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

FORM 10-Q

(Mark One)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the quarterly period ended June 30, 2000

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 No. 0-25826

HARMONIC INC.  
(Exact name of Registrant as specified in its charter)

DELAWARE	77-0201147
(State of incorporation)	(I.R.S. Employer Identification No.)

549 Baltic Way  
Sunnyvale, CA 94089  
(408) 542-2500

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

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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 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

As of June 30, 2000 there were 57,310,809 shares of the Registrant's Common Stock outstanding.

HARMONIC INC.

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PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

HARMONIC INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS, EXCEPT SHARE DATA)

	JUNE 30, 2000 ----- (UNAUDITED)	DECEMBER 31, 1999 -----
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 350,430	\$ 24,822
Short-term investments	90,925	64,877
Accounts receivable, net	114,764	35,421
Inventories	68,355	35,310
Deferred income taxes	11,525	5,478
Prepaid expenses and other assets	12,060	3,792
	-----	-----
Total current assets	648,059	169,700
Property and equipment, net	35,270	14,931
Intangibles and other assets	1,688,662	1,062
	-----	-----
	\$ 2,371,991	\$ 185,693
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 32,676	\$ 18,946
Income taxes payable	332,378	2,265
Deferred income taxes	19,327	--
Accrued liabilities	48,104	19,073

Total current liabilities	432,485	40,284
Deferred income taxes	74,088	--
Other non-current liabilities	3,120	521
Stockholders' equity:		
Preferred stock, \$.001 par value, 5,000,000 shares authorized; no shares issued or outstanding	--	--
Common Stock, \$.001 par value, 150,000,000 shares authorized; 57,310,809 and 30,501,766 shares issued and outstanding	57	31
Capital in excess of par value	1,943,124	148,551
Accumulated deficit	(81,527)	(3,792)
Accumulated other comprehensive income	644	98
Total stockholders' equity	1,862,298	144,888
	\$ 2,371,991	\$ 185,693

The accompanying notes are an integral part of these condensed consolidated financial statements.

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HARMONIC INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(IN THOUSANDS, EXCEPT PER SHARE DATA)  
(UNAUDITED)

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30, 2000	JULY 2, 1999	JUNE 30, 2000	JULY 2, 1999
Net sales	\$ 79,963	\$ 37,902	\$ 142,826	\$ 68,165
Cost of sales	49,118	21,946	82,185	39,798
Gross profit	30,845	15,956	60,641	28,367
Operating expenses:				
Research and development	11,951	3,479	17,969	7,173
Selling, general and administrative	16,016	7,972	25,795	14,846
Amortization of goodwill and other intangibles	55,256	76	55,332	152
In-process research and development	38,700	--	38,700	--
Total operating expenses	121,923	11,527	137,796	22,171
Income (loss) from operations	(91,078)	4,429	(77,155)	6,196
Interest and other income, net	4,814	711	5,935	743
Income (loss) before income taxes	(86,264)	5,140	(71,220)	6,939
Provision for income taxes	799	1,285	6,515	1,735
Net income (loss)	\$ (87,063)	\$ 3,855	\$ (77,735)	\$ 5,204
Net income (loss) per share				
Basic	\$ (1.81)	\$ 0.13	\$ (1.98)	\$ 0.20
Diluted	\$ (1.81)	\$ 0.12	\$ (1.98)	\$ 0.18
Weighted average shares				
Basic	47,980	29,654	39,348	26,324
Diluted	47,980	32,125	39,348	29,238

The accompanying notes are an integral part of these condensed consolidated financial statements.

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HARMONIC INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS)  
(UNAUDITED)

	SIX MONTHS ENDED	
	JUNE 30, 2000	JULY 2, 1999
Cash flows from operating activities:		
Net income (loss)	\$ (77,735)	\$ 5,204
Adjustments to reconcile net income (loss) to cash provided by (used in) operating activities:		
Amortization of goodwill and other intangibles	58,417	304
In-process research and development	38,700	--
Depreciation	4,790	2,213
Changes in assets and liabilities:		
Accounts receivable	(21,548)	(9,239)
Inventories	(15,086)	(1,748)
Prepaid expenses and other assets	(5,266)	(1,068)
Accounts payable	223	4,775
Income taxes payable	1,212	--
Accrued and other liabilities	(18,742)	1,888
	-----	-----
Net cash provided by (used in) operating activities	(35,035)	2,329
Cash flows from investing activities:		
Acquisition of property and equipment	(9,776)	(3,668)
Net cash received from DiviCom acquisition	393,739	--
Proceeds from maturities of short-term investments	24,307	--
Purchases of short-term investments	(50,534)	(41,645)
	-----	-----
Net cash provided by (used in) investing activities	357,736	(45,313)
Cash flows from financing activities:		
Proceeds from issuance of Common Stock, net	2,597	66,335
Borrowings under bank line	--	840
Repayments under bank line and term loan	--	(1,270)
	-----	-----
Net cash provided by financing activities	2,597	65,905
Effect of exchange rate changes on cash and cash equivalents	310	89
	-----	-----
Net increase in cash and cash equivalents	325,608	23,010
Cash and cash equivalents at beginning of period	24,822	9,178
	-----	-----
Cash and cash equivalents at end of period	\$ 350,430	\$ 32,188
	=====	=====
Supplemental disclosure of cash flow information:		
Interest paid during the period	\$ 21	\$ 37
Income taxes paid during the period	\$ 9,266	\$ 70
Non-cash financing activities:		
Issuance of Common Stock and assumption of options in DiviCom acquisition	\$ 1,792,000	\$ --

The accompanying notes are an integral part of these condensed consolidated financial statements.

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## HARMONIC INC.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 1 - BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which Harmonic Inc. (the "Company") considers necessary for a fair presentation of the results of operations for the unaudited interim periods covered and the consolidated financial condition of the Company at the date of the balance sheets. The quarterly financial information is unaudited. This Quarterly Report on Form 10-Q should be read in conjunction with the Company's audited consolidated financial statements contained in the Company's Annual Report on Form 10-K and Form 10-K/A which were filed with the Securities and Exchange Commission on March 31, 2000 and May 15, 2000, respectively. The interim results presented herein are not necessarily indicative of the results of operations that may be expected for the full fiscal year ending December 31, 2000, or any other future period.

## NOTE 2 - NEW ACCOUNTING PRONOUNCEMENTS

In June 2000 the Financial Accounting Standards Board ("FASB") issued SFAS No. 138, "Accounting for Certain Derivative Instruments and Certain Hedging Activities," which amends SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS No. 133 was previously amended by SFAS No. 137, "Deferral of the Effective Date of SFAS No. 133," which deferred the effective date of SFAS No. 133 to fiscal years commencing after June 15, 2000. The Company will adopt SFAS Nos. 133 and 138 as of the beginning of fiscal 2001. The Company is continuing to evaluate the impact of SFAS Nos. 133 and 138 but is unable to determine the impact from adoption of these standards on its financial position or results of operations at this time.

In December 1999, the Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin No. 101 ("SAB 101"), "Revenue Recognition in Financial Statements." SAB 101 summarizes certain of the SEC's views in applying generally accepted accounting principles ("GAAP") to revenue recognition. The Company is required to adopt SAB 101 in the fourth quarter of fiscal 2000. The Company is continuing to evaluate the impact of SAB 101, but currently does not expect any material effects on its financial position or results of operations from the implementation of this SAB.

## NOTE 3 - INVENTORIES

	JUNE 30, 2000	DECEMBER 31, 1999
	----- (UNAUDITED)	-----
IN THOUSANDS		
Raw materials	\$18,436	\$10,649
Work-in-process	15,783	4,740
Finished goods	34,136	19,921
	-----	-----
	\$68,355	\$35,310
	=====	=====

## NOTE 4 - CASH EQUIVALENTS AND INVESTMENTS

Cash equivalents are comprised of highly liquid investments with original maturities of three months or less at time of acquisition. Investments are comprised of U.S. government, state, municipal and county obligations and corporate debt securities with lives ranging from three months to two years. The Company classifies its investments as available for sale in accordance with Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities," and states its investments at estimated fair value, with material unrealized gains and losses reported in other comprehensive income. The specific identification method is used to

determine the cost of securities disposed of, with realized gains and losses reflected in other income and expense. Investments are anticipated to be used for current operations and are, therefore, classified as current assets, even though maturities may extend beyond one year.

At June 30, 2000, short-term investments of \$53.1 million mature in less than one year and \$37.9 million mature between one and two years. The Company's cash equivalents as of June 30, 2000 included approximately \$320 million of cash received in connection with the C-Cube merger for payment by August 15, 2000 of taxes incurred on the spin-off of C-Cube's semiconductor business.

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HARMONIC INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 5 - NET INCOME (LOSS) PER SHARE

Basic net income (loss) per share is computed by dividing net income available to common stockholders (numerator) by the weighted average number of common shares outstanding (denominator) during the period. Basic net income (loss) per share excludes the dilutive effect of stock options and warrants. Diluted net income (loss) per share gives effect to all dilutive potential common shares outstanding during a period. In computing diluted net income (loss) per share, the average price for the period is used in determining the number of shares assumed to be purchased from exercise of stock options and warrants.

The following table presents a reconciliation of the numerators and denominators of the Basic and Diluted net income (loss) per share computations for the periods presented below:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30, 2000	JULY 2, 1999	JUNE 30, 2000	JULY 2, 1999
IN THOUSANDS (UNAUDITED)				
Net income (loss) - (numerator)	\$ (87,063)	\$ 3,855	\$ (77,735)	\$ 5,204
Shares calculation - (denominator):				
Average shares outstanding - basic	47,980	29,654	39,348	26,324
Effect of Dilutive Securities:				
Potential Common Stock relating to stock options and warrants	--	2,471	--	2,914
Average shares outstanding - diluted	47,980	32,125	39,348	29,238
Net income (loss) per share - basic	\$ (1.81)	\$ 0.13	\$ (1.98)	\$ 0.20
Net income (loss) per share - diluted	\$ (1.81)	\$ 0.12	\$ (1.98)	\$ 0.18

Options and warrants to purchase 6.4 million shares of common stock were outstanding during the three and six month periods ended June 30, 2000, and 0.5 million shares of common stock were outstanding during the three and six month periods ended July 2, 1999, but were not included in the computation of diluted net income (loss) per share because either the option's exercise price was greater than the average market price of the common stock or inclusion of such options would have been antidilutive. The exercise price ranges of these options and warrants were from \$0.15 to \$121.68 per share for the three and six month periods ended June 30, 2000. The exercise price ranges of these options and warrants were from \$22.82 to \$28.72 per share for the three and six month

periods ended July 2, 1999.

