shall have the right to exercise any remedy provided for at Section 28 hereof. Within thirty (30) days after the Term has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default of any of its obligations hereunder, Landlord shall return the Security Deposit or any balance thereof to Tenant, or if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. Such Security Deposit shall be returned to Tenant within thirty (30) days of Tenant's vacation of the Premises provided that the Premises is in satisfactory condition as per Paragraph 12.8 of the Lease Agreement. If any portion of the Security Deposit is retained by Landlord, Landlord shall provide Tenant with a statement setting for the amounts and reasons for retention. IF Landlord sells its interest in the Premises, Landlord may deliver this deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation to Tenant with respect to the Security Deposit.

9. TENANT'S USE OF THE PREMISES.

Tenant shall use the Premises solely for general office and assembly of components for telecommunications equipment. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Project or the certificate of occupancy

issued for the Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expenses, shall comply with all laws, ordinances, regulations, rules and/or any directives of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant of any action or proceeding against Tenant or that Tenant has violated any such law, ordinances, regulations, rules and/or directives in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Section. Tenant shall not

do or permit anything to be done in or about the Premises or Project which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises or Project to be used for any improper, immoral, or unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or Project. Tenant shall not permit animals in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises or Project.

10. SERVICES AND UTILITIES.

Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises, during normal business hours of generally recognized business days, the utilities and services described herein, including water, electricity for operating common areas during hours determined by Landlord in its sole discretion and subject to the Rules and Regulations of the Building or Project. If Tenant desires any of these services at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's charges therefore on demand. Landlord shall also keep lighted the common stairs, common entries and restroom(s) in the Project. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, (ii) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or by any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, the Building or the Project, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, the Building, or the Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such services. If Tenant uses heat generating machines or equipment in the Premises which affect the temperature otherwise maintained, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

Tenant shall not consume water in excess of that usually furnished or supplied for the use of premises as general office space (as determined by the Landlord) without first procuring the written consent of Landlord, which Landlord may refuse, and, in the event of consent, Landlord may have installed a water meter in the Premises to measure the amount of water consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the Tenant, and Tenant agrees to pay promptly as and when bills are rendered for all such water consumed as shown by said meters, at the rates charged for such services by the local public utility plus any additional expense incurred by Landlord in keeping account of the water so consumed. If a separate meter is not installed, the excess cost for such water shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense.

If Landlord has installed separate metering of electricity furnished to the Premises, the cost of maintenance and repair of such metering shall be paid by Tenant. Tenant agrees to cause all bills for its use of electricity to be sent and charged directly to Tenant and Tenant agrees to promptly pay such electrical bill as and when rendered for all such electricity consumed as shown by said metering at utility rates charged by said public utility. Tenant agrees not to connect any apparatus with electric current except through existing electrical outlets in the Premises.

Landlord shall furnish heating, ventilation, and air conditioning ("HVAC"), elevator service, lighting replacement for building standard lights, restroom supplies, window washing and janitor services in the manner that such services are customarily furnished to comparable office building in the area. Tenant at his sole cost and expense shall provide for itself all other services including telephone services chargeable to the Premises not herein supplied by Landlord.

11. CONDITION OF THE PREMISES.

Except as specified in the "Tenant Improvement Punch List" and/or "Move-In Walk Through Form," taking of possession of the Premises by Tenant shall be deemed conclusive evidence that, as of that date, the Premises were in good order and satisfactory condition. Tenant acknowledges that no promises to alter, remodel, repair or improve the Premises, the Building, or the Project and no representation, express or implied, respecting any matter relating to the Premises, the Building, or the Project or this Lease including, without limitation, the suitability of or condition of the Premises, the Building, or the Project have been made to Tenant by Landlord or its Broker or any agent, other than as may be contained herein or in a separate exhibit or addendum signed and made a part of this agreement by Landlord and Tenant.

12. CONSTRUCTION, REPAIRS AND MAINTENANCE.



12.1. Landlord's Obligations: Landlord shall maintain in good order, condition and repair the structural portions of the Project, the Building, the Common Areas, and all other portions of the Premises and the Project not the obligation of Tenant or of any other tenant in the Project, unless such maintenance and repairs are caused in part or in whole by the act, neglect,, 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 as determined by Landlord plus a reasonable percentage of mark-up to cover general conditions and fees.

12.2. Tenant's Obligations.

- a. Tenant, at Tenant's sole expense shall, except for services and utilities furnished by Landlord pursuant to Section 10 hereof, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing,

pipes and fixtures, electrical wiring, switches and fixtures, furnishings and special items and equipment installed by or at the expense of Tenant; provided, however, that Tenant may not make repairs of a capital nature without Landlord's prior written consent (at Landlord's sole discretion) nor shall Tenant be responsible for the costs of capital repairs unless such repairs are due to Tenant's use in excess of normal wear and tear or due to Tenant's negligence or intentional misconduct.

- b. Tenant shall be responsible for all repairs and alterations in and to the Premises, the Building, and the Project and the facilities and systems thereof, the need for which arises out of (I) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Section 14) in the Premises, (iii) the moving of Tenant's Property into or out of the Premises, or (iv) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.
- c. If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If, within ten (10) days thereafter, Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such work and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord plus a reasonable percentage of mark-up to cover general conditions and fees shall be paid by Tenant promptly upon demand and interest shall accrue on any unpaid portion of such amount at the prime rate then established by Bank Of America plus two percent per annum, from the date payment was due, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.
- 12.3. Compliance with Law: 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 and repair obligations as set forth herein.
- 12.4. Waiver by Tenant: 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 in good order, condition or repair. The foregoing sentence shall not be a waiver of Tenant's rights to claim Landlord has breached its obligations specified in this Lease.
- 12.5. Load and Equipment Limits: 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 by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Project tenants.
- 12.6. 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's making any repairs, alterations or improvements in or to any portion of the Project, the Building, or the Premises which Landlord is required or permitted to make under this Lease or under any other tenant's lease or required to make by law. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.
- 12.7. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Project's mechanical, electrical, plumbing, heating, ventilating, air conditioning or other systems serving, located in, or passing through the Premises.
- 12.8. Upon the expiration or earlier 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 pursuant to Section 14 shall be repaired by Tenant at Tenant's expense.

13. ALTERATIONS AND ADDITIONS.

- 13.1. Tenant shall not make any additions, alterations or improvements to the Premises without first obtaining the prior written consent of Landlord. Landlord's consent may be conditioned upon Tenant's removing any such additions, alterations or improvements upon the expiration of the Lease Term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvements shall be done in a good and workmanlike manner by properly qualified and licensed contractors, mechanics and other personnel approved in advance by Landlord, and such work shall be permitted by the City in which the work is performed and diligently pursued to completion in conformance with applicable building codes. Tenant shall supply Landlord with copies of as-built drawings and permits. Landlord may, at Landlord's option, require that any such work be performed by Landlord's contractor, in which case the cost of such work shall be paid for before commencement of the work.
- 13.2. Tenant shall pay the costs of any work done on the Premises pursuant to Section 13.1 and shall keep the Premises and Project free and clear of mechanic's, materialman's or any other liens. Tenant shall

indemnify, defend against and hold Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens before the actual commencement of any work for which a claim or lien may be filed. Tenant shall give Landlord ten days written notice of the intended commencement date to enable Landlord to post notices of nonresponsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises or the Project, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

- 13.3. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half times the total estimated cost to any additions, alterations or improvements to be made in or to the Premises to protect Landlord against any liability for mechanic's and materialman's liens and to insure timely completion of the work. Nothing contained in this Section 13.3 shall relieve Tenant of its obligation under Section 13.2 to keep the Premises and the Project free of all liens.
- 13.4. Unless their removal is required by Landlord as provided in Section 13.1, all additions, alterations and improvements made to the Premises shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof upon the expiration of the Lease Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 14.2.
- 13.5. Tenant shall be required to remove only those Alterations and Additions which Landlord identifies in writing, at the time Landlord consents to construction, as an Alteration or Addition which Landlord desires to be removed upon termination or expiration of this Lease.

14. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.

- 14.1. All fixtures, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 14.2.
- 14.2. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Project, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Lease Term; provided that if any of Tenant's Property is removed, Tenant shall, within ten (10) days thereafter or the Expiration Date, whichever occurs first, repair any damage to the Premises or to the Building resulting from such removal,

15. RULES AND REGULATIONS.

Tenant agrees to comply with (and cause its agents, contractors employees and invitees to comply with) the rules and regulations attached hereto as Exhibits "D", "E" and "E-1" and with such reasonable modifications and additions thereto as Landlord may from time to time make which shall apply uniformly to all tenants of the Project. Landlord shall not be responsible for any violation of said rules and regulations by other tenants or occupants of Page 8 of the Project or their agents, contractors or invitees.

16. CERTAIN RIGHTS RESERVED BY LANDLORD.

Landlord reserves the following rights, exercisable without liability to Tenant for (i) damage or injury to property, person or business, (ii) causing an actual or constructive eviction, from the Premises, or (iii) disturbing Tenant's use or possession of the premises:

- a. To name the Project and to change the name or street address of the Project;
- b. To change the size, location, nature and use of the common areas, so long as such changes do not

materially affect Tenant's use of the Premises;

- c. To install and maintain all signs on the exterior and interior of the Project;
- d. To have pass keys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes;
- e. At any time during the Lease Term, and on reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an Interest in the Project or Landlord, and during the last six months of the Lease Term, to show the Premises to prospective tenants thereof and post signs; and

- f. To enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Project (including, without limitation, checking, calibrating, adjusting or balancing controls and other systems), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Project or Landlord's interest herein, or as may be necessary or desirable for the operation or improvement of the Project or in order to comply with laws, orders or requirements of any governmental authority. Landlord agrees to use its best efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

17. ASSIGNMENT AND SUBLETTING.

No assignment or hypothecation of this Lease or sublease of all or any part of the Premises shall be permitted, except as provided in this Section 17.

- a. Tenant shall not, without the prior written consent of Landlord, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the prior written consent of Landlord.
- b. If, at any time or from time to time during the Lease Term, Tenant desires to assign or otherwise transfer this Lease or sublet all or any part of the Premises, Tenant shall give thirty (30) days prior written notice to Landlord setting forth the provisions of the proposed assignment or sublease, the name, address and business of the proposed assignee or subtenant, information concerning the character, ownership and financial condition of the proposed assignee or subtenant, the proposed date of the assignment or sublease, any ownership or commercial relationship between Tenant and the proposed assignee or subtenant, the consideration and all other material terms and conditions of the proposed transfer, all in such detail as Landlord shall reasonably require. In addition, Tenant shall promptly supply Landlord with such additional information concerning the proposed transfer as Landlord may reasonably request. Landlord shall have the option, exercisable by written notice given to Tenant within twenty (20) days after Tenant's notice is given, either to permit a proposed sublease of such space at the rental and on the other terms set forth in this Lease for the term set forth in Tenant's notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:
- (i) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;
  - (ii) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord,
  - (iii) No assignment or sublease shall be valid and no assignee or sublessee shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;
  - (iv) No assignee or sublessee shall have a further right to assign the lease or sublet the Premises except on the terms herein contained; and
  - (v) Fifty percent (50%) of any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord

under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder.

- c. If Tenant is a corporation, partnership or other entity, the transfer of controlling interest of Tenant during the terms shall constitute an assignment for purposes of this Section 17.
- d. Notwithstanding the provisions of Paragraphs 17(a) and 17(b) above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any recapture or termination option to Landlord, to any corporation or entity which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern, provided that (i) the assignee or sublessee assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant remains fully liable under this Lease, and (iii) the use of the Premises under Section 9 remains unchanged.
- e. No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of

exhausting remedies against such assignee, subtenant or successor. Landlord may, if Tenant does not provide Landlord with a current mailing address to notify Tenant, consent to subsequent assignment of the Lease or subletting or amendments or modifications to the Lease with assignees of Tenant, without notifying Tenant, and without obtaining its or their consent thereto and any such actions shall not relieve Tenant of liability under this Lease.

- f. If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee of five hundred and 00/100 Dollars (\$500.00) plus any attorneys' fees reasonably incurred by Landlord in connection with such act or request. Such administrative fee shall be increased annually by the same percentage as Annual Base Rent is increased pursuant to Section 6.2 hereof.

18. HOLDING OVER.

If after the expiration or earlier termination of the Term, as it may be extended, Tenant remains in possession of the Premises with or without Landlord's consent (express or implied), Tenant shall become a tenant from month to month only, upon all the provisions of this Lease (except as to Lease Term and Annual Base Rent), but the "Monthly Installments of Annual Base Rent" payable by Tenant shall be increased to one hundred fifty percent (150%) of the Monthly Installments of Annual Base Rent payable by Tenant at the expiration of the Lease Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month to month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

19. SURRENDER OF PREMISES.

- a. Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. On or before the Expiration Date, Tenant shall, on Landlord's request, remove Tenant's Property and repair all damage to the Premises or Building caused by such removal.
- b. If Tenant abandons or surrenders the Premises, or is dispossessed of the Premises by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, including court costs and attorneys' fees and storage charges on such effects, for any length of time that the same shall be in Landlord's possession, shall be paid by Tenant. Landlord may, at its option, without notice, sell said effects, or any of the same at private sale and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale upon any amounts due under this Lease from Tenant to Landlord and upon the expense incident to the removal and sale of said effects. On the Expiration Date, Tenant shall surrender all keys to the Premises.

20. DESTRUCTION OR DAMAGE.

- a. If the Premises or the portion of the Project reasonably necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements or other casualty, Landlord shall, subject to the provisions of this Section, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days. If Landlord determines that repairs can be completed within ninety (90) days, this Lease shall remain in full force and effect.
- b. If in Landlord's opinion, such repairs to the Premises or any portion of the Project reasonably necessary for Tenant's occupancy cannot be completed within ninety (90) days, Landlord may elect, upon written notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which



event this Lease shall continue In full force and effect, or if Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty. If, however, the damage is limited to the interior of the Premises, then if Landlord does not elect to repair the Premises, Tenant shall have the option, at its expense, by written notice to Landlord within fifteen (15) days after receipt of Landlord's notice that it will not repair, to repair the Premises and then keep this Lease in effect. If Tenant shall repair the premises, then any insurance proceeds attributable to the damage may be used by Tenant to pay the cost of such repair.

- c. If the Premises are to be repaired under this Section, Landlord shall repair at its cost any injury or damage to the Project outside of the Premises and shall pay the cost of restoring the Premises to their condition prior to the damage, except that Tenant shall be responsible for payment of the cost of the repair, restoration and replacement of any Leasehold Improvements and Tenant's Property in excess of the Tenant's Improvements established in the Addendum, Paragraphs 47 and 48 and the attached Exhibit "C". Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises or the Project as a result of any damage from fire or other casualty.
- d. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises or the Project by fire or other casualty, and any present or future law

which purports to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement, shall have no application.

21. EMINENT DOMAIN.

- a. If the whole of the Project or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Project or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by written notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, or if such portion of the Project other than the Premises is taken which makes it reasonably impossible for Tenant to carry on its operations, and (ii) Landlord shall have the right to terminate this Lease by written notice to Tenant given within ninety (90) days after the date of such taking if the taking shall include the Building of which the Premises are a part. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of Termination. If this Lease continues in force upon such partial taking, the Annual Base Rent and Tenant's Proportionate Share of Project Operating Expenses shall be equitably adjusted according to the remaining Area of the Premises and Project.
- b. In the event of any taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any award, judgment or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property and after damage recoverable by Tenant under applicable laws.
- c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of the Tenant Improvement allowance established pursuant to Addendum, Paragraphs 47 and 48 and the attached Exhibit "C". Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any other leasehold improvements and Tenant's Property.

22. INDEMNIFICATION.

- a. Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant, Landlord, or any other person, or for any injury to or death of any person, arising out of: (i) Tenant's use and occupancy of the Premises, or any work, activity or other things allowed or suffered by Tenant to be done in or on the Premises; (ii) any breach or default by Tenant of any of Tenant's obligations under this Lease; (iii) any negligent or otherwise tortuous act or omission of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim and shall indemnify Landlord against all costs, attorneys' fees, and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises or Project from any cause, except to the extent due to Landlord's gross negligence or intentional misconduct.

- b. Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises or Project, caused by or resulting from fire, explosion, falling plaster, steam, electricity, gas, water or rain which may leak or flow or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause whatsoever, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Project except to the extent resulting from the willful misconduct or gross negligence of Landlord. Landlord shall not be liable for any damage arising from any act or omission of any other tenant of the Project.
  
- c. Notwithstanding the provisions of Section 22(a) and (b) to the contrary, Landlord or its agents shall not be liable for (i) any damage to any property entrusted to employees of the Building, (ii) loss or damage to any property by theft or otherwise. Landlord, its agents, employees and invitees shall not be liable for interference with light or other incorporeal hereditaments, nor shall Landlord be liable for any latent defect on the Premises or in the Building. Tenant shall give prompt notice to Landlord in case of fire or accidents on the Premises or in the Building or of defects therein or in the fixtures or equipment.

23. TENANT'S INSURANCE.

- a. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. All insurance required to be carried by Tenant hereunder shall (i) be issued by an insurance company having a General Policyholders Rating of

B+ or better and a financial size of "VI" or better, as set forth in the most current issue of Best's Rating Guide and licensed to do business in the State of California; (ii) name Landlord, Landlord's agent if any, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear; (iii) be an occurrence policy (or policies); (iv) contain a cross-liability endorsement and contractual liability endorsement; (v) contain a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance; and (vi) include a waiver by the insurer of any right of subrogation against Landlord, its agent, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives. A certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefor. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. Tenant shall furnish Landlord with renewals to "binders" of any such policy at least ten days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's agent and mortgagee and Tenant as required by this Lease. Renewal certificates shall be regularly provided to Landlord at such times as renewal certificates are regularly provided to all other landlords of Tenant. Such certificates shall provide that Tenant's insurer shall endeavor to provide Landlord with thirty (30) days/prior written notice of any cancellation or modification of Tenant's insurance coverage.

- b. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Lease Term, Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (i) all Leasehold Improvements (including any alterations, additions, or improvements as may be made by Tenant pursuant to the provisions of Section 13 hereof), and (ii) trade fixtures, merchandise and other personal property from time to time in, on or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included with the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under (i) above shall be paid to Landlord, and the proceeds under (ii) above shall be paid to Tenant.
- c. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Lease Term, Tenant shall procure, pay for and maintain in effect workers' compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation or condition of the Premises and the operations of Tenant in, on or about the Premises, providing personal injury and broad form property damage coverage for not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage liability.
- d. Not less than every two years during the Lease Term, Landlord and Tenant shall mutually agree to

increases in all of Tenant's Insurance policy limits for all insurance to be carried by Tenant as set forth in this Section. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, then Tenant agrees that all insurance policy limits as set forth in this Section shall be adjusted for increases in the cost of living in the same manner as is set forth in Section 6.2 hereof for the adjustment of the Annual Base Rent.

24. WAIVER OF SUBROGATION.

Landlord and Tenant each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, on account of loss by or damage to the waiving party or its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

25. SUBORDINATION AND ATTORNMENT.

Upon written request of Landlord, or any mortgage or deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any mortgage or deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or hereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender or lessor of Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Lease Term. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale or transfer in lieu of foreclosure, Tenant shall attorn to the purchaser or transferee as the case may be, and recognize that party, as Landlord, under this Lease, provided such party acquires and accepts the Premises subject to this Lease,

26. TENANT ESTOPPEL CERTIFICATES.

Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, in recordable form, a written statement in the form as required by Landlord certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Annual Base Rent and the date to which Annual Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall, at Landlord's election, be a default under this Lease without further notice other than that required pursuant to Section 28.1 hereof and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

27. TRANSFER OF LANDLORD'S INTEREST.

In the event of any sale or transfer by Landlord of the Premises or the Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises, Project or Lease occurring after the completion of such sale or transfer, and Landlord's successor shall be solely responsible for all obligations of Landlord under this Lease. If any security deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the security deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto. Tenant shall fully and properly cooperate in the completion of such transfer

28. DEFAULT.

28.1. Tenant's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- a. If Tenant abandons or vacates the Premises; or
- b. If Tenant fails to pay any Rent or any additional rent or any other charges required to be paid by Tenant under this Lease and such failure continues for three (3) days after written notice thereof from Landlord (so long as the form of any such notice complies with statutory requirements, any such notice and the opportunity to cure shall be in lieu of and not in addition to the notice required in order to commence unlawful detainer proceedings); or
- c. If Tenant fails promptly and fully to perform any non-monetary covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant (so long as the form of any such notice complies with statutory requirements, any such notice and the opportunity to cure shall be in lieu of and not in addition to the notice required in order to commence unlawful detainer proceedings); or
- d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days; or

- g. If in any proceeding or action in which Tenant is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- h. 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 involved in any of the acts or events described in subparagraphs (d) through (g) above.

28.2. Remedies. In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or no further claim under this Lease; or

- b. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the premises. This remedy is intended to be the remedy described in California Civil Code Section 1951.4. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder; and/or
- c. Reenter the Premises under the provisions of subparagraph (b), and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

If Landlord reenters the Premises under the provisions of subparagraphs (b) or (c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of re-entry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's Property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting which is applied against the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord within five (5) days after demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, within five (5) days of the demand, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises which are not covered by the rent received from the reletting.

- 28.3. Damages. Should Landlord elect to terminate this Lease under the provisions of subparagraph 28.2(a) or (c) above, Landlord may recover as damages from Tenant the following:
- a. Past Rent. The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus
  - b. Rent Prior to Award. The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
  - c. Rent After Award. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided; plus
  - d. Proximately Caused Damages. Any, other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would by likely to result therefrom, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (i) retaking possession of the Premises, (ii) maintaining the Premises after Tenant's default, (iii) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (iv) reletting the Premises, including brokers' commissions.

"The worth at the time of the award" as used in subparagraphs (a) and (b) above, is to be computed by allowing interest on the unpaid rent at the rate of twelve percent (12%) per annum or by allowing interest at the maximum rate an individual is permitted to charge by law, whichever is greater. "The worth at the time of the award" as used in subparagraph (c) above, 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.

- 28.4. Waiver: Cumulative. The waiver by Landlord of any breach of



any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term; covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed to be a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver. Landlord's exercise of any right of remedy shall not prevent it from exercising any other right or remedy which may be provided by law or this Lease, whether or not stated in this Lease. The termination of this Lease under this Article 16 shall not release Tenant from obligations arising as a result of any acts or omissions occurring prior to such expiration or termination, including, without limitation, any indemnity obligations of Tenant and any obligations of Tenant under Article 7 of this Lease and all such obligations shall survive such termination.

29. BROKERAGE FEES.

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation other than Newport National Corporation, who represents the Landlord, and Business Real Estate, Rick Reeder, who represents the Tenant. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or

fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant.

30. NOTICES.

All notices, approvals and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given when actually delivered if personally delivered or within three (3) business days after deposit in the mail if sent by certified or registered U.S. mail, postage prepaid, or return receipt requested. Such notices shall be addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building Manager, and (b) If to Tenant, to Tenant's Mailing Address; provided however, notices to Tenant or Landlord shall be deemed duly served or given if personally delivered or mailed to Landlord at its offices. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

31. GOVERNMENT ENERGY OR UTILITY CONTROLS.

In the event of imposition of federal, state or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant or any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

32. QUIET ENJOYMENT.

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

33. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 33 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease in a timely manner.

34. CURING TENANT'S DEFAULTS.

If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account and at the expense of Tenant. Tenant shall pay Landlord all costs plus a reasonable percentage mark-up to cover general conditions and fees of such performance within ten (10) days upon receipt of a bill therefor.

35. LIMITATION OF LIABILITY.

In consideration of the benefits accruing hereunder, Tenant agrees that, if Landlord is a partnership, in the event of any actual or alleged failure, breach or default of this Lease by Landlord,

- a. The sole and exclusive remedy shall be against the assets of such partnership;
- b. No partner of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);
- c. No service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction of the partnership);
- d. No partner of Landlord shall be required to answer or otherwise plead to any service of process;
- e. No judgment may be taken against any partner of Landlord;
- f. Any judgment taken against any partner of Landlord may be vacated and set-aside at any time without hearing;
- g. No writ of execution will ever be levied against the assets of any partner of Landlord; and
- h. These covenants and agreements are for the benefit of and shall be enforceable both by Landlord and by any partner of Landlord.

Tenant agrees that each of the foregoing provisions shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by statute or at common law.

36.

**BUILDING PLANNING.**

In the event Landlord requires the Premises for use in conjunction with another suite or for other reasons connected with the Building planning program, upon notifying Tenant in writing, Landlord shall have the right to move Tenant to other space in the Building of which the Premises forms a part, at Landlord's sole cost and expense, and the terms and conditions of the original Lease shall remain in full force and effect, save and excepting that a revised Exhibit 48

shall become part of this Lease and shall reflect the location of the new space. However, if the new space does not meet with Tenant's reasonable approval, Tenant shall have the right to cancel this Lease upon giving Landlord thirty (30) days notice within ten (10) days of receipt of Landlord's notification. In no event shall Landlord relocate Tenant during the first (1st) year of the Original Lease Term. Any relocation shall be to space which is substantially similar in size, dimensions and configuration to the Premises. Landlord shall reimburse Tenant for all reasonable expenses incurred by Tenant in relocating including, but not limited to, moving expenses, phone transfer charges, and the cost of changing the address on business stationery and business cards.

37. MISCELLANEOUS.

- a. Accord and Satisfaction; Allocation of Payments. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent, be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.
- b. Addenda. If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.
- c. Attorneys' Fees. If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding. In addition, if Landlord incurs attorneys fees and/or costs in enforcing or seeking to enforce any right of indemnity set forth in the Lease, all such attorneys' fees and costs shall be recoverable and deemed within the scope of such indemnity and/or this attorneys' fees provisions.
- d. Captions and Section Numbers. The captions appearing within the body of this lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Section numbers refer to Sections in this Lease unless expressly stated otherwise.
- e. Changes Requested. Neither Landlord or Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by a lender that holds Landlord's interest as security, or by any prospective purchaser of the Project, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of the party from whom consent to such change of amendment is requested.
- f. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.
- g. Consent. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, approval or statement of satisfaction.
- h. Corporate Authority. If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a

certified copy of a resolution of its Board of Directors authorizing such execution.

- i. Counterparts. This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.
- j. Execution of Lease, No Option. The submission of this Lease to Tenant shall be for examination purposes only and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease or a counterpart to Tenant.
- k. Furnishing of Financial Statements: Tenant's Representations. In order to induce Landlord to enter into this Lease, Tenant agrees that it shall within thirty (30) days furnish Landlord, from time to time, upon Landlord's written request, with published annual and/or quarterly reports reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects.
- l. Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

- m. **Prior Agreements: Amendments.** This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement of understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.
- n. **Recording.** Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and, acknowledge a "short form" memorandum of this Lease for recording purposes in form and content satisfactory to both parties. The party requesting that a short form lease be recorded shall be responsible for paying any costs incurred in connection therewith.
- o. **Severability.** A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall to the extent possible, be construed to accomplish its intended effect.
- p. **Successors and Assigns.** This Lease shall apply to and bind the permitted successors and assigns of the parties.
- q. **Time of the Essence.** Time is of the essence in this Lease.
- r. **Waiver.** No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default.

The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default: it shall constitute only a waiver of timely payment for the particular Rent payment involved.

No act or conduct of Landlord including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a 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.

- s. **Mortgagee Protection.** In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises whose address shall have been furnished to Tenant, and shall offer such beneficiary of mortgagee a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure.
- t. **Identification of Tenant.** If more than one person executes this Lease as Tenant:
  - (i) Each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant, and
  - (ii) The term "Tenant" as used in this Lease shall mean and include each of them jointly and severally. The act of or notice from or notice or refund to, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to any renewal, extension, expiration,

termination or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

- u. Exhibits and Addenda. All exhibits and addenda attached to this Lease are incorporated herein by this reference and shall be deemed a part of this Lease.

Notwithstanding anything to the contrary contained herein, the obligations of Tenant hereunder shall not extend beyond what is commercially reasonable given the particularities of the project and such premises.

38. WAIVER OF LANDLORD'S LIEN.

The terms of any statutory lien provisions notwithstanding, in no event shall Landlord have a lien on, interest in or any other right to any computer hardware, computer peripherals or computer software, in whatever form, which may be or may have been on the Premises at any time during the term of this Lease.

The parties hereto have executed this Lease as of the date first above written.