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HARMONIC INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 6 - COMPREHENSIVE INCOME

Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income" ("SFAS 130"), requires that all items recognized under accounting standards as components of comprehensive income be reported in an annual financial statement that is displayed with the same prominence as other annual financial statements. In accordance with SFAS 130, the Company's total comprehensive income (loss) was as follows:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30, 2000	JULY 2, 1999	JUNE 30, 2000	JULY 2, 1999
IN THOUSANDS (UNAUDITED)				
Net income (loss)	\$ (87,063)	\$ 3,855	\$ (77,735)	\$ 5,204
Change in unrealized income (loss) on investments	61	--	(14)	--
Currency translation	445	65	560	137
	-----	-----	-----	-----
Total comprehensive income (loss)	\$ (86,557)	\$ 3,920	\$ (77,189)	\$ 5,341
	=====	=====	=====	=====

NOTE 7 - ACQUISITION OF DIVICOM BUSINESS

On May 3, 2000, Harmonic completed its merger with C-Cube Microsystems Inc. ("C-Cube") pursuant to the terms of an Agreement and Plan of Merger and Reorganization (the "Merger Agreement") dated October 27, 1999. Under the terms of the Merger Agreement, C-Cube spun off its semiconductor business as a separate publicly traded company prior to the closing. C-Cube then merged into Harmonic and Harmonic therefore acquired C-Cube's DiviCom business. The merger was structured as a tax-free exchange of stock and was accounted for under the purchase method of accounting.

The purchase price of \$1.8 billion includes \$1.6 billion of issued stock, \$155 million in Harmonic stock option costs, and expenses of the transaction of \$9.6 million. The issued stock reflects the conversion of C-Cube common stock into 0.5427 shares of Harmonic stock, totaling 26.4 million shares of Harmonic common stock, at an average market price per share of Harmonic common stock of \$62.00. The average market price per share was based on the average closing price for a period three days before and after the October 27, 1999 announcement of the merger.

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HARMONIC INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Following is a table of the total purchase price, purchase price allocation and annual amortization of the intangible assets acquired (in thousands):

		ANNUAL AMORTIZATION
		-----
Purchase price allocation:		
Net assets of DiviCom business	\$ 138,400	--
Fair value adjustments:		
Accounts receivable	(10,800)	--
Inventory	4,500	--
Accrued liabilities	(14,600)	--
	-----	-----
Total fair value of tangible net assets acquired	117,500	--
Intangible assets acquired:		
Customer base	113,000	\$ 22,600
Developed technology	78,300	15,660
Trademark and tradename	14,000	2,800
Assembled workforce	23,000	4,600
Supply agreement	8,000	1,600
	-----	-----
Total intangibles (excluding goodwill)	236,300	47,260
In-process research and development	38,700	--
Goodwill	1,506,400	301,280
Deferred tax liabilities	(97,000)	--
	-----	-----
Total purchase price allocation	\$ 1,801,600	\$ 348,480
	=====	=====

The tangible net assets acquired represent the historical net assets of the DiviCom business as of May 2, 2000 adjusted to eliminate intangibles of \$3.8 million arising from C-Cube's acquisition of the DiviCom business in 1996, plus additional cash of \$60 million received as a result of the merger. In addition, under the terms of the Merger Agreement, the Company is liable for all of C-Cube Microsystems' liabilities consisting principally of tax liabilities related to the spin-off of C-Cube's semiconductor business. The net assets acquired included \$333.7 million of cash and other consideration sufficient to pay these liabilities. As required under purchase accounting, the assets and liabilities have been adjusted to fair value.

A customer base represents established relationships with businesses that repeatedly order from a company. The income approach was used to estimate the value of the DiviCom business' customer base by determining the present value of future cash flows generated by existing customers. Key assumptions used in the calculation included an attrition rate of 20%, discount rate of 20% and estimates of revenue growth, cost of sales, operating expenses and tax rate provided by management of the DiviCom business.

In estimating the value of the trademark and tradename, the relief from royalty method was employed. The relief from royalty method is based on the assumption that in lieu of ownership, a firm would be willing to pay a royalty in order to exploit the related benefits of the assets. Therefore, a portion of the company's earnings, equal to the after-tax royalty that would have been paid for the use of the trademark and tradename, can be

HARMONIC INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

attributed to the company's possession of the trademark and tradename. The trademark and tradename are each being amortized on a straight-line basis over its estimated useful life of five years.

The value of the assembled workforce was derived by estimating the costs to replace the existing employees, including recruiting, hiring and training costs for each category of employee. The value of the assembled workforce is being amortized on a straight-line basis over its estimated useful life of five years.

Harmonic and C-Cube Semiconductor entered into a Supply, License and Development Agreement (Supply Agreement) concurrent with the merger agreement. This separate agreement covers the supply, licensing and development of two



encoder chips for Harmonic by the spun-off semiconductor business. The value of the Supply Agreement was derived by using the income approach and is being amortized on a straight line basis over its estimated useful life of five years.

A portion of the purchase price has been allocated to developed technology and in-process research and development ("IPR&D"). Developed technology and IPR&D were identified and valued through extensive interviews, analysis of data provided by the DiviCom business concerning development projects, their stage of development, the time and resources needed to complete them, if applicable, their expected income generating ability and associated risks. The income approach, which includes an analysis of the cash flows, and risks associated with achieving such cash flows, was the primary technique utilized in valuing the developed technology and IPR&D.

Where development projects had reached technological feasibility, they were classified as developed technology and the value assigned to developed technology was capitalized. The developed technology is being amortized on a straight-line basis over its estimated useful life of five years.

Where the development projects had not reached technological feasibility and had no future alternative uses, they were classified as IPR&D, which was expensed upon the consummation of the merger. The value was determined by estimating the expected cash flows from the projects once commercially viable, discounting the net cash flows back to their present value and then applying a percentage of completion to the calculated value as defined below.

- Net cash flows. The net cash flows from the identified projects were based on estimates of revenue, cost of sales, research and development costs, selling, general and administrative costs and income taxes from those projects. These estimates were based on the assumptions mentioned below. The research and development costs included in the model reflected costs to sustain projects, but excluded costs to bring in-process projects to technological feasibility.

The estimated revenue was based on projections of the DiviCom business for each in-process project. These projections were based on its estimates of market size and growth, expected trends in technology and the nature and expected timing of new product introductions by the DiviCom business and its competitors.

Projected gross margins and operating expenses approximated the DiviCom business' recent historical levels.

- Discount rate. Discounting the net cash flows back to their present value was based on the industry weighted average cost of capital ("WACC"). The industry WACC was approximately 17%. The

HARMONIC INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

discount rate used in discounting the net cash flows from IPR&D was 25%, an 800 basis point increase from the industry WACC. This discount rate was higher than the industry WACC due to inherent uncertainties surrounding the successful development of the IPR&D, market acceptance of the technology, the useful life of such technology and the uncertainty of technological advances which could potentially impact the estimates described above.

- Percentage of completion. The percentage of completion for each project was determined using costs incurred to date on each project as compared to the remaining research and development to be completed to bring each project to technological feasibility. The percentage of completion varied by individual project ranging from 10% to 80%.

If the projects discussed above are not successfully developed, the sales and profitability of the combined company may be adversely affected in future periods.

The following unaudited pro forma summary presents the combined statement of operations as if the merger had been completed on January 1, 1999 and does not purport to be indicative of what would have occurred had the merger actually been completed on such date or of results which may occur in the future.

	SIX MONTHS ENDED	
	JUNE 30, 2000	JULY 2, 1999
Net sales	\$ 182,228	\$ 152,925
Net loss	(186,638)	(189,342)
Net loss per share		
Basic and diluted	\$ (4.74)	\$ (3.59)
Weighted average shares		
Basic and diluted	39,348	52,724

Adjustments made in arriving at the pro forma unaudited results of operations include amortization of goodwill and other intangibles and related tax adjustments. No effect has been given to cost savings or operating synergies that may be realized as a result of the merger.

Based on the finalization of the valuation, purchase price allocation, integration plans and other factors, the effects of the merger may change from those included in the above pro forma summary. A change in the value assigned to long-term tangible and intangible assets and liabilities could result in a reallocation of the purchase price and a change in the adjustments. The statement of operations effect of these changes will depend on the nature and amount of the assets or liabilities adjusted.

#### NOTE 8 - SEGMENT REPORTING

Operating segments are defined as components of an enterprise that engage in business activities for which separate financial information is available and evaluated by the chief operating decision maker. Prior to

#### HARMONIC INC.

#### NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

the acquisition of the DiviCom business, Harmonic was organized as one operating segment. On May 3, 2000, Harmonic completed the acquisition of the DiviCom business, thus changing its organizational structure. The merged company has been organized into two operating segments: Broadband Access Networks ("BAN") for fiber optic systems, and Convergent Systems ("CS") for digital headend systems. These segments do not correspond to the pre-merger companies in significant ways. For example, Harmonic's TRANsend and CyberStream product lines are part of the CS segment. Each of these operating segments require their own development and marketing strategies and therefore have separate management teams, however, a worldwide sales, sales support and systems integration group supports both operating segments.

The results of the reportable segments are derived directly from the

Company's management reporting system. These results reported below are based on Harmonic's method of internal reporting and are not necessarily in conformity with generally accepted accounting principles. Subsequent to the acquisition of DiviCom, management commenced measuring the performance of each segment based on several metrics, including revenue, and income or loss from operations. These results are used, in part, to evaluate the performance of, and allocate resources to each of the segments. Revenue for the prior periods has been reclassified to reflect the new organizational structure. The reclassified revenue for the prior periods reflect only Harmonic's revenue, and not the historical revenue of the DiviCom business. However, income or loss from operations is not available and is impractical to prepare for the periods prior to the quarter ended June 30, 2000, and accordingly, has not been presented. Net income or loss, and assets and liabilities are not internally reported by business segment.

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30, 2000	JULY 2, 1999	JUNE 30, 2000	JULY 2, 1999
Net Sales:				
Broadband Access Networks	\$ 53,159	\$ 36,390	\$109,002	\$ 63,725
Convergent Systems	26,804	1,512	33,824	4,440
Total net sales	\$ 79,963	\$ 37,902	\$142,826	\$ 68,165
Income (loss) from operations:				
Broadband Access Networks	\$ 12,451			
Convergent Systems	(3,785)			
Total segment income (loss) from operations	8,666			
Amortization of goodwill and other intangibles	(58,220)			
In-process research and development	(38,700)			
Interest and other income, net	4,814			
Corporate and unallocated costs, and eliminations	(2,824)			
Income (loss) before income taxes	\$ (86,264)			

HARMONIC INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 9 - LEGAL PROCEEDINGS

Securities Litigation

On June 28, 2000, a securities class action captioned Smith v. Harmonic Inc., Et. Al., Civil Action No. C-00-2287-PJH was filed against Harmonic and several of its officers and directors in the United States District Court for the Northern District of California. Additional actions containing similar allegations have since been filed. These complaints allege violations of the federal securities laws, specifically Section 10 (b) of the Securities Exchange Act of 1934, and seek unspecified damages on behalf of a purported class of purchasers of Harmonic common stock during the period from March 27, 2000 through June 26, 2000. The various actions have not yet been consolidated and no trial date has been scheduled.

On June 29, 2000, a securities class action captioned Krim v. Harmonic Inc., Et. Al., Civil Action No. CV 790816 was filed against Harmonic and several of its officers and directors in the California Superior Court for the County of Santa Clara. The complaint alleges violations of the federal securities laws, specifically Section 11 of the Securities Act of 1933, and seeks unspecified damages on behalf of a purported class of persons who acquired Harmonic common stock pursuant to a Form S-4 Registration Statement filed March 23, 2000, concerning a transaction completed on May 3, 2000. On July 26, 2000, the action

was removed to the United States District Court for the Northern District of California. No trial date has been scheduled.