AGREED AND ACCEPTED:

AGREED AND ACCEPTED:

LANDLORD:

TENANT:

The Campus, LLC,  
a California Limited Liability Company

Viasat, Inc.,  
a California corporation,

By: Newport National Corporation,  
a California corporation  
Its: Manager

By: \_\_\_\_\_  
Greg Monahan  
Its: Vice President

By: \_\_\_\_\_  
Jeffry A. Brusseau  
Its: Senior Vice President/CCO

Date: \_\_\_\_\_

Date: \_\_\_\_\_



SOUTHERN CALIFORNIA CHAPTER OF THE  
SOCIETY OF INDUSTRIAL AND OFFICE REALTORS, (R) INC.

INDUSTRIAL REAL ESTATE LEASE  
(MULTI-TENANT FACILITY)

ARTICLE ONE: BASIC TERMS

This Article One contains the Basic Terms of this Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. DATE OF LEASE: April 22, 1997

Section 1.02. LANDLORD (INCLUDE LEGAL ENTITY): Onimac Corporation, a California corporation

Address of Landlord: 12520 High Bluff Drive, Suite 100  
San Diego, CA 92130

Section 1.03. TENANT (INCLUDE LEGAL ENTITY): Viasat, Inc., a Delaware corporation

Section 1.04. PROPERTY: The Property is A 25,000+/- square foot portion subject to verification and adjustment, of Landlord's multi-tenant real property development known as Suite A of 2320 Camino Vida Roble, Carlsbad, California 92008, and described or depicted in Exhibit "A" (the "Project"). The Project includes the land, the buildings and all other improvements located on the land, and the common areas described in Paragraph 4.05(a). The Property is (include street address, approximate square footage and description) approximately 44,000 square feet, and is a single-story building which is a part of a two-building complex, the other building having the street address 2310 Camino Vida Roble, Carlsbad, California.

Address of Tenant: 2290 Cosmos Court  
Carlsbad, California

Section 1.05. LEASE TERM: One (1) years five (5) months BEGINNING ON July 1, 1997 or such other date as specified in this Lease, and ENDING ON November 30, 1998.

Section 1.06. PERMITTED USES: (See Article Five) General office use.

Section 1.07. TENANT'S GUARANTOR: (if none, so state) Not applicable.

Section 1.08. BROKERS: (See Article Fourteen) (if none, so state)

Landlord's Broker: Not applicable.

Tenant's Broker: Rick Reeder, Business Real Estate, 5050 Avenida Encinas, Suite 150, Carlsbad, CA 92008, Phone: 431-4200, ext. 208.

Section 1.09. COMMISSION PAYABLE TO LANDLORD'S BROKER: (See Article Fourteen) \$ N/A

Section 1.10. INITIAL SECURITY DEPOSIT: (See Section 3.03) \$22,500.00.

Section 1.11. VEHICLE PARKING SPACES ALLOCATED TO TENANT: (See Section 4.05) 3.6/1000 sq. ft. at no expense to Tenant.

Section 1.12. RENT AND OTHER CHARGES PAYABLE BY TENANT:

(a) BASE RENT: Twenty Two Thousand Five Hundred Dollars (\$22,500.00) per month for the first seventeen (17) months, as provided in Section 3.01, and shall be increased on the first day of the eighteenth (18th) month after the Commencement Date, at the start of the first Option Period.

(b) OTHER PERIODIC PAYMENTS: (i) Utilities (See Section 4.03); (ii) Insurance Premiums (See Section 4.04); (iii) Maintenance, Repairs and Alterations (See Article Six) and (iv) janitorial services for the Premises.

Section 1.13. LANDLORD'S SHARE OF PROFIT ON ASSIGNMENT OR SUBLEASE: (See Section 9.05) fifty percent (50%) of the Profit (the "Landlord's Share").

Section 1.14. RIDERS: The following Riders are attached to and made a part of this Lease: (If none, so state)

First Addendum to Lease (Additional Lease Terms)  
 Exhibit "A" - The Project  
 Exhibit "B" - The Property

ARTICLE TWO: LEASE TERM

Section 2.01. LEASE OF PROPERTY FOR LEASE TERM. Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Lease Term. The Lease Term is for the period stated in Section 1.05 above and shall begin and end on the dates specified in Section 1.05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The "Commencement Date" shall be the date specified in Section 1.05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 2.02. DELAY IN COMMENCEMENT. Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Property to Tenant on the Commencement Date. Landlord's non-delivery of the Property to Tenant on that date shall not affect this Lease or the obligations of Tenant under this Lease except that the Commencement Date shall be delayed until Landlord delivers possession of the Property to Tenant and the Lease Term shall be extended for a period equal to the delay in delivery of possession of the Property to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month. If Landlord does not deliver possession of the Property to Tenant within thirty (30) days after the Commencement Date, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after the sixty (60) -day period ends. If Tenant gives such notice, the Lease shall be canceled and neither Landlord nor Tenant shall have any further obligations to the other. If Tenant does not give such notice, Tenant's right to cancel the Lease shall expire and the Lease Term shall commence upon the delivery of possession of the Property to Tenant. If delivery of possession of the Property to Tenant is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the actual Commencement Date and expiration date of the Lease. Failure to execute such amendment shall not affect the actual Commencement Date and expiration date of the Lease.

Section 2.03. EARLY OCCUPANCY. If Tenant occupies the Property prior to the Commencement Date, Tenant's occupancy of the Property shall be subject to all of the provisions of this Lease. Early occupancy of the Property shall not advance the expiration date of this Lease. Tenant shall pay Base Rent and all other charges specified in this Lease for the early occupancy period. Tenant shall have access thirty (30) days early for cabling, furniture and phones.

Section 2.04. HOLDING OVER. Tenant shall vacate the Property upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Property. If Tenant does not vacate the Property upon the expiration or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant's occupancy of the Property shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by ten percent (10%).

ARTICLE THREE: BASE RENT

Section 3.01. TIME AND MANNER OF PAYMENT. Upon execution of this Lease, Tenant shall pay Landlord the Base Rent in the amount stated in Paragraph 1.12(a) above for the first month of the Lease Term. On the first day of the second month of the Lease Term and each month thereafter, Tenant shall pay Landlord the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing.

Section 3.02. [deleted]

Section 3.03. SECURITY DEPOSIT; INCREASES.

(a) Upon the execution of this Lease, Tenant shall deposit with Landlord a cash Security Deposit in the amount set forth in Section 1.10 above. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be

required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit.

(b) [deleted]

Section 3.04. TERMINATION; ADVANCE PAYMENTS. Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant's default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall refund or credit to Tenant within ten (10) days, (or Tenant's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

#### ARTICLE FOUR: OTHER CHARGES PAYABLE BY TENANT

Section 4.01. ADDITIONAL RENT. All charges payable by Tenant other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term "rent" shall mean Base Rent and Additional Rent.

Section 4.02. [deleted]

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) PERSONAL PROPERTY TAXES.

(i) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall try to have personal property taxed separately from the Property.

(ii) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

Section 4.03. UTILITIES. Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Property. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement. If utilities are prorated, Tenant shall have the right to audit the historical utility cost to determine if additional leasing at the Project has increased its proportionate share of utilities. If so, Landlord shall adjust the utility cost to reflect Tenant's actual use.

Section 4.04. INSURANCE POLICIES.

(a) LIABILITY INSURANCE. During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be One Million Dollars (\$1,000,000) per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, recommendation of Landlord's professional insurance advisers and other relevant factors. The liability insurance obtained by Tenant under this Paragraph 4.04(a) shall (i) be primary and non-contributing; (ii) contain cross-liability endorsements; and (iii) insure Landlord against Tenant's performance under Section 5.05, if the matters giving rise to the indemnity under Section 5.05 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) **PROPERTY AND RENTAL INCOME INSURANCE.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Landlord deems reasonably necessary. Landlord shall have the right to obtain flood and earthquake insurance if required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall not do or permit anything to be done which invalidates any such insurance policies.

(c) **PAYMENT OF PREMIUMS.** Subject to Section 4.08, Tenant shall pay all premiums for the insurance policies described in Paragraphs 4.04(a) (whether obtained by Landlord or Tenant) within fifteen (15) days after Tenant's receipt of a copy of the premium statement or other evidence of the amount due, except Landlord shall pay all premiums for non-primary comprehensive public liability insurance which Landlord elects to obtain as provided in Paragraph 4.04(a). Before the Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord a certificate of insurance, executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonably requires, naming Landlord and Manager as additional insureds thereto.

(d) **GENERAL INSURANCE PROVISIONS.**

(i) Any insurance which Tenant is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(iii) Tenant shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A-12 or better, as set forth in the most current issue of "Best Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) Unless prohibited under any applicable insurance policies maintained, Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

**Section 4.05. COMMON AREAS; USE, MAINTENANCE AND COSTS.**

(a) **COMMON AREAS.** As used in this Lease, "Common Areas" shall mean all areas within the Project which are available for the common use of tenants of the Project and which are not leased or held for the exclusive use of Tenant or other tenants, including, but not limited to, parking areas, driveways, sidewalks, loading areas, access roads, corridors, landscaping and planted areas. Landlord, from time to time, may change the size, location, nature and use of any of the Common Areas, convert

Common Areas into leaseable areas, construct additional parking facilities (including parking structures) in the Common Areas, and increase or decrease Common Area land and/or facilities. Tenant acknowledges that such activities may result in inconvenience to Tenant. Such activities and changes are permitted if they do not materially affect Tenant's use of the Property.

(b) USE OF COMMON AREAS. Tenant shall have the nonexclusive right (in common with other tenants and all others to whom Landlord has granted or may grant such rights) to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Landlord may establish from time to time. Tenant shall abide by such rules and regulations and shall use its best effort to cause others who use the Common Areas with Tenant's express or implied permission to abide by Landlord's rules and regulations. At any time, Landlord may close any Common Areas to perform any acts in the Common Areas as, in Landlord's judgment, are desirable to improve the Project. Tenant shall not interfere with the rights of Landlord, other tenants or any other person entitled to use the Common Areas.

(c) SPECIFIC PROVISION RE: VEHICLE PARKING. Tenant shall be entitled to use the number of vehicle parking spaces in the Project allocated to Tenant in Section 1.11 of the Lease without paying any additional rent. Tenant's parking shall not be reserved and shall be limited to vehicles no larger than standard size automobiles or pickup utility vehicles. Tenant shall not cause large trucks or other large vehicles to be parked within the Project or on the adjacent public streets. Temporary parking of large delivery vehicles in the Project may be permitted by the rules and regulations established by Landlord. Vehicles shall be parked only in striped parking spaces and not in driveways, loading areas or other locations not specifically designated for parking. Handicapped spaces shall only be used by those legally permitted to use them. If Tenant parks more vehicles in the parking area than the number set forth in Section 1.11 of this Lease, such conduct shall be a material breach of this Lease. In addition to Landlord's other remedies under the Lease, Tenant shall pay a daily charge determined by Landlord for each such additional vehicle.

(d) MAINTENANCE OF COMMON AREAS. Landlord shall maintain the Common Areas in good order, condition and repair and shall operate the Project, in Landlord's sole discretion, as a first-class industrial/commercial real property development. Common Area costs include, but are not limited to, costs and expenses for the following: gardening and landscaping; utilities, water and sewage charges; maintenance of signs (other than tenants' signs); premiums for liability, property damage, fire and other types of casualty insurance on the Common Areas and worker's compensation insurance; all property taxes and assessments levied on or attributable to the Common Areas and all Common Area improvements; all personal property taxes levied on or attributable to personal property used in connection with the Common Areas; straight-line depreciation on personal property owned by Landlord which is consumed in the operation or maintenance of the Common Areas; rental or lease payments paid by Landlord for rented or leased personal property used in the operation or maintenance of the Common Areas; fees for required licenses and permits; repairing, resurfacing, repaving, maintaining, painting, lighting, cleaning, refuse removal, security and similar items; reserves for roof replacement and exterior painting and other appropriate reserves; and a reasonable allowance to Landlord for Landlord's supervision of the Common Areas (not to exceed five percent (5%) of the gross rents of the Project for the calendar year). Landlord may cause any or all of such services to be provided by third parties and the cost of such services shall be included in Common Area costs. Common Area costs shall not include depreciation of real property which forms part of the Common Areas.

(e) [deleted]

Section 4.06. LATE CHARGES. Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Landlord does not receive any rent payment within ten (10) days after it becomes due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

Section 4.07. INTEREST ON PAST DUE OBLIGATIONS. Any amount owed by Tenant to Landlord which is not paid when due shall bear interest at the rate of ten percent (10%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Tenant under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

## ARTICLE FIVE: USE OF PROPERTY

Section 5.01. PERMITTED USES. Tenant may use the Property only for the Permitted Uses set forth in Section 1.06 above.

Section 5.02. MANNER OF USE. Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which annoys or interferes with the rights of tenants of the Project, or which constitutes a nuisance or waste. Landlord shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Property and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property, including the Occupational Safety and Health Act.

Section 5.03. HAZARDOUS MATERIALS. As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances," hazardous wastes, "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Property by Tenant, its agents, employees, contractors, sublessees or invitees without the prior written consent of Landlord. Landlord shall be entitled to take into account such other factors or facts as Landlord may reasonably determine to be relevant in determining whether to grant or withhold consent to Tenant's proposed activity with respect to Hazardous Material. In no event, however, shall Landlord be required to consent to the installation or use of any storage tanks on the Property.

Section 5.04. SIGNS AND AUCTIONS. Tenant shall not place any signs on the Property without Landlord's prior written consent. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property.

Section 5.05. INDEMNITY. Tenant shall indemnify Landlord against and hold Landlord harmless from any and all costs, claims or liability arising from: (a) Tenant's use of the Property; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Property, including any contamination of the Property or any other property resulting from the presence or use of Hazardous Material caused or permitted by Tenant; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in connection with any such claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors and invitees, if applicable. This section shall not apply to events due to the negligence, breach, fault or willful misconduct of Landlord or its employees, agents, contractors or invitees.

Section 5.06. LANDLORD'S ACCESS. Landlord or its agents may enter the Property at all reasonable times to show the Property to potential buyers, investors or tenants or other parties; to do any other act or to inspect (upon reasonable notice -- See Paragraph 25 in First Addendum) and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or for any other purpose Landlord deems necessary. Landlord shall give Tenant prior notice of such entry, except in the case of an emergency. Landlord may place customary "For Sale" or "For Lease" signs on the Property within ninety (90) days of expiration.

Section 5.07. QUIET POSSESSION. If Tenant pays the rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Property for the full Lease Term, subject to the provisions of this Lease. Landlord acknowledges and agrees that Landlord's obligation to comply with applicable laws with respect to the Project and Landlord's obligations under this Lease is an integral part of Tenant's right of quiet enjoyment of the Premises.

## ARTICLE SIX: CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6.01. EXISTING CONDITIONS. Tenant accepts the Property in its condition as of the execution of the Lease (latent defects excluded), subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Landlord or any Broker with respect thereto. If Landlord or Landlord's Broker has provided a Property Information Sheet or other Disclosure Statement regarding the Property, a copy is attached as an exhibit to the Lease. Landlord warrants that all mechanical are in good working order and shall repair same at no additional cost to Tenant for a period of ninety (90) days.

Section 6.02. EXEMPTION OF LANDLORD FROM LIABILITY. Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Property or upon other portions of the Project, or from other sources or places; or (d) any act or omission of any other tenant of the Project. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 6.02 shall not, however, exempt Landlord from liability for Landlord's gross negligence or willful misconduct, fault or breach or that of its employees, agents, contractors and invitees.

## Section 6.03. LANDLORD'S OBLIGATIONS.

(a) Except as provided in Article Seven (Damage or Destruction) and Article Eight (Condemnation), Landlord shall keep the following in good order, condition and repair: the foundations, exterior walls and roof of the Property (including painting the exterior surface of the exterior walls of the Property not more often than once every five (5) years, if necessary) and all components of electrical, mechanical, plumbing, heating and air conditioning systems and facilities located in the Property which are concealed or used in common by tenants of the Project. However, Landlord shall not be obligated to maintain or repair windows, doors, plate glass or the interior surfaces of exterior walls. Landlord shall make repairs under this Section 6.03 within a reasonable time after receipt of written notice from Tenant of the need for such repairs. Landlord shall use its best efforts to keep the Project and the Property in compliance with all applicable laws, ordinances, codes and governmental regulations and orders.

(b) Tenant waives the benefit of any statute in effect now or in the future which might give Tenant the right to make repairs at Landlord's expense or to terminate this Lease due to Landlord's failure to keep the Property in good order, condition and repair.

## Section 6.04. TENANT'S OBLIGATIONS.

(a) Except as provided in Section 6.03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Property (including nonstructural, interior, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Property or any system or equipment in the Property which Tenant is obligated to repair cannot be fully repaired or restored, Tenant shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term; but if the benefit or useful life of such replacement extends beyond the Lease Term (as such term may be extended by exercise of any options), the useful life of such replacement shall be prorated over the remaining portion of the Lease Term (as extended), and Tenant shall be liable only for that portion of the cost which is applicable to the Lease Term (as extended). Tenant shall maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor, unless Landlord maintains such equipment under Section 6.03 above. If any part of the Property or the Project is damaged by any act or omission of Tenant, Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the portions of the Property which Tenant is obligated to maintain in an attractive, first-class and fully operative condition.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04, Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs reasonably incurred in performing such maintenance or repair immediately upon demand.

Section 6.05. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. (a) Tenant shall not make any alterations, additions, or improvements to the Property without Landlord's prior written consent, except for non-structural alterations which do not exceed Ten Thousand Dollars (\$10,000) in cost cumulatively over the Lease Term and which are not visible from the outside of any building of which the Property is part. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 6.05(a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to the Property. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Property, regardless of whether Landlord's consent to such work is required. Landlord may elect to record and post notices of non-responsibility on the Property.

Section 6.06. CONDITION UPON TERMINATION. Upon the termination of the Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair under Article Seven (Damage or Destruction), or for which Tenant is not responsible under this Lease. In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Property to its prior condition, all at Tenant's expense. All alterations, additions and improvements shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment and decorations.

#### ARTICLE SEVEN: DAMAGE OR DESTRUCTION

##### Section 7.01. PARTIAL DAMAGE TO PROPERTY.

(a) Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Property. If the Property is only partially damaged (i.e., less than twenty-five percent (25% of the Property is untenable as a result of such damage or less than twenty-five percent (25%) of Tenant's operations are materially impaired) and if the proceeds to be received by Landlord from the insurance policies described in Paragraph 4.04(b) are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.

(b) If the insurance proceeds to be received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which Landlord maintains under Paragraph 4.04(b), Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If Landlord elects to repair the damage, Tenant shall pay Landlord, if the damage was due to an act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate this Lease, Tenant may elect to continue this Lease in full force and effect,



in which case Tenant shall repair any damage to the Property and any building in which the Property is located. Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

(c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord, of the occurrence of the damage.

Section 7.02. SUBSTANTIAL OR TOTAL DESTRUCTION. If the Property is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Property is greater than partial damage as described in Section 7.01), and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate as of the date the destruction occurred. Notwithstanding the preceding sentence, if the Property can be rebuilt within six (6) months after the date of destruction, Landlord may elect to rebuild the Property at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within thirty (30) days after Tenant's notice of the occurrence of total or substantial destruction. If Landlord so elects, Landlord shall rebuild the Property at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord. Tenant must consent in writing to Landlord's election to rebuild or this Lease shall terminate as aforesaid.

Section 7.03. TEMPORARY REDUCTION OF RENT. If the Property is destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Property is impaired. However, the reduction shall not exceed the sum of one year's payment of Base Rent, insurance premiums and real property taxes if Tenant is doing the Repair. Except for such possible reduction in Base Rent, insurance premiums and real property taxes, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Property for which Landlord is not otherwise responsible.

Section 7.04. WAIVER. Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the substantial or total destruction of the leased property. Tenant agrees that the provisions of Section 7.02 above shall govern the rights and obligations of Landlord and Tenant in the event of any substantial or total destruction to the Property.

#### ARTICLE EIGHT: CONDEMNATION

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the building in which the Property is located, or which is located on the Property, is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Property, the amount of its interest in the Property; (b) second, to tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage to the Property caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

#### ARTICLE NINE: ASSIGNMENT AND SUBLETTING

Section 9.01. LANDLORD'S CONSENT REQUIRED. No portion of the Property or of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, transfer, operation of law, or act of Tenant, without Landlord's prior written consent, except as provided in Section 9.02 below. Landlord has the right to grant or withhold its consent as provided in Section 9.05 below. Any attempted transfer without consent shall be void and shall constitute a non-curable breach of this Lease. If Tenant is a partnership, any cumulative transfer of more than twenty percent (20%) of the partnership interests shall require Landlord's consent. If Tenant is a corporation, any change in the ownership of a controlling interest of the voting stock of the corporation shall require that Landlord be informed of such change.

Section 9.02. TENANT AFFILIATE. Tenant may assign this Lease or sublease the Property, without Landlord's consent, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from the merger of or consolidation with Tenant ("Tenant's Affiliate"). In such case, any Tenant's Affiliate shall assume in writing all of Tenant's obligations under this Lease.

Section 9.03. NO RELEASE OF TENANT. No transfer permitted by this Article Nine, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

Section 9.04. OFFER TO TERMINATE. If Tenant desires to assign the Lease or sublease the Property, Tenant shall have the right to offer, in writing, to terminate the Lease as of a date specified in the offer. If Landlord elects in writing to accept the offer to terminate within twenty (20) days after notice of the offer, the Lease shall terminate as of the date specified and all the terms and provisions of the Lease governing termination shall apply. If Landlord does not so elect, the Lease shall continue in effect until otherwise terminated and the provisions of Section 9.05 with respect to any proposed transfer shall continue to apply.

Section 9.05. LANDLORD'S CONSENT.

(a) Tenant's request for consent to any transfer described in Section 9.01 shall set forth in writing the details of the proposed transfer, including the name, business and financial condition of the prospective transferee, financial details of the proposed transfer (e.g., the term of and the rent and security deposit payable under any proposed assignment or sublease), and any other information Landlord deems relevant. Landlord shall have the right to withhold consent, if reasonable, or to grant consent, based on the following factors: (i) the business of the proposed assignee or subtenant and the proposed use of the Property; (ii) the net worth and financial reputation of the proposed assignee or subtenant; (iii) Tenant's compliance with all of its obligations under the Lease; and (iv) such other factors as Landlord may reasonably deem relevant. If Landlord objects to a proposed assignment solely because of the net worth and/or financial reputation of the proposed assignee, Tenant may nonetheless sublease (but not assign), all or a portion of the Property to the proposed transferee, but only on the other terms of the proposed transfer.

(b) If Tenant assigns or subleases, the following shall apply:

(i) Tenant shall pay to Landlord as Additional Rent under the Lease the Landlord's Share (stated in Section 1.13) of the Profit (defined below) on such transaction as and when received by Tenant, unless Landlord gives written notice to Tenant and the assignee or subtenant that Landlord's Share shall be paid by the assignee or subtenant to Landlord directly. The "Profit" means (A) all amounts paid to Tenant for such assignment or sublease, including "key" money, monthly rent in excess of the monthly rent payable under the Lease, and all fees and other consideration paid for the assignment or sublease, including fees under any collateral agreements, less (B) costs and expenses directly incurred by Tenant in connection with the execution and performance of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of tenant improvements required under such assignment or sublease. Tenant is entitled to recover such costs and expenses before Tenant is obligated to pay the Landlord's Share to Landlord. The Profit in the case of a sublease of less than all the Property is the rent allocable to the subleased space as a percentage on a square footage basis.

(ii) Tenant shall provide Landlord a written statement certifying all amounts to be paid from any assignment or sublease of the Property within thirty (30) days after the transaction

documentation is signed, and Landlord may inspect Tenant's books and records to verify the accuracy of such statement. On written request, Tenant shall promptly furnish to Landlord copies of all the transaction documentation, all of which shall be certified by Tenant to be complete, true and correct. Landlord's receipt of Landlord's Share shall not be a consent to any further assignment or subletting. The breach of Tenant's obligation under this Paragraph 9.05(b) shall be a material default of the Lease.

Section 9.06. NO MERGER. No merger shall result from Tenant's sublease of the Property under this Article Nine, Tenant's surrender of this Lease or the termination of this Lease in any other manner. In any such event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord under any or all subtenancies.

ARTICLE TEN: DEFAULTS; REMEDIES

Section 10.01. COVENANTS AND CONDITIONS. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. DEFAULTS. Tenant shall be in material default under this Lease:

(a) If Tenant abandons the Property or if Tenant's vacation of the Property results in the cancellation of any insurance described in Section 4.04;

(b) If Tenant fails to pay rent or any other non-disputed charge when due;

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) -day period and thereafter diligently pursues its completion. However, Landlord shall not be required to give such notice if Tenant's failure to perform constitutes a non-curable breach of this Lease. The notice required by this Paragraph is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement. SEE PARAGRAPH 24., FIRST ADDENDUM.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

Section 10.03. REMEDIES. On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. In such event, Landlord shall be entitled to recover from Tenant all legally allowable damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Landlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease term after

the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining or preserving the Property after such default, the cost of recovering possession of the Property, expenses of reletting, including necessary renovation or alteration of the Property, Landlord's reasonable attorneys' fees incurred in connection therewith, and any real estate commission paid or payable. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Tenant has abandoned the Property, Landlord shall have the option of (i) retaking possession of the Property and recovering from Tenant the amount specified in this Paragraph 10.03(a), or (ii) proceeding under Paragraph 10.03(b);

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Property. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due;

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property is located.

Section 10.04. REPAYMENT OF "FREE" RENT. If this Lease provides for a postponement of any monthly rental payments, a period of "free" rent or other rent concession, such postponed rent or "free" rent is called the "Abated Rent." Tenant shall be credited with having paid all of the Abated Rent on the expiration of the Lease Term only if Tenant has fully, faithfully, and punctually performed all of Tenant's obligations hereunder, including the payment of all rent (other than the Abated Rent) and all other monetary obligations and the surrender of the Property in the physical condition required by this Lease. Tenant acknowledges that its right to receive credit for the Abated Rent is absolutely conditioned upon Tenant's full, faithful and punctual performance of its obligations under this Lease. If Tenant defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case Abated Rent shall be calculated based on the full initial rent payable under this Lease,

Section 10.05. AUTOMATIC TERMINATION. Notwithstanding any other term or provision hereof to the contrary, the Lease shall terminate on the occurrence of any act which affirms the Landlord's intention to terminate the Lease as provided in Section 10.03 hereof, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees that Landlord incurs in connection with the filing, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to the Lease; the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant; or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Section 10.06. CUMULATIVE REMEDIES. Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

#### ARTICLE ELEVEN: PROTECTION OF LENDERS

Section 11.01. SUBORDINATION. Landlord shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Property or the Lease. Tenant shall execute such further documents and assurances as such lender may require, provided that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Property during the Lease Term shall not be disturbed if Tenant pays the rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this

Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

Section 11.02. ATTORNTMENT. If Landlord's interest in the Property is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Property and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Property upon the transfer of Landlord's interest.

Section 11.03. SIGNING OF DOCUMENTS. Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so. If Tenant fails to do so within ten (10) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document.

Section 11.04. ESTOPPEL CERTIFICATES.

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within ten (10) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(b) If Tenant does not deliver such statement to Landlord within such ten (10) -day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

Section 11.05. [deleted]

#### ARTICLE TWELVE: LEGAL COSTS

Section 12.01. LEGAL PROCEEDINGS. If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action.

Section 12.02. LANDLORD'S CONSENT. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

## ARTICLE THIRTEEN: MISCELLANEOUS PROVISIONS

Section 13.01. NON-DISCRIMINATION. Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

## Section 13.02. LANDLORD'S LIABILITY; CERTAIN DUTIES.

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Property or Project or the leasehold estate under a ground lease of the Property or Project at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30) -day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property and the Project, and neither the Landlord nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.03. SEVERABILITY. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.04. INTERPRETATION. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

Section 13.05. INCORPORATION OF PRIOR AGREEMENTS; MODIFICATIONS. This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.06. NOTICES. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above, Attn: Greg Monahan, Vice Pres. - General Council, with a copy to Gerard Turksley. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07. WAIVERS. All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08. NO RECORDATION. Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09. BINDING EFFECT; CHOICE OF LAW. This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no

obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Property is located shall govern this Lease.

Section 13.10. CORPORATE AUTHORITY; PARTNERSHIP AUTHORITY. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership.

Section 13.11. JOINT AND SEVERAL LIABILITY. All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant.

Section 13.12. FORCE MAJEURE. If a party cannot perform any of its obligations due to events beyond its control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

Section 13.13. EXECUTION OF LEASE. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14. SURVIVAL. All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

#### ARTICLE FOURTEEN: BROKERS

Section 14.01. BROKER'S FEE. When this Lease is signed by and delivered to both Landlord and Tenant, Landlord shall pay a real estate commission to Tenant's Broker named in Section 1.08 above, the sum stated in Section 1.09 above for services rendered to Landlord by Tenant's Broker in this transaction. Landlord shall pay Tenant's Broker a commission if Tenant exercises any option to extend the Lease Term or to buy the Property, or any similar option or right which Landlord may grant to Tenant, or if Tenant's Broker is the procuring cause of any other lease or sale entered into between Landlord and Tenant covering the Property. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Tenant's Broker.