While the Company believes these class actions to be without merit and is vigorously defending against them, there can be no assurance that the Company will prevail. An unfavorable outcome of this litigation could have a material adverse effect on the Company's consolidated financial position, liquidity or results of operations.

#### NOTE 10 - SUBSEQUENT EVENT

On July 1, 2000, Harmonic completed the acquisition of privately-held Cogent Technology, Inc. ("Cogent") of Santa Cruz, California, a developer of advanced MPEG-2 technology for the migration from analog to digital television on PCI based platforms. Harmonic issued approximately 284,000 shares of common stock to shareholders of Cogent in the stock-for-stock transaction, which will be accounted for as a purchase. The purchase price of approximately \$12 million will be allocated to the acquired assets, in-process technology, goodwill and other intangibles during the third quarter of 2000. The acquisition is not expected to have a material impact on earnings for the remainder of 2000, excluding a one-time charge for in-process research and development which will be recorded in the third quarter of 2000 and amortization of goodwill and other intangibles. Cogent's products and eight employees have been integrated into Harmonic's Convergent Systems division.

#### ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including statements regarding future revenue, gross margins, and expense levels, future capital expenditures, future cash flows, future borrowing capability and the merger with C-Cube Microsystems, Inc. ("C-Cube") and the reorganization of our business organization. Actual results could differ materially from those projected in the forward-looking statements as a result of a number of factors, including those set forth under "Factors That May Affect Future Results of Operations" below and elsewhere in this Form 10-Q.

#### OVERVIEW

Harmonic Inc. ("Harmonic" or the "Company") designs, manufactures and markets digital and fiber optic systems for delivering video, voice and data services over cable, satellite and wireless networks. Historically, almost all of our sales were derived directly or indirectly from sales of fiber optic transmission systems to cable television operators. With the introduction of our TRANsend digital headend products in 1997 and the subsequent purchase of New Media Communication Ltd., which changed its name to Harmonic Data Systems Ltd., we broadened our product offering to enable delivery of digital video, voice and data over satellite and wireless networks and cable systems.

In order to further expand our digital systems capability, the Company entered into an Agreement and Plan of Merger and Reorganization with C-Cube on October 27, 1999, pursuant to which C-Cube merged into Harmonic (the "Merger Agreement"). Under the terms of the Merger Agreement, C-Cube spun off its semiconductor business as a separate publicly traded company. C-Cube then merged into Harmonic and Harmonic therefore acquired C-Cube's DiviCom business, which provides MPEG-2 encoding products and systems for digital television. The merger was structured as a tax-free exchange of stock and has been accounted for under the purchase method of accounting. In the merger, each share of common stock of C-Cube was converted into 0.5427 shares of Harmonic common stock. The purchase price, including merger-related costs, was approximately \$1.8 billion.

The merger closed on May 3, 2000, and Harmonic has consolidated the results of the DiviCom business in its financial statements from that date forward. The merged company has been organized into two operating segments, Broadband Access Networks ("BAN") for fiber optic systems and Convergent Systems ("CS") for digital headend systems. While the two segments have been organized generally around the pre-merger Harmonic fiber optics systems and the DiviCom

digital headend systems, respectively, these segments do not correspond to the pre-merger companies in significant ways. For example, Harmonic's TRANsend and CyberStream product lines are now part of the CS segment. Each of these segments has its own separate management team, with a worldwide sales, sales support and systems integration group supporting both segments.

## RESULTS OF OPERATIONS

### Net Sales

The Company's net sales increased 111% from \$37.9 million in the second quarter of 1999 to \$80.0 million in the second quarter of 2000. For the six month periods, net sales increased 110% from \$68.2 million in the first six months of 1999 to \$142.8 million in the first six months of 2000. The increases in net sales reflected significant growth in the BAN segment and inclusion of approximately two months of sales for the DiviCom business. BAN sales for the second quarter and first six months of 2000 increased by 46% and 71% compared to the comparable periods of 1999 due to higher cable industry spending and increasing customer acceptance of the Company's products, particularly METROLink DWDM systems, and PWRBlazer Scaleable Nodes. International sales represented 35% of net sales in the second quarter of 2000 compared to 31% in the second quarter of 1999 due to DiviCom's higher percentage of international sales.

While the Company's sales increased significantly in the second quarter of 2000 compared to the second quarter of 1999, sales were below the Company's expectations within each segment. BAN sales were lower than expected and below the level achieved in the first quarter of 2000 due to reduced sales to AT&T, which have continued to decline from record levels in the third quarter of 1999. While sales to AT&T decreased, AT&T remains an important customer, and sales to BAN's other cable customers increased in the second quarter. The lower CS sales reflect slower spending by satellite operators and the impact of organizational changes resulting from the merger.

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### Gross Profit

Gross profit increased from \$16.0 million (42% of net sales) in the second quarter of 1999 to \$30.8 million (39% of net sales) in the second quarter of 2000. For the six month periods, gross profit increased from \$28.4 million (42% of net sales) in the first six months of 1999 to \$60.6 million (42% of net sales) in the first six months of 2000. Gross profit for the second quarter and first six months of 2000 is net of amortization of intangibles of \$3.0 million related to the C-Cube merger, which had the effect of reducing the gross margin percentage by 3% for both periods of 2000. Excluding amortization of intangibles gross margins were unchanged for the second quarter of 2000 compared to 1999 but increased for the first six months of 2000 by 3% compared to 1999, as higher unit volumes of BAN products allowed for improved fixed cost absorption and realization of economies of scale through increased production and purchasing volumes.

### Research and Development

Research and development expenses increased from \$3.5 million (9% of net sales) in the second quarter of 1999 to \$12.0 million (15% of net sales) in the second quarter of 2000. For the six month periods, research and development expenses increased from \$7.2 million (11% of net sales) in 1999 to \$18.0 million (13% of net sales) in 2000. The increases were principally attributable to the inclusion of DiviCom, which historically has spent a higher percentage of sales on research and development than has Harmonic, and higher payroll and prototype expenses. Harmonic anticipates that research and development expenses will continue to increase in absolute dollars, although they may vary as a percentage of net sales.

### Selling, General and Administrative

Selling, general and administrative expenses increased from \$8.0 million (21% of net sales) in the second quarter of 1999 to \$16.0 million (20% of net sales) in the second quarter of 2000. For the six month periods, selling, general and administrative expenses increased from \$14.8 million (22% of net sales) in 1999 to \$25.8 million (18% of net sales) in 2000. The increases in

absolute expenses were primarily due to inclusion of DiviCom, as well as higher payroll and recruiting expenses, principally for the expansion of the sales and marketing organizations to provide greater customer focus and support for sales of new products. In addition, higher promotional expenses also contributed to the increase. The decreases in selling, general and administrative expenses as a percentage of net sales were principally attributable to increased net sales. Harmonic anticipates that selling, general and administrative expenses will continue to increase in absolute dollars, although such expenses may vary as a percentage of net sales.

#### Amortization of Goodwill and Other Intangibles

Goodwill and other intangible assets of approximately \$1.7 billion were recorded in connection with the C-Cube merger resulting in amortization of \$55.3 million for the second quarter of 2000. See Note 7 to the unaudited Condensed Consolidated Financial Statements for the three and six month periods ended June 30, 2000. Goodwill and intangibles are being amortized over 5 years, and such amortization is expected to result in substantial net losses over the amortization period.

#### In-Process Research and Development

The Company recorded a \$38.7 million one-time charge to operations in the second quarter of 2000 for acquired in-process technology in connection with the C-Cube merger. See Note 7 to the unaudited Condensed Consolidated Financial Statements for the three and six month periods ended June 30, 2000. This amount was expensed on the acquisition date in accordance with generally accepted accounting principles because the acquired technology had not yet reached technology feasibility and had no future alternative uses.

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#### Interest and Other Income, Net

Interest and other income, net, increased from \$0.7 million in the second quarter of 1999 to \$4.8 million in the second quarter of 2000 and from \$0.7 million for the six month period of 1999 to \$5.9 million for the six month period of 2000. The increases were due primarily to interest earned on cash received in the merger, and to a lesser extent, interest earned on cash proceeds resulting from the Company's public offering of common stock in April 1999. The majority of the cash received is required to pay taxes incurred on the spin-off of C-Cube's semiconductor business, payment of which is due by August 15, 2000. The Company expects interest income to decrease in future periods.

#### Income Taxes

The provisions for income taxes for both periods of 1999 and 2000 were based on estimated tax rates of 25% and 38%, respectively. The increase in the effective rate reflects the full utilization of remaining net operating loss carryovers and research and development credit carryovers in 1999. The Company expects to have an effective annual rate that approximates statutory rates in year 2000 and beyond on income before amortization of goodwill, other intangibles and related tax effects thereon, and acquired in-process research and development.

#### LIQUIDITY AND CAPITAL RESOURCES

As of June 30, 2000, cash and cash equivalents and short-term investments totaled \$441.4 million of which \$60.0 million of cash was received under the terms of the Merger Agreement plus additional cash of approximately \$320 million for payment by August 15, 2000 of the estimated tax liability related to the spin-off of C-Cube's semiconductor business. In addition, the Company completed a public offering of its common stock in April 1999, raising approximately \$58.3 million, net of underwriting discounts and offering expenses. The Company also received \$4.0 million from exercise of a warrant in connection with the public offering.

Cash used in operations was \$35.0 million in the first six months of 2000 compared to cash provided by operations of \$2.3 million in the first six months of 1999. The increase in cash used in operations in the first six months of 2000 was primarily due to an increase in accounts receivable and inventory

and a decrease in accrued and other liabilities.

The Company has a bank line of credit facility which provides for borrowings up to \$10.0 million with a \$3.0 million equipment term loan sub-limit and expires December 31, 2000. Borrowings pursuant to the line bear interest at the bank's prime rate (prime rate plus 0.5% under the term loan) and are payable monthly. There were no outstanding borrowings at June 30, 2000 under the line. The Company has letters of credit issued under the line of \$0.7 million.

Additions to property, plant and equipment were approximately \$3.7 million and \$9.8 million in the first six months of 1999 and 2000, respectively. The increase in 2000 was due principally to higher expenditures for manufacturing and test equipment associated with expansion of production capacity, and leasehold improvements, which allowed the Company to expand into space during the first quarter of 2000 that had been previously subleased. In connection with the merger, Harmonic has entered into lease agreements to relocate employees from certain existing facilities and expects to incur significant costs associated with leasehold improvements commencing in the fourth quarter of 2000.

The Company believes that its existing liquidity sources, including \$60 million of cash received pursuant to the merger, its bank line of credit facility, and anticipated funds from operations will satisfy its cash requirements for at least the next twelve months.

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#### QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact the financial position, results of operations or cash flows of Harmonic due to adverse changes in market prices and rates. Harmonic is exposed to market risk because of changes in interest rates and foreign currency exchange rates as measured against the U.S. Dollar and currencies of Harmonic's subsidiaries.