Section 14.02. PROTECTION OF BROKERS. If Landlord sells the Property, or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Property or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article Fourteen. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this provision. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Paragraph is included in this Lease for the benefit of Landlord's Broker.

Section 14.03. BROKER'S DISCLOSURE OF AGENCY. Tenant's Broker hereby discloses to Landlord and Tenant and Landlord and Tenant hereby consent to Tenant's Broker acting in this transaction as the agent of (check one):

- Landlord exclusively; or  
 both Landlord and Tenant.

Section 14.04. NO OTHER BROKERS. Tenant represents and warrants to Landlord that the brokers named in Section 1.08 above are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease or the Property.

ADDITIONAL PROVISIONS MAY BE SET FORTH IN A RIDER OR RIDERS ATTACHED HERETO OR IN THE BLANK SPACE BELOW. IF NO ADDITIONAL PROVISIONS ARE INSERTED, PLEASE DRAW A LINE THROUGH THE SPACE BELOW.

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders which are attached to or incorporated by reference in this Lease.

"LANDLORD"

Signed on \_\_\_\_\_, 1997 Onimac Corporation, a California corporation  
at San Diego, California, \_\_\_\_\_

By: John I. Kocmur  
Its: President

"TENANT"

Signed on \_\_\_\_\_, 1997 Viasat, Inc., a Delaware corporation  
at Carlsbad, California, \_\_\_\_\_

By: Greg Monahan  
Its: CFO/Corporate Counsel

IN ANY REAL ESTATE TRANSACTION, IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

THIS PRINTED FORM LEASE HAS BEEN DRAFTED BY LEGAL COUNSEL AT THE DIRECTION OF THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS, (R) INC. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS, (R) INC., ITS LEGAL COUNSEL, THE REAL ESTATE BROKERS NAMED HEREIN, OR THEIR EMPLOYEES OR AGENTS, AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS LEASE OR OF THIS TRANSACTION. LANDLORD AND TENANT SHOULD RETAIN LEGAL COUNSEL TO ADVISE THEM ON SUCH MATTERS AND SHOULD RELY UPON THE ADVICE OF SUCH LEGAL COUNSEL.



FIRST ADDENDUM

(ADDITIONAL LEASE TERMS)

THIS ADDENDUM is attached to and made a part of that certain Southern California Chapter of the Society of Industrial and Office Realtors, Inc. Industrial Real Estate Lease (Multi-Tenant Facility) dated April 22, 1997 (the "Lease") by and between ONIMAC CORPORATION, a California corporation (the "Landlord") and VIASAT, INC., a Delaware corporation (the "Tenant"), with respect to Premises (the "Premises") located in the Project (as defined in the Lease) located in the City of Carlsbad, San Diego County, California. The following new terms or modifications to existing terms are hereby made a part of the Lease as though fully set forth therein.

- 15. TENANT'S RIGHT OF FIRST OFFERING. Provided that Tenant is not in default with any of the terms and conditions of the Lease, Tenant shall have the first right of offering on any contiguous space that may become available, and any space located at 2310 Camino Vida Roble, Carlsbad, California that may become available, during the Lease Term or any extension of thereof.
- 16. TENANT IMPROVEMENTS. Landlord shall, at Landlord's sole cost and expense:
  - a. paint the interior of the Property;
  - b. repair damaged ceiling tiles; and

If and when the remaining 19,000 (plus or minus) square foot balance of space in the 2320 Camino Vida Roble Building is leased to another tenant, Landlord shall, at Landlord's sole cost and expenses, construct a demising wall separating the Property from the 19,000 (plus or minus) square foot balance of space in the Building.
- 17. ARBITRATION. In the event that Landlord and Tenant are unable to resolve a dispute pertaining to the terms and conditions of this Lease, such dispute shall be resolved by binding arbitration under the rules of the American Arbitration Association, or any other procedures mutually agreeable to Landlord and Tenant.
- 18. NON-DISTURBANCE. With respect to any Security Device entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the holder thereof that Tenant's possession and this Lease, including any options to extend the term hereof, will not be disturbed so long as Tenant is not in default hereunder and attorns to the record owner of the Premises.
- 19. BUILDING SIGNAGE. Tenant, at Tenant's sole cost and expense, shall have the right to install building signage based upon mutually-agreed-on plans and specifications, and subject to City of Carlsbad rules and regulations, and any CC&R's pertaining to the Property.
- 20. SATELLITE DISH. Tenant shall be allowed to install, at Tenant's sole cost and expense, a satellite dish (the "Dish") on the roof of the Building. Such installation shall be subject to review and approval by Landlord, the City of Carlsbad, and the appropriate association that governs the business park, if any, including the location and method of such installation, and comply with CC&R's pertaining to the Property. On termination of the Lease, Tenant shall be responsible for, at Tenant's sole cost and expense, the removal of the Dish and the repair of any and all damage to the Building caused by such Dish installation and subsequent removal thereof. Tenant shall reimburse Landlord for Landlord's costs of reviewing, approving and supervising the installation and removal of the Dish, subject to a maximum of \$250.00 for installation, and \$125.00 for removal.

LANDLORD'S INITIALS:

TENANT'S INITIALS:

\_\_\_\_\_

\_\_\_\_\_

- 21. PROPERTY TAX INCREASE DUE TO SALE OR REFINANCE. Tenant shall not be responsible for any increases in real property taxes pertaining to the Property as a result of the sale of the Property or refinance thereof.
- 22. OPTIONS TO EXTEND LEASE TERM. Provided that Tenant is not in default with any of the terms and conditions of the Lease, Tenant shall have two (2) options to extend the Lease Term for a period of one (1) year each (the "First Option Period" and "Second Option Period", respectively) by providing Landlord with one hundred twenty (120) days' written notice prior to the expiration of the Lease Term of Tenant's intention to exercise the Option. The rent during the First Option Period shall be \$0.95 per square foot per month. The rent during the Second Option Period, if applicable, shall be \$1.00 per square foot per month. All other terms and conditions of the Lease shall remain in full force and effect during each Option Period.
- 23. AMERICANS WITH DISABILITIES ACT-1990, TITLE III ("ADA"). Landlord shall be solely responsible for any and all costs and expenses pertaining to and delivering compliance with ADA. Such costs and expenses shall not be a part of the project operating expenses.
- 24. LANDLORD'S INABILITY TO PERFORM. Landlord shall not be in default under this Lease as a result of its inability to fulfill any of its obligations hereunder or its delay in doing so, if such inability or delay is caused by reason of any act of God, war, revolt, civil arrest, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws, regulations or approvals, or any other similar cause including, but not limited to, impossibility due to excessive or unreasonable costs beyond the reasonable control of Landlord. Further, Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after notice by Tenant to Landlord specifying how Landlord has failed to perform such obligation; provided, however that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within the thirty (30) day period and thereafter diligently prosecutes same to completion.
- 25. LANDLORD'S ACCESS. Tenant holds a security clearance from the United States Government. Landlord and its agents, independent contractors and designated representatives, may enter the Premises at all reasonable times to post notices of non-responsibility, to make repairs and/or show the Premises to holders of any encumbrances, potential buyers, mortgagees, investors or tenants or other parties, or for any other purpose Landlord deems reasonably necessary. Landlord shall give Tenant written notice of such entry at least twenty-four (24) hours before such entry, except in the case of an emergency, in which case no prior notice need be given. Tenant shall have the right to escort any such entrant and to limit Landlord's access to the Premises as Tenant in good faith determines is beneficial or necessary for national defense purposes. Any entry to the Premises by Landlord in the event of an emergency shall not, under any circumstances, be construed or deemed to be forcible or unlawful entry onto the Premises or to be an eviction of Tenant from the Premises or any part thereof. Landlord may place customary "For Lease" signs on the exterior of the Premises during the last one hundred eighty (180) days of the Lease Term.

LANDLORD'S INITIALS:

TENANT'S INITIALS:

\_\_\_\_\_

\_\_\_\_\_

LEASE AGREEMENT  
BASIC LEASE INFORMATION

LEASE DATE: March 24, 1998

LANDLORD: W9/LNP Real Estate Limited Partnership,  
a Delaware limited partnership

LANDLORD'S ADDRESS: c/o LPC MS, Inc.  
6480 Weathers Place, Suite 245  
San Diego, California 92121

TENANT: ViaSat, Inc.,  
a Delaware corporation

TENANT'S ADDRESS: 2290 Cosmos Court  
Carlsbad, California 92009-1585

PREMISES: The Premises consists of (i) certain real property located on El Camino Real, Carlsbad, California containing approximately thirteen (13) acres of land ("Land"), which Land shall be a separate, independent tax parcel and, when approved by the City, a separate legal parcel and (ii) certain Improvements (defined herein) to be constructed by Landlord thereon consisting, in part, of three (3) buildings ("Buildings") containing a total of approximately 180,000 square feet. The term "Premises" shall not mean the Premises into which Tenant may expand, as more particularly set forth in Addendum 2 to this Lease. The Premises are part of approximately 49 acre parcel being developed by Landlord for commercial/industrial uses (the "Park").

PREMISES ADDRESS: To be assigned after Substantial Completion of the Improvements (on El Camino Real, Carlsbad, California)

TERM: Ten (10) years, as more particularly set forth in Section 2 and Exhibit B of this Lease plus any extension options as set forth in Addendum 1 of this Lease

BASE RENT (Paragraph 3): Base Rent is more particularly set forth in Section 3 of this Lease

ADJUSTMENTS TO BASE RENT: Base Rent shall be adjusted as more particularly set forth in Addendum 3 to this Lease

SECURITY DEPOSIT (Paragraph 4): An initial Security Deposit of One Hundred Thousand Dollars (\$100,000.00), which Security Deposit shall be increased and may be decreased as more particularly set forth in Section 4 of this Lease

PERMITTED USES (Paragraph 9): Office headquarters, manufacturing, warehouse, and research and development and, incidental to the aforementioned uses, a day care facility, cafeteria and recreational and sports facilities for Tenant's employees and for satellite antennas and dishes (as more particularly set forth in and subject to the terms of Section 42 of this Lease) but only to the extent permitted by the City of Carlsbad and all agencies and governmental authorities having jurisdiction thereof and for no other purposes whatsoever.

EXCLUSIVE PARKING SPACES: Seven Hundred Twenty (720) exclusive spaces

BROKER (Paragraph 38): Business Real Estate Brokerage Company for Tenant and  
Colliers Iliff Thorn for Landlord

EXHIBITS:

- Exhibit A - Premises
- Exhibit B - Work Letter
- Exhibit C - Rules and Regulations
- Exhibit D - Covenants, Conditions and Restrictions
- Exhibit E - Hazardous Materials Disclosure Certificate - Example
- Exhibit F - Change of Commencement Date - Example
- Exhibit G - Tenant's Initial Hazardous Materials Disclosure Certificate

ADDENDA:

- Addendum 1: Options to Extend
- Addendum 2: Expansion Options
- Addendum 3: Base Rent Adjustment
- Addendum 4: Right of First Offer to Purchase

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## LEASE AGREEMENT

DATE: This Lease is made and entered into as of the Lease Date set forth on Page 1. The Basic Lease Information set forth on Page 1 and this Lease are and shall be construed as a single instrument.

1. PREMISES: Landlord hereby leases the Premises on an exclusive basis to Tenant upon the terms and conditions contained herein, subject to the terms of this Lease. The term "Premises" as used herein shall mean and refer to the Buildings and the Land upon which the Buildings are situated. Landlord and Tenant hereby agree that for purposes of this Lease, as of the Lease Date, the rentable square footage area of the Buildings shall be deemed to be the number of rentable square feet set forth in the Basic Lease Information on Page 1; provided, however, within thirty (30) days after the date on which Landlord causes the Improvements of each of the Buildings to be Substantially Completed (as such term is defined in Exhibit B hereto), Landlord shall deliver to Tenant the actual square footage of the Land and the rentable square feet contained within the Buildings. Tenant may have its architect verify the actual square footage of the Land and the rentable square feet contained within the Buildings, provided that the basis of such measurement of the Buildings shall be measured from drip line to drip line. Landlord and Tenant hereby acknowledge and agree that as of the Lease Date the Buildings have not been constructed on the Land. After Landlord has Substantially Completed the Improvements, Landlord and Tenant shall execute a written amendment to this Lease, substantially in the form of Exhibit F hereto, wherein the parties shall specify the following: (i) the actual square footage of the Land; (ii) the rentable square feet contained within the Buildings; (iii) the actual amount of Base Rent to be paid by Tenant, which shall be based upon the amount of Base Rent per rentable square foot as set forth in this Lease; and (iv) the Premises Addresses. Such measurement at Substantial Completion shall be final.

2. COMMENCEMENT DATE; CONDITION OF THE PREMISES; TERMINATION RIGHT OF TENANT:

2.1 The Term of the Lease shall be a period of ten (10) years commencing upon the earlier to occur of the following ("Commencement Date") and, except as set forth in Addendum 2 to this Lease, expiring ten (10) years thereafter ("Expiration Date"): (i) the date Tenant commences business operations at the Premises, or (ii) Substantial Completion of the Improvements (as defined in Exhibit B) for all of the Buildings. In no event shall the Commencement Date be prior to January 10, 1999, unless Tenant has commenced conducting its business operations at the Premises prior to that date.

2.2 Landlord shall construct the Improvements (as defined in Exhibit B) as more particularly set forth in Exhibit B. If the Improvements (as defined in Exhibit B) for all of the Buildings are not Substantially Complete (as defined in Exhibit B) on or before July 10, 1999, (i) Landlord agrees to use reasonable efforts to Substantially Complete the Improvements for all of the Buildings as soon as practicable thereafter, (ii) the Lease shall remain in full force and effect, (iii) Landlord shall not be deemed to be in breach or default of the Lease as a result thereof and Landlord shall, except as set forth below, have no liability to Tenant as a result of any delay in occupancy (whether for damages, abatement of all or any portion of the rent, or otherwise). Subject to Force Majeure Delays (as defined in Exhibit B) or Tenant Caused Delays (as defined in Exhibit B), Landlord shall cause Substantial Completion of all of the Buildings to occur no later than September 10, 1999 or for each day of delay thereafter, Landlord shall pay to Tenant liquidated damages in the amount of Two Thousand Dollars (\$2,000.00); provided, however, Landlord shall have the right to extend such date by one (1) day for each day after July 10, 1999 that Landlord shall not have received all permits and approvals necessary for construction of all of the Buildings and such liquidated damages amount shall not be applicable to such days of delay. Tenant shall also have the right to extend the Term for two (2) consecutive periods of three (3) years each as more particularly set forth in Addendum 1 to this Lease. The Lease Term and the obligation to pay Rent shall commence on the Commencement Date. Landlord and Tenant shall execute a written amendment to this Lease, substantially in the form of Exhibit F hereto, wherein the parties shall specify the actual commencement date, expiration date and the date on which Tenant is to commence paying Rent. The word "Term" whenever used herein refers to the initial term of this Lease and any extension thereof. Except as otherwise expressly set forth in this Lease, Tenant hereby acknowledges and agrees that neither Landlord nor Landlord's agents or representatives has made any representations or warranties as to the suitability, safety or fitness of the Premises for the conduct of Tenant's business, Tenant's intended use of the Premises or for any other purpose. Notwithstanding the foregoing, within three (3) business days after the Substantial Completion (as such term is defined in Exhibit B hereto) of the Tenant Improvements for each of the Buildings representatives of Landlord and Tenant shall make a joint inspection of Improvements and the results of each such inspection shall be set forth in a written list specifying the incomplete items as well as those items for which corrections need to be made to the Improvements (the "Punchlist Items"). Landlord and Tenant shall promptly (by no later than three (3) business days thereafter) and in good faith approve or disapprove the written list of Punchlist Items. Landlord, at its sole cost and expense, shall use commercially reasonable efforts to cause the Punchlist Items to be promptly completed and/or corrected,

as applicable. The performance of the work associated with the Punchlist Items shall be performed in such a manner so as not to preclude or substantially prevent Tenant's conduct of its operations in the Premises. Upon the completion of the Punchlist Items to Tenant's reasonable satisfaction Tenant shall immediately notify Landlord in writing that such items have been completed to Tenant's reasonable satisfaction. In addition to the Punchlist Items, Landlord shall also use commercially reasonable efforts to cause the Project Contractor to correct any other deficiencies or defects in the Improvements during the ninety (90) day period following Substantial Completion of all of the Improvements in the Buildings. If Tenant fails to timely deliver to Landlord any such written notice of the aforementioned patent defects or deficiencies within said 90-day period, Landlord shall have no obligation to perform any such work thereafter, except as otherwise specifically provided in this Lease; provided, however, subject to the terms of Landlord's agreement with the Project Contractor (as defined in Exhibit B), Tenant shall have the right, concurrently with Landlord (if Landlord so desires, otherwise separately) to make a claim against Landlord's Project Contractor for patent or latent defects in the design or construction of the Improvements for any general applicable warranty period. Tenant shall also have the right to enforce, concurrently with Landlord, any warranties made or given to Landlord from the Project Contractor and major subcontractors. Upon final completion of Punchlist Items and acceptance by Tenant, all further obligations for repair, maintenance and replacement of the Improvements shall be controlled under Section 11 of this Lease.

2.3 TERMINATION RIGHTS. Tenant shall have the right to terminate this Lease in the event Landlord shall not commence demolishing the existing improvements on the Land on or before May 1, 1998, which date shall be extended one (1) day for each day of Force Majeure Delays (as defined in Exhibit B). Tenant must exercise such right, if at all, on or before May 10, 1998 or such right shall be null and void and of no further force or effect. In the event of the proper termination of this Lease by Tenant, Landlord shall promptly return the portion of the Security Deposit then deposited with Landlord and neither party shall have any further obligation or liability to the other.

### 3. RENT:

3.1 DEFINITION OF BASE RENT: The initial monthly Base Rent is \$1.062 per square foot. This includes a Tenant Improvement Allowance (as defined in Exhibit B) of \$26.00 per square foot, as more particularly described in Section 4.1 of Exhibit B to this Lease. The initial monthly Base Rent may decrease if the actual TI Costs (as defined in Exhibit B) are less than \$26.00 per square foot; provided, however, the maximum amount that the initial monthly Base Rent may decrease is by \$.037 per square foot per month, which is the difference, on a monthly basis, between \$26.00 per square foot and \$22.00 per square foot for TI Costs; and, provided further, the initial monthly Base Rent shall not decrease due to certain Tenant Changes (as defined in Exhibit B) the cost of which may be deducted from the Tenant Improvement Allowance as more particularly described in Sections 3.6.3 and 4.1 of Exhibit B. In other words, as more particularly described in Section 4.1 of Exhibit B to this Lease, in no event shall the TI Costs be less than \$22.00 per square foot. In the event actual TI Costs are less than \$26.00 per square foot, the reduction in initial monthly Base Rent is calculated by (i) taking the amount that such actual TI Costs are less than \$26.00 per square foot (but not less than \$22.00 per square foot) ("Savings"), (ii) multiplying the Savings by an amount equal to eleven percent (11%) of such Savings and (iii) dividing the quotient in (ii) above by twelve (12) (the number of months in a year). For example, if the actual TI Costs equal \$24.00 per square foot, the Savings is \$2.00 and the reduction in initial monthly Base Rent is calculated as follows:  $\$2.00 \times .11 = .22$  (DIVIDED BY) 12 = \$0.018. The initial monthly Base Rent is reduced by \$0.018 per square foot per month or, to \$1.044 per square foot per month.

If the actual TI Costs are more than \$26.00 per square foot, Tenant may elect to amortize the actual TI Costs in excess of \$26.00 per square foot up to the maximum amount of \$35.00 per square foot (the "Amortized TI Costs"). The Amortized TI Costs shall be repaid to Landlord in the form of increases to the initial monthly Base Rent in the following manner: the actual TI Costs over \$26.00 per square foot, but less than \$32.51 (an amount equal to \$6.50 per square foot) shall increase the Base Rent at the interest rate of eleven percent (11%) per annum; and the actual TI Costs over \$32.50, but less than \$35.01 (an amount equal to \$2.50 per square foot) shall be fully amortized at the interest rate of eleven percent (11%) per annum. For example, if (a) if the actual TI Costs are \$28.00 per square foot, the initial monthly Base Rent shall increase to the amount of \$1.08 per square foot per month as follows:  $\$2.00 \times 11\%$  (DIVIDED BY) 12 = \$0.018 + \$1.062 = \$1.08; or (b) if the actual TI Costs are \$34.00 per square foot, the initial monthly Base Rent shall increase to the amount of \$1.142 per square foot per month as follows:  $(\$6.50 \times 11\% = .715$  (DIVIDED BY) 12 = \$.06) PLUS (\$1.50 fully amortized over the initial Term of one hundred twenty (120) months at 11% equals \$0.02 per square foot per month) = \$1.142 ( $\$1.062 + \$0.06 + \$0.02$ ) per square foot per month.

3.2 PAYMENT OF RENT: On the date that Tenant executes this Lease, Tenant shall deliver to Landlord the original executed Lease and One Hundred Thousand Dollars (\$100,000.00) of the Security Deposit. Insurance certificates evidencing the liability insurance required to be obtained by Tenant under Section 12 of this Lease shall be delivered to Landlord prior to Tenant entering onto the Premises. Tenant agrees to pay Landlord, without prior notice or demand, or abatement, offset, deduction or claim (except as otherwise provided in this Lease), the Base Rent specified herein, payable in advance at Landlord's

address specified in the Basic Lease Information on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of the Lease. In addition to the Base Rent set forth herein, Tenant shall pay Landlord in advance on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease the Operating Expenses, Utility Expenses, (if any) and any Common Area Expenses as set forth in Section 6.3 of this Lease, as Additional Rent. In the event of a default by Tenant, Tenant shall also pay to Landlord as Additional Rent hereunder, within thirty (30) days of Landlord's written demand therefor, any and all reasonable costs and expenses incurred by Landlord to enforce the provisions of this Lease, including, but not limited to, costs associated with the delivery of notices, delivery and recordation of notice(s) of default, attorneys' fees, expert fees, court costs and filing fees (collectively, the "Enforcement Expenses"). In addition, Tenant shall pay directly to the appropriate vendor all operating costs which are separately metered or separately contracted for by Tenant. The term "Rent" whenever used herein refers to the aggregate of all these amounts. If Landlord permits Tenant to occupy the Premises without requiring Tenant to pay rental payments for a period of time, the waiver of the requirement to pay rental payments shall only apply to waiver of the Base Rent and Tenant shall otherwise perform all other obligations of Tenant required hereunder. The Rent for any fractional part of a calendar month at the commencement or termination of the Lease term shall be a prorated amount of the Rent for a full calendar month based upon a thirty (30) day month. The prorated Rent shall be paid on the Commencement Date and the first day of the calendar month in which the date of termination occurs, as the case may be.

4. SECURITY DEPOSIT: Upon Tenant's execution of this Lease, Tenant shall deliver to Landlord, as a Security Deposit for the performance by Tenant of its obligations under this Lease, One Hundred Thousand Dollars (\$100,000.00). On or within five (5) days after Landlord notifies Tenant that all permits are ready to be issued for commencement of construction of the Shell Improvements for the Premises, Tenant shall deliver to Landlord an additional security deposit of One Hundred Thousand Dollars (\$100,000.00). Provided there shall have occurred no default during the initial Term, Tenant's net income shall not have decreased more than Two Million Dollars (\$2,000,000.00) on an annual basis and Tenant's net worth shall not have decreased, One Hundred Thousand Dollars (\$100,000.00) of the Security Deposit shall be returned to Tenant upon the commencement of the twenty-fifth (25th) month of the initial Term and Fifty Thousand Dollars (\$50,000.00) of the Security Deposit shall be returned to Tenant every two (2) years thereafter until the Security Deposit is exhausted. However, Tenant shall be obligated to increase the Security Deposit to Two Hundred Thousand Dollars (\$200,000.00) in the event Tenant's net worth declines or net income declines more than Two Million Dollars (\$2,000,000.00) on an annual basis. In the event the TI Costs exceed \$26.00 per square foot for the Premises, the Security Deposit shall be increased (in excess of Two Hundred Thousand Dollars (\$200,000.00)) by an amount equal to five percent (5%) of the amount by which such TI Costs exceed \$26.00 per square foot for such Premises. If Tenant is in default, Landlord may, but without obligation to do so, use the Security Deposit, or any portion thereof, to cure the default or to compensate Landlord for all damages sustained by Landlord resulting from Tenant's default, including, but not limited to the Enforcement Expenses. Tenant shall, within ten (10) days of Landlord's written demand, pay to Landlord a sum equal to the portion of the Security Deposit so applied or used so as to replenish the amount of the Security Deposit held to increase such deposit to the amount initially deposited with Landlord. Within thirty (30) days after the termination of this Lease, Landlord shall return the Security Deposit to Tenant, less such amounts as are reasonably necessary to remedy Tenant's default(s) hereunder or to otherwise restore the Premises to a clean and safe condition, reasonable wear and tear excepted. If the cost to restore the Premises exceeds the amount of the Security Deposit, Tenant shall promptly deliver to Landlord any and all of such excess sums as reasonably determined by Landlord. Landlord shall not be required to keep the Security Deposit separate from other funds, and, unless otherwise required by law, Tenant shall not be entitled to interest on the Security Deposit. In no event or circumstance shall Tenant have the right to any use of the Security Deposit and, specifically, Tenant may not use the Security Deposit as a credit or to otherwise offset any payments required hereunder, including, but not limited to, Rent or any portion thereof.

#### 5. TENANT IMPROVEMENTS, ACCESS AND TENANT'S PRE-OCCUPANCY WORK:

5.1 Landlord shall install and construct the Tenant Improvements (as such term is defined in Exhibit B hereto) in accordance with the terms, conditions, criteria and provisions set forth in Exhibit B. Except for completion of the Punch-List Items, the defects and deficiencies to be corrected during the ninety (90) day time period set forth in Section 2.2 above, and Tenant's right to enforce any warranties and make a claim against the Project Contractor set forth in Section 2.2 above, Tenant shall accept the Premises as suitable for Tenant's use and as being in good operating order, condition and repair, "AS-IS." Landlord and Tenant hereby agree to and shall be bound by the terms, conditions and provisions of Exhibit B. Any exception to the foregoing provisions must be made by express written agreement by both parties.

5.2 ACCESS TO THE PREMISES: Tenant and Tenant's Representatives (as defined in Section 9 below) shall have access to the Premises during construction of the Improvements to assure themselves that construction is in conformance with final plans and specifications for the Improvements; provided, (i) such access shall be subject to the terms of Section 5.3 below and (ii) in the event any such persons interfere and/or delay construction in any manner, form or means, such interference and/or delay shall be a Tenant

Delay, which shall extend the Commencement Date by one (1) day for each day of such interference and/or delay and no payment of liquidated damages shall be paid to Tenant due to such delay of the Commencement Date.

5.3 TENANT'S PRE-OCCUPANCY WORK: Tenant shall have access to the Premises commencing thirty (30) days prior to the Commencement Date to allow Tenant to do other work required by Tenant to make the Premises ready for Tenant's use and occupancy (the "Tenant's Pre-Occupancy Work") upon the following conditions:

5.3.1 Tenant shall give to Landlord a written request to have such access not less than three (3) business days prior to the date on which such proposed access will first commence (the "Access Notice"). The Access Notice shall contain or be accompanied by each of the following items, all in form and substance reasonably acceptable to Landlord: (i) a detailed description of and schedule for Tenant's Pre-Occupancy Work; (ii) the names and addresses of all contractors, subcontractors and material suppliers and all other representatives of Tenant who or which will be entering the Premises on behalf of Tenant to perform Tenant's Pre-Occupancy Work or will be supplying materials for such work, and the approximate number of individuals, itemized by trade, who will be present in the Premises; (iii) copies of all contracts, subcontracts, material purchase orders, plans and specifications pertaining to Tenant's Pre-Occupancy Work; (iv) copies of all licenses and permits required in connection with the performance of Tenant's Pre-Occupancy Work; and (v) certificates of insurance (in amounts reasonably satisfactory to Landlord and with the parties identified in, or required by, the Lease named as additional insureds).

5.3.2 Such pre-term access by Tenant and Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees shall be subject to reasonable scheduling by Landlord.

5.3.3 Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees shall fully cooperate, work in harmony and not, in any manner, materially interfere with Landlord or Landlord's agents or representatives in performing the work required to install and/or construct the Tenant Improvements and any additional work, Landlord's work in other areas of the Buildings or the Park, or the general operation of the Buildings, such interference to be deemed a "Tenant-Caused Delay" under Exhibit B to this Lease. If at any time any such person representing Tenant shall not be cooperative or shall otherwise cause or threaten to cause any such disharmony or interference, including, without limitation, labor disharmony, and Tenant fails to promptly institute and maintain corrective actions as directed by Landlord, then Landlord may revoke such license upon twenty-four (24) hours' prior written notice to Tenant.