Harmonic has subsidiaries in Israel and the United Kingdom whose sales are generally denominated in U.S. dollars. While Harmonic does not anticipate that near-term changes in exchange rates will have a material impact on future operating results, fair values or cash flows, Harmonic cannot assure you that a sudden and significant change in the value of the Israeli Shekel or British Pound would not harm Harmonic's financial condition and results of operations.

Harmonic's exposure to market risk for changes in interest rates relates primarily to its investment portfolio of marketable debt securities of various issuers, types and maturities. Harmonic does not use derivative instruments in its investment portfolio, and its investment portfolio only includes highly liquid instruments with an original maturity of less than two years. These investments are classified as available for sale and states its investments at estimated fair value, with material unrealized gains and losses reported in other comprehensive income. While Harmonic generally holds its investment securities to maturity there is risk that losses could be incurred if it were to sell any of its securities prior to maturity.

#### FACTORS THAT MAY AFFECT FUTURE RESULTS OF OPERATIONS

Our Operating Results Are Likely To Fluctuate Significantly And May Fail To Meet Or Exceed The Expectations Of Securities Analysts Or Investors, Causing Our Stock Price To Decline

Our operating results have fluctuated in the past and are likely to continue to fluctuate in the future, on an annual and a quarterly basis, as a result of several factors, many of which are outside of our control. Some of the factors that may cause these fluctuations include:

- the level of capital spending of our customers, both in the U.S. and in foreign markets;
- changes in market demand;
- the timing and amount of customer orders;

- the timing of revenue from systems contracts which may span several quarters;
- competitive market conditions;
- our unpredictable sales cycles;
- our ability to integrate the acquired DiviCom business into Harmonic's operations;
- new product introductions by our competitors or by us;
- changes in domestic and international regulatory environments;
- market acceptance of new or existing products;

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- the cost and availability of components, subassemblies and modules;
- the mix of our customer base and sales channels;
- the mix of our products sold;
- our development of custom products and software;
- the level of international sales; and
- economic conditions specific to the cable and satellite industries, and general economic conditions.

In addition, we often recognize a substantial portion of our revenues in the last month of the quarter. We establish our expenditure levels for product development and other operating expenses based on projected sales levels, and expenses are relatively fixed in the short term. Accordingly, variations in timing of sales can cause significant fluctuations in operating results. In addition, because a significant portion of our business is derived from orders placed by a limited number of large customers, the timing of such orders can also cause significant fluctuations in our operating results. Our expenses for any given quarter are typically based on expected sales and if sales are below expectations in any given quarter, the adverse impact of the shortfall on our operating results may be magnified by our inability to adjust spending to compensate for the shortfall. As a result of all these factors, our operating results in one or more future periods may fail to meet or exceed the expectations of securities analysts or investors. In that event, the trading price of our common stock would likely decline. In this regard, due to lower than expected sales to AT&T, and lower than expected sales in the CS segment, we failed to meet our internal expectations, as well as the expectations of securities analysts and investors during the second quarter of 2000, and the price of our common stock declined significantly.

We Depend On Cable and Satellite Industry Capital Spending For A Substantial Portion Of Our Revenue And Any Decrease Or Delay In Capital Spending In These Industries Would Negatively Impact Our Resources, Operating Results And Financial Condition.

Prior to the merger with C-Cube, almost all of Harmonic's historic sales had been derived from sales to cable television operators and broadcasters, and it expects these sales to constitute a substantial majority for the foreseeable future. Almost all of the DiviCom business' historic sales have been derived from sales to satellite operators, telephone companies and cable operators. Demand for the combined company's products in the future will depend on the magnitude and timing of capital spending by cable television operators, broadcasters, satellite operators and telephone companies for constructing and upgrading of their systems.

These capital spending patterns are dependent on a variety of factors, including:



- access to financing;
- annual budget cycles;
- the status of federal, local and foreign government regulation of telecommunications and television broadcasting;
- overall demand for communication services and the acceptance of new video, voice and data services;
- evolving industry standards and network architectures;
- competitive pressures;
- discretionary customer spending patterns;

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- general economic conditions.

In the past, specific factors contributing to reduced capital spending have included:

- uncertainty related to development of digital video and cable modem industry standards;
- delays associated with the evaluation of new services and system architectures by many cable television operators;
- emphasis on marketing and customer service strategies by cable television operators instead of construction of networks; and
- general economic conditions in international markets.

While our net sales increased during the last eight quarters from the level achieved in the first quarter of 1998 due primarily to increased spending in the North American cable television industry, spending by cable television operators outside of North America generally remained weak. While net sales outside of North America increased during the last three quarters compared to the first quarter of 1998 we cannot predict if cable television spending outside of North America will continue to grow. Although the Company's sales increased significantly in the second quarter of 2000 compared to the first quarter of 2000, sales were below our expectations within each operating segment. BAN sales were lower than expected and below the level achieved in the first quarter of 2000 due to reduced sales to AT&T, which have continued to decline from levels achieved in the third quarter of 1999. For a more detailed discussion regarding risks related to AT&T and other major customers, see "Our Customer Base Is Concentrated And The Loss Of One Or More Of Our Key Customers Would Harm Our Business. The Loss Of AT&T Or Any Other Key Customer Would Have A Negative Effect On Our Business" below. The lower CS sales are due in part to slower spending by satellite operators and to the impact of organizational changes resulting from the C-Cube merger. The Company is unable to predict when cable and satellite industry spending will increase. In addition, cable television capital spending can be subject to the effects of seasonality, with fewer construction and upgrade projects typically occurring in winter months and otherwise being affected by inclement weather.

Our Customer Base Is Concentrated And The Loss Of One Or More Of Our Key Customers Would Harm Our Business. The Loss Of AT&T Or Any Other Key Customer Would Have A Negative Effect On Our Business.

Historically, a significant majority of our sales and sales of DiviCom have been to relatively few customers. Sales to Harmonic's ten largest customers in 1998, 1999 and the first half of 2000 accounted for approximately 66%, 75% and 61% of net sales, respectively. Due in part to the consolidation of ownership of domestic cable television systems, we expect that sales to AT&T, RCN and relatively few other customers will continue to account for a significant percentage of net sales of the combined company for the foreseeable future. In the second quarter of 2000, sales to AT&T accounted for 10% of our net sales compared to 28% in the prior quarter and 40% in the second quarter of

1999. Sales to AT&T have continued to decline from a record 52% of net sales in the third quarter of 1999. We cannot assure you that sales to other customers will compensate for any further reduction in sales to AT&T. Sales to RCN accounted for 12% of our net sales in the second quarter of 2000 compared to 15% in the prior quarter and less than 10% in the second quarter of 1999. Almost all of our sales are made on a purchase order or system contract basis, and none of our customers has entered into a long-term agreement requiring it to purchase our products. The loss of, or any reduction in orders from, a significant customer would harm our business.

We Have Experienced Difficulties Integrating The DiviCom Business Of C-Cube.

In addition to the risks generally associated with acquisitions, there are a number of significant risks directly associated with our merger with C-Cube. In particular, the successful combination of Harmonic and C-

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Cube requires substantial attention from management. The anticipated benefits of the merger will not be achieved unless the operations of the DiviCom business of C-Cube are successfully combined with those of Harmonic in a timely manner. To date, we have had difficulty in assimilating and integrating disparate information systems and personnel into a combined corporation. These difficulties are increased due to our limited personnel, management and other resources. The successful combination of the two companies requires integration of the companies' product offerings and the coordination of their research and development and sales and marketing efforts. The process of combining the two organizations has caused interruption of, and a loss of momentum in, the activities of both of the organizations' businesses, and we believe that this diversion may have caused certain customers to defer purchasing decisions. The diversion of the attention of management from the day-to-day operations of the combined company, or difficulties encountered in the transition and integration process, could materially and adversely affect our business, financial condition and operating results. In addition, our success depends, in part, on the retention and integration of key management, technical, marketing, sales and customer support personnel of the DiviCom business, and, in particular, the retention of these key employees during the transitional period following the merger. We have experienced the loss of certain key employees since the merger, principally due to intense competition for qualified technical and other personnel in the San Francisco Bay Area. The loss of key employees and managers has adversely affected the acquired DiviCom business and could continue to adversely affect our business and operating results.

We Depend On Our International Sales And Are Subject To The Risks Associated With International Operations, Which May Negatively Affect Our Profitability.

Sales to customers outside of the United States in 1998, 1999 and first half of 2000 represented 43%, 30% and 35% of net sales, respectively, and we expect that international sales will continue to represent a substantial portion of our net sales for the foreseeable future. Our international operations are subject to a number of risks, including:

- changes in foreign government regulations and telecommunications standards;
- import and export license requirements, tariffs, taxes and other trade barriers;
- fluctuations in currency exchange rates;
- difficulty in collecting accounts receivable;
- the burden of complying with a wide variety of foreign laws, treaties and technical standards;
- difficulty in staffing and managing foreign operations; and
- political and economic instability.

While our international sales are typically denominated in U.S. dollars, fluctuations in currency exchange rates could cause our products to become

relatively more expensive to customers in a particular country, leading to a reduction in sales or profitability in that country. Gains and losses on the conversion to U.S. dollars of accounts receivable, accounts payable and other monetary assets and liabilities arising from international operations may contribute to fluctuations in operating results. Furthermore, payment cycles for international customers are typically longer than those for customers in the United States. Unpredictable sales cycles could cause us to fail to meet or exceed the expectations of security analysts and investors for any given period. Further, foreign markets may not continue to develop.

We Must Be Able To Manage Expenses And Inventory Risks Associated With Meeting The Demand Of Our Customers.

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From time to time, we receive indications from our customers as to their future plans and requirements to ensure that we will be prepared to meet their demand for our products. In the past, however, we have received such indications but, on occasion, we did not ultimately receive purchase orders for our products. We must be able to effectively manage expenses and inventory risks associated with meeting potential demand for our products. In addition, if we fail to meet customers' supply expectations, we may lose business from such customers. If we expend resources and purchase materials to manufacture products and such products are not purchased, our business and operating results could suffer.

The Markets In Which We Operate Are Intensely Competitive And Many Of Our Competitors Are Larger And More Established.

The markets for cable television fiber optics systems and digital video broadcasting systems are extremely competitive and have been characterized by rapid technological change and declining average selling prices. Harmonic's competitors in the cable television fiber optics systems business include significantly larger corporations such as ADC Telecommunications, ANTEC, a company owned in part by AT&T, General Instrument, which has been acquired by Motorola, Philips and Scientific-Atlanta. Additional competition could come from new entrants in these markets, such as Lucent Technologies and Cisco Systems.

In the digital and video broadcasting systems business, we compete with vertically integrated system suppliers including Motorola, Scientific-Atlanta, Tandberg, Thomson Broadcast Systems and Philips, as well as more specialized suppliers including SkyStream and Terayon.

Most of our competitors are substantially larger and have greater financial, technical, marketing and other resources than Harmonic. Many of these large organizations are in a better position to withstand any significant reduction in capital spending by customers in these markets. They often have broader product lines and market focus and will therefore not be as susceptible to downturns in a particular market. In addition, many of our competitors have been in operation longer than we have and therefore have more long standing and established relationships with domestic and foreign customers. We may not be able to compete successfully in the future and competition may harm our business.