5.3.4 Any such entry into and occupancy of the Premises or any portion thereof by Tenant or any person or entity working for or on behalf of Tenant shall be deemed to be subject to all of the terms, covenants, conditions and provisions of the Lease as set forth above in Section 2 of this Lease. Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's Pre-Occupancy Work made in or about the Premises or to any property placed therein prior to the commencement of the term of the Lease, the same being at Tenant's sole risk and liability. Tenant shall be liable to Landlord for any damage to any portion of the Premises, the Improvements or the additional work related to any Tenant Changes caused by Tenant or any of Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees. In the event that the performance of Tenant's Pre-Occupancy Work causes extra costs to be incurred by Landlord or requires the use of other Building services, such extra costs shall be treated in the same manner as a Tenant Change.

5.3.5 Tenant shall be solely responsible for the security of its property or equipment stored in the Premises, except for Landlord's gross negligence or willful misconduct.

5.3.6 In consideration for Landlord permitting Tenant to access the Premises prior to the Commencement Date, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, losses or damages arising from (i) the use of the Premises or any portion thereof, by Tenant or Tenant's Representatives or from any activity permitted or suffered by Tenant or Tenant's Representatives in or about the Premises, and (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the Lease, or arising from any act or negligence of Tenant or Tenant's Representatives, and from and against any and all costs, attorney's fees, expenses and liabilities incurred in connection with such claim or any such action or proceeding; provided, however, Tenant shall not be liable for damage or injury occasioned by the gross negligence or willful misconduct of Landlord and its designated agents or employees, unless covered by insurance Tenant is required by the Lease to maintain. In no event shall Landlord be liable for any claims, damages, or losses of any nature incurred or suffered by Tenant or Tenant's Representatives, or any other person in or about the Premises, arising during the period covered by this Section 5.3.6, except to the extent such claims, damages or losses arise from the gross negligence or willful misconduct of Landlord (provided, however, in no event shall Landlord be liable for consequential damages).



6. ADDITIONAL RENT : Except as otherwise expressly set forth in this Lease it is intended by Landlord and Tenant that this Lease be a "Triple Net Lease," Tenant shall pay directly any and all costs and expenses associated with the use, operation, management, repair and occupancy of the Premises. All other costs and expenses described in this Section 6 and all other sums, charges, costs and expenses specified in this Lease other than Base Rent are to be paid by Tenant to Landlord as additional rent (collectively, "Additional Rent").

6.1 LANDLORD'S OPERATING EXPENSES: In addition to the Base Rent set forth in Section 3, Tenant shall pay to Landlord all Landlord's Operating Expenses as Additional Rent. The term "Operating Expenses" as used herein shall mean the total amounts paid or payable by Landlord in connection with the following:

6.1.1 Landlord's annual cost of insurance (which shall be at commercially competitive rates) insuring against fire and extended coverage (including, if Landlord elects, "all risk" or "special purpose" coverage) and all other insurance, including, but not limited to, earthquake, flood and/or surface water endorsements reasonably apportioned by Landlord to the Premises, rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least six (6) months commencing on the date of loss, and subject to the provisions of Section 27 below, any deductible;

6.1.2 Landlord's cost of: (i) modifications and/or new improvements to the Buildings and/or Common Area occasioned by any laws or regulations effective subsequent to the date on which the Buildings were originally constructed; (ii) reasonably necessary replacement improvements to the Buildings and/or Common Area after the Lease Date; and (iii) new improvements to the Buildings and/or Common Area that reduce operating costs or improve life/safety conditions, all as reasonably determined by Landlord; provided, however, if any of the foregoing are in the nature of capital improvements, then the cost of such capital improvements shall be amortized on a straight-line basis over a reasonable period, which shall not be less than the lesser of fifteen (15) years or the reasonably estimated useful life of such modifications, new improvements or replacement improvements in question (with interest at a rate reasonably determined by Landlord), and Tenant shall pay the monthly amortized portion of such costs (including interest charges) as part of the Operating Expenses herein;

6.1.3 Landlord's cost for the management and administration of the Premises and Common Area, including without limitation, a property management fee, accounting, auditing, billing, salaries for clerical and supervisory employees and all fees, licenses and permits related to the ownership, operation and management of the Premises and Common Area in an amount not to exceed one and one-half percent (1-1/2%) of the Base Rent, plus Landlord's Operating Expenses reimbursed to Landlord by Tenant under Sections 6.1.1, 6.1.2, 6.1.4, 6.2, 6.3, and 7 (but excluding for purposes of calculating this sum, the costs described in this Section 6.1.3).

6.1.4 Any other replacements, not within the scope of Sections 6.1.2 or 11.2.3, which under customary practices in the industry would be considered to be "capital expenditures," shall be paid ninety percent (90%) by Landlord and ten percent (10%) by Tenant (Tenant shall pay such amounts within thirty (30) days of receipt of written demand therefor); provided, however the ninety percent (90%) paid by Landlord for the costs of such capital expense shall be reimbursed by Tenant to Landlord in accordance with the reimbursement formula set forth in Section 6.1.2 of this Lease.

Notwithstanding anything to the contrary contained herein, for purposes of this Lease, the term "Operating Expenses" shall not include the following:

(a) Legal and auditing fees (other than those fees reasonably incurred in connection with the maintenance and operation of the Buildings and/or Common Area), leasing commissions, advertising expenses, and other costs incurred in connection with the original development or original leasing of the Buildings and/or Common Area or future re-leasing of the Buildings and/or Common Area;

(b) Depreciation of the Buildings or any other improvements situated within the Park;

(c) Any items for which Landlord is actually reimbursed by insurance;

(d) Costs of repairs or other work necessitated by fire, windstorm or other casualty and/or costs of repair or other work necessitated by the exercise of the right of eminent domain to the extent insurance proceeds or a condemnation award, as applicable, is actually received by Landlord for such purposes; provided (i) such costs of repairs or other work shall be paid by the parties in accordance with the provisions of Sections 27 and 28 below and (ii) a commercially reasonable deductible under any such insurance policies shall be included as an Operating Expense if paid by Landlord;

(e) Other than any interest charges for capital improvements referred to in

Section 6.1.3 hereinabove, any interest or payments on any financing for the Buildings or the Common Area, interest and penalties incurred as a result of Landlord's late payment of any invoice (provided that Tenant pays Operating Expenses, Tax Expenses and Tenant's Share of Common Area Expenses to Landlord when due as set forth herein), and any bad debt loss, rent loss or reserves for same;

(f) Costs associated with the investigation and/or remediation of Hazardous Materials (hereafter defined) present in, on or about the Premises and/or Common Area, unless such costs and expenses are the responsibility of Tenant as provided in Section 29 of this Lease, in which event such costs and expenses shall be paid solely by Tenant in accordance with the provisions of Section 29 of this Lease;

(g) Landlord's cost for the replacement items set forth in Section 11.2.3 below; and

(h) Costs for services performed or materials provided by Landlord or affiliates of Landlord to the extent such costs exceed those amounts which would otherwise be paid to independent third parties in an arms-length transaction;

(i) rental payments and any related costs pursuant to any ground lease of land underlying all or any portion of the Premises and/or Common Area;

(j) any costs, fees, dues, contributions or similar expenses for political, charitable, industry association or similar organizations;

(k) amortization on any mortgage or mortgages or any other debt instrument made by Landlord encumbering the Premises and/or Common Area;

(l) marketing costs, including leasing commissions, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Buildings, including bad debt expenses, attorneys' fees and other costs and expenditures incurred in connection with disputes with present or prospective tenants or other occupants of the Buildings;

(m) real estate brokers' leasing commissions;

(n) costs incurred by Landlord due to the violation solely by Landlord or any tenant, including Tenant, of the terms and conditions of any lease of space in the Buildings;

(o) Landlord's general corporate overhead and general administrative expenses, including, but not limited to, salaries of officers and executives of Landlord;

(p) advertising and promotional expenditures, and costs of signs identifying the owner of the Buildings or other tenants' signs;

(q) legal and accounting fees for preparation of Landlord's business documents, including the preparation of any and all tax returns;

(r) costs incurred by Landlord in the original development and/or original construction of the Park, Premises and/or Common Area for "tap fees" or sewer or water connection fees of the Park, Premises and/or Common Area; and

(s) any fines, costs, penalties or interest resulting from the gross negligence or willful misconduct of the Landlord or its agents, contractors or employees.

6.2 TAX EXPENSES: In addition to the Base Rent set forth in Section 3, Tenant shall pay to Landlord (and Landlord shall pay the Tax Collector prior to delinquency) one hundred percent (100%) of all real property taxes applicable to the Premises (except as otherwise set forth below), all personal property taxes now or hereafter assessed or levied against the Premises or Tenant's personal property and subject to this Section 6.2, any increases in real property taxes and assessments attributable to any and all alterations, tenant improvements (including, but not limited to, the Tenant Improvements) or other improvements of any kind whatsoever placed in, on or about the Premises for the benefit of, at the request of, or by Tenant; provided, however, (a) during the first (1st) year of the initial Term, Tenant shall not pay any increase in real property taxes and assessments attributable to a "Change in Ownership" which may occur during such first (1st) year of the initial Term, (b) during the second (2nd) year of the initial Term, in the event of a "Change in Ownership" during the first (1st) or second (2nd) years of the initial Term, Tenant shall pay fifty percent (50%) of any real property taxes and assessments attributable to such

"Change in Ownership" plus the annual two percent (2%) adjustment as and when such adjustment becomes effective, and (c) thereafter, Tenant shall pay all real property taxes and assessments attributable to a "Change in Ownership." The term "Tax Expenses" shall mean and include, without limitation, any form of tax and assessment (general, special, supplemental, ordinary or extraordinary), including the existing City of Carlsbad Community Facilities Districts commercial rental tax, payments under any improvement bond or bonds, license fees, license tax, business license fee, rental tax, transaction tax or levy imposed by authority having the direct or indirect power of tax (including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof) as against any legal or equitable interest of Landlord in the Premises, as against Landlord's right to rent, or as against Landlord's business of leasing the Premises or the occupancy of Tenant or any other tax, fee, or excise, however described, including, but not limited to, any value added tax, or any tax imposed in substitution (partially or totally) of any tax previously included within the definition of real property taxes, or any additional tax the nature of which was previously included within the definition of real property taxes. The term "Tax Expenses" shall not include any franchise, estate, inheritance, net income, or excess profits tax imposed upon Landlord. Tenant shall not be responsible for the payment of any assessments or special taxes on the Park in conjunction with the development or future development of the Park.

6.3 COMMON AREA EXPENSES: In addition to the Base Rent set forth in Section 3, Tenant shall pay to Landlord Tenant's Share of Common Area Expenses as Additional Rent in the same manner as provided in Section 3.2 and reconciled in the same manner as set forth in Section 6.5. The term "Tenant's Share" shall mean a percentage derived by dividing the actual gross square footage of the Premises by the actual gross square footage of the entire Park, including the Premises. The term "Common Area" shall mean the land, landscaping and improvements between El Camino Real and the Premises and the main entrance and driveway to the Premises from El Camino Real and the slopes fronting on El Camino Real. The term "Common Area Expenses" shall mean Landlord's cost of maintaining, repairing and replacing the improvements within the Common Area, including, but not limited to Landlord's cost of utilities, insurance, fees, charges and expenses, supplies, equipment, rental equipment, security and fire protection services if provided by Landlord and other similar items used in the operation and/or maintenance of the Common Area, and all real property taxes applicable or reasonably apportioned by the Landlord to the Common Area. The Landlord may be maintaining other portions of the Park under service contracts which include the Common Area, and in such event, the expense charged to the Common Area shall be reasonably apportioned by Landlord.

6.4 PAYMENT OF EXPENSES: Landlord shall estimate Operating Expenses, Tax Expenses and Tenant's Share of Common Area Expenses for the calendar year in which the Lease commences. Commencing on the Commencement Date, one-twelfth (1/12th) of this estimated amount shall be paid by Tenant to Landlord, as Additional Rent, and thereafter on the first (1st) day of each month throughout the remaining months of such calendar year. Thereafter, Landlord may estimate such expenses as of the beginning of each calendar year during the Term of this Lease and Tenant shall pay one-twelfth (1/12th) of such estimated amount as Additional Rent hereunder on the first (1st) day of each month during such calendar year and for each ensuing calendar year throughout the Term of this Lease. Tenant's obligation to pay Operating Expenses, Tax Expenses and Tenant's Share of Common Area Expenses arising during the Term of the Lease shall survive for a period of two (2) years following the expiration or earlier termination of this Lease.

6.5 ANNUAL RECONCILIATION: By May 31st of each calendar year, or as soon thereafter as reasonably possible, Landlord shall furnish Tenant with an accounting of actual Operating Expenses, Tax Expenses and Common Area Expenses. Within thirty (30) days of Landlord's delivery of such accounting, Tenant shall pay to Landlord the amount of any underpayment. Notwithstanding the foregoing, failure by Landlord to give such accounting by such date shall not constitute a waiver by Landlord of its right to collect any of Tenant's underpayment at any time. Landlord shall credit the amount of any overpayment by Tenant toward the next estimated monthly installment(s) falling due, or where the Term of the Lease has expired, refund the amount of overpayment to Tenant. If the Term of the Lease expires prior to the annual reconciliation of expenses Landlord shall have the right to reasonably estimate Operating Expenses, Tax Expenses and Common Area Expenses, and if Landlord determines that an underpayment is due, Tenant hereby agrees that Landlord shall be entitled to deduct such underpayment from Tenant's Security Deposit. If Landlord reasonably determines that an overpayment has been made by Tenant, Landlord shall refund said overpayment to Tenant as soon as practicable thereafter. Notwithstanding the foregoing, failure of Landlord to accurately estimate Operating Expenses, Tax Expenses and Common Area Expenses or to otherwise perform such reconciliation of Operating Expenses, Tax Expenses and Common Area Expenses, including without limitation, Landlord's failure to deduct any portion of any underpayment from Tenant's Security Deposit, shall not constitute a waiver of Landlord's right to collect any of Tenant's underpayment so long as any action is brought by Landlord within two (2) years after the after the expiration or earlier termination of this Lease.

6.6 AUDIT: After delivery to Landlord of at least thirty (30) days prior written notice, Tenant, at its sole cost and expense through any accountant designated by it, shall have the right to examine and/or audit the books and records evidencing such costs and expenses for the previous one (1) calendar year,

during Landlord's reasonable business hours but not more frequently than once during any calendar year. Any such accounting firm designated by Tenant may not be compensated on a contingency fee basis. The results of any such audit (and any negotiations between the parties related thereto) shall be maintained strictly confidential by Tenant and its accounting firm and shall not be disclosed, published or otherwise disseminated to any other party other than to Landlord and its authorized agents. Landlord and Tenant shall use their reasonable efforts to cooperate in such negotiations and to promptly resolve any discrepancies between Landlord and Tenant in the accounting of such costs and expenses. If the audit objectively demonstrates a mistake in Tenant's favor in excess of five percent (5%) of the total amounts paid by Tenant for Operating Expenses, Tax Expenses, and Tenant's Share of Common Area Expenses, Landlord shall within thirty (30) days thereafter reimburse Tenant for the actual and reasonable cost of the audit, and any monies shown to be owing to Tenant.

7. UTILITIES: Tenant shall pay directly the cost of all utilities, including but not limited to, all water, sewer use, sewer discharge fees, water and sewer connection fees (but only to the extent, if any, required in Exhibit B), gas, heat, electricity, refuse pickup, janitorial service, telephone and other utilities billed or separately metered to the Premises and/or Tenant. Tenant shall cause all such utilities to be placed in Tenant's name and Tenant shall timely pay the costs of all such utilities. Tenant shall also pay prior to delinquency directly to the appropriate authority any assessments or charges for utility or similar purposes included within any tax bill for the Premises, including, without limitation, entitlement fees, allocation unit fees, and/or any similar fees or charges, and any penalties related thereto. Tenant acknowledges that the Premises may become subject to the rationing of utility services or restrictions on utility use as required by a public utility company, governmental agency or other similar entity having jurisdiction thereof. Notwithstanding any such rationing or restrictions on use of any such utility services, Tenant acknowledges and agrees that its tenancy and occupancy hereunder shall be subject to such rationing restrictions as may be imposed upon Landlord, Tenant, the Premises or Common Area, and Tenant shall in no event be excused or relieved from any covenant or obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant further agrees to timely and faithfully pay, prior to delinquency, any amount, tax, charge, surcharge, assessment or imposition levied, assessed or imposed upon the Premises, or Tenant's use and occupancy thereof.

8. LATE CHARGES: Any and all sums or charges set forth in this Section 8 are considered part of Additional Rent. Tenant acknowledges that late payment (the sixth (6th) day of each month or any time thereafter) by Tenant to Landlord of Base Rent, Operating Expenses, Tax Expenses, Common Area Expenses, and Utility Expenses (if any) (the 31st day after Tenant's receipt of Landlord's written demand therefor or any time thereafter) or other sums due hereunder, will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by any encumbrance against the Premises, and late charges and penalties imposed on Landlord as a result of Tenant's late payment of Operating Expenses. Therefore, if any installment of Rent or any other sum due from Tenant is not received by Landlord within five (5) days of the date when due, Tenant shall promptly pay to Landlord all of the following, as applicable: (a) an additional sum equal to five percent (5%) of such delinquent amount plus interest on such delinquent amount at the rate equal to the prime rate plus three percent (3%) for the time period such payments are delinquent as a late charge for every month or portion thereof that such sums remain unpaid, (b) the amount of seventy-five dollars (\$75) for each three-day notice prepared for, or served on, Tenant, (c) the amount of fifty dollars (\$50) relating to checks for which there are not sufficient funds. If Tenant delivers to Landlord a check for which there are not sufficient funds, Landlord may, at its sole option, require Tenant to replace such check with a cashier's check for the amount of such check and all other charges payable hereunder. The parties agree that this late charge and the other charges referenced above represent a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge or other charges shall not constitute a waiver by Landlord of Tenant's default with respect to the delinquent amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other breach of Tenant under this Lease. If a late charge or other charge becomes payable for any three (3) installments of Rent within any twelve (12) month period, then Landlord, at Landlord's sole option, can either require the Rent be paid quarterly in advance, or be paid monthly in advance by cashier's check or by electronic funds transfer.

## 9. USE OF PREMISES:

### 9.1 COMPLIANCE WITH LAWS, RECORDED MATTERS, AND RULES AND REGULATIONS:

The Premises are to be used solely for the purposes and uses specified in the Basic Lease Information and for no other uses or purposes without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed so long as the proposed use (i) does not involve the use of Hazardous Materials other than as expressly permitted under the provisions of Section 29 below and (ii) is compatible and consistent with the other uses then being made in the vicinity of the Premises, as reasonably determined by Landlord. The use of the Premises by Tenant and its employees, representatives, agents, invitees, licensees, subtenants, customers or contractors (collectively, "Tenant's Representatives") shall be subject to, and at all times in compliance with, (a) any and all applicable laws, ordinances, statutes, orders and regulations

as same exist from time to time (collectively, the "Laws"), (b) any and all documents, matters or instruments, including without limitation, any declarations of covenants, conditions and restrictions, and any supplements thereto, each of which has been or hereafter is recorded in any official or public records with respect to the Premises and/or Common Area, or any portion thereof (collectively, the "Recorded Matters"), and (c) any and all rules and regulations set forth in Exhibit C, attached to and made a part of this Lease, and any other reasonable rules and regulations promulgated by Landlord now or hereafter enacted relating to parking and the operation of the Premises and/or Common Area (collectively, the "Rules and Regulations"); provided, however, any Recorded Matters which are recorded subsequent to the Lease Date shall not materially and adversely affect Tenant's use and enjoyment of the Premises or Common Area or be inconsistent with the terms of this Lease (provided, Tenant acknowledges that Landlord intends to parcelize the Land such that each of the Buildings shall be located on a separate legal parcel and Tenant shall have no right to approve and/or consent to such parcelization). Subject to any other express terms set forth in this Lease, Tenant agrees to, and does hereby, assume full and complete responsibility to ensure that the design of the Tenant Improvements is adequate to fully meet the needs and requirements of Tenant's intended operations of its business within the Premises, and Tenant's use of the Premises and that same are in compliance with all applicable Laws throughout the Term of this Lease. Additionally, Tenant shall be solely responsible for the payment of all costs, fees and expenses associated with any modifications, improvements or alterations to the Premises and/or Common Area occasioned by the enactment of, or changes to, any Laws arising from Tenant's particular use of the Premises or alterations, improvements or additions made to the Premises regardless of when such Laws became effective.

9.2 PROHIBITION ON USE: Tenant shall not use the Premises or permit anything to be done in or about the Premises nor keep or bring anything therein which will in any way conflict with any of the requirements of the Board of Fire Underwriters or similar body now or hereafter constituted or in any way increase the existing rate of or affect any policy of fire or other insurance upon any of the Buildings or any of its contents, or cause a cancellation of any insurance policy. No auctions may be held or otherwise conducted in, on or about the Premises and/or Common Area without Landlord's written consent thereto, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of Landlord or other persons or businesses in the area, or injure or annoy other tenants or use or allow the Premises to be used for any unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any private or public nuisance in, on or about the Premises and/or Common Area, including, but not limited to, any offensive odors, noises, fumes or vibrations. Tenant shall not damage or deface or otherwise commit or suffer to be committed any waste in, upon or about the Premises. Tenant shall not place or store, nor permit any other person or entity to place or store, any property, equipment, materials, supplies, personal property or any other items or goods outside of the Premises for any period of time. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises. Tenant shall place no loads upon the floors, walls, or ceilings in excess of the maximum designed load permitted by the applicable Uniform Building Code or which may damage any of the Buildings or outside areas; nor place any harmful liquids in the drainage systems; nor dump or store waste materials, refuse or other such materials, or allow such to remain outside the Building area, except for any non-hazardous or non-harmful materials which may be stored in refuse dumpsters or in any enclosed trash areas provided. Tenant shall honor the terms of all Recorded Matters relating to the Premises and/or Common Area. Tenant shall honor the Rules and Regulations. If Tenant fails to comply with such Laws, Recorded Matters, Rules and Regulations or the provisions of this Lease, Landlord shall have the right to pursue any and all rights and remedies of Landlord hereunder including, but not limited to, the payment by Tenant to Landlord of all Enforcement Expenses and Landlord's costs and expenses, if any, to cure any of such failures of Tenant, if Landlord, at its sole option, elects to undertake such cure. If any portion of the Common Area is located on the Premises, Landlord shall have the right to reasonably enter upon the Premises for the purposes of keeping and maintaining the Common Area as required herein and that portion of the Common Area consisting of the right of way shall be open and available to other tenants within the Park and their invitees. The provisions of this Section 9.2 shall be applied to Tenant by Landlord in a reasonable and non-discriminatory manner on the same basis that Landlord applies similar provisions to other tenants within the Park.

#### 10. ALTERATIONS AND ADDITIONS; AND SURRENDER OF PREMISES:

10.1 ALTERATIONS AND ADDITIONS: Tenant shall be permitted to make, at Tenant's sole cost and expense, non-structural alterations and additions to the Premises which do not require a permit without obtaining Landlord's prior written consent provided the cost of same does not exceed One Hundred Thousand Dollars (\$100,000.00) cumulatively in any six (6) month period ("Permitted Improvements"); provided, however, no such Permitted Improvement shall be allowed which penetrate the roof or alter the plumbing, mechanical, electrical or fire sprinkler/monitoring systems of the Building. Except for the Permitted Improvements, Tenant shall not install any signs, fixtures (other than trade fixtures), improvements, nor make or permit any other alterations or additions to the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. If any such alteration or addition is expressly permitted by Landlord, including the Permitted Improvements, Tenant shall deliver

at least twenty (20) days prior notice to Landlord, from the date Tenant intends to commence construction, sufficient to enable Landlord to post a Notice of Non-Responsibility. Within twenty (20) business days of Landlord's receipt of Tenant's written notice of any item comprising the Permitted Improvements, Landlord shall notify Tenant whether or not Landlord will require Tenant to remove such items from the Premises upon the expiration or earlier termination of this Lease. In all events, Tenant shall obtain all permits or other governmental approvals prior to commencing any of such work and deliver a copy of same to Landlord. All alterations and additions shall be installed by a licensed contractor approved by Landlord, at Tenant's sole expense in compliance with all applicable Laws (including, but not limited to, the ADA as defined herein), Recorded Matters, and Rules and Regulations. Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. As a condition to Landlord's consent to the installation of any fixtures, additions or other improvements the cost of which exceeds Five Hundred Thousand Dollars (\$500,000.00), Landlord may require Tenant to post and obtain a completion and indemnity bond for up to one hundred fifty percent (150%) of the cost of the work.

10.2 SURRENDER OF PREMISES: Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon the termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, together with the Tenant Improvements (except as set forth below), fixtures (other than trade fixtures), additions and improvements which Landlord has notified Tenant, in writing, that Landlord will require Tenant not to remove, to Landlord in good condition and repair (including, but not limited to, replacing all light bulbs and ballasts not in good working condition) and in the condition in which the Premises existed as of the Commencement Date, except for reasonable wear and tear and casualty; provided, however, (i) Landlord may require Tenant to remove some or all of the Tenant Improvements so long as Landlord gives Tenant written notice of such demand at the time of Landlord's approval of the Tenant Improvements, (ii) in the event TI Costs exceed \$35.00 per square foot ("Excess TIs"), Landlord and Tenant shall identify and agree upon at or prior to the finalization of the TI Construction Drawings (as defined in Exhibit B) those Excess TIs which (a) which may be removed by Tenant at Tenant's election at the expiration or earlier termination of the Term provided Tenant repairs any damage caused by such removal and (b) which shall be removed by Tenant at the expiration or earlier termination of the Term in the event Landlord requires Tenant to so remove such Excess TIs, (iii) Tenant shall remove those Permitted Improvements of which Landlord, at least sixty (60) days prior to the expiration or earlier termination of this Lease, notifies Tenant must be removed at the expiration or earlier termination of this Lease, and (iv) such removal by Tenant shall not cause the Premises to be in non-compliance with any and all applicable codes, laws and regulations; provided, further, in the event Landlord fails to notify Tenant that Landlord shall require the removal of any Permitted Improvements, Tenant Improvements, Excess TIs (except those agreed upon by Landlord and Tenant as set forth above) or any other addition, fixture or other improvement, Tenant shall not remove any such Permitted Improvements, Tenant Improvements, Excess TIs (except those agreed upon by Landlord and Tenant as set forth above) or any other addition, fixture or other improvement. Reasonable wear and tear shall not include any damage or deterioration to the floors of the Premises arising from the use of forklifts in, on or about the Premises (including, without limitation, any marks or stains of any portion of the floors), and any damage or deterioration that would have been prevented by proper maintenance by Tenant or Tenant otherwise performing all of its obligations under this Lease. Tenant shall repair any damage caused by the installation or removal of any Tenant Improvements, any Excess TIs, signs, trade fixtures, furniture, furnishings, fixtures, additions and improvements which are to be removed from the Premises by Tenant hereunder. Tenant shall ensure that the removal of such items and the repair of the Premises will be completed within thirty (30) days after termination of this Lease and such tenancy shall be subject to Section 22.

#### 11. REPAIRS AND MAINTENANCE:

11.1 TENANT'S REPAIRS AND MAINTENANCE OBLIGATIONS: Except for those portions of the Buildings to be replaced by Landlord, as expressly provided in Section 11.2 below, (i) Tenant shall, at Tenant's sole cost and expense, keep and maintain the entirety of the Premises in good, clean and safe condition and repair to the reasonable satisfaction of Landlord including, but not limited to, repairing any damage caused by Tenant or Tenant's Representatives and replacing any property so damaged by Tenant or Tenant's Representatives; any replacements, including those replacements described in Section 11.2.1 of this Lease, shall be of equal or better quality than the components or items replaced and be reasonably approved by Landlord in advance of such replacements and Landlord shall have the right, but not the obligation to, inspect and monitor the installation and operation of such replacement; and (ii) Tenant shall, at Tenant's sole cost, provide for security and fire protection services for the Premises as may reasonably be required. Tenant shall procure and maintain preventative maintenance contract(s) for (a) the heating, ventilation and air conditioning systems; (b) the fire and sprinkler protection services (including, without limitation, monitoring services; and (c) the roof systems (other than the structural portions of the roof which are the responsibility of the Landlord unless damage to those portions of the roof is due to Tenant's failure to maintain its portion of the roof systems). All preventative maintenance contract(s) shall be obtained from licensed contractors or vendors, on a monthly, bi-monthly or quarterly basis, as reasonably determined by Landlord. Landlord shall have the right to reasonably approve all such maintenance

contracts prior to their execution by Tenant, and, in the event Landlord shall reasonably conclude that Tenant is not properly maintaining the above-mentioned systems, Landlord reserves the right, but without the obligation to do so, to procure and maintain (i) the heating, ventilation and air conditioning systems preventative maintenance contract(s), (ii) the fire and sprinkler protection services and preventative maintenance contract(s) (including, without limitation, monitoring services) and/or (iii) the roof systems preventative maintenance contract(s). If Landlord so elects to procure and maintain any such contract(s), Tenant will be named as a third party beneficiary in each such contract(s) and Tenant shall reimburse Landlord for the cost thereof in accordance with the provisions of Section 6 above. If Tenant procures and maintains any of such contract(s), Tenant will promptly deliver to Landlord a true and complete copy of each such contract and any and all renewals or extensions thereof, and each service report or other summary received by Tenant pursuant to or in connection with such contract(s). If Landlord actually procures any of such contract(s) and the contractors or vendors thereunder fail to promptly and adequately respond or otherwise perform the work required, then Tenant shall notify Landlord of such in writing (including a reasonably detailed explanation of the problems being experienced by Tenant) and Landlord shall promptly commence and undertake such corrective action as may be reasonably necessary to resolve such problems to Tenant's reasonable satisfaction. In addition to the above, if required Tenant shall also obtain repair contracts with appropriate contractors or vendors.