If any of our competitors' products or technologies were to become the industry standard, our business could be seriously harmed. For example, U.S. cable operators have to date mostly purchased proprietary digital systems from Motorola and Scientific-Atlanta. While certain operators have made limited purchases of the "open" systems provided by Harmonic, we cannot assure you that our digital products will find broad market acceptance with U.S. cable operators. In addition, companies that have historically not had a large presence in the broadband communications equipment market have begun recently to expand their market share through mergers and acquisitions. The continued consolidation of our competitors could have a significant negative impact on us. Further, our competitors, particularly competitors of our digital and video broadcasting systems' business may bundle their products or incorporate functionality into existing products in a manner that discourages users from purchasing our products or which may require us to lower our selling prices resulting in lower gross margins.

Broadband Communications Markets Are Relatively Immature And Characterized By

## Rapid Technological Change.

Broadband communications markets are relatively immature, making it difficult to accurately predict the markets' future growth rates, sizes or technological directions. In view of the evolving nature of these markets, it is possible that cable television operators, telephone companies or other suppliers of broadband wireless and satellite services will decide to adopt alternative architectures or technologies that are incompatible with our current or future products. If we are unable to design, develop, manufacture and sell products that incorporate or are compatible with these new architectures or technologies, our business will suffer.

We Need To Develop And Introduce New And Enhanced Products In A Timely Manner To Remain Competitive.

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Broadband communications markets are characterized by continuing technological advancement, changes in customer requirements and evolving industry standards. To compete successfully, we must design, develop, manufacture and sell new or enhanced products that provide increasingly higher levels of performance and reliability. However, we may not be able to successfully develop or introduce these products, if our products:

- are not cost effective,
- are not brought to market in a timely manner,
- are not in accordance with evolving industry standards and architectures, or
- fail to achieve market acceptance.

In addition, to successfully develop and market our planned products for digital applications, we will be required to retain and attract new personnel with experience and expertise in the digital arena. Competition for qualified personnel is intense. We may not be successful in retaining and attracting qualified personnel.

Also, to successfully develop and market certain of our planned products for digital applications, we may be required to enter into technology development or licensing agreements with third parties. We cannot assure you that we will be able to enter into any necessary technology development or licensing agreement on terms acceptable to us, or at all. The failure to enter into technology development or licensing agreements when necessary could limit our ability to develop and market new products and, accordingly, could materially and adversely affect our business and operating results.

We Need To Effectively Manage Our Growth.

The growth in our business has placed, and is expected to continue to place, a significant strain on our personnel, management and other resources. Our ability to manage any future growth effectively will require us to attract, train, motivate and manage new employees successfully, to integrate new employees into our overall operations, to retain key employees and to continue to improve our operational, financial and management systems. If we fail to manage our future growth effectively, our business could suffer.

Competition For Qualified Personnel Is Intense, And We May Not Be Successful In Attracting And Retaining Personnel.

Our future success will depend, to a significant extent, on the ability of our management to operate effectively, both individually and as a group. We are dependent on our ability to retain and motivate high caliber personnel, in addition to attracting new personnel. Competition for qualified technical and other personnel is intense, particularly in the San Francisco Bay Area and Israel, and we may not be successful in attracting and retaining such personnel.

Competitors and others have in the past and may in the future attempt to recruit our employees. While our employees are required to sign standard agreements concerning confidentiality and ownership of inventions, we generally

do not have employment contracts or noncompetition agreements with any of our personnel. The loss of the services of any of our key personnel, the inability to attract or retain qualified personnel in the future or delays in hiring required personnel, particularly engineers and other technical personnel, could negatively affect our business.

The C-Cube Merger Has Resulted In The Recording Of Substantial Goodwill And Other Intangible Assets And Reporting Of Substantial Net Losses Without Any Corresponding Tax Deduction.

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Goodwill and other intangible assets of approximately \$1.7 billion were recorded in connection with the merger as disclosed in Note 7 to the unaudited Condensed Consolidated Financial Statements for the three months ended June 30, 2000. Goodwill and intangibles are being amortized over 5 years, and this amortization is expected to result in substantial net losses over the amortization period. The amortization of goodwill and intangibles are not deductible for tax purposes which will result in a provision for income taxes despite a substantial reported net loss.

We Are Liable For C-Cube's Pre-Merger Tax Liabilities, Including Tax Liabilities Resulting From The Spin-Off Of Its Semiconductor Business.

The spin-off of C-Cube's semiconductor business gave rise to a significant tax liability of approximately \$320 million based on a valuation of the semiconductor business of \$1.1 billion. This liability is payable on or before August 15, 2000. C-Cube determined the valuation by using the volume weighted average price on May 3, 2000, the first trading day following the spin-off, which resulted in a share price of \$21.74. Under state law, Harmonic generally is liable for all of C-Cube's debts, including C-Cube's liability for taxes resulting from the spin-off. C-Cube retained and transferred to Harmonic in the merger an amount of cash and other consideration sufficient to pay this liability as well as all other tax liabilities of C-Cube and its subsidiaries for periods prior to the merger. Harmonic will also be indemnified by the spun-off semiconductor business if the cash reserves are not sufficient to satisfy all of C-Cube's tax liabilities for periods prior to the merger. If for any reason, the spun-off semiconductor business does not have sufficient cash to pay such taxes, or if there are additional taxes due with respect to the non-semiconductor business, Harmonic generally will remain liable, and such liability could have a material adverse effect on Harmonic.

Due To The Structure Of The Merger Transaction, Harmonic Is Liable For C-Cube's General Pre-Merger Liabilities And Any Liabilities Relating To C-Cube's Semiconductor Business For Which The Spun-off Semiconductor Business Is Unable To Indemnify Harmonic.

The merger of C-Cube into Harmonic, with Harmonic as the surviving entity, resulted in our assuming all of the liabilities of C-Cube at the time of the merger. Pursuant to the merger agreement, Harmonic is indemnified by the spun-off semiconductor business for liabilities associated with C-Cube's historic semiconductor business. However, if the spun-off semiconductor business is unable to fulfill its indemnification obligations to Harmonic or if general liability claims not specifically associated with C-Cube's historic semiconductor business are asserted, we would have to assume such obligations. Those obligations could have a material adverse effect on us.

We May Be Subject To Risks Associated With Other Acquisitions.

We have made and may make investments in complementary companies, products or technologies. If we make acquisitions, we could have difficulty assimilating or retaining the acquired companies' personnel and operations or integrating the acquired technology or products into ours. These difficulties could disrupt our ongoing business, distract our management and employees and increase our expenses. Moreover, our profitability may suffer because of acquisition-related costs or amortization costs for acquired goodwill and other intangible assets. Furthermore, we may have to incur debt or issue equity securities to pay for any future acquisitions, the issuance of which could be dilutive to our existing shareholders. If we are unable to successfully address any of these risks, our business, financial condition and operating results

could be harmed.

Difficulties In The Development And Production Of Video Encoding Chips By C-Cube's Spun-off Semiconductor Business May Adversely Impact Us.

The DiviCom business and C-Cube semiconductor business collaborated on the production and development of two video encoding microelectronic chips prior to the merger. In connection with the merger, Harmonic and the spun-off semiconductor business entered into a contractual relationship under which Harmonic will have access to certain of the spun-off semiconductor business technologies and products which the DiviCom business

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previously depended on for its product and service offerings. However, under the contractual relationships between Harmonic and the spun-off semiconductor business, the semiconductor business does not have a firm commitment to continue the development of video encoding microelectronic chips. As a result, the semiconductor business may choose not to continue future development of the chips for any reason. The semiconductor business may also encounter in the future technological difficulties in the production and development of the chips. If the spun-off semiconductor business is not able to or does not sustain its development and production efforts in this area, we may not be able to fully recognize the benefits of the acquisition. See "Supply, License and Development Agreement" at page 60 of the joint proxy statement filed with the Securities and Exchange Commission on March 23, 2000, for further details of Harmonic's business relationship with the spun-off semiconductor business after the merger.

If Sales Forecasted For A Particular Period Are Not Realized In That Period Due To The Unpredictable Sales Cycles Of Our Products, Our Operating Results For That Period Will Be Harmed.

The sales cycles of many of our products, particularly our newer products and products sold internationally, are typically unpredictable and usually involve:

- a significant technical evaluation;
- a commitment of capital and other resources by cable, satellite, and other network operators;
- delays associated with cable, satellite, and other network operators' internal procedures to approve large capital expenditures;
- time required to engineer the deployment of new technologies or services within broadband networks; and
- testing and acceptance of new technologies that affect key operations.

For these and other reasons, our sales cycles generally last three to six months, but can last up to 12 months. If orders forecasted for a specific customer for a particular quarter do not occur in that quarter, our operating results for that quarter could be substantially lower than anticipated.

As a result of the merger, a significant portion of our revenue will be derived from systems contracts. Substantially all of DiviCom's revenues are from systems contracts which include a combination of product sales as well as installation and integration services. Revenue forecasts are based on estimated timing of the systems installation and integration. Because the systems contracts on the average span three quarters, the timing of revenue is difficult to predict and could result in lower than expected revenue in any particular quarter.

Our Failure To Adequately Protect Our Proprietary Rights May Adversely Affect Us.

We currently hold 29 issued United States patents and 9 issued foreign patents, and have a number of patent applications pending. Although we attempt to protect our intellectual property rights through patents, trademarks,

copyrights, licensing arrangements, maintaining certain technology as trade secrets and other measures, we cannot assure you that any patent, trademark, copyright or other intellectual property rights owned by us will not be invalidated, circumvented or challenged, that such intellectual property rights will provide competitive advantages to us or that any of our pending or future patent applications will be issued with the scope of the claims sought by us, if at all. We cannot assure you that others will not develop technologies that are similar or superior to our technology, duplicate our technology or design around the patents that we own. In addition, effective patent, copyright and trade secret protection may be unavailable or limited in certain foreign countries in which we do business or may do business in the future.

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We believe that the future success of our business will depend on our ability to translate the technological expertise and innovation of our personnel into new and enhanced products. We generally enter into confidentiality or license agreements with our employees, consultants, vendors and customers as needed, and generally limit access to and distribution of our proprietary information. Nevertheless, we cannot assure you that the steps taken by us will prevent misappropriation of our technology. In addition, we have taken in the past, and may take in the future, legal action to enforce our patents and other intellectual property rights, to protect our 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 harm our business and operating results.

In order to successfully develop and market certain of our planned products for digital applications, we may be required to enter into technology development or licensing agreements with third parties. Although many companies are often willing to enter into such technology development or licensing agreements, we cannot assure you that such agreements will be negotiated on terms acceptable to us, or at all. The failure to enter into technology development or licensing agreements, when necessary, could limit our ability to develop and market new products and could cause our business to suffer.