**11.2 REPLACEMENT OBLIGATIONS:** With respect to replacements of Improvements on the Premises, other than those caused by fire or other casualty covered under Section 27 of this Lease, Landlord and Tenant agree that they shall have the following obligations:

11.2.1 Replacements rendered necessary by (i) the intentional or negligent acts or omissions of Tenant or any of Tenant's Representatives and (ii) replacements not covered by Sections 6.1.2, 6.1.4 or 11.2.3, shall be the sole responsibility of Tenant subject to waiver of subrogation under Section 13.

11.2.2 Replacements made pursuant to Section 6.1.2 of this Lease (if any) shall be subject to Tenant's obligation to reimburse Landlord in accordance with Section 6.1.2 and shall be deemed to be Additional Rent hereunder.

11.2.3 Landlord shall be solely responsible for the replacement of the structural portions of the following portions of the Buildings: the floors, foundations, exterior perimeter walls and roofs of the Buildings (exclusive of the roof membrane and glass and exterior doors), as, and when, Landlord determines such replacement to be necessary in Landlord's reasonable discretion.

11.2.4 Replacements made pursuant to Section 6.1.4 of this Lease, if any, shall be subject to Tenant's obligation to reimburse Landlord in accordance with Section 6.1.4 and shall be deemed to be Additional Rent hereunder.

**11.3 TENANT'S FAILURE TO PERFORM REPAIRS AND MAINTENANCE OBLIGATIONS:** Except for normal maintenance and repair of the items described above and except as set forth in Section 42 of this Lease, Tenant shall have no right of access to or right to install any device on the roofs of the Buildings nor make any penetrations of the roofs of the Buildings without the express prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. If Tenant refuses or neglects to commence repair and maintenance of Premises (including the Land) as required herein and to the reasonable satisfaction of Landlord within three (3) business days after written notice from Landlord (unless in the case of an emergency in which case no notice shall be required), Landlord may, but without obligation to do so, at any time make such repairs and/or maintenance without Landlord having any liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property, or to Tenant's business by reason thereof, except to the extent any damage is caused by the willful misconduct or gross negligence of Landlord or its authorized agents and representatives. In the event Landlord makes such repairs and/or maintenance, upon completion thereof Tenant shall pay to Landlord, as additional rent, the Landlord's costs for making such repairs and/or maintenance, plus ten percent (10%) for overhead, upon presentation of a bill therefor, plus any Enforcement Expenses. The obligations of Tenant hereunder shall survive two (2) years following the expiration of the Term of this Lease or the earlier termination thereof. Subject to Section 41 of this Lease, Tenant hereby waives any right to repair at the expense of Landlord under any applicable Laws now or hereafter in effect respecting the Premises.

**11.4 LANDLORD'S AUDIT RIGHTS.** Landlord shall have the right to audit Tenant's replacement, maintenance and repair of the Buildings' systems, including without limitation, those systems identified in Section 11.1 of this Lease and, in the event such audit shall reveal deficiencies and/or defects in the replacement, repair and maintenance of such systems by Tenant, Landlord shall have those rights granted to Landlord under Sections 11.1 and 11.3 of this Lease.

## 12. INSURANCE:

**12.1 TYPES OF INSURANCE:** Tenant shall maintain in full force and effect at all times during the

Term of this Lease, at Tenant's sole cost and expense, for the protection of Tenant and Landlord, as their interests may appear, policies of insurance issued by a carrier or carriers reasonably acceptable to Landlord and its lender(s) which afford the following coverages: (i) worker's compensation: statutory limits; (ii) employer's liability, as required by law, with a minimum limit of \$100,000 per employee and \$500,000 per occurrence; (iii) commercial general liability insurance (occurrence form) providing coverage against any and all claims for bodily injury and property damage occurring in, on or about the Premises arising out of Tenant's and Tenant's Representatives' use and/or occupancy of the Premises. Such insurance shall include coverage for blanket contractual liability, fire damage, premises, personal injury, completed operations, products liability, personal and advertising, and a plate-glass rider to provide coverage for all glass in, on or about the Premises including, without limitation, skylights. Such insurance shall have a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence with a Four Million Dollar (\$4,000,000) aggregate limit and excess/umbrella insurance in the amount of Four Million Dollars (\$4,000,000). If Tenant has other locations which it owns or leases, the policy shall include an aggregate limit per location endorsement. If necessary, as reasonably determined by Landlord, Tenant shall provide for restoration of the aggregate limit; (iv) comprehensive automobile liability insurance: a combined single limit of not less than \$2,000,000 per occurrence and insuring Tenant against liability for claims arising out of the ownership, maintenance, or use of any owned, hired or non-owned automobiles; (v) "all risk" or "special purpose" property insurance, including without limitation, sprinkler leakage, boiler and machinery comprehensive form, if applicable, covering damage to or loss of any personal property, trade fixtures, inventory, fixtures and equipment located in, on or about the Premises, and in addition, coverage for flood, earthquake, and business interruption of Tenant, together with, if the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Premises. Such insurance shall be written on a replacement cost basis (without deduction for depreciation) in an amount equal to eighty percent (80%) of the full replacement value of the aggregate of the items referred to in this subparagraph (v); and (vi) such other insurance as Landlord deems reasonably necessary and prudent or as may otherwise be reasonably required by any of Landlord's lenders or joint venture partners.

12.2 INSURANCE POLICIES: Insurance required to be maintained by Tenant shall be written by companies (i) licensed to do business in the State of California, (ii) domiciled in the United States of America, and (iii) having a "General Policyholders Rating" of at least A:X (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "A.M. Best's Rating Guides." Any deductible amounts under any of the insurance policies required hereunder shall not exceed Ten Thousand Dollars (\$10,000.00). Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements required herein for all insurance required to be maintained by Tenant hereunder at the time of execution of this Lease by Tenant. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days prior written notice to the parties named as additional insureds as required in this Lease (except for cancellation for nonpayment of premium, in which event cancellation shall not take effect until at least ten (10) days' notice has been given to Landlord). Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms of this Lease under a blanket insurance policy, provided such blanket policy expressly affords coverage for the Premises and for Landlord as required by this Lease.

12.3 ADDITIONAL INSURED AND COVERAGE: Landlord, any property management company and/or agent of Landlord for the Premises and Common Area and any lender(s) of Landlord having a lien against the Premises and Common Area shall be named as additional insureds under all of the policies required in Section 12.1(iii) above. Additionally, such policies shall provide for severability of interest. All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance maintained by Landlord. Any umbrella/excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease. It is the parties' intention that the insurance to be procured and maintained by Tenant as required herein shall provide coverage for any and all damage or injury arising from or related to Tenant's operations of its business and/or Tenant's or Tenant's Representatives' use of the Premises. It is not contemplated or anticipated by the parties that the aforementioned risks of loss be borne by Landlord's insurance carriers, rather it is contemplated and anticipated by Landlord and Tenant that such risks of loss be borne by Tenant's insurance carriers pursuant to the insurance policies procured and maintained by Tenant as required herein.

12.4 FAILURE OF TENANT TO PURCHASE AND MAINTAIN INSURANCE: In the event Tenant does not purchase the insurance required in this Lease or keep the same in full force and effect throughout the Term of this Lease (including any renewals or extensions), Landlord may, but without obligation to do so, purchase the necessary insurance and pay the premiums therefor. If Landlord so elects to purchase such insurance, Tenant shall promptly pay to Landlord as Additional Rent, the amount so paid by Landlord, upon Landlord's demand therefor. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as Additional Rent, any and all Enforcement Expenses and damages which Landlord may sustain by



reason of Tenant's failure to obtain and maintain such insurance. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses, damages and costs resulting from such failure.

12.5 LANDLORD'S INSURANCE: Landlord shall maintain in full force and effect during the Term of this Lease, subject to reimbursement as provided in Section 6, policies of insurance which afford such coverages as are commercially reasonable and as is consistent with other properties in Landlord's portfolio. Notwithstanding the foregoing, Landlord shall obtain and keep in force during the Term of this Lease, as an item of Operating Expenses, 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 Premises ("Lender(s)"), insuring loss or damage to the Buildings, including all improvements, fixtures (other than trade fixtures) and permanent additions. However, all alterations, additions and improvements made to the Premises by Tenant (other than the Tenant Improvements) shall be insured by Tenant rather than by Landlord. The amount of such insurance procured by Landlord shall be equal to at least eighty percent (80%) of the full replacement cost of the Buildings, including all improvements and permanent additions as the same shall exist from time to time, or the amount required by Lenders. At Landlord's option, such policy or policies shall insure against all risks of direct physical loss or damage (including, without limitation, 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 Buildings required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. If any such insurance coverage procured by Landlord has a deductible clause, the deductible shall not exceed commercially reasonable amounts, and in the event of any casualty, the amount of such deductible shall be an item of Operating Expenses. Notwithstanding anything to the contrary contained herein, to the extent the cost of maintaining insurance with respect to the Buildings is increased as a result of Tenant's acts, omissions, use or occupancy of the Premises, Tenant shall pay for such increase(s).

13. WAIVER OF SUBROGATION: Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property to the extent that such loss or damage is insured by an insurance policy required to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required by its insurer whereby the insurer waives its rights of subrogation against the other party. This provision is intended to waive fully, and for the benefit of the parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to Section 12 of this Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance. The provisions of this Section 13 shall not apply in those instances in which such waiver of subrogation would invalidate such insurance coverage or would cause either party's insurance coverage to be voided or otherwise uncollectible. In addition to the above, neither party shall be personally obligated under any indemnities given to the other party to the extent that insurance carried by the party suffering a loss actually covers such loss.

14. LIMITATION OF LIABILITY AND INDEMNITY: Except to the extent of losses, damages, liabilities, claims, charges and costs resulting from the gross negligence or willful misconduct of Landlord or its authorized representatives, Tenant agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's lenders, partners, members, property management company (if other than Landlord), agents, directors, officers, employees, representatives, contractors, shareholders, successors and assigns and each of their respective partners, members, directors, employees, representatives, agents, contractors, shareholders, successors and assigns (collectively, the "Indemnitees") harmless and indemnify the Indemnitees from and against all liabilities, damages, claims, losses, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, (i) Tenant's or Tenant's Representatives' use of the Premises, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant's Representatives, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

Except to the extent of damage resulting from the gross negligence or willful misconduct of Landlord or its authorized representatives, to the fullest extent permitted by law, Tenant agrees that neither Landlord nor any of Landlord's lender(s), partners, members, employees, representatives, legal representatives, successors or assigns shall at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, liability, injury, death or damage to persons or property which at any time may be suffered or sustained by Tenant or by any person(s) whomsoever who may at any time be using, occupying or visiting the Premises, including, but not limited to, any acts, errors or omissions by or on behalf of any other tenants or occupants of the Buildings. Tenant shall not, in any event or circumstance, be permitted to offset or otherwise credit against any payments of Rent required herein for matters for which Landlord may be liable hereunder. Landlord and its authorized representatives shall not

be liable for latent defects or any interference with light or air from other structures off the Premises and not leased by Tenant.

#### 15. ASSIGNMENT AND SUBLEASING:

15.1 PROHIBITION: Except as expressly set forth herein with respect to a Related Entity, Tenant shall not assign, mortgage, hypothecate, encumber, grant any license or concession, pledge or otherwise transfer this Lease (collectively, "assignment"), in whole or in part, whether voluntarily or involuntarily or by operation of law, nor sublet or permit occupancy by any person other than Tenant of all or any portion of the Premises without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant hereby agrees that Landlord may withhold its consent to any proposed sublease or assignment if the proposed sublessee or assignee or its business is subject to compliance with additional requirements of the ADA (defined below) and/or Environmental Laws (defined below) beyond those requirements which are applicable to Tenant, unless the proposed sublessee or assignee shall (a) first deliver plans and specifications for complying with such additional reasonable requirements and obtain Landlord's written reasonable consent thereto, and (b) comply with all Landlord's reasonable conditions for or contained in such consent, including without limitation, requirements for security to assure the lien-free completion of such improvements. If Tenant seeks to sublet or assign all or any portion of the Premises, Tenant shall deliver to Landlord at least thirty (30) days prior to the proposed commencement of the sublease or assignment (the "Proposed Effective Date") the following: (i) the name of the proposed assignee or sublessee; (ii) such information as to such assignee's or sublessee's financial responsibility and standing as Landlord may reasonably require; and (iii) the aforementioned plans and specifications, if any. Within ten (10) days after Landlord's receipt of a written request from Tenant that Tenant seeks to sublet or assign all or any portion of the Premises, Landlord shall deliver to Tenant a copy of Landlord's standard form of sublease or assignment agreement (as applicable), which instrument shall be utilized for each proposed sublease or assignment (as applicable), and such instrument shall include a provision whereby the assignee assumes all of Tenant's obligations hereunder and agrees to be bound by the terms hereof. As Additional Rent hereunder, Tenant shall pay to Landlord a fee in the amount of five hundred dollars (\$500) plus Tenant shall reimburse Landlord for actual legal and other expenses incurred by Landlord in connection with any actual or proposed assignment or subletting. In the event the sublease or assignment (other than to a Related Entity) (1) by itself or taken together with prior sublease(s) or partial assignment(s) covers or totals, as the case may be, (a) more than thirty-five percent (35%) of the rentable square feet of the Premises, or (b) all of any one or more of the Buildings; or (2) is for a term which by itself or taken together with prior or other subleases or partial assignments is greater than fifty percent (50%) of the period remaining in the Term of this Lease as of the time of the Proposed Effective Date; or (3) is an assignment or subletting for any portion of the Premises for a period extending into any option or renewal Term of this Lease, then Landlord shall have the right, to be exercised by giving written notice to Tenant within ten (10) business days after Landlord's receipt of Tenant's written request seeking to assign or sublet all or a portion of the Premises, to recapture the space described in the sublease or assignment. If such recapture notice is given, it shall serve to terminate this Lease with respect to the proposed sublease or assignment space, or, if the proposed sublease or assignment space covers all the Premises, it shall serve to terminate the entire term of this Lease in either case, as of the Proposed Effective Date. However, no termination of this Lease with respect to part or all of the Premises shall become effective without the prior written consent, where necessary, of the holder of each deed of trust encumbering the Premises or any part thereof. If this Lease is terminated pursuant to the foregoing with respect to less than the entire Premises, the Rent shall be adjusted on the basis of the proportion of square feet retained by Tenant to the square feet originally demised and this Lease as so amended shall continue thereafter in full force and effect. Each permitted assignee or sublessee, including without limitation, a Related Entity, shall assume and be deemed to assume this Lease and shall be and remain liable jointly and severally with Tenant for payment of Rent and for the due performance of, and compliance with all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed or complied with, for the term of this Lease. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease. Tenant hereby acknowledges and agrees that it understands that Landlord's accounting department may process and accept Rent payments without verifying that such payments are being made by Tenant, a permitted sublessee or a permitted assignee in accordance with the provisions of this Lease. Although such payments may be processed and accepted by such accounting department personnel, any and all actions or omissions by the personnel of Landlord's accounting department shall not be considered as acceptance by Landlord of any proposed assignee or sublessee nor shall such actions or omissions be deemed to be a substitute for the requirement that Tenant obtain Landlord's prior written consent to any such subletting or assignment, and any such actions or omissions by the personnel of Landlord's accounting department shall not be considered as a voluntary relinquishment by Landlord of any of its rights hereunder nor shall any voluntary relinquishment of such rights be inferred therefrom. For purposes hereof, and except with respect to a Related Entity, in the event Tenant is a corporation, partnership, joint venture, trust or other entity other than a natural person, any change in the direct or indirect ownership of Tenant (whether pursuant to one or more transfers) which results in a change of more than fifty percent (50%) (except for sales of shares through a regulated public exchange) in the direct or indirect ownership of Tenant shall be deemed to be

an assignment within the meaning of this Section 15 and shall be subject to all the provisions hereof. Except for a permissible assignment to a Related Entity, any and all options, first rights of refusal, tenant improvement allowances and other similar rights granted to Tenant in this Lease, if any, shall not be assignable by Tenant unless expressly authorized in writing by Landlord.

15.2 EXCESS SUBLEASE RENTAL OR ASSIGNMENT CONSIDERATION: In the event of any sublease or assignment of all or any portion of the Premises where the rent or other consideration provided for in the sublease or assignment either initially or over the term of the sublease or assignment exceeds the Rent or pro rata portion of the Rent, as the case may be, for such space reserved in the Lease, Tenant shall pay the Landlord monthly, as Additional Rent, at the same time as the monthly installments of Rent are payable hereunder, the following: until Tenant shall have been reimbursed the actual costs expended by Tenant for Tenant Improvements and brokerage commissions in connection with any assignment or subletting (and no other costs shall be reimbursable to Tenant from such profits), Tenant shall receive seventy-five percent (75%) of such profits and Landlord shall receive twenty-five percent (25%) of such profits; provided, such deduction of actual costs shall in no event exceed Fifteen Dollars (\$15.00) per square foot assigned or sublet. After such reimbursement of costs to Tenant, all profits shall be shared fifty/fifty (50/50).

15.3 WAIVER: Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by Landlord to any assignee or sublessee, or failure by Landlord to take action against any assignee or sublessee, Landlord may, at its option, proceed against Tenant without having taken action against or joined such assignee or sublessee, except that Tenant shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

15.4 RELATED ENTITY: Notwithstanding anything to the contrary contained herein, so long as Tenant delivers to Landlord (1) at least fifteen (15) business days prior written notice of its intention to assign or sublease the Premises to any Related Entity, which notice shall set forth the name of the Related Entity, (2) a copy of the proposed agreement pursuant to which such assignment or sublease shall be effectuated, and (3) such other information concerning the Related Entity as Landlord may reasonably require, including without limitation, information regarding any change in the proposed use of any portion of the Premises and any financial information with respect to such Related Entity, and so long as Landlord approves, in writing, of any change in the proposed use of the subject portion of the Premises and such financial information, then Tenant may assign this Lease or sublease any portion of the Premises (X) to any Related Entity, or (Y) in connection with any merger, consolidation or sale of substantially all of the assets of Tenant, without having to obtain the prior written consent of Landlord thereto. For purposes of this Lease the term "Related Entity" shall mean and refer to any corporation or entity which controls, is controlled by or is under common control with Tenant and/or which arises from the merger, consolidation or sale of substantially all of the assets of Tenant, as all of such terms are customarily used in the industry, and in the case of a complete assignment of the Lease, with an equal or greater net worth as Tenant has as of the proposed transfer date.

15.5 Notwithstanding anything else in the Lease, those entities ("Business Entities") (i) in which Tenant holds at least a ten percent (10%) interest, (ii) which are performing services with or for the Tenant to fulfill contractual obligations of the Tenant, and/or (iii) for which the Tenant is providing services, if any of (i), (ii) and/or (iii) are not otherwise a Related Entity, will be governed by the following terms with respect to assignments and/or subleases under the Lease:

(1) Tenant may partially assign or sublet up to (singularly or in the aggregate) forty percent (40%) of the rentable square feet of the Premises to Business Entities without the prior consent of the Landlord; provided Tenant notifies Landlord of such assignment or sublease within thirty (30) days after it becomes effective. Any such assignment or sublease shall be subject to Landlord's right to share in any excess Base Rent as provided in Section 15.2. of the Lease.

(2) Any assignment or sublease to Business Entities which singularly or in the aggregate with other such assignments or subleases exceeds forty percent (40%) of the rentable square footage of the Premises ("Excess Space") shall require the prior written consent of the Landlord, which consent shall not be unreasonably withheld. It shall be reasonable for Landlord to withhold Landlord's consent to any such assignment or subletting in the event, at the time of such assignment or subletting Tenant shall not have a net worth equal to at least Tenant's net worth as of the Lease Date. In the event of a partial assignment or sublease to a Business Entity of Excess Space, Landlord shall not have the right to recapture the Excess Space under Section 15.1 of the Lease, but shall have the right to share in excess Base Rent pursuant to the following terms and conditions which shall supersede Section 15.2 of the Lease in such event:

(a) The Base Rent under the assignment or sublease for the Excess Space shall be the greater of (i) the actual Base Rent charged by Tenant; or (ii) the Fair Rental Value of the Excess Space as determined pursuant to the formula set forth in Addendum 1 to the Lease.

(b) To the extent the Base Rent per rentable square foot of the Excess Space

as calculated under subparagraph (a) above is greater than the Base Rent per rentable square foot paid by Tenant under the Lease, Landlord and Tenant shall share the difference fifty/fifty (50/50) without any offset or reimbursement to Tenant for costs and expenses incurred with respect to the assignment or sublease of the Excess Space.

The provisions of this Section 15.5 (2) shall only be applicable during the period(s) of time in which more than forty percent (40%) of the Premises is assigned or sublet to one or more Business Entities.

(3) The term "Premises," as used in and for purposes only of this Section 15.5, shall include the (i) Phase 2 Building if Landlord owns such Phase, Tenant has exercised the Phase 2 Option, and the Commencement Date for the Lease on the Phase 2 Building has occurred, and (ii) the Phase 3 Building if Landlord owns such Phase, Tenant has exercised the Phase 3 Option, and the Commencement Date for the Lease on the Phase 3 Building has occurred.

16. AD VALOREM TAXES: Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and personal property located and/or installed on or in the Premises by, or on behalf of, Tenant; and if requested by Landlord, Tenant shall promptly deliver to Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

17. SUBORDINATION: Except as set forth below, 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 any bona fide mortgagee or deed of trust beneficiary with a lien on all or any portion of the Premises or any ground lessor with respect to the land of which the Premises are a part, the rights of Tenant under this Lease (including, without limitation, the rights set forth in Addendum 4 hereto) and 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 Buildings or the land upon which the Buildings are situated or both, and (ii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which any of the Buildings, the Premises, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security. Notwithstanding the foregoing, Landlord or any such ground lessor, mortgagee, or any beneficiary shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If 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 and upon the request of such successor to Landlord, attorn to and become the Tenant of the successor in interest to Landlord, provided such successor in interest will not disturb Tenant's use, occupancy or quiet enjoyment of the Premises so long as Tenant is not in default of the terms and provisions of this Lease. The successor in interest to Landlord following foreclosure, sale or deed in lieu thereof shall not be (a) liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) subject to any offsets or defenses which Tenant might have against any prior lessor; (c) bound by prepayment of more than one (1) month's Rent, except in those instances when Tenant pays Rent quarterly in advance pursuant to Section 8 hereof, then not more than three months' Rent; or (d) liable to Tenant for any Security Deposit not actually received by such successor in interest to the extent any portion or all of such Security Deposit has not already been forfeited by, or refunded to, Tenant. Landlord shall be liable to Tenant for all or any portion of the Security Deposit not forfeited by, or refunded to Tenant, until and unless Landlord transfers such Security Deposit to the successor in interest. Tenant covenants and agrees to execute (and acknowledge if required by Landlord, any lender or ground lessor) and deliver, within ten (10) days of written demand or request by Landlord and, subject to this Section 17, in the form requested by Landlord, ground lessor, mortgagee or beneficiary, any additional documents evidencing the priority or subordination of this Lease (including, without limitation, the rights set forth in Addendum 4 hereto) with respect to any such ground leases or underlying leases or the lien of any such mortgage or deed of trust. Tenant's failure to timely execute and deliver such additional documents shall, at Landlord's option, constitute a material default hereunder. Tenant's agreement to subordinate this Lease and any automatic subordination to any future ground or underlying lease or any future deed of trust or mortgage pursuant to the foregoing provisions of this Section 17 is conditioned upon Landlord delivering to Tenant from the lessor under such future ground or underlying lease or the holder of any such mortgage or deed of trust, a non-disturbance agreement agreeing, among other things, that Tenant's right to possession of the Premises pursuant to the terms and conditions of this Lease shall not be disturbed provided that Tenant is not in default under this Lease beyond the applicable notice and cure periods hereunder. If Landlord at any time during the Term causes the Premises to be encumbered by a deed of trust or mortgage and the beneficiary thereof requires this Lease to be subordinated to such encumbrance or lien, Landlord or the successor of Landlord will use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Landlord, Tenant and the subject beneficiary. If said subordination, non-disturbance and attornment agreement is required and agreed upon by the aforesaid parties, Landlord or the successor of Landlord, the subject beneficiary and Tenant shall cause any such subordination, non-disturbance and attornment agreement to be executed, acknowledged and

recorded concurrently with, or as soon as practicable after, the execution and recordation of any such lien, deed of trust or mortgage. In addition to the foregoing, if Landlord enters into a ground lease with regard to the Buildings and/or the Land and such ground lessee requires this Lease to be subordinated to such ground lease, the ground lessee and ground lessor will use commercially reasonable efforts to provide to Tenant a subordination, non-disturbance and attornment agreement in form reasonably acceptable to such ground lessee, ground lessor, any beneficiary of ground lessee, and to Tenant. Tenant will in good faith accept commercially reasonable non-disturbance agreements.

18. RIGHT OF ENTRY: Tenant grants Landlord or its agents the right to enter the Premises with an escort designated by Tenant for purposes of inspection, exhibition, posting of notices, repair or alteration during normal business hours upon twenty-four (24) hours prior written notice (except in the event of an emergency in which case no notice shall be required). It is further agreed that Landlord shall have the right to use any and all reasonable means Landlord deems necessary to enter the Premises in an emergency. Landlord shall have the right to place "for rent" or "for lease" signs in the Common Area during the final twelve (12) months of the Term, and on the outside of the Premises and/or the outside of the Buildings during the final six (6) months of the Term. Landlord shall also have the right to place "for sale" signs on the outside of the Buildings. Tenant hereby waives any claim from damages or for any injury or inconvenience to or interference with Tenant's business, or any other loss occasioned thereby except for any claim for any of the foregoing arising out of the sole active gross negligence or willful misconduct of Landlord or its authorized representatives.

19. ESTOPPEL CERTIFICATE: Each party shall execute (and acknowledge if required by any lender or ground lessor) and deliver to the other, within ten (10) days after written request therefor, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification), the date to which the Rent and other charges are paid in advance, if any, acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder or specifying such defaults as are claimed, and such other matters as the other party may reasonably require. Any such statement may be conclusively relied upon by the other party and any prospective purchaser or encumbrancer of the Premises. A party's failure to deliver such statement within such time shall be conclusive upon the other party that (a) this Lease is in full force and effect, without modification except as may be represented by the requesting party; (b) there are no uncured defaults in such party's performance; and (c) not more than one month's Rent has been paid in advance, except in those instances when Tenant pays Rent quarterly in advance pursuant to Section 8 hereof, then not more than three (3) month's Rent has been paid in advance. Failure by Tenant to so deliver such certified estoppel certificate shall be a material default of the provisions of this Lease.

20. TENANT'S DEFAULT: The occurrence of any one or more of the following events shall, at Landlord's option, constitute a material default by Tenant of the provisions of this Lease:

20.1 The abandonment of the Premises by Tenant or the vacation of the Premises by Tenant which would cause any insurance policy to be invalidated or otherwise lapse; provided, however, notwithstanding the foregoing Tenant may leave the Premises vacant so long as (i) Tenant fully insures or otherwise pays for any loss or damage thereto and (ii) all insurance policies carried by Landlord with respect to the Buildings are not invalidated, in whole or in part, nor would such insurance policies be caused to otherwise lapse. Tenant agrees to notice and service of notice as provided for in this Lease and waives any right to any other or further notice or service of notice which Tenant may have under any statute or law now or hereafter in effect;

20.2 The failure by Tenant to make any payment of Rent, Additional Rent or any other payment required hereunder within three (3) calendar days after the delivery by Landlord of written notice that said payment is due. Tenant agrees that such written notice by Landlord shall serve as the statutorily required notice under the Law (including without limitation, any unlawful detainer statutes), and Tenant further agrees to notice and service of notice as provided for in this Lease and waives any right to any other or further notice or service of notice which Tenant may have under any statute or law now or hereafter in effect on the date said payment is due.