As is common in our industry, we have from time to time received notification from other companies of intellectual property rights held by those companies upon which our products may infringe. Any claim or litigation, with or without merit, could be costly, time consuming and could result in a diversion of management's attention, which could harm our business. If we were found to be infringing on the intellectual property rights of any third party, we could be subject to liabilities for such infringement, which could be material, and could be required to seek licenses from other companies or to refrain from using, manufacturing or selling certain products or using certain processes. Although holders of patents and other intellectual property rights often offer licenses to their patent or other intellectual property rights, we cannot assure you that licenses would be offered, that the terms of any offered license would be acceptable to us or that failure to obtain a license would not cause our operating results to suffer.

We Purchase Several Key Components, Subassemblies And Modules Used In The Manufacture Or Integration Of Our Products From Sole Or Limited Sources, And We Are Increasingly Dependent On Contract Manufacturers.

Many components, subassemblies and modules necessary for the manufacture or integration of our products are obtained from a sole supplier or a limited group of suppliers. Our reliance on sole or limited suppliers, particularly foreign suppliers, and our increasing reliance on subcontractors involves several risks, including a potential inability to obtain an adequate supply of required components, subassemblies or modules and reduced control over pricing, quality and timely delivery of components, subassemblies or modules. In particular, certain optical components have been recently in short supply and are available only from a small number of suppliers, including sole source suppliers. While we expend considerable efforts to qualify additional optical component sources, consolidation of suppliers in the industry (including the acquisition of Etek Dynamics and the proposed acquisition of SDL Inc. by JDS Uniphase) and the small number of viable alternatives have limited the results of these efforts. Certain key elements of our digital headend products are provided by a sole foreign supplier. We do not generally maintain long-term

agreements with any of our suppliers or subcontractors. An inability to obtain adequate deliveries or any other circumstance that would require us to seek alternative sources of supply could affect our ability to ship our products on a timely basis, which could damage relationships with current and prospective customers and harm our business. We attempt to limit this risk by maintaining safety stocks of these components, subassemblies and modules. As a result of this investment in inventories, we may be subject to an increasing risk of inventory obsolescence in the future, which could harm our business.

We May Need Additional Capital In The Future And May Not Be Able To Secure Adequate Funds On Terms Acceptable To Us.

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We currently anticipate that our existing cash balances including cash received pursuant to the merger, and available line of credit and cash flow expected to be generated from future operations will be sufficient to meet our liquidity needs for at least the next twelve months. However, we may need to raise additional funds if our estimates change or prove inaccurate or in order for us to respond to unforeseen technological or marketing hurdles or to take advantage of unanticipated opportunities.

In addition, we expect to review other potential acquisitions that would complement our existing product offerings or enhance our technical capabilities. While we have no other current agreements or negotiations underway with respect to any potential acquisition, any future transaction of this nature could require potentially significant amounts of capital. Funds may not be available at the time or times needed, or available on terms acceptable to us. If adequate funds are not available, or are not available on acceptable terms, we may not be able to take advantage of market opportunities, to develop new products or to otherwise respond to competitive pressures.

We Face Risks Associated With Having Important Facilities And Resources Located In Israel.

Harmonic maintains two facilities in the State of Israel with a total of approximately 90 employees. The personnel at these facilities represent a significant portion of our research and development operations. Accordingly, we are directly influenced by the political, economic and military conditions affecting Israel, and any major hostilities involving Israel or the interruption or curtailment of trade between Israel and its present trading partners could significantly harm our business.

In addition, most of our employees in Israel are currently obligated to perform annual reserve duty in the Israel Defense Forces and are subject to being called for active military duty at any time. We cannot predict the effect of these obligations on Harmonic in the future.

Securities Class Action Claims

On June 28, 2000, a securities class action captioned Smith v. Harmonic Inc., Et. Al., Civil Action No. C-00-2287-PJH was filed against Harmonic and several of its officers and directors in the United States District Court for the Northern District of California. Additional actions containing similar allegation have since been filed. These complaints allege violations of the federal securities laws, specifically Section 10 (b) of the Securities Exchange Act of 1934, and seek unspecified damages on behalf of a purported class of purchasers of Harmonic common stock during the period from March 27, 2000 through June 26, 2000. The various actions have not yet been consolidated and no trial date has been scheduled.

On June 29, 2000, a securities class action captioned Krim v. Harmonic Inc., Et. Al., Civil Action No. CV 790816 was filed against Harmonic and several of its officers and directors in the California Superior Court from the County of Santa Clara. The complaint alleges violations of the federal securities laws, specifically Section 11 of the Securities Act of 1933, and seeks unspecified damages on behalf of a purported class of persons who acquired Harmonic common stock pursuant to a Form S-4 Registration Statement filed March 23, 2000, concerning a transaction completed on May 3, 2000. On July 26, 2000, the action was removed to the United States District Court for the Northern District of



California. No trial date has been scheduled.

While the Company believes these class actions to be without merit and is vigorously defending against them, there can be no assurance that the Company will prevail. An unfavorable outcome of this litigation could have a material adverse effect on the Company's consolidated financial position, liquidity or results of operations.

Our Stock Price May Be Volatile.

The market price of our common stock has fluctuated in the past and is likely to fluctuate in the future. In addition, the securities markets have experienced significant price and volume fluctuations and the market prices of the securities of technology companies have been especially volatile. Investors may be unable to resell their shares of our common stock at or above their purchase price. In the past, companies that have experienced volatility in the market price of their stock have been the object of securities class action litigation. If we were

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We are currently the object of securities class action litigation, and this could result in substantial costs and a diversion of management's attention and resources.

While the Company believes these class actions to be without merit and is vigorously defending against them, there can be no assurance that the Company will prevail. An unfavorable outcome of this litigation could have a material adverse effect on the Company's consolidated financial position, liquidity or results of operations.

Our Certificate Of Incorporation And Bylaws And Delaware Law Contain Provisions That Could Discourage A Takeover.

Provisions of our Amended and Restated Certificate of Incorporation, Bylaws, and Delaware law could make it more difficult for a third party to acquire us, even if doing so would be beneficial to our stockholders.

## PART II

### ITEM 1. LEGAL PROCEEDINGS

On June 28, 2000, a securities class action captioned Smith v. Harmonic Inc., Et. Al., Civil Action No. C-00-2287-PJH was filed against Harmonic and several of its officers and directors in the United States District Court for the Northern District of California. Additional actions containing similar allegations have since been filed. These complaints allege violations of the federal securities laws, specifically Section 10 (b) of the Securities Exchange Act of 1934, and seek unspecified damages on behalf of a purported class of purchasers of Harmonic common stock during the period from March 27, 2000 through June 26, 2000. The various actions have not yet been consolidated and no trial date has been scheduled.

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While the Company believes these class actions to be without merit and is vigorously defending against them, there can be no assurance that the Company will prevail. An unfavorable outcome of this litigation could have a material adverse effect on the Company's consolidated financial position, liquidity or results of operations.

ITEM 5. OTHER INFORMATION

Pursuant to Rule 14a-4 (c) (1) under the Securities Exchange Act of 1934, the proxies provided to management shall confer on management discretionary authority to vote with respect to any non Rule 14a-8 stockholder proposals raised at the Company's annual meeting of stockholders, without any discussion of the matter in the proxy statement, unless a stockholder has notified the Company of such a proposal at least 45 days prior to the month and day on which the Company mailed its prior year's proxy statement. Since the Company mailed its proxy statement for the 2000 annual meeting of stockholders on June 13, 2000, the deadline for receipt of any such stockholder proposal for the 2001 annual meeting of stockholders is April 28, 2001.

In connection with the C-Cube Merger, Harmonic has entered into various lease agreements, which have been attached as Exhibit 99.1.

- 10.26 Lease Agreement for 603-611 Baltic Way, Sunnyvale, California
- 10.27 Lease Agreement for 1322 Crossman Avenue, Sunnyvale, California
- 10.28 Lease Agreement for 646 Caribbean Drive, Sunnyvale, California
- 10.29 Lease Agreement for 632 Caribbean Drive, Sunnyvale, California
- 10.30 First Amendment to the Lease Agreement for 549 Baltic Way, Sunnyvale, California

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ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

A. Exhibits

Exhibit #	Description of Document
-----	-----
27.1	Financial Data Schedule
10.26	Lease Agreement for 603-611 Baltic Way, Sunnyvale, California
10.27	Lease Agreement for 1322 Crossman Avenue, Sunnyvale, California
10.28	Lease Agreement for 646 Caribbean Drive, Sunnyvale, California
10.29	Lease Agreement for 632 Caribbean Drive, Sunnyvale, California
10.30	First Amendment to the Lease Agreement for 549 Baltic Way, Sunnyvale, California

B. Reports on Form 8-K

Amended Current Report on Forms 8-K and 8-K/A filed on May 2, 2000 and July 17, 2000, respectively, relating to the merger of C-Cube Microsystems Inc. with and into Harmonic.

SIGNATURE

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

Dated: August 14, 2000

HARMONIC INC.  
(Registrant)

By: /s/ Robin N. Dickson  
-----  
Robin N. Dickson  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

HARMONIC INC.  
Index to Exhibits

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LEASE

DATED APRIL 18, 2000

BY AND BETWEEN

AMB PROPERTY, L.P.  
as Landlord

and

HARMONIC, INC.  
as Tenant

AFFECTING PREMISES COMMONLY KNOWN AS

603-611 BALTIC WAY  
SUNNYVALE, CALIFORNIA

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EXHIBIT A  
EXHIBIT B  
Not Applicable  
Not Applicable

Not Applicable  
Not Applicable  
EXHIBIT G  
Not Applicable  
EXHIBIT I

AMB PROPERTY CORPORATION  
INDUSTRIAL MULTI-TENANT LEASE

1. BASIC PROVISIONS ("Basic Provisions").

1.1 Parties: This Lease ("Lease") dated April 18, 2000, is made by and between AMB PROPERTY, L.P., a Delaware limited partnership, ("Landlord") and HARMONIC, INC., a Delaware corporation ("Tenant") (collectively the "Parties," or individually a "Party").

1.2 Premises: The area consisting of 43,500 square feet of leasable area as outlined on Exhibit A attached hereto ("Premises"), of the building ("Building") located at 603611 Baltic Way in the City of Sunnyvale, State of California. The Building is located in the industrial center commonly known as MBC/Moffett Business Center (the "Industrial Center"). Tenant shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.3 below), but shall not have any rights to the roof, exterior walls or utility raceways of the Building or to any other buildings in the Industrial Center. The Premises, the Building, the Common Areas, the land upon which they are located and all other buildings and improvements thereon are herein collectively referred to as the "Industrial Center."

1.3 Term: Eight (8) years and Nine (9) months ("Term") commencing January 1, 2002 ("Commencement Date") and ending September 30, 2010 ("Expiration Date").

1.4 Base Rent: \$95,700.00 per month ("Base Rent"). \$95,700.00 payable on execution of this Lease for period January 1, 2002 through and including January 31, 2002.