20.3 The failure by Tenant to observe, perform or comply with any of the conditions, covenants or provisions of this Lease (except failure to make any payment of Rent and/or Additional Rent) and such failure is not cured within (i) thirty (30) days of the date on which Landlord delivers written notice of such failure to Tenant, complying with the notice requirements of Section 31.10 hereof, for all failures other than with respect to Hazardous Materials, and (ii) ten (10) days of the date on which Landlord delivers written notice of such failure to Tenant for all failures in any way related to Hazardous Materials. However, Tenant shall not be in default of its obligations hereunder if such failure cannot reasonably be cured within such thirty (30) or ten (10) day period, as applicable, and Tenant promptly commences, and thereafter diligently proceeds with same to completion, all actions necessary to cure such failure as soon as is reasonably possible, but in no event shall the completion of such cure be later than sixty (60) days after the date on which Landlord delivers to Tenant written notice of such failure, unless Landlord, acting reasonably and in good faith, otherwise expressly agrees in writing to a longer period of time based upon

the circumstances relating to such failure as well as the nature of the failure and the nature of the actions necessary to cure such failure;

20.4 The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation, or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within ninety (90) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, the cessation or suspension of Tenant's use of the Premises, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

20.5 Tenant's use or storage of Hazardous Materials in, on or about the Premises other than as expressly permitted by the provisions of Section 29 below, unless cured as provided in Section 20.3; or

20.6 The intentional making of any material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease.

## 21. REMEDIES FOR TENANT'S DEFAULT:

21.1 LANDLORD'S RIGHTS: In the event of Tenant's material default under this Lease, Landlord may terminate Tenant's right to possession of the Premises by any lawful means in which case upon delivery of written notice by Landlord this Lease shall terminate on the date specified by Landlord in such notice and Tenant shall immediately surrender possession of the Premises to Landlord. In addition, the Landlord shall have the immediate right of re-entry whether or not this Lease is terminated, and if this right of re-entry is exercised following abandonment of the Premises by Tenant, Landlord may consider any personal property belonging to Tenant and left on the Premises to also have been abandoned. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 21 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant. If Landlord relets the Premises or any portion thereof, (i) Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises or any part thereof, including, without limitation, broker's commissions, expenses of cleaning, redecorating, and other similar costs (collectively, the "Reletting Costs"), and (ii) the rent received by Landlord from such reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent, Operating Expenses, Tax Expenses, Common Area Expenses, and Utility Expenses; second, all costs including maintenance, incurred by Landlord in reletting; and, third, Base Rent, Operating Expenses, Tax Expenses, Common Area Expenses, Utility Expenses, and all other sums due under this Lease. Any and all of the Reletting Costs shall be fully chargeable to Tenant and shall not be prorated or otherwise amortized in relation to any new lease for the Premises or any portion thereof. After deducting the payments referred to above, any sum remaining from the rental 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. Reletting may be for a period shorter or longer than the remaining term of this Lease. No act by Landlord other than giving written notice 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. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the maximum rate permitted by law from the date of such expenditure.

21.2 DAMAGES RECOVERABLE: If Tenant defaults under this Lease and abandons the Premises before the end of the Term, or if Tenant's right to possession is terminated by Landlord because of a breach or default under this Lease, then in either such case, Landlord may recover from Tenant all damages suffered by Landlord as a result of Tenant's failure to perform its obligations hereunder, allowed by law and the worth at the time of the award (computed in accordance with paragraph (3) of Subdivision (a) of Section 1951.2 of the California Civil Code) of the amount by which the Rent then unpaid hereunder for the balance of the Lease Term exceeds the amount of such loss of Rent for the same period which Tenant proves could be reasonably avoided by Landlord and in such case, Landlord prior to the award, may relet the Premises for the purpose of mitigating damages suffered by Landlord because of Tenant's failure to perform its obligations hereunder; provided, however, that even though Tenant has abandoned the Premises following such default, this Lease shall nevertheless continue in full force and effect for as long as Landlord does not terminate Tenant's right of possession, and until such termination, Landlord shall have the remedy described in Section 1951.4 of the California Civil Code (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations) and may enforce all its

rights and remedies under this Lease, including the right to recover the Rent from Tenant as it becomes due hereunder. The "worth at the time of the award" within the meaning of Subparagraphs (a)(1) and (a)(2) of Section 1951.2 of the California Civil Code shall be computed by allowing interest at the rate of ten percent (10%) per annum. Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default of Tenant hereunder.

21.3 RIGHTS AND REMEDIES CUMULATIVE: The foregoing rights and remedies of Landlord are not exclusive; they are cumulative in addition to any rights and remedies now or hereafter existing at law, in equity by statute or otherwise, or to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditor's rights generally. In addition to all remedies set forth above, if Tenant materially defaults under this Lease, any and all Base Rent waived by Landlord under Section 3 above shall be immediately due and payable to Landlord and all options granted to Tenant hereunder shall automatically terminate, unless otherwise expressly agreed to in writing by Landlord.

21.4 WAIVER OF A DEFAULT: The waiver by Landlord of any default of any provision of this Lease shall not be deemed or construed a waiver of any other default by Tenant hereunder or of any subsequent default of this Lease, except for the default specified in the waiver.

22. HOLDING OVER: If Tenant holds possession of the Premises after the expiration of the Term of this Lease with Landlord's consent, Tenant shall become a tenant from month-to-month upon the terms and provisions of this Lease, provided the monthly Base Rent during the first two (2) months of such hold over period shall be 125% of the Base Rent due on the last month of the Lease Term and thereafter, monthly Base Rent shall be 150% of the Base Rent due on the last month of the Lease Term, payable in advance on or before the first day of each month. Acceptance by Landlord of the monthly Base Rent without the additional applicable increase of Base Rent shall not be deemed or construed as a waiver by Landlord of any of its rights to collect the increased amount of the Base Rent as provided herein at any time. Such month-to-month tenancy shall not constitute a renewal or extension for any further term. All options, if any, granted under the terms of this Lease shall be deemed automatically terminated and be of no force or effect during said month-to-month tenancy. Tenant shall continue in possession until such tenancy shall be terminated by either Landlord or Tenant giving written notice of termination to the other party at least thirty (30) days prior to the effective date of termination. This paragraph shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Base Rent by Landlord following expiration or termination of this Lease shall not constitute a renewal of this Lease.

23. LANDLORD'S DEFAULT: Landlord shall not be deemed in breach or default of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord hereunder. For purposes of this provision, a reasonable time shall not be less than thirty (30) days after receipt by Landlord of written notice specifying the nature of the obligation Landlord has not performed; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days, after receipt of written notice, is reasonably necessary for its performance, then Landlord shall not be in breach or default of this Lease if performance of such obligation is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

24. PARKING: Tenant shall have the exclusive right to use the number of parking spaces specified in the Basic Lease Information, provided, in the event of a sublease or assignment of the whole or any part of the Premises, the number of parking spaces for Tenant's exclusive use shall be reduced by an amount equal to four (4) parking spaces for each one thousand (1,000) square feet of Premises assigned or sublet.

25. SALE OF PREMISES: In the event of any sale of the Premises by Landlord or the cessation otherwise of Landlord's interest therein, Landlord shall be and is hereby entirely released from any and all of its obligations to perform or further perform under this Lease from or after the date of sale and from all liability hereunder accruing from or after the date of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. For purposes of this Section 25, the term "Landlord" means only the owner and/or agent of the owner as such parties exist as of the date on which Tenant executes this Lease. A ground lease or similar long term lease by Landlord of the entire Buildings, of which the Premises are a part, shall be deemed a sale within the meaning of this Section 25. Tenant agrees to attorn to such new owner provided such new owner does not disturb Tenant's use, occupancy or quiet enjoyment of the Premises so long as Tenant is not in default of any of the provisions of this Lease. Landlord agrees that Landlord shall not sell the separate legal parcels into which Landlord intends to divide the Premises (which term, for the purposes of this sentence, shall specifically not include Phase 2 and/or Phase 3 (as defined in Addendum 2 to this Lease) to more than one (1) owner.

26. WAIVER: No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The subsequent acceptance

of Rent by Landlord after default by Tenant of any covenant or term of this Lease shall not be deemed a waiver of such default, other than a waiver of timely payment for the particular Rent payment involved, and shall not prevent Landlord from maintaining an unlawful detainer or other action based on such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent and other sums due hereunder shall be deemed to be other than on account of the earliest Rent or other sums due, nor shall any endorsement or statement on any check or accompanying any 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 balance of such Rent or other sum or pursue any other remedy provided in this Lease. No failure, partial exercise or delay on the part of the Landlord in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

#### 27. CASUALTY DAMAGE:

27.1 CASUALTY. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice thereof to Landlord. Within ninety (90) days after receipt by Landlord of such notice, Landlord shall notify Tenant, in writing, whether the necessary repairs can reasonably be made, as reasonably determined by Landlord: (a) within one hundred twenty (120) days; (b) in more than one hundred twenty (120) days but in less than one hundred eighty (180) days; or (c) in more than one hundred eighty (180) days, from the date of such notice. Notwithstanding anything to the contrary contained in this Section 27, if any portion of the Premises is damaged or destroyed due to the fault, negligence (active or passive) or material default of this Lease by Tenant or any of Tenant's Representatives, this Lease shall not terminate (and Tenant's termination rights in this Section 27 shall be of no force or effect), Rent shall not be diminished during the repair of such damage to the extent Landlord does not receive rental abatement insurance proceeds, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

27.1.1 MINOR INSURED DAMAGE. If either (i) only one (1) Building is damaged and/or (ii) less than one-third (1/3) of the total rentable square footage for all Buildings then subject to the Lease are damaged, this Lease shall not terminate and, provided that insurance proceeds are available to fully repair the damage and/or Tenant otherwise contributes any shortfall thereof to Landlord, Landlord shall, with reasonable diligence, repair the damage, including Tenant Improvements, to substantially the same condition that existed prior to the occurrence of such casualty, except Landlord shall not be required to rebuild, repair, or replace any alterations or improvements installed by or for the benefit of Tenant or any part of Tenant's property, including without limitation, the Excess Tenant Improvements, Tenant's furniture, furnishings or trade fixtures and equipment removable by Tenant. The Rent payable hereunder shall be abated proportionately from the date of the occurrence of such insured damage until any and all repairs are substantially completed to the extent of the portion of the Premises which is rendered unusable and unfit for occupancy.

27.1.2 MAJOR INSURED DAMAGE. If (i) more than one (1) Building is damaged and (ii) more than one-third (1/3) of the total rentable square footage of all Buildings then subject to the Lease are damaged, and such damage is to such extent that repairs, rebuilding and/or restoration cannot be reasonably completed within two hundred seventy (270) days, then Landlord shall within ninety (90) days after such damage notify Tenant in writing that the repairs cannot be completed within two hundred seventy (270) days. For a period of thirty (30) days following the receipt of the above-mentioned notice from Landlord, either Landlord or Tenant may terminate this Lease by giving written notice thereof within such thirty (30) day period; and, in the event of such termination, this Lease shall terminate and the Rent payable hereunder shall be abated proportionately from the date of the occurrence of such damage; provided, however, in the event Landlord terminates this Lease as provided herein, Tenant may nonetheless elect to keep this Lease in full force and effect (even though Landlord has elected not to repair any damage), with respect to any Building which has no damage whatsoever and this Lease shall terminate as to any wholly or partially damaged Building. In the event of such election by Tenant, the Premises shall be reduced accordingly and the Rent payable hereunder shall be abated proportionately from the date of the occurrence of such damage. If Landlord elects to repair and Tenant does not elect to terminate the Lease, Landlord shall promptly commence and diligently prosecute to completion the repairs to the Premises, including the Tenant Improvements provided insurance proceeds are available to fully repair the damage and/or Tenant contributes any shortfall thereof to Landlord (except that Landlord shall not be required to rebuild, repair, or replace any alterations or improvements installed by Tenant or any part of Tenant's property, including without limitation, the Excess Tenant Improvements, Tenant's furniture, furnishings or trade fixtures and equipment removable by Tenant). During the time when Landlord is prosecuting such repairs to completion, the Rent payable hereunder shall be abated proportionately from the date of the occurrence of such insured damage until any and all repairs are substantially completed, to the extent of the portion of the Premises which are rendered unusable and are unfit for occupancy.

27.1.3 DAMAGE NEAR END OF TERM. If the Premises are damaged or destroyed to an extent affecting more than twenty-five percent (25%) of the rentable square footage of the Buildings during the last year of the then applicable term of this Lease and Tenant has not or does not within thirty (30) days of such damage exercise any option to extend the Lease (which exercise by Tenant shall serve to extend



the Term of this Lease and thereafter Tenant shall not have the right to terminate this Lease as a result of such casualty), either Landlord or Tenant may, at its option, cancel and terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after receipt by Landlord of notice from Tenant of the occurrence of such casualty. If either party so elects to terminate this Lease, Tenant shall promptly vacate the damaged Building or Buildings and have six (6) months to vacate the remainder of the Buildings which are undamaged provided that the Rent shall continue to be paid proportionately to the amount of rentable square footage that Tenant continues to occupy during this period.

27.2 UNINSURED CASUALTY; LENDER'S APPLICATION OF PROCEEDS. Tenant shall be responsible for and shall pay to Landlord, as Additional Rent, any commercially reasonable deductible amounts under the insurance policies for the Premises and/or the Building. So long as Landlord actually maintains the insurance policies required to be maintained by Landlord under this Lease, if any portion of the Premises is damaged and (i) such damage is not fully covered by insurance proceeds received by Landlord due to the casualty being uninsured, (ii) a holder of indebtedness secured by the Premises applies the insurance proceeds to the debt, or (iii) the deductible amounts under the policies make rebuilding unfeasible in Landlord's reasonable judgment, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days after the date of notice to Tenant of any such event, whereupon all rights and obligations shall cease and terminate hereunder (except for those obligations expressly provided for in this Lease to survive such termination of the Lease); provided, however, in any of such events described above in (i), (ii) or (iii) of this Section 27.2, Tenant may elect to keep the Lease in full force and effect by (x) delivering a notice of such election to Landlord during the thirty (30) day period referenced in this Section 27.2 and (y) making a loan (upon the terms and conditions set forth below) to Landlord in the amount of any shortfall between the amount of the available insurance proceeds and the cost of repairing and restoring the Premises due to the occurrence of any of the events described in (i), (ii) or (iii) above (the "Shortfall Amount"). Prior to the commencement of any repairs, Tenant shall cause the Shortfall Amount to be placed in a mutually agreeable fund control which provides adequate assurance to Landlord that the Shortfall Amount will be available for the repairs. In the event Landlord shall not repay the loan for the Shortfall Amount as and when due, Tenant shall receive a credit against each monthly payment of Rent under the Lease from and after the date of Landlord's failure to repay the loan in an amount equal to the monthly payment of the loan for the Shortfall Amount not made to Tenant by Landlord. Any loan made by Tenant hereunder shall bear interest at a variable rate equal to the prime rate as published in the Wall Street Journal plus one hundred (100) basis points (1%), but not to exceed eleven percent (11%) per annum, amortized from the date the loan for such Shortfall Amount is first drawn upon by Landlord over the balance of the Lease Term (including any option terms exercised by Tenant). Interest on the Shortfall Amount shall be imputed whether or not Tenant actually obtains a loan for the Shortfall Amount.

27.3 TENANT'S WAIVER. Landlord shall not be liable for any inconvenience or annoyance to Tenant, injury to the business of Tenant, loss of use of any part of the Premises by Tenant or loss of Tenant's personal property, resulting in any way from such damage, destruction or the repair thereof, except that, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unusable and unfit for occupancy as specifically provided above in this Section 27. With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair, except as expressly set forth herein, Tenant hereby waives all rights to terminate this Lease or offset any amounts against Rent pursuant to rights accorded Tenant by any law currently existing or hereafter enacted, including but not limited to, all rights pursuant to the provisions of Sections 1932(2.), 1933(4.), 1941 and 1942 of the California Civil Code, as the same may be amended or supplemented from time to time.

28. CONDEMNATION: If twenty-five percent (25%) or more of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("Condemned"), then Tenant or Landlord may terminate this Lease as of the date when physical possession of the Premises is taken and title vests in such condemning authority, and Rent shall be adjusted to the date of termination. Tenant shall not because of such condemnation assert any claim against Landlord or the condemning authority for any compensation because of such condemnation, and, except as set forth below, Landlord shall be entitled to receive the entire amount of any award without deduction for any estate of interest or other interest of Tenant; provided, however, the foregoing provisions shall not preclude Tenant, at Tenant's sole cost and expense, from obtaining any separate award to Tenant for loss of or damage to Tenant's trade fixtures, Excess TIs, removable personal property and goodwill or for damages for cessation or interruption of Tenant's business provided such award is separate from Landlord's award and provided further such separate award does not diminish or impair the award otherwise payable to Landlord. In addition to the foregoing, Tenant shall be entitled to seek compensation for the relocation costs recoverable by Tenant pursuant to the provisions of California Government Code Section 7262. If neither party elects to terminate this Lease, Landlord shall, if necessary, promptly proceed to restore the Premises or the Building(s) to substantially its same condition prior to such partial condemnation, allowing for the reasonable effects of such partial condemnation, and a proportionate allowance shall be made to Tenant, as reasonably determined by Landlord, for the Rent corresponding to the time during which, and to the part of the Premises of which, Tenant is deprived on account of such partial condemnation and restoration. Landlord shall not be required to spend funds for restoration in excess of the amount received by Landlord

as compensation awarded. The Base Rent shall be reduced on a pro rata basis to the extent that the square footage of the Premises is reduced as a result of any condemnation.

29. ENVIRONMENTAL MATTERS/HAZARDOUS MATERIALS:

29.1 HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE: Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord Tenant's initial Hazardous Materials Disclosure Certificate (the "Initial HazMat Certificate"), a copy of which is attached hereto as Exhibit G and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial HazMat Certificate is true and correct and accurately describes the use(s) of Hazardous Materials which will be made and/or used on the Premises by Tenant. Tenant shall commencing with the date which is one year from the Commencement Date and continuing every year thereafter, complete, execute, and deliver to Landlord, a Hazardous Materials Disclosure Certificate ("the "HazMat Certificate") describing Tenant's present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord. The HazMat Certificate required hereunder shall be in substantially the form as that which is attached hereto as Exhibit E.

29.2 DEFINITION OF HAZARDOUS MATERIALS: As used in this Lease, the term Hazardous Materials shall mean and include (a) any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws; (b) petroleum, petroleum by products, gasoline, diesel fuel, crude oil or any fraction thereof; (c) asbestos and asbestos containing material, in any form, whether friable or non-friable; (d) polychlorinated biphenyls; (e) radioactive materials; (f) lead and lead-containing materials; (g) any other material, waste or substance displaying toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); or (h) any materials which cause or threatens to cause a nuisance upon or waste to any portion of the Premises or any surrounding property; or poses or threatens to pose a hazard to the health and safety of persons on the Premises or any surrounding property.

29.3 PROHIBITION; ENVIRONMENTAL LAWS: Except for items disclosed in the Initial HazMat Disclosure Certificate and other than office supplies and janitorial supplies normally used in premises similar to the Premises and stored in their original packaging, Tenant shall not be entitled to use nor store any Hazardous Materials on, in, or about the Premises or any portion of the foregoing, without, in each instance, obtaining Landlord's prior written consent thereto. If Landlord consents to any such usage or storage, then Tenant shall be permitted to use and/or store only those Hazardous Materials that are necessary for Tenant's business and to the extent disclosed in the HazMat Certificate and as expressly approved by Landlord in writing, provided that such usage and storage is only to the extent of the quantities of Hazardous Materials as specified in the then applicable HazMat Certificate as expressly approved by Landlord and provided further that such usage and storage is in full compliance with any and all local, state and federal environmental, health and/or safety-related laws, statutes, orders, standards, courts' decisions, ordinances, rules and regulations (as interpreted by judicial and administrative decisions), decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Tenant or all or any portion of the Premises (collectively, the "Environmental Laws"). Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent HazMat Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Landlord shall have the right at all times during the Term of this Lease to (i) inspect the Premises, (ii) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section 29, and (iii) request lists of all Hazardous Materials used, stored or otherwise located on, under or about any portion of the Premises and/or the Common Area. The cost of all such inspections, tests and investigations shall be borne solely by Tenant, if Landlord reasonably determines that Tenant or any of Tenant's Representatives are directly or indirectly responsible in any manner for any contamination revealed by such inspections, tests and investigations. The aforementioned rights granted herein to Landlord and its representatives shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Premises or the activities of Tenant and Tenant's Representatives with respect to Hazardous Materials, including without limitation, Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord and its representatives for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

29.4 TENANT'S ENVIRONMENTAL OBLIGATIONS: Tenant shall give to Landlord immediate verbal and follow-up written notice of any spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials on, under or about any portion of the Premises or in any Common Area. Tenant, at its sole cost and expense, covenants and warrants to promptly investigate, clean up, remove, restore and otherwise remediate (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any spill, release, discharge, disposal,

emission, migration or transportation of Hazardous Materials arising from or related to the intentional or negligent acts or omissions of Tenant or Tenant's Representatives such that the affected portions of the Premises and any adjacent property are returned to the condition existing prior to the appearance of such Hazardous Materials. Any such investigation, clean up, removal, restoration and other remediation shall only be performed after Tenant has obtained Landlord's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on any portion of the Premises or the Common Area. Notwithstanding the foregoing, Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's prior written consent. Tenant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all closures as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Tenant fails to so promptly investigate, clean up, remove, restore, provide closure or otherwise so remediate, Landlord may, but without obligation to do so, take any and all steps necessary to rectify the same and Tenant shall promptly reimburse Landlord, upon demand, for all costs and expenses to Landlord of performing investigation, clean up, removal, restoration, closure and remediation work. All such work undertaken by Tenant, as required herein, shall be performed in such a manner so as to enable Landlord to make full economic use of the Premises and Common Area after the satisfactory completion of such work.

29.5 ENVIRONMENTAL INDEMNITY: In addition to Tenant's obligations as set forth hereinabove, Tenant agrees to, and shall, protect, indemnify, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses (including, without limitation, diminution in value of any portion of the Premises or the Common Area, damages for the loss of or restriction on the use of rentable or usable space, and from any adverse impact of Landlord's marketing of any space within the Buildings), suits, administrative proceedings and costs (including, but not limited to, attorneys' and consultant fees and court costs) arising at any time during or after the Term of this Lease in connection with or related to, directly or indirectly, the use, presence, transportation, storage, disposal, migration, removal, spill, release or discharge of Hazardous Materials on, in or about any portion of the Premises or the Common Area, as a result (directly or indirectly) of the intentional or negligent acts or omissions of Tenant or any of Tenant's Representatives. Neither the written consent of Landlord to the presence, use or storage of Hazardous Materials in, on, under or about any portion of the Premises nor the strict compliance by Tenant with all Environmental Laws shall excuse Tenant from its obligations of indemnification pursuant hereto. Tenant shall not be relieved of its indemnification obligations under the provisions of this Section 29.5 due to Landlord's status as either an "owner" or "operator" under any Environmental Laws.

29.6 SURVIVAL: Tenant's obligations and liabilities pursuant to the provisions of this Section 29 shall survive the expiration or earlier termination of this Lease. If it is determined by Landlord that the condition of all or any portion of the Premises or Common Area is not in compliance with the provisions of this Lease with respect to Hazardous Materials, including without limitation all Environmental Laws at the expiration or earlier termination of this Lease, then in Landlord's sole discretion, Landlord may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Landlord in the condition in which the Premises existed as of the Commencement Date and prior to the appearance of such Hazardous Materials except for reasonable wear and tear, including without limitation, the conduct or performance of any closures as required by any Environmental Laws. The burden of proof hereunder shall be upon Tenant. For purposes hereof, the term "reasonable wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises or Common Area in any manner whatsoever related to directly, or indirectly, Hazardous Materials. Any such holdover by Tenant will be with Landlord's consent, will not be terminable by Tenant in any event or circumstance and will otherwise be subject to the provisions of Section 22 of this Lease.

29.7 EXCULPATION OF TENANT: Tenant shall not be liable to Landlord for nor otherwise obligated to Landlord under any provision of the Lease with respect to the following: (i) any claim, remediation, obligation, investigation, obligation, liability, cause of action, attorney's fees, consultants' cost, expense or damage resulting from any Hazardous Materials present in, on or about the Premises or the Buildings to the extent not caused or otherwise permitted, directly or indirectly, by Tenant or Tenant's Representatives; or (ii) the removal, investigation, monitoring or remediation of any Hazardous Material present in, on or about the Premises or the Buildings caused by any source, including third parties, other than Tenant or Tenant's Representatives; provided, however, Tenant shall be fully liable for and otherwise obligated to Landlord under the provisions of this Lease for all liabilities, costs, damages, penalties, claims, judgments, expenses (including without limitation, attorneys' and experts' fees and costs) and losses to the extent (a) Tenant or any of Tenant's Representatives contributes to the presence of such Hazardous Materials, or Tenant and/or any of Tenant's Representatives exacerbates the conditions caused by such Hazardous Materials, or (b) Tenant and/or Tenant's Representatives allows or permits persons over which Tenant or any of Tenant's Representatives has control, and/or for which Tenant or any of Tenant's Representatives are legally responsible for, to cause such Hazardous Materials to be present in, on, under, through or about any portion of the Premises or Common Area, or (c) Tenant and/or any of Tenant's Representatives does not take all reasonably appropriate actions to prevent such persons over which Tenant or any of Tenant's Representatives has control and/or for which Tenant or any of Tenant's Representatives

are legally responsible from causing the presence of Hazardous Materials in, on, under, through or about any portion of the Premises.

29.8 ACKNOWLEDGMENT OF ENVIRONMENTAL REPORT: Tenant hereby acknowledges that Landlord has delivered and Tenant has received and reviewed that certain Phase I Environmental Site Assessment Report prepared by Dudek & Associates, dated November 1995 and that certain draft Phase I Environmental Site Assessment Report prepared by Camp Dresser & McKee, Inc., dated March 17, 1997 and that certain Supplemental Geotechnical Investigation Report prepared by Robert Prater Associates, dated December 1997, and that certain Phase II Environment Site Characterization Report prepared by Genesis Environmental Corporation, dated July 28, 1997 (collectively, "Report"). Landlord represents to Tenant that, to Landlord's actual (not constructive or imputed and without additional investigation or inquiry) knowledge, there are no other Hazardous Materials present in, on or under the Premises or the Common Area except as set forth in the Report. Landlord shall, within one hundred eighty (180) days of the Lease Date, cause the preparation of an additional environmental report the scope and subject matter of which shall be reasonably determined by Landlord ("Additional Report"); provided, prior to the commencement of any investigation or inquiry which is the subject matter of the Additional Report, Tenant may inquire in writing as to the scope and/or methods to be employed in such Additional Report and Tenant request in writing that Landlord cause the scope and/or methods to be employed in such Additional Report to be altered or expanded. Such request by Tenant shall be approved or disapproved by Landlord in Landlord's reasonable judgment. Landlord shall be responsible for the payment of the Additional Report to the extent and only to the extent the investigation and/or inquiry in such Additional Report is expressly and specifically required by any applicable governmental agency or by Landlord's lender; otherwise, Tenant shall be responsible for payment of the Additional Report. At no time during the Term shall Tenant have the right or ability to independently perform or cause the performance of an environmental assessment of the Land and/or Buildings. Landlord shall provide the Additional Report to Tenant; however, in no event shall Tenant be entitled to rely on such Additional Report and such Additional Report shall be provided to Tenant without representation or warranty of any kind or nature. Landlord and Tenant agree to keep strictly confidential the Additional Report and any and all matters discussed therein; provided, however, that notwithstanding the foregoing, the existence of the Report and Additional Report and the matters discussed therein may be disclosed (i) to the extent as may be required by law, regulation, court order, subpoena, or otherwise necessary to defend or prosecute a claim, (ii) by Landlord, to any of Landlord's officers, directors, partners, members, employees, paralegals, advisors, agents, attorneys, accountants, inspectors, consultants, potential or actual investors, partners, members, assignees, potential or actual lenders and potential or actual purchasers of the Premises, and (iii) by Tenant, to Tenant's actual or potential assignees or sublessees, officers, directors, employees, advisors, agents, attorneys and accountants. Any Hazardous Material disclosed by such Additional Report shall not be deemed a breach of the above representation made by Landlord.