1.5 Tenant's Share of Operating Expenses ("Tenant's Share"):

(a)	Industrial Center	15.24%
(b)	Building	100%

1.6 Tenant's Estimated Monthly Rent Payment: Following is the estimated monthly Rent payment to Landlord pursuant to the provisions of this Lease. This estimate is made at the inception of the Lease and is subject to adjustment pursuant to the provisions of this Lease:

(a)	Base Rent (Paragraph 4.1)	\$ 95,700.00
(b)	Operating Expenses (Paragraph 4.2; excluding Real Property Taxes, Landlord Insurance)	\$ 2,838.00
(c)	Landlord Insurance (Paragraph 8.3)	\$ 254.00
(d)	Real Property Taxes (Paragraph 10)	\$ 3,565.00
	Estimated Monthly Payment	\$102,357.00

1.7 Security Deposit: \$130,500.00 ("Security Deposit").

1.8 Permitted Use ("Permitted Use") Research and development, manufacturing, storage and distribution, offices and marketing and other legal related uses.

1.9 Guarantor: N/A

1.10 Addenda and Exhibits: Attached hereto are the following Addenda and Exhibits, all of which constitute a part of this Lease:

- (a) Addenda: First Addendum to Lease
- (b) Exhibits: Exhibit A: Diagram of Premises.  
Exhibit B: Commencement Date Certificate.  
Exhibit C:  
Exhibit D:  
Exhibit E:  
Exhibit F:  
Exhibit G: Hazardous Materials Questionnaire.  
Exhibit H:  
Exhibit I: Rules and Regulations.

1.11 Address for Rent Payments: All amounts payable by Tenant to Landlord shall until further notice from Landlord be paid to AMB PROPERTY L. P./MBC MOFFETT BUSINESS CENTER, C/O ORCHARD PROPERTIES at the following address:

File No.: 3750789034  
P.O. Box 840349  
Dallas, TX 75284-0349

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2. PREMISES, PARKING AND COMMON AREAS.

2.1 Letting. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon all of the terms, covenants and conditions set forth in this Lease. Any statement of square footage set forth in this Lease or that may have been used in calculating Base Rent and/or Operating Expenses is an approximation which Landlord and Tenant agree is reasonable and the Base Rent and Tenant's Share based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Common Areas - Definition. "Common Areas" are all areas and facilities outside the Premises and within the exterior boundary line of the Industrial Center and interior utility raceways within the Premises that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Industrial Center and their respective employees, suppliers, shippers, tenants, contractors and invitees.

2.3 Common Areas - Tenant's Rights. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or covenants, conditions and restrictions governing the use of the Industrial Center.

2.4 Common Areas - Rules and Regulations. Landlord shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 16.19.

2.5 Common Area Changes. Landlord shall have the right, in Landlord's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the locations, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress,

egress, direction of traffic, landscaped areas, walkways and utility raceways;

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

(c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Industrial Center, or any portion thereof; and

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

3. TERM.

3.1 Term. The Commencement Date, Expiration Date and Term of this Lease are as specified in Paragraph 1.3.

3.2 Delay in Possession. If for any reason Landlord cannot deliver possession of the Premises to Tenant by the Commencement Date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder. In such case, Tenant shall not, except as otherwise provided herein, be obligated to pay Rent or perform any other obligation of Tenant under the terms of this Lease until Landlord delivers possession of the Premises to Tenant. The term of the Lease shall COMMENCE 30 days following notice to Tenant that Landlord is prepared to tender possession of the Premises to Tenant. If possession of the Premises is not delivered to Tenant within 120 days after the Commencement Date and such delay is not due to Tenant's acts, failure to act or omissions Tenant may by notice in writing to Landlord within 10 days after the end of said 120 day period cancel this Lease and the parties shall be discharged from all obligations hereunder. If such written notice of Tenant is not received by Landlord within said 10 day period, Tenant's right to cancel this Lease shall terminate.

3.3 Commencement Date Certificate. At the request of Landlord, Tenant shall execute and deliver to Landlord a completed certificate ("Commencement Date Certificate") in the form attached hereto as Exhibit B.

4. RENT.

4.1 Base Rent. Tenant shall pay to Landlord Base Rent and other monetary obligations of Tenant to Landlord under the terms of this Lease (such other monetary obligations are herein referred to as "Additional Rent") in lawful money of the United States, without offset or deduction, in advance on or before the first day of each month. Base Rent and Additional Rent for any period during the term hereof which is for less than one full month shall be prorated based upon the actual number of days of the month involved. Payment of

Base Rent and Additional Rent shall be made to Landlord at its address stated herein or to such other persons or at such other addresses as Landlord may from time to time designate in writing to Tenant. Base Rent and Additional Rent are collectively referred to as "Rent". All monetary obligations of Tenant to Landlord under the terms of this Lease are deemed to be rent.

4.2 Operating Expenses. Tenant shall pay to Landlord on the first day of each month during the term hereof, in addition to the Base Rent, Tenant's Share of all Operating Expenses in accordance with the following provisions:

(a) "Operating Expenses" are all costs incurred by Landlord relating to the ownership, management and operation of the Industrial Center, Building and Premises including, but not limited to, the following:



(i) The management, operation, repair, maintenance and replacement in neat, clean, good order and condition of the Common Areas, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, drainage systems, lighting facilities, fences and gates, exterior signs and tenant directories.

(ii) Water, gas, electricity, telephone and other utilities servicing the Common Areas.

(iii) Trash disposal, janitorial services, snow removal, property management and security services.

(iv) Reserves set aside for maintenance, repair and replacement of the Common Areas and Building.

(v) Real Property Taxes.

(vi) Premiums for the insurance policies maintained by Landlord under Paragraph 8 hereof.

(vii) Environmental monitoring and insurance programs.

(viii) Monthly amortization of capital improvements to the Common Areas and the Building. The monthly amortization of any given capital improvement shall be the sum of the (i) quotient obtained by dividing the cost of the capital improvement by Landlord's estimate of the number of months of useful life of such improvement plus (ii) an amount equal to the cost of the capital improvement times 1/12 of the lesser of 12% or the maximum annual interest rate permitted by law.

(ix) Maintenance of the Building including, but not limited to, painting, caulking and repair and replacement of Building components, including, but not limited to, roof, elevators and fire detection and sprinkler systems.

(x) If Tenant fails to maintain the Premises, any expense incurred by Landlord for such maintenance.

(b) Tenant's Share of Operating Expenses that are not specifically attributed to the Premises or Building ("Common Area Operating Expenses") shall be that percentage shown in Paragraph 1.5(a). Tenant's Share of Operating Expenses that are attributable to the Building ("Building Operating Expenses") shall be that percentage shown in Paragraph 1.5(b). Landlord in its sole discretion shall determine which Operating Expenses are Common Area Operating Expenses, Building Operating Expenses or expenses to be entirely borne by Tenant.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose any obligation upon Landlord to either have said improvements or facilities or to provide those services.

(d) Tenant shall pay monthly in advance on the same day as the Base Rent is due Tenant's Share of estimated Operating Expenses in the amount set forth in Paragraph 1.6. Landlord shall deliver to Tenant within 90 days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual Operating Expenses incurred during the preceding year. If Tenant's estimated payments under this Paragraph 4(d) during the preceding year exceed Tenant's Share as indicated on said statement, Tenant shall be credited the amount of such overpayment against Tenant's Share of Operating Expenses next becoming due. If Tenant's estimated payments under this Paragraph 4.2(d) during said preceding year were less than Tenant's Share as indicated on said statement, Tenant shall pay to Landlord the amount of the deficiency within 30 days after delivery by Landlord to Tenant of said statement. At any time Landlord may adjust the amount of the estimated Tenant's Share of Operating Expenses to reflect Landlord's estimate of such expenses for the year.

5. SECURITY DEPOSIT. Tenant shall deposit with Landlord prior to Commencement Date or Early Occupancy the Security Deposit set forth in Paragraph 1.7 as security for Tenant's faithful performance of Tenant's obligations under this Lease. If Tenant fails to pay Base Rent or Additional Rent or otherwise defaults under this Lease (as defined in Paragraph 13.1), Landlord may use the Security Deposit for the payment of any amount due Landlord or to reimburse or

compensate Landlord for any liability, cost, expense, loss or damage (including attorney's fees) which Landlord may suffer or incur by reason thereof. Tenant shall on demand

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pay Landlord the amount so used or applied so as to restore the Security Deposit to the amount set forth in Paragraph 1.7. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall, at the expiration or earlier termination of the term hereof and after Tenant has vacated the Premises, return to Tenant that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest, or to be prepayment for any monies to be paid by Tenant under this Lease.

6. USE.

6.1 Permitted Use. Tenant shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8. Tenant shall not commit any nuisance, permit the emission of any objectionable noise or odor, suffer any waste, make any use of the Premises which is contrary to any law or ordinance or which will invalidate or increase the premiums for any of Landlord's insurance. Tenant shall not service, maintain or repair vehicles on the Premises, Building or Common Areas. Tenant shall not store foods, pallets, drums or any other materials outside the Premises.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, but upon notice to Landlord and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of the Permitted Use, so long as such use is not a Reportable Use and does not expose the Premises, or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) Duty to Inform Landlord. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance is located in, under or about the Premises or the Building, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration,

application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) Indemnification by Tenant. Tenant shall indemnify, protect, defend and hold Landlord, Landlord's affiliates, Lenders, and the officers, directors, shareholders, partners, employees, managers, independent contractors, attorneys and agents of the foregoing ("Landlord Entities") and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by any of Tenant's employees, agents, contractors or invitees. Tenant's obligations under this Paragraph 6.2(c) shall include, but not be limited to, the effects

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of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved. Tenant's obligations under this Paragraph 6.2(c) shall survive the expiration or earlier termination of this Lease.

(D). LANDLORD'S REPRESENTATION REGARDING HAZARDOUS MATERIALS. LANDLORD HEREBY MAKES THE FOLLOWING REPRESENTATIONS TO TENANT AS OF THE EFFECTIVE DATE WITHOUT HAVING MADE ANY INVESTIGATION THEREOF (AND WITHOUT BEING REQUIRED TO MAKE OR BEING DEEMED TO HAVE MADE ANY SUCH INVESTIGATION) TO VERIFY THE ACCURACY THEREOF AND IS SUBJECT TO AND QUALIFIED BY ALL INFORMATION AND DISCLOSURES MADE TO TENANT BY LANDLORD. TO THE BEST OF THE LANDLORD'S KNOWLEDGE:

1. THE SOIL AND GROUNDWATER ON OR UNDER THE PROJECT DOES NOT CONTAIN HAZARDOUS MATERIALS IN AMOUNTS WHICH VIOLATE ANY HAZARDOUS MATERIALS LAWS TO THE EXTENT THAT ANY GOVERNMENTAL ENTITY COULD REQUIRE EITHER LANDLORD OR TENANT TO TAKE ANY REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS.

2. DURING THE TIME THAT LANDLORD HAS OWNED THE PROJECT, LANDLORD HAS RECEIVED NO WRITTEN NOTICE OF: (I) ANY VIOLATION, OR ALLEGED VIOLATION, OF ANY HAZARDOUS MATERIALS LAW WITH RESPECT TO THE PROJECT THAT HAS NOT BEEN REMEDIATED TO THE EXTENT THAT NO OTHER REMEDIATION IS THEN LEGALLY REQUIRED BY APPLICABLE LAW; (II) ANY PENDING CLAIMS RELATING TO THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROJECT; OR, (III) ANY PENDING INVESTIGATION BY ANY GOVERNMENTAL AGENCY CONCERNING THE PROJECT RELATING TO HAZARDOUS MATERIALS.