29.9 EXIT REPORT: Tenant shall notify Landlord in writing no more than two hundred forty (240) days and no less than one hundred twenty (120) days prior to the expiration or earlier termination of this Lease that Tenant desires Landlord to cause the preparation of, at Tenant's sole cost and expense, an environmental site assessment of the Premises ("Exit Report"). Within sixty (60) days of receipt of such written notification, Landlord shall cause such Exit Report to be prepared and delivered to Tenant. The scope and subject matter of such Exit Report shall be reasonably determined by Landlord; provided, the Exit Report shall be prepared in a manner consistent with the scope of and methods used in the Report and Additional Report unless Landlord determines that Tenant's use of the Premises requires additional testing or a change in the scope or methods of the Report and Additional Report. In the event of such determination by Landlord, Landlord shall have the right to cause such additional testing and/or change in the scope and/or methods of the Report and Additional Report as Landlord deems prudent. In no event shall Tenant be entitled to rely on such Exit Report and such Exit Report shall be provided to Tenant without representation or warranty of any kind or nature. Landlord and Tenant agree to keep strictly confidential the Exit Report and any and all matters discussed therein; provided, however, that notwithstanding the foregoing, the existence of the Exit Report and the matters discussed therein may be disclosed (i) to the extent as may be required by law, regulation, court order, subpoena, or otherwise necessary to defend or prosecute a claim, (ii) by Landlord, to any of Landlord's officers, directors, partners, members, employees, paralegals, advisors, agents, attorneys, accountants, inspectors, consultants, potential or actual investors, partners, members, assignees, potential or actual lenders and potential or actual purchasers of the Premises, and (iii) by Tenant, to Tenant's actual or potential assignees or sublessees, officers, directors, employees, advisors, agents, attorneys and accountants. No later than the expiration or earlier termination of this Lease, Tenant shall correct any deficiencies identified in such Exit Report as being caused by or being the probable result of Tenant's operation in accordance with its obligations under this Section 29. The preparation of such Exit Report shall not constitute a consent or waiver by Landlord of any kind or nature as to any matter disclosed or not disclosed in such Exit Report. This Section 29 is the exclusive provision in this Lease regarding cleanup, repairs or maintenance arising from the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Premises and Common Area, by Tenant or Tenant's Representatives and the provisions of Section 11 (Repairs and Maintenance) shall not apply thereto.

30. FINANCIAL STATEMENTS: The following provisions of this Section 30 shall only apply if Tenant is no longer a publicly traded company. Tenant, for the reliance of Landlord, any lender holding or anticipated to acquire a lien upon the Premises or any portion thereof, or any prospective purchaser of the Premises or any portion thereof, within ten (10) days after Landlord's request therefor, but not more often than once annually so long as Tenant is not in default of this Lease, shall deliver to Landlord the then current audited financial statements of Tenant (including interim periods following the end of the last fiscal year for which annual statements are available) which statements shall be prepared or compiled by a certified public accountant and shall present fairly the financial condition of Tenant at such dates and the result of its operations and changes in its financial positions for the periods ended on such dates. If an audited financial statement has not been prepared, Tenant shall provide Landlord with an unaudited financial statement and/or such other information, the type and form of which are acceptable to Landlord in Landlord's reasonable discretion, which reflects the financial condition of Tenant. If Landlord so requests, Tenant shall deliver to Landlord an opinion of a certified public accountant, including a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with generally accepted accounting principles consistently applied. Any and all options granted to Tenant hereunder shall be subject to and conditioned upon Landlord's reasonable approval of Tenant's financial condition at the time of Tenant's exercise of any such option.

31. GENERAL PROVISIONS:

31.1 TIME. Time is of the essence in this Lease and with respect to each and all of its provisions in which performance is a factor.

31.2 SUCCESSORS AND ASSIGNS. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

31.3 RECORDATION. Landlord and Tenant shall execute and record a short form memorandum of this Lease as set forth in Exhibit B to this Lease.

31.4 LANDLORD'S PERSONAL LIABILITY. The liability of Landlord (which, for purposes of this Lease, shall include Landlord and the owner of the Buildings if other than Landlord) to Tenant for any default by Landlord under the terms of this Lease shall be limited to the actual interest of Landlord and its present or future partners or members in the Premises or the Buildings, and Tenant agrees to look solely to the Premises for satisfaction of any liability and shall not look to other assets of Landlord nor seek any recourse against the assets of the individual partners, members, directors, officers, shareholders, agents or employees of Landlord (including without limitation, any property management company of Landlord); it being intended that Landlord and the individual partners, members, directors, officers, shareholders, agents and employees of Landlord (including without limitation, any property management company of Landlord) shall not be personally liable in any manner whatsoever for any judgment or deficiency. The liability of Landlord under this Lease is limited to its actual period of ownership of title to the Premises or the Buildings, and Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder accruing after the date of such transfer of Landlord's interest in the Premises or the Buildings.

31.5 SEPARABILITY. Any provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof and such other provision shall remain in full force and effect.

31.6 CHOICE OF LAW. This Lease shall be governed by, and construed in accordance with, the laws of the State of California.

31.7 ATTORNEYS' FEES. In the event any dispute between the parties results in litigation or other proceeding, the prevailing party shall be reimbursed by the party not prevailing for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees and costs incurred by the prevailing party in connection with such litigation or other proceeding, and any appeal thereof. Such costs, expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any. In the event that Tenant is named in any litigation or other proceeding due to the acts or omissions of Landlord with respect to the Common Area only and Tenant is a prevailing party in such litigation or proceeding involving the Common Area only, Tenant shall be reimbursed by Landlord for all reasonable attorneys' fees, expert fees and court costs incurred by the Tenant in connection with such litigation or other proceeding, and any appeal thereof.

31.8 ENTIRE AGREEMENT. This Lease supersedes any prior agreements, representations, negotiations or correspondence between the parties, and contains the entire agreement of the parties on matters covered. No other agreement, statement or promise made by any party, that is not in writing and signed by all parties to this Lease, shall be binding.

31.9 WARRANTY OF AUTHORITY. On the date that Tenant executes this Lease, Tenant shall deliver to Landlord an original certificate of status for Tenant issued by the California Secretary of State or statement of partnership for Tenant recorded in the county in which the Premises are located, as applicable, and such other documents as Landlord may reasonably request with regard to the lawful existence of Tenant. Each person executing this Lease on behalf of a party represents and warrants that (1) such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (2) if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Lease and perform all of its obligations hereunder. Tenant hereby warrants that this Lease is valid and binding upon Tenant and enforceable against Tenant in accordance with its terms.

31.10 NOTICES. Any and all notices and demands required or permitted to be given hereunder to Landlord shall be in writing and shall be sent: (a) by United States mail, certified and postage prepaid; or (b) by personal delivery; or (c) by overnight courier, addressed to Landlord at 30 Executive Park, Suite 100, Irvine, California 92614-6741. Any and all notices and demands required or permitted to be given hereunder to Tenant shall be in writing and shall be sent: (i) by United States mail, certified and postage prepaid; or (ii) by personal delivery to any employee or agent of Tenant over the age of eighteen (18) years of age; or (iii) by overnight courier, all of which shall be addressed to Tenant at the Premises. Notice and/or demand shall be deemed given upon the earlier of actual receipt or the third day following deposit in the United States mail. Any notice required by any statute or law now or hereafter in effect, including, but not limited to, California Code of Civil Procedure Sections 1161, 1161.1, and 1162 (including any amendments, supplements or substitutions thereof), is hereby waived by Tenant.

31.11 JOINT AND SEVERAL. If Tenant consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several.

31.12 COVENANTS AND CONDITIONS. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

31.13 WAIVER OF JURY TRIAL. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim of injury, loss or damage.

31.14 [INTENTIONALLY OMITTED.]

31.15 UNDERLINING. The use of underlining within the Lease is for Landlord's reference purposes only and no other meaning or emphasis is intended by this use, nor should any be inferred.

31.16 MERGER. The voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof by Landlord and Tenant, or a termination of this Lease by Landlord for a material default by Tenant hereunder, shall not work a merger, and, at the sole option of Landlord, (i) shall terminate all or any existing subleases or subtenancies, or (ii) may operate as an assignment to Landlord of any or all of such subleases or subtenancies. Landlord's election of either or both of the foregoing options shall be exercised by delivery by Landlord of written notice thereof to Tenant and all known subtenants under any sublease.

32. SIGNS: Tenant shall have the right to install a sign or signs on each of the Buildings depicting Tenant's name and logo, provided, all signs and graphics of every kind visible in or from public view or corridors or the exterior of the Premises shall be subject to Landlord's prior written reasonable approval, the terms, covenants and conditions of any Recorded Matters and shall be subject to any applicable governmental laws, ordinances, and regulations. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in a manner as to avoid damage or defacement of the Premises; and Tenant shall repair any damage or defacement, including without limitation, discoloration caused by such installation or removal. Landlord shall have the right, at its option, to deduct from the Security Deposit such sums as are reasonably necessary to remove such signs, including, but not limited to, the costs and expenses associated with any repairs necessitated by such removal. Tenant further agrees to maintain any such sign, awning, canopy, advertising matter, lettering, decoration or other thing as may be approved in good condition and repair at all times.

33. MORTGAGEE PROTECTION: Upon any default on the part of Landlord, Tenant will give written notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Premises who has provided Tenant with notice of their interest together with an address for receiving notice, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default (which, in no event shall be not more than one hundred twenty (120) days), including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure. If such default cannot be cured within such time period, then such additional time as may be necessary will be given to such beneficiary or mortgagee to effect such cure so long as such beneficiary or mortgagee has commenced the cure within the original time period and thereafter diligently pursues such cure to

completion, in which event this Lease shall not be terminated while such cure is being diligently pursued. Tenant agrees that each lender to whom this Lease has been assigned by Landlord is an express third party beneficiary hereof. Tenant shall not make any prepayment of Rent more than one (1) month in advance without the prior written consent of each such lender, except if Tenant is required to make quarterly payments of Rent in advance pursuant to the provisions of Section 8 above. Tenant waives the collection of any deposit from such lender(s) or any purchaser at a foreclosure sale of such lender(s)' deed of trust unless the lender(s) or such purchaser shall have actually received and not refunded the deposit. Tenant agrees to make all payments under this Lease to the lender with the most senior encumbrance upon receiving a direction, in writing, to pay said amounts to such lender. Tenant shall comply with such written direction to pay without determining whether an event of default exists under such lender's loan to Landlord. Nothing herein shall diminish any rights of Tenant under Civil Code Section 1950.7.

34. QUITCLAIM: Upon any termination of this Lease, Tenant shall, at Landlord's request, execute, have acknowledged and deliver to Landlord a quitclaim deed of Tenant's interest in and to the Premises. If Tenant fails to so deliver to Landlord such a quitclaim deed, Tenant hereby agrees that Landlord shall have the full authority and right to record such a quitclaim deed signed only by Landlord and such quitclaim deed shall be deemed conclusive and binding upon Tenant.

35. [INTENTIONALLY OMITTED.]

36. WARRANTIES OF TENANT: Tenant hereby warrants and represents to Landlord, for the express benefit of Landlord, that Tenant has undertaken a complete and independent evaluation of the risks inherent in the execution of this Lease and the operation of the Premises for the use permitted hereby, and that, based upon said independent evaluation, Tenant has elected to enter into this Lease and, except as otherwise expressly set forth in this Lease, hereby assumes all risks with respect thereto. Tenant hereby further warrants and represents to Landlord, for the express benefit of Landlord, that in entering into this Lease, Tenant has not relied upon any statement, fact, promise or representation (whether express or implied, written or oral) not specifically set forth herein in writing and that any statement, fact, promise or representation (whether express or implied, written or oral) made at any time to Tenant, which is not expressly incorporated herein in writing, is hereby waived by Tenant.

37. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT: Landlord and Tenant hereby agree and acknowledge that the Premises may be subject to the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 et seq, including, but not limited to Title III thereof, all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "ADA"). Any Tenant Improvements to be constructed hereunder shall be in compliance with the requirements of the ADA, and all costs incurred for purposes of compliance therewith shall be a part of and included in the costs of the Tenant Improvements. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Tenant Improvements strictly comply with all requirements of the ADA. Subject to reimbursement pursuant to Section 6 of the Lease, if any barrier removal work or other work is required to the Premises under the ADA, then such work shall be the responsibility of Landlord; provided, if such work is required under the ADA as a result of Tenant's use of the Premises or any work or alteration made to the Premises by or on behalf of Tenant, then such work shall be performed by Landlord at the sole cost and expense of Tenant. Except as otherwise expressly provided in this provision, Tenant shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA, including without limitation, not discriminating against any disabled persons in the operation of Tenant's business in or about the Premises, and offering or otherwise providing auxiliary aids and services as, and when, required by the ADA. Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises or the Buildings; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises or the Buildings; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises or the Buildings. Tenant shall and hereby agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless and indemnify the Indemnitees from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Tenant's or Tenant's Representatives' violation or alleged violation of the ADA. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

38. BROKERAGE COMMISSION: Landlord and Tenant each represents and warrants for the benefit of the other that it has had no dealings with any real estate broker, agent or finder in connection with the Premises and/or the negotiation of this Lease, except for the Broker(s) (as set forth on Page 1), and that neither party

knows of no other real estate broker, agent or finder who is or might be entitled to a real estate brokerage commission or finder's fee in connection with this Lease or otherwise based upon contacts between the claimant and such party. Landlord shall be responsible for the payment of a brokerage commission to Broker pursuant to separate agreement between Broker and Landlord. Each party shall indemnify and hold harmless the other from and against any and all liabilities or expenses arising out of claims made for a fee or commission by any real estate broker, agent or finder in connection with the Premises and this Lease other than Broker(s), if any, resulting from the actions of the indemnifying party. Any real estate brokerage commission or finder's fee payable to the Broker(s) in connection with this Lease shall only be payable and applicable to the extent of the initial Term of the Lease and to the extent of the Premises as same exist as of the date on which Tenant executes this Lease. Unless expressly agreed to in writing by Landlord and Broker(s), no real estate brokerage commission or finder's fee shall be owed to, or otherwise payable to, the Broker(s) for any renewals or other extensions of the initial Term of this Lease or for any additional space leased by Tenant other than the Premises as same exists as of the date on which Tenant executes this Lease. Tenant further represents and warrants to Landlord that Tenant will not receive (i) any portion of any brokerage commission or finder's fee payable to the Broker(s) in connection with this Lease or (ii) any other form of compensation or incentive from the Broker(s) with respect to this Lease.

39. QUIET ENJOYMENT: Landlord covenants with Tenant, upon the paying of Rent and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, and during the periods that Tenant is not otherwise in default of any of the terms or provisions of this Lease, and subject to the rights of any of Landlord's lenders, (i) that Tenant shall and may peaceably and quietly hold, occupy and enjoy the Premises during the Term of this Lease, and (ii) neither Landlord, nor any successor or assign of Landlord, shall disturb Tenant's occupancy or enjoyment of the Premises.

40. LANDLORD'S ABILITY TO PERFORM TENANT'S UNPERFORMED OBLIGATIONS:

Notwithstanding anything to the contrary contained in this Lease, if Tenant shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Tenant pursuant to this Lease, and/or if the failure of Tenant relates to a matter which in Landlord's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of time commensurate with such emergency, then Landlord may, at Landlord's option without any obligation to do so, and in its sole discretion as to the necessity therefor, perform any such term, provision, covenant, or condition, or make any such payment and Landlord by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Tenant or anyone holding under or through Tenant. If Landlord so performs any of Tenant's obligations hereunder, the full amount of the cost and expense entailed or the payment so made or the amount of the loss so sustained shall immediately be owing by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable law and Enforcement Expenses. The obligation of Tenant to pay any amounts to Landlord in accordance with the terms of this Section 40 shall survive the expiration or earlier termination of this Lease.

41. TENANT'S ABILITY TO PERFORM LANDLORD'S UNPERFORMED OBLIGATIONS:

Notwithstanding anything to the contrary contained in this Lease, if Landlord shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Landlord pursuant to this Lease after expiration of all applicable notice and cure periods for Landlord's and any mortgagee's benefit as set forth in Sections 23 and 33, respectively and/or if the failure of Landlord relates to a matter which in Tenant's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of time commensurate with such emergency, then Tenant may, at Tenant's option, without any obligation to do so, after delivery of prior written notice to Landlord, perform any such term, provision, covenant, or condition. If Tenant so performs any of Landlord's obligations hereunder, the full amount of the reasonable costs and expenses incurred shall immediately be owing by Landlord to Tenant, and Landlord shall pay to Tenant the full amount thereof within sixty (60) days of Landlord's receipt of Tenant's written demand therefor. If Landlord fails to pay such sums within said 60-day period, and provided there does not then exist a good faith dispute thereof on the part of Landlord, Tenant may deduct such sums so demanded from the next installment of Base Rent then due from Tenant hereunder. The obligation of Landlord to pay any amounts to Tenant in accordance with the terms of this Section 41 shall survive the expiration or earlier termination of this Lease.

42. SATELLITE DISH: Tenant shall have the right (but only to the extent permitted by the City of Carlsbad and all agencies and governmental authorities having jurisdiction thereof), at Tenant's sole cost and expense, to install and operate a satellite or microwave dish or dishes ("Satellite Dish") along with any necessary cables ("Cables") on a portion of the roof of each Building ("Roof Space") and upon the Land (but such Equipment (defined below) shall only be allowed to be placed on the Premises pursuant to the City of Carlsbad or other applicable governmental authority approval) for the Term of the Lease (the Satellite Dish and Cables are hereinafter collectively referred to as the "Equipment"). The location and size of the Equipment shall be subject to Landlord's approval in accordance with the approvals under the Work Letter, which approval shall be based upon that which best promotes the safety, aesthetics and efficiency of the Equipment; provided, all of the Equipment and any modifications thereto or placement



thereof shall be (i) at Tenant's sole cost and expense, (ii) contained visually within the roof screen, (iii) installed and operated to Landlord's reasonable specifications, and (iv) installed, maintained, operated and removed in accordance with all Recorded Matters and applicable Laws. Landlord shall cooperate reasonably with Tenant to modify the roof screen placement (subject to all applicable Laws and Recorded Matters) if required for signal quality, reconfiguration due to the installation of any HVAC systems and other reasonable considerations; provided, the cost of all such modifications shall be the responsibility of Tenant. All modifications to the Buildings, including the roofs and Roof Space, if any, shall be reasonably approved by Landlord prior to commencement of any work with respect to the Equipment. No additional rent shall be paid by Tenant for use of the Roof Space and operation of the Equipment. The Equipment shall remain the property of Tenant and Tenant shall remove the Equipment upon the expiration or earlier termination of the Lease. Tenant shall restore the Roof Space and any other portion of the Buildings affected by the Equipment to its original condition, excepting ordinary wear and tear and/or damage or destruction due to fire or other casualty not caused directly or indirectly by Tenant, its agents, employees, contractors or the Equipment or any part thereof. Tenant may not assign, lease, rent, sublet or otherwise transfer any of its interest in the Roof Space or the Equipment except together with the remainder of the Premises as more particularly set forth in Section 15. Each of the other provisions of this Lease shall be applicable to the Equipment and the use of the Roof Space by Tenant, including without limitation, Sections 12 and 14 of this Lease. The Equipment shall comply with all-non-interference rules of the Federal Communications Commission. If applicable, Tenant shall provide to Landlord a copy of (i) the Federal Communications Commission (or other agency) grant which has awarded frequencies to Tenant and (ii) a list of Tenant's frequencies. Tenant acknowledges and agrees that Tenant shall not have the right to change Tenant's frequencies without Landlord's prior written consent. Landlord may, at any time and at Landlord's sole cost and expense, relocate the Equipment, including, without limitation, the antenna and any wiring, to a mutually agreeable alternative site within the Premises upon sixty (60) days' notice to Tenant. Upon relocation, Tenant's means of access and utility lines will be relocated by Landlord or, at Landlord's option, by Tenant as required to operate and maintain Equipment. Except as expressly provided in this Paragraph, in no event shall the relocation of the Equipment, or any part thereof, affect, alter, modify, or otherwise change any of the terms and conditions of the Lease. Anything to the contrary contained herein notwithstanding, if, during the Lease Term, as such Term may be extended, Landlord, in its reasonable judgment, believes that the Equipment poses a human health or environmental hazard that cannot be remediated or has not been remediated within ten (10) days after Tenant has been notified thereof, then Tenant shall immediately cease all operations of the Equipment and Tenant shall remove all of the Equipment within thirty (30) days thereafter. Tenant represents to Landlord that the Equipment shall not emit or project any electro-magnetic fields which pose a human health or environmental hazard. In addition, Tenant shall be responsible for insuring the Equipment and Landlord shall have no responsibility therefor. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord) and hold harmless Landlord from any

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and all claims, demands, liabilities, damages, judgments, costs and expenses (including reasonable attorneys' fees) Landlord may suffer or incur arising out of or related to the installation, use, operation, maintenance, replacement and/or removal of the Equipment or any portion thereof.

IN WITNESS WHEREOF, this Lease is executed by the parties as of the Lease Date referenced on Page 1 of this Lease.

LANDLORD:

W9/LNP REAL ESTATE LIMITED PARTNERSHIP,  
a Delaware limited partnership

By: LPC MS, Inc.,  
as manager and agent for W9/LNP  
Real Estate Limited Partnership,  
a Delaware Limited Partnership

By: \_\_\_\_\_  
Senior Vice President

Date: \_\_\_\_\_

TENANT:

VIASAT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Gregory Monahan

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ADDENDUM 1  
OPTIONS TO EXTEND

This Addendum 1 ("Addendum") is incorporated as part of that certain Lease Agreement, dated for reference purposes as of March 24, 1998 (the "Lease"), by and between W9/LNP Real Estate Limited Partnership, a Delaware limited partnership ("Landlord"), and ViaSat, Inc., a Delaware corporation ("Tenant"), for the leasing by Tenant of (i) a portion of that certain site on El Camino Real, Carlsbad, California currently known as the "Hughes facility" and to be known as Lincoln Northpointe as more particularly described in Exhibit A to the Lease (the "Premises"). Any capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the Lease.

1. GRANT OF EXTENSION OPTIONS. Subject to the provisions and conditions of this Addendum, Tenant shall have the right, at its option (individually, an "Option" and collectively, the "Options"), to extend the term of the Lease for two (2) additional three (3) year periods (individually, the "First Extended Term" and the "Second Extended Term," respectively and collectively, the "Extended Terms").

2. TENANT'S OPTION NOTICES. Landlord must receive written notice from Tenant of Tenant's exercise of an Option on a date which is not more than four hundred fifty (450) days nor less than two hundred seventy (270) days prior to the end of, with respect to the First Extended Term, the initial term of the Lease or, with respect to the Second Extended Term, the First Extended Term ("Option Notice"). In the event Tenant fails to timely and properly exercise such Option for the (i) First Extended Term, all rights to both Options shall automatically lapse and terminate and shall be of no further force or effect or (ii) the Second Extended Term, all rights to the Option for the Second Extended Term shall automatically terminate and be of no further force or effect.

3. ESTABLISHING THE MONTHLY BASE RENT FOR EXTENDED TERMS. The initial monthly Base Rent for each of the Extended Terms shall be the greater of (i) four percent (4%) in excess of the monthly Base Rent for the last month of the initial term or First Extended Term, as applicable (excluding for purposes of this calculation the portion of the monthly Base Rent included in such Base Rent to amortize TI Costs between \$32.50 and \$35.00 per square foot), or (ii) ninety five percent (95%) of the then current market rent for similar space within the "competitive market area" of the Premises (the "Fair Rental Value") agreed upon by and between Landlord and Tenant and their agents appointed for this purpose. For purposes of this Section 3, "competitive market area" shall be conclusively deemed to be the Carlsbad office market. The "Fair Rental Value" of the Premises shall be defined to mean the current market rental value of the Premises as of the commencement of each of the Extended Terms, as applicable, taking into consideration all relevant factors, including length of term, the uses permitted under the Lease, the quality, size, design and location of the Premises, including but not limited to the condition and value of existing tenant improvements, and the monthly base rent paid by tenants for premises comparable to the Premises, located within the competitive market area of the Premises.

If Landlord and Tenant are unable to agree on the Fair Rental Value for either of the Extended Terms, as applicable, within ten (10) days of receipt by Landlord of the applicable Option Notice, Landlord and Tenant each, at its cost and by giving notice to the other party, shall appoint a competent and disinterested real estate appraiser with an "MAI" designation (hereinafter "Appraiser") with at least five (5) years' full-time commercial real estate brokerage experience in the geographical area of the Premises to set the Fair Rental Value for the applicable Extended Term. If either Landlord or Tenant does not appoint an Appraiser within ten (10) days after the other party has given notice of the name of its Appraiser, the single Appraiser appointed shall be the sole Appraiser and shall set the Fair Rental Value for the applicable Extended Term. If two (2) Appraisers are appointed by Landlord and Tenant as stated in this paragraph, they shall meet promptly and attempt to set the Fair Rental Value. If the two (2) Appraisers are unable to agree within ten (10) days after the second Appraiser has been appointed, they shall attempt to select a third Appraiser, meeting the qualifications stated in this paragraph within ten (10) days after the last day the two (2) Appraisers are given to set the Fair Rental Value. If they are unable to agree on the third Appraiser, either Landlord or Tenant by giving ten (10) days' notice to the other party, can apply to the Presiding Judge of the Superior Court of the county in which the Premises is located for the selection of a third Appraiser who meets the qualifications stated in this paragraph. Landlord and Tenant each shall bear one-half (1/2) of the cost of appointing the third Appraiser and of paying the third Appraiser's fee. The third Appraiser, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant. Within fifteen (15) days after the selection of the third Appraiser, the third Appraiser shall select and specify a Fair Rental Value for the applicable Extended Term, which Fair Rental Value shall neither be higher than the highest Fair Rental Value nor lower than the lowest Fair Rental Value submitted by the first two Appraisers as the Fair Rental Value for the applicable Extended Term. If either of the first two Appraisers fails to submit their opinion of the Fair Rental Value, then the single Fair Rental Value submitted shall automatically be the monthly Base Rent for the applicable Extended Term.

Upon determination of the initial monthly Base Rent for the applicable Extended Term, pursuant to the terms outlined above, Tenant shall have a period of fifteen (15) days in which to rescind its Option Notice by delivering written notice of such rescission to the Landlord, whereupon the Option shall be deemed not to have been exercised by Tenant. In the event of such a rescission, Tenant shall pay for the entire cost of all appraisals and reimburse Landlord for any portions of such costs previously paid by Landlord. If Tenant fails to rescind its Option Notice in the manner set forth, Landlord and Tenant shall immediately execute an amendment to the Lease. Such amendment, shall set forth among other things, the initial monthly Base Rent for the applicable Extended Term, and the actual commencement date and expiration date of the applicable Extended Term, and shall otherwise be on the same terms and provisions of the Lease to the extent then applicable (by way of example only, the provisions of Exhibit B to the Lease may not be applicable during the Second Extended Term). Tenant shall have no other right to further extend the term of the Lease under this Addendum unless Landlord and Tenant otherwise expressly agree in writing.

4. INCREASES IN MONTHLY BASE RENT DURING EXTENDED TERMS. The initial monthly Base Rent in effect for the First Extended Term and Second Extended Term shall be increased effective as of the thirtieth (30th) month anniversary date following the commencement of the applicable Extended Term by the change in the Index (defined in Addendum 3) in effect one (1) month prior to the commencement of the applicable Extended Term as compared to the Index in effect one (1) month prior to such adjustment; provided, however, in no event shall such increase, on an annual basis, be less than three percent (3%) or more than five percent (5%) from the commencement of the applicable Extended Term to the adjustment date.

5. CONDITION OF PREMISES AND BROKERAGE COMMISSIONS FOR THE EXTENDED TERMS. If Tenant timely and properly exercises either or both of the Options, in accordance with the terms contained herein: (1) Tenant shall accept the Premises in its then "As-Is" condition and, accordingly, Landlord shall not be required to perform any additional improvements to the Premises; and (2) each party will solely be responsible for any and all brokerage commissions and finder's fees payable to any broker now or hereafter procured or hired by the party or who otherwise claims a commission based on any act or statement of the party in connection with the Options; and the other party shall in no event or circumstance be responsible for the payment of any such commissions and fees.

6. LIMITATIONS ON, AND CONDITIONS TO, EXTENSION OPTIONS. Each Option is personal to Tenant and may not be assigned separate from or as a part of the Lease other than to a Related Entity. At Landlord's option, all rights of Tenant under both Options shall terminate and be of no force or effect if any of the following individual events occur or any combination thereof occur: (i) Tenant has been in default at any time beyond the expiration of any applicable notice and cure periods during more than three (3) times during any twelve (12) month period in the initial term of the Lease or First Extended Term, as the case may be, or is in default in the performance of any of its obligations under this Lease beyond any applicable notice and cure periods at the time of Tenant's exercise of the then applicable Option; and/or (ii) there has occurred a substantial and adverse change in Tenant's financial condition during the initial term or First Extended Term, as then applicable; and/or (iii) Tenant has failed to exercise properly the then applicable Option described in this Addendum in a timely manner in strict accordance with the provisions of this Addendum; and/or (iv) Tenant no longer has lawful possession of the Premises under the Lease, or if the Lease has been terminated earlier, pursuant to the terms of the Lease; and/or (v) Tenant has assigned its rights and obligations under all or part of the Lease or Tenant has subleased twenty-five percent (25%) or more of the Premises other than to a Related Entity and/or a Business Entity.

7. TIME IS OF THE ESSENCE. Time is of the essence with respect to each and every time period set forth in this Addendum.

ADDENDUM 2  
EXPANSION OPTIONS

This Addendum 2 is incorporated as part of that certain Lease Agreement dated for reference purposes March 24, 1998, by and between ViaSat, Inc., a Delaware corporation ("Tenant") and W9/LNP Real Estate Limited Partnership, a Delaware limited partnership ("Landlord"), for the leasing by Tenant of the Premises. Any capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the Lease.

1. TENANT'S OPTION TO LEASE "PHASE 2". For a period of eighteen (18) months following the Commencement Date (the "Phase 2 Option Period"), Tenant shall have the option (the "Phase 2 Option") to lease and hire from Landlord an additional approximately 60,000 square foot building with similar landscaping, recreation facilities and other amenities to be constructed (the "Phase 2 Building") on approximately 4.25 acres of land contiguous to the initial Premises described in the Lease (the "Phase 2 Land"), upon the same terms and conditions contained in the Lease and in the Work Letter, except as set forth herein (the Phase 2 Building and the Phase 2 Land are sometimes collectively referred to as "Phase 2"). Tenant shall notify Landlord of its desire to lease Phase 2, in writing, at any time within the Phase 2 Option Period (the "Phase 2 Notice"). Within ten (10) days after Landlord's receipt of the Phase 2 Notice, Landlord and Tenant shall, acting reasonably and exercising good business judgment, agree upon the actual configuration of the Phase 2 Building (the location of which is designated as Building 5 on the "Phase II Site Plan" attached hereto and incorporated herein as Schedule 1). Within ten (10) days after Substantial Completion of the Phase 2 Building, the parties shall execute a new lease substantially similar to this Lease, including without limitation, a lease which includes a provision substantially similar to Section 31.4 of this Lease and with a Project Schedule with substantially the same time periods as set forth in Exhibit 5 to the Work Letter (but, for example, such new lease shall not contain any expansion options beyond those in this original Lease). Such new lease shall, among other things, set forth the following: (i) Base Rent for Phase 2, as agreed upon by the parties pursuant to Section 3 below, (ii) the term of the Lease for Phase 2, which term shall be ten (10) years from the date of Substantial Completion of the Shell Improvements and Tenant Improvements for the Phase 2 Building except as set forth in Section 5 below, (iii) the actual square footage of the Phase 2 Building, (iv) the security deposit for such lease shall be seventy five thousand dollars (\$75,000.00), and (v) a default under any one or more of this Lease, the lease for Phase 2 or the lease for Phase 3 (collectively, "Phase Leases") shall constitute a default under each of the other Phase Leases, so long as the identity of the landlord under each Phase Lease is the same; and, in the event the identity of the landlord under any two (2) of the Phase Leases is the same, a default under one of such Phase Leases shall constitute a default under the other Phase Lease; and, in the event the identity of the landlord is different under each Phase Lease, a default under any Phase Lease shall not be a default under any other Phase Lease. Landlord shall provide Tenant with a Tenant Improvement Allowance for TI Costs of up to \$26.00 per square foot. Landlord shall provide Tenant up to an additional \$5.00 per square foot for TI Costs provided (a) such additional \$5.00 per square foot shall be amortized over the term of the Lease for Phase 2 at an interest rate equal to twelve percent (12%) per annum, and (b) that, at the date of Landlord's receipt of the Phase 2 Notice, Tenant's net worth and net operating income shall not have decreased from such net worth and net operating income as of the Lease Date.

If Tenant does not exercise the Phase 2 Option within twelve (12) months following the Commencement Date, from and after the commencement of the thirteenth (13th) month following the Commencement Date, Tenant shall pay Landlord, on a monthly basis as additional rent and option consideration, an amount equal to interest of eleven percent (11%) per annum (compounded) on the land value of the Phase 2 Land. Such value shall be determined by multiplying the square footage of the Phase 2 Land by Seven Dollars and Eighty-two Cents (\$7.82). In the event Tenant timely exercises the Phase 2 Option, such additional rent and option payments shall continue until commencement of construction of the Shell Improvements for the Phase 2 Building. In the event Tenant fails to timely exercise the Phase 2 Option or informs Landlord prior to the expiration of the Phase 2 Option Period that Tenant shall not elect the Phase 2 Option, such additional rent and option payments shall continue until the expiration of the Phase 2 Option Period unless Tenant terminates the Phase 2 Option by written notice to Landlord prior to the Commencement Date, in which case no such payments shall be required to be made by Tenant.

2. TENANT'S OPTION TO LEASE "PHASE 3". Provided Tenant has timely and properly exercised the Phase 2 Option, Tenant shall have, for a period of twenty-four (24) months following the Commencement Date (the "Phase 3 Option Period"), the option (the "Phase 3 Option") to lease and hire from Landlord an additional approximately 60,000 square foot building and the Work Letter to be constructed (the "Phase 3 Building") on approximately 4.25 acres of land contiguous to the initial Premises and/or the Phase 2 Land (the "Phase 3 Land"), upon the same terms and conditions contained in the Lease with similar landscaping, recreation facilities and other amenities, except as set forth herein (the Phase 3 Building and the Phase 3 Land are sometimes collectively referred to as "Phase 3"). Tenant shall notify Landlord of its desire to

lease Phase 3, in writing, at any time within the Phase 3 Option Period (the "Phase 3 Notice"). Within ten (10) days after Landlord's receipt of the Phase 3 Notice, Landlord and Tenant shall, acting reasonably and exercising good business judgment, agree upon the actual configuration of the Phase 3 Building (the location of which is designated as Building 4 on the "Phase III Site Plan" attached hereto and incorporated herein as Schedule 2). Within ten (10) days after Substantial Completion of the Phase 3 Building, the parties shall execute a new lease substantially similar to this Lease, including without limitation, a lease which includes a provision substantially similar to Section 31.4 of this Lease (but, for example, such new lease shall not contain any expansion options beyond those in this original Lease) setting forth the following: (i) Base Rent for Phase 3, as agreed upon by the parties pursuant to Section 3 below, (ii) the term of the Lease for Phase 3, which term shall be ten (10) years from the date of Substantial Completion of the Shell Improvements and Tenant Improvements for the Phase 3 Building except as set forth in Section 5 below, (iii) the actual square footage of the Phase 3 Building, (iv) the security deposit for such lease shall be seventy five thousand dollars (\$75,000.00), and (v) a default under any one or more of the Phase Leases shall constitute a default under each of the other Phase Leases, so long as the identity of the landlord under each Phase Lease is the same; and, in the event the identity of the landlord under any two (2) of the Phase Leases is the same, a default under one of such Phase Leases shall constitute a default under the other Phase Lease; and, in the event the identity of the landlord is different under each Phase Lease, a default under any Phase Lease shall not be a default under any other Phase Lease. Landlord shall provide Tenant with a Tenant Improvement Allowance for TI Costs of up to \$26.00 per square foot. Landlord shall provide Tenant up to an additional \$5.00 per square foot for TI Costs provided (a) such additional \$5.00 per square foot shall be amortized over the term of the Lease for Phase 3 at an interest rate equal to twelve percent (12%) per annum, and (b) that, at the date of Landlord's receipt of the Phase 3 Notice, Tenant's net worth and net operating income shall not have decreased from such net worth and net operating income as of the Lease Date.

If Tenant does not exercise the Phase 3 Option within twelve (12) months following the Commencement Date, from and after the commencement of the thirteenth (13th) month following the Commencement Date, Tenant shall pay Landlord, on a monthly basis as additional rent and option consideration, an amount equal to interest of eleven percent (11%) per annum on the land value of the Phase 3 Land. Such value shall be determined by multiplying the square footage of the Phase 3 Land by Seven Dollars and Eighty-two Cents (\$7.82). In the event Tenant timely exercises the Phase 3 Option, such additional rent and option payments shall continue until commencement of construction of the Shell Improvements for the Phase 3 Building. In the event Tenant fails to timely exercise the Phase 3 Option or informs Landlord prior to the expiration of the Phase 3 Option Period that Tenant shall not elect the Phase 3 Option, such additional rent and option payments shall continue until the expiration of the Phase 3 Option Period unless Tenant terminates the Phase 3 Option by written notice to Landlord prior to the Commencement Date, in which case no such payments shall be required to be made by Tenant.

3. **BASE RENT FOR PHASE 2 AND/OR PHASE 3.** Initial monthly Base Rent for Phase 2 shall be One Dollar and Nineteen Cents (\$1.19) per square foot per month. Initial monthly Base Rent for Phase 3, if exercised within the Phase 2 Option Period, shall be One Dollar and Nineteen Cents (\$1.19) per square foot per month; if Tenant exercises the Phase 3 Option after the expiration of the Phase 2 Option Period, the initial monthly Base Rent for Phase 3 shall be One Dollar and Twenty-three Cents (\$1.23) per square foot per month. These initial monthly Base Rent amounts shall not be altered except as follows: (i) in the event that the Ten (10) Year Treasury Note Rate increases by more than 200 basis points from five and 59 one hundredths percent (5.59%) (which is the Ten (10) Year Treasury Note Rate as of the Lease Date) to the date of either the Phase 2 Notice or the Phase 3 Notice, as applicable, monthly Base Rent shall be increased as follows: because the Base Rent has been calculated on an eleven percent (11%) per annum return to Landlord, the Base Rent shall be adjusted upward to calculate the return to Landlord at a rate equal to eleven percent (11%) per annum plus the number of basis points in excess of 200 basis points by which the ten (10) year Treasury Note Rate increases from the Lease Date to the date of the Phase 2 Notice and/or Phase 3 Notice, as applicable, and/or (ii) in the event that Tenant requests any changes to Landlord's Plans (as defined in Exhibit B to the Lease) for such Phase (and the parties anticipate that Landlord's Plans for Phase 2 and Phase 3 shall be identical to Landlord's Plans for the two (2) "engineering buildings" constituting a portion of the Premises) and such changes increase the construction costs in either Phase, the Base Rent shall be increased such that Landlord shall receive a return on such increased costs of an amount equal to eleven percent (11%) per annum or if such changes decrease the construction costs, the Base Rent shall decrease by an amount calculated in the same manner.

4. **INCREASES IN BASE RENT.** Base Rent shall increase on the 30th, 60th and 90th month anniversary dates following the applicable commencement date of the Phase by the annual change in the Index, as more specifically set forth in Addendum 3 to the Lease. Notwithstanding the foregoing, in no event shall each percentage increase, on an annual basis, be less than three percent (3%) or more than five percent (5%).

5. **TENANT'S OPTION TO MAKE LEASE TERM CO-TERMINUS WITH THE PHASE 2 BUILDING AND/OR PHASE 3 BUILDING LEASES.** Tenant shall have the option, exercisable with Tenant's delivery of the (i) Phase 2 Notice, to elect that the term of the lease for the Premises be co-terminus with the term of the lease for Phase 2 and (ii) Phase 3 Notice, to elect that the term of the Lease for the Premises and Phase 2 be co-terminus with the term of the lease for Phase 3. If Tenant makes either of such elections,



Base Rent shall be increased on the 120th month anniversary date of the Commencement Date in the same manner as such Base Rent was increased on the thirtieth (30th), sixtieth (60th) and ninetieth (90th) month anniversary dates of the Commencement Date of the Lease and as otherwise set forth in Addendum 3 to this Lease. Tenant's Options to Extend the Term of this Lease shall be applicable to the leases for Phase 2 and Phase 3, provided in no event shall the expiration date of any lease for any Phase (including this Lease) be later than the date which is sixteen (16) years from the Commencement Date (as defined in this Lease).

#### 6. FAILURE TO CONSTRUCT.

A. The parties acknowledge that the Tenant's ability to expand into the Phase 2 Building and the Phase 3 Building is of material consideration to Tenant under this Lease; provided, however, the parties further acknowledge that Landlord may determine (in Landlord's reasonable business judgment) that it would not be commercially reasonable for the Landlord to construct the applicable Phase at the time Tenant exercises its option for the applicable Phase. Landlord shall notify Tenant of such determination within sixty (60) days following Tenant's notice. In the event Landlord fails to commence to construct either Phase 2 or Phase 3, by ten (10) months after receipt of either the Phase 2 Notice or the Phase 3 Notice and upon the terms and conditions contained in this Addendum 2, then Tenant shall have the option to purchase the Phase 2 Land or the Phase 3 Land, as then applicable, at the Fair Market Value (defined below); and, in the event Tenant actually consummates the purchase of the Phase 2 Land or Phase 3 Land, as applicable, Tenant shall receive a credit against the purchase price for the applicable Phase in the amount of the consideration previously paid to Landlord (and described in Sections 1 and 2 of this Addendum 2) for such Phase. Tenant shall have a period of thirty (30) days from receipt of Landlord's written notice that Landlord is unable to construct the applicable Phase in order to determine whether Tenant will purchase the applicable Phase and the parties shall have thirty (30) days thereafter to agree upon the purchase price for the Phase 2 Land or Phase 3 Land, as then applicable, and to enter into a definitive agreement. If the parties are unable to agree upon the purchase price for the Phase 2 Land or Phase 3 Land, as then applicable, it shall be determined in the same manner and under the same time frames set forth in the second paragraph of Section 3 of Addendum 1 (and no other Section or paragraph of Addendum 1 shall be applicable hereto) of this Lease for determination of Fair Rental Value (as defined in Addendum 1); provided, however, Landlord and Tenant agree that, with respect to (i) Phase 2, in no event shall the purchase price for the Phase 2 Land be less than thirteen dollars (\$13.00) or more than eighteen dollars (\$18.00) per square foot of the Phase 2 Land and (ii) Phase 3, in no event shall the purchase price for the Phase 3 Land be less than fourteen dollars (\$14.00) or more than nineteen dollars (\$19.00) per square foot of the Phase 3 Land. The purchase price determined by the MAI appraisers, subject to the immediately preceding sentence, shall be deemed to be the "Fair Market Value" of the Phase 2 Land or Phase 3 Land, as applicable. In the event Tenant shall not desire to purchase the Phase 2 Land or Phase 3 Land, as applicable, after the purchase price for the Phase 2 Land or Phase 3 Land, as applicable, is determined pursuant to the arbitration procedure described above, Tenant shall have the right, by written notice delivered to Landlord within fifteen (15) days of such determination (or such right shall be null and void and of no further force or effect), to rescind Tenant's exercise of the applicable option to purchase; provided, however, in the event Tenant rescinds the exercise of Tenant's option to purchase the Phase 2 Land, Tenant shall have no further right whatsoever to exercise Tenant's option to purchase the Phase 3 Land and such option to purchase with respect to the Phase 3 Land shall be null and void and of no further force or effect.

B. IN CONSIDERATION OF LANDLORD GRANTING TENANT THE OPTION TO PURCHASE THE PHASE 2 LAND AND PHASE 3 LAND AS SET FORTH IN THIS SECTION 6, TENANT ACKNOWLEDGES AND EXPRESSLY AGREES THAT, IF LANDLORD DETERMINES (IN LANDLORD'S REASONABLE BUSINESS JUDGMENT) THAT IT WOULD NOT BE COMMERCIALY REASONABLE FOR LANDLORD TO CONSTRUCT THE PHASE 2 BUILDING AND/OR PHASE 3 BUILDING, AS APPLICABLE, AND LANDLORD FAILS TO SO CONSTRUCT THE PHASE 2 BUILDING AND/OR PHASE 3 BUILDING, AS APPLICABLE, THEN AND ONLY THEN (I) IN NO EVENT OR CIRCUMSTANCE SHALL TENANT, ANY OF TENANT'S REPRESENTATIVES OR ANY SUCCESSOR, ASSIGN AND/OR AFFILIATE THEREOF HAVE THE RIGHT OR ABILITY TO BRING ANY LEGAL OR EQUITABLE ACTION, PROCEEDING OR SUIT (INCLUDING ANY ARBITRATION) OF ANY KIND OR NATURE AGAINST LANDLORD, THE INDEMNITEES (AS DEFINED IN SECTION 14 OF THE LEASE) OR ANY SUCCESSOR, ASSIGN OR AFFILIATE THEREOF FOR LANDLORD'S FAILURE TO CONSTRUCT THE BUILDINGS AND (II) TENANT'S SOLE AND EXCLUSIVE REMEDY FOR SUCH FAILURE OF LANDLORD SHALL BE THE EXERCISE BY TENANT OF THE OPTION(S) TO PURCHASE DESCRIBED IN THIS SECTION 6. SUCH REMEDY SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF TENANT, INTENDED NOT AS A PENALTY OR FORFEITURE WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT AS FULL LIQUIDATED DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677 AND THE SOLE AND EXCLUSIVE REMEDY OF TENANT AT LAW OR IN EQUITY FOR LANDLORD'S FAILURE TO CONSTRUCT THE PHASE 2 BUILDING AND/OR PHASE 3 BUILDING AND (III)



TENANT WAIVES AND RELEASES ANY RIGHTS THAT TENANT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTIONS 1680 AND 3389 EXCEPT TO THE EXTENT NECESSARY TO ENFORCE THE LIQUIDATED DAMAGES. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.

LANDLORD'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_

7. APPLICABLE PROVISIONS OF ADDENDUM 1. Section 5(2), Section 6 and Section 7 of Addendum 1 of this Lease shall be applicable to the Phase 2 Option and Phase 3 Option, and such provisions shall be deemed to be fully incorporated into this Addendum 2, except the references to "initial term" and "First Extended Term," respectively, shall be replaced with "Phase 2 Option Period" and "Phase 3 Option Period," respectively.

ADDENDUM 3  
ADJUSTMENTS TO BASE RENT

This Addendum 3 ("Addendum") is incorporated as part of that certain Lease Agreement, dated for reference purposes as of March 24, 1998 (the "Lease"), by and between W9/LNP Real Estate Limited Partnership, a Delaware limited partnership ("Landlord"), and ViaSat, Inc., a Delaware corporation ("Tenant"), for the leasing by Tenant of the Premises. Any capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the Lease.

The following provision shall be added to and incorporated in the above-referenced Lease. Any capitalized terms used herein, and not otherwise defined herein, shall have the meaning ascribed to such terms as set forth in the Lease. In the event of any inconsistencies between the terms and provisions of this Addendum 3 and the Lease, the terms and provisions of this Addendum 3 shall control.

The monthly rent payable by Tenant to Landlord, as set forth in this Lease, shall be adjusted effective on the first (1st) day of the (i) thirtieth (30th), sixtieth (60th) and ninetieth (90th) month anniversary dates of the Commencement Date of this Lease (and one hundred twentieth (120th) month in the event Tenant makes either of the elections described in Addendum 2, Paragraph 5 of this Lease) and (ii) thirtieth (30th) month anniversary date following the commencement of the applicable Extended Term, if any, of this Lease (each an "Adjustment Date"), in accordance with the percentage increase, if any, in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for Los Angeles-Riverside-Orange County, California" (Base: 1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics ("Index").

The monthly rent payable on each Adjustment Date shall be the product of the monthly rent in effect on the last day preceding each Adjustment Date and the fraction described below. The denominator of such fraction shall be the Index in effect one (1) month prior to the first day of the initial term of the Lease or the last adjustment date, as the case may be ("Base Index"). The numerator of such fraction shall be the Index in effect one (1) month prior to the last day preceding each Adjustment Date ("Adjustment Index"). The monthly rent shall be increased and paid thereafter in accordance with the percentage increase, if any, between such Indices; provided, however, in no event shall such increase, on an annual basis, be less than three percent (3%) or more than five percent (5%).

Should said Bureau discontinue the publication of the above Index, or the compilation of the Index be materially altered, or publish the same less frequently, or vary the method of calculation of same, or alter the same in some other manner, then Landlord shall adopt a substitute index which is most nearly the same or substitute procedure which reasonably reflects and monitors consumer prices, and shall be used to make such calculation. If the Index is changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc. or by any other nationally recognized publisher of similar statistical information. In the event the compilation and/or publication of the Index shall be discontinued or materially altered, then the index most nearly the same as the Index shall be used to make such calculation. In the event the Landlord and Tenant cannot agree on such alternative Index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of the said Association and a decision of the arbitrators as to the applicable Index shall be binding upon the parties. The cost of said arbitrator shall be paid equally by the Landlord and Tenant.

References herein to the term "monthly rent" shall, for purposes of all applicable provisions of this Lease, mean Base Rent and be synonymous therewith.

Example:

Hypothetical Facts:

-----  
 Lease Commencement Date or  
 Last Adjustment Date: 9/1/92  
 Adjustment Date: 9/1/93  
 Monthly rent in effect: 8/31/93 - \$2,000.00  
 Base Index: July, 1992 - 410.0  
 Adjustment Index: July, 1993 - 430.0

Adjusted Rent Calculation:  
 -----  
 Ratio of Indices: 430.0 = 1.0488 or 4.88%  
 410.0  
 Adjusted monthly rent: \$2,000.00 x 4.88% = \$2,097.60

ADDENDUM 4  
RIGHT OF FIRST OFFER TO PURCHASE

This Addendum 4 is incorporated as a part of that certain Lease Agreement dated March 24, 1998 by and between ViaSat, Inc., a Delaware corporation ("Tenant"), and W9/LNP Real Estate Limited Partnership, a Delaware limited partnership ("Landlord"), for the leasing of the Premises. Any capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the Lease.

Tenant shall have a one time right of first offer ("Right of First Offer") to purchase any portion of the Premises which constitutes a separate legal lot including Phase 2 and Phase 3 which Landlord has elected to sell. Tenant's Right of First Offer, as granted herein, shall be void if (i) Tenant has been in default in the performance of any of Tenant's obligations under the Lease more than three (3) times in any twelve (12) month period, or (ii) on the date of Landlord's Availability Notice (defined below) Tenant is then in default in the performance of any of its obligations under the Lease or (iii) the Premises or any portion thereof has been assigned or subleased at the time this Right of First Offer is offered other than to a Related Entity and/or a Business Entity.

Provided the above conditions are satisfied, and Landlord desires to sell any portion of the Premises which constitutes a separate legal lot, Landlord shall give Tenant written notice of such desire and the amount Landlord is willing to offer the Premises for sale ("Landlord's Availability Notice") and Tenant shall have the right to exercise Tenant's Right of First Offer. Tenant shall have a period of seven (7) days following receipt of Landlord's Availability Notice to advise Landlord of Tenant's interest in the portion of the Premises which were the subject of Landlord's Availability Notice ("Tenant's Offer"), which Tenant's Offer shall contain all of the terms and conditions on which Tenant is willing and able to purchase the Building(s). If Tenant fails to deliver to Landlord such advisement within the time specified herein, it shall be deemed that (i) Tenant has elected not to offer to purchase the Building(s); (ii) Landlord may thereafter enter into negotiations with any person or entity and/or negotiate and consummate an agreement to sell the Building(s) with any person or entity on any terms and conditions Landlord, in its sole and absolute discretion, shall deem desirable; and (iii) all rights under this Right of First Offer shall terminate and be of no further force or effect. Time is of the essence herein.

In the event Tenant's Offer is acceptable to Landlord, Tenant and Landlord shall have twenty-one (21) days after Tenant's receipt of Landlord's written acceptance of such terms and conditions in which to exclusively negotiate and enter into a purchase and sale agreement for the Building(s). In the event Tenant's Offer is not acceptable to Landlord, Landlord shall have the right, within the above-referenced fourteen (14) day period, to either (i) reject Tenant's Offer (in which case Landlord may thereafter enter into negotiations with any person or entity and/or negotiate and consummate an agreement to sell the Building(s) with any person or entity on any terms and conditions Landlord, in its sole and absolute discretion, shall deem desirable, and all rights under this Right of First Offer shall terminate and be of no further force or effect) or (ii) counter Tenant's Offer ("Counteroffer") and Tenant shall have a period of ten (10) days after receipt of the Counteroffer in which to accept or reject such Counteroffer. In the event Tenant accepts such Counteroffer within the above-referenced ten (10) day period with no changes, modifications or amendments, Landlord and Tenant shall have a period of twenty-one (21) days after Landlord's receipt of Tenant's written acceptance of such Counteroffer in which to exclusively negotiate and enter into a purchase and sale agreement for the Building(s). In the event (a) Landlord accepts Tenant's Offer, as described in the first and second sentences of this paragraph, but Landlord and Tenant are unable to reach agreement within the above-referenced twenty-one (21) day period, (b) Tenant rejects the Counteroffer or does not respond to the Counteroffer, (c) Tenant makes any changes, modifications or amendments to the Counteroffer or, (d) following Tenant's acceptance of Landlord's Counteroffer, Landlord and Tenant are unable to enter into a purchase and sale agreement within the above-referenced twenty-one (21) day period, it shall be deemed that (i) Tenant has elected not to purchase the Building(s); (ii) Landlord may thereafter enter into negotiations with any person or entity and/or negotiate and consummate an agreement to sell the Building(s) with any person or entity on any terms and conditions Landlord, in its sole and absolute discretion, shall deem desirable; and (iii) all rights under this Right of First Offer shall terminate and be of no further force or effect.

This Right of First Offer is personal to Tenant and may not be assigned, voluntarily or involuntarily, separate from or as a part of the Lease. Notwithstanding the foregoing, Tenant may acquire the Buildings with a partner or other joint venture entity in which Tenant is a member, and/or cause a third party to acquire the Buildings as long as Tenant remains in compliance with the above conditions to this Right of First Offer.

Upon consummation of the purchase and sale of the Building(s) to Tenant, this Lease shall terminate and be of no further force or effect. In the event the Building(s) are sold to any person or entity other than Tenant during the initial term or extended term of this Lease, Tenant shall remain in possession of the Premises subject to the terms, covenants, conditions and provisions of this Lease.

Landlord and Tenant represent and warrant to the other that no person or entity shall be entitled to a brokerage or real estate commission of any kind in connection with the subject matter of this Addendum 4.



EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-21113) of ViaSat, Inc. of our report dated May 13, 1998 appearing on page F-1 of this Form 10-K.

PRICE WATERHOUSE LLP

San Diego, California  
June 24, 1998

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE VIASAT INC. FINANCIAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 1998 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS INCLUDED IN FORM 10-K.

1,000

YEAR		
	MAR-31-1998	
	APR-01-1997	
	MAR-31-1998	3,290
		5,918
		19,056
		0
		4,687
		34,978
		12,671
		5,685
		42,793
	10,702	0
	0	0
		81
		29,529
42,793		64,197
	64,197	
		40,899
		40,899
		15,493
		0
	(586)	
		8,391
		3,104
	5,287	
		0
		0
		0
		5,287
		0.68
		0.65

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE VIASAT INC. FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED SEPTEMBER 30, 1997 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS INCLUDED IN FORM 10-K.

1,000

6-MOS	MAR-31-1998	JUL-01-1997	SEP-30-1997
			13,299
			0
		13,394	0
			5,736
		34,120	10,208
		4,472	
		40,355	
11,811			0
	0		0
		0	81
		26,276	
40,355			30,407
		30,407	
			19,872
		19,872	
		7,069	
		0	
		102	
		3,779	
		1,401	
2,378			
		0	
		0	
			0
		2,378	
		0.31	
		0.29	

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE VIASAT INC. FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED DECEMBER 31, 1996 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS INCLUDED IN FORM 10-K.

1,000

9-MOS		
	MAR-31-1997	
	APR-01-1996	
	DEC-31-1996	
		13,823
		0
		7,699
		0
		4,961
	27,574	6,914
		3,083
		31,870
	7,240	0
	0	0
		0
		80
		22,209
31,870		33,661
	33,661	
		23,580
		30,654
		0
		0
	187	
	2,969	
		1,034
	1,935	
		0
		0
		0
		1,935
		0.50
		0.31



THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE VIASAT INC. FINANCIAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 1997 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS INCLUDED IN FORM 10-K.

1,000

YEAR		
	MAR-31-1997	
	APR-01-1996	
	MAR-31-1997	12,673
		0
		10,315
		0
		4,478
	30,154	8,588
		3,503
	35,674	
	9,748	0
	0	0
		81
		23,538
35,674		47,715
	47,715	33,102
		33,102
	9,839	0
	0	
	(100)	
	4,874	
		1,702
	3,172	0
		0
		0
		3,172
		0.66
		0.48