6.3 Tenant's Compliance with Requirements. Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the REASONABLE recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within 5 days after receipt of Landlord's written request, provide Landlord with copies of all documents and information evidencing Tenant's compliance with any Applicable Requirements and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

6.4 Inspection; Compliance with Law. In addition to Landlord's environmental monitoring and insurance program, the cost of which is included in Operating Expenses, Landlord and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lenders") shall have the right to enter the

Premises at any time in the case of an emergency, and otherwise at reasonable times PROVIDED LANDLORD HAS PROVIDED TWENTY-FOUR (24) HOUR NOTICE TO TENANT, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements. Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The cost and expenses of any such inspections shall be paid by the party requesting same unless a violation of Applicable Requirements exists or is imminent or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall upon request reimburse Landlord or Landlord's Lender, as the case may be, for the costs and expenses of such inspections.

7. MAINTENANCE, REPAIRS, TRADE FIXTURES AND ALTERATIONS.

7.1 Tenant's Obligations. Subject to the provisions of Paragraph 7.2 (Landlord's Obligations), Paragraph 9 (Damage or Destruction) and Paragraph 14 (Condemnation), Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonable or readily accessible to Tenant and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connectors if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord pursuant to Paragraph 7.2

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below. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

7.2 Landlord's Obligations. Subject to the provisions of Paragraph 6 (Use), Paragraph 7.1 (Tenant's Obligations), Paragraph 9 (Damage or Destruction) and Paragraph 14 (Condemnation), Landlord at its expense and not subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations and exterior walls of the Building and utility systems outside the Building. Landlord, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the Building roof and Common Areas.

7.3 Alterations. Construction by Tenant of Alterations shall be governed by the following:

A. Except as set forth below, Tenant shall not construct any Tenant Alterations or otherwise alter, improve, modify, or perform any work of improvement to the Premises without Landlord's prior written approval. However, Tenant shall be entitled, without Landlord's prior approval, to make Tenant Alterations (i) which do not affect the structural or exterior parts or water tight character of the Building, and (ii) the reasonably estimated cost of which, plus the original cost of any part of the Premises removed or materially altered in connection with such Tenant Alterations, together do not exceed the Permitted Tenant Alterations Limit per work of improvement. In the event Landlord's approval for any Tenant Alterations is required, Tenant shall not construct the Tenant Alterations until Landlord has approved in writing the plans and specifications therefor. Such Tenant Alterations shall be constructed substantially in compliance with such approved plans and specifications by a licensed contractor first approved by Landlord. All Tenant Alterations (whether Landlord's consent is required or not) shall be constructed by a licensed contractor in accordance with all Laws (including the ADA) using new materials of good quality.

B. Tenant shall not commence construction of any Tenant Alterations until (i) all required governmental approvals and permits have been obtained, (ii) all requirements regarding insurance imposed by this Lease have been satisfied, (iii) Tenant has given Landlord at least five days' prior

written notice of its intention to commence such construction, and (iv) if requested by Landlord, Tenant has obtained contingent liability and broad form builders' risk insurance in an amount reasonably satisfactory to Landlord if there are any perils relating to the proposed construction not covered by insurance carried pursuant to the Lease.

C. All Tenant Alterations shall remain the property of Tenant during the Lease Term but shall not be altered or removed from the Premises except with Landlord's advance written permission. At the expiration or sooner termination of the Lease Term, all Tenant Alterations shall be surrendered to Landlord as part of the realty and shall then become Landlord's property, and Landlord shall have no obligation to reimburse Tenant for all or any portion of the value or cost thereof; provided, however, that if Landlord requires Tenant to remove any Tenant Alterations, Tenant shall so remove such Tenant Alterations prior to the expiration or sooner termination of the Lease Term. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Tenant Alterations with respect to which the following is true: (i) Tenant was required, or elected, to obtain the approval of Landlord to the installation of the Leasehold Improvement in question; (ii) at the time Tenant requested Landlord's approval, Tenant requested of Landlord in writing that Landlord inform Tenant of whether or not Landlord would require Tenant to remove such Leasehold Improvement at the expiration of the Lease Term; and (iii) at the time Landlord granted its approval, it did not inform Tenant that it would require Tenant to remove such Leasehold Improvement at the expiration of the Lease Term.

D. Landlord's consent to the construction of Tenant Alterations may be withheld in Landlord's sole discretion. Landlord's consent to construction of Tenant Alterations and Landlord's approval of plans and specifications for Tenant Alterations shall not create any responsibility or liability on Landlord's part in regard to the completeness, competency, design sufficiency, or compliance with Law of such Tenant Alterations or the plans and specifications therefor.

7.4 Surrender/Restoration. Tenant shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair ordinary wear and tear excepted. Without limiting the generality of the above, Tenant shall remove all personal property, trade fixtures and floor bolts, patch all floors and cause all lights to be in good operating condition.

## 8. INSURANCE; INDEMNITY.

8.1 Payment of Premiums. The cost of the premiums for the insurance policies maintained by Landlord under this Paragraph 8 shall be a Common Area Operating Expense pursuant to Paragraph 4.2 hereof. Premiums for policy periods commencing prior to, or

extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date of Expiration Date.

### 8.2 Tenant's Insurance.

(i) At its sole cost and expense, Tenant shall maintain in full force and effect during the Term of the lease the following insurance coverages insuring against claims which may arise from or in connection with the Tenant's operation and use of the leased premises.

(a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence; \$3,000,000 general aggregate for bodily injury, personal injury and property damage. If required by Landlord, liquor liability coverage will be included.

(b) Workers' Compensation insurance with statutory limits and Employers Liability with a \$1,000,000 per accident limit for bodily injury or disease.

(c) Automobile Liability covering all owned, non-owned and hired vehicles with a \$1,000,000 per accident limit for bodily injury and property damage.

(d) Property insurance against all risks of loss to any tenant improvements or betterments and business personal property on a full replacement cost basis with no coinsurance penalty provision; and Business Interruption Insurance with a limit of liability representing loss of at least approximately THREE months of income.

(ii) Tenant shall deliver to AMB certificates of all insurance reflecting evidence of required coverages prior to initial occupancy; and annually thereafter.

(iii) If, in the opinion of Landlord's insurance advisor, the amount of scope of such coverage is deemed inadequate at any time during the Term, Tenant shall increase such coverage to such reasonable amounts or scope as Landlord's advisor deems adequate.

(iv) All insurance required under Paragraph 8.2 (i) shall be primary and non-contributory (ii) shall provide for severability of interests, (iii) shall be issued by insurers, licensed to do business in the state in which the Premises are located and which are rated A:VII or better by Best's Key Rating Guide, (iv) shall be endorsed to include Landlord and such other persons or entities as Landlord may from time to time designate, as additional insureds (Commercial General Liability only), and (v) shall be endorsed to provide at least 30-days prior notification of cancellation or material change in coverage to said additional insureds.

8.3 Landlord's Insurance. Landlord may, but shall not be obligated to, maintain all risk, including earthquake and flood, insurance covering the buildings within the Industrial Center, Commercial General Liability and such other insurance in such amounts and covering such other liability or hazards as deemed appropriate by Landlord. The amount and scope of coverage of Landlord's insurance shall be determined by Landlord from time to time in its sole discretion and shall be subject to such deductible amounts as Landlord may elect. Landlord shall have the right to reduce or terminate any insurance or coverage. Premiums for any such insurance shall be a Common Area Operating Expense.

8.4 Waiver of Subrogation. To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other on account of any and all claims Landlord or Tenant may have against the other with respect to property insurance actually carried, or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage.

8.5 Indemnity. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY AGREES TO DEFEND (WITH ATTORNEYS ACCEPTABLE TO LANDLORD), INDEMNIFY, PROTECT AND HOLD HARMLESS LANDLORD AND LANDLORD'S AGENTS AND ANY SUCCESSORS TO ALL OR ANY PORTION OF LANDLORD'S INTEREST IN THE PREMISES AND THEIR DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AUTHORIZED AGENTS, REPRESENTATIVES, AFFILIATES AND MORTGAGES, FROM AND AGAINST ANY AND ALL DAMAGE, LOSS, CLAIM, LIABILITY AND EXPENSE INCLUDING, BUT NOT LIMITED TO, ACTUAL ATTORNEY'S FEES AND LEGAL COSTS, INCURRED DIRECTLY OR INDIRECTLY BY REASON OF ANY CLAIM, SUIT OR JUDGMENT BROUGHT BY OR ON BEHALF OF (I) ANY PERSON OR PERSONS FOR DAMAGE, LOSS OR EXPENSE DUE TO, BUT NOT LIMITED TO, BODILY INJURY OR PROPERTY DAMAGE SUSTAINED BY SUCH PERSON OR PERSONS WHICH ARISE OUT OF, ARE OCCASIONED BY, OR ARE IN ANY WAY ATTRIBUTABLE TO THE CONDITION, USE OR OCCUPANCY OF THE PREMISES OR THE ACTS OR OMISSIONS OF THE TENANT OR TENANT'S AGENTS IN OR ABOUT THE PREMISES OR THE PROJECT (INCLUDING BUT NOT LIMITED TO ANY EVENT OF DEFAULT HEREUNDER), OR (II) TENANT OR TENANT'S AGENTS FOR DAMAGE, LOSS OR EXPENSE DUE TO, BUT NOT LIMITED TO, BODILY INJURY OR PROPERTY DAMAGE WHICH ARISE OUT OF, ARE OCCASIONED BY, OR ARE IN ANY WAY ATTRIBUTABLE TO THE USE IF ANY OF THE COMMON AREA, EXCEPT TO THE EXTENT CAUSED SOLELY BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD SHALL NOT BE RELEASED OR INDEMNIFIED FROM, AND SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS TENANT FROM, ALL DAMAGES, LIABILITIES, JUDGMENTS, ACTIONS, CLAIMS, ATTORNEY'S FEES, CONSULTANTS' FEES, PAYMENTS, COSTS AND EXPENSES ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL

VIOLATION OR APPLICABLE LAW.

8.6 Exemption of Landlord from Liability. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Landlord Entities shall not be liable for and Tenant waives any claims against Landlord Entities for injury or damage to the person or the property of Tenant, Tenant's employees, contractors, invitees, customers or any other person in or about the Premises, Building or Industrial Center from any cause whatsoever, including, but not limited to, damage or injury which is caused by or results from (i) fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or (ii) from the condition of the Premises, other portions of the Building or Industrial Center. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord nor from the failure by Landlord to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business, for any loss of income or profit therefrom or any indirect, consequential or punitive damages.

9. DAMAGE OR DESTRUCTION.

9.1 Termination Right. Tenant shall give Landlord immediate written notice of any damage to the Premises. Subject to the provisions of Paragraph 9.2, if the Premises or the Building shall be damaged to such an extent that there is substantial interference for a period exceeding 90 consecutive days with the conduct by Tenant of its business at the Premises, Tenant, at any time prior to commencement of repair of the Premises and following 10 days written notice to Landlord, may terminate this Lease effective 30 days after delivery of such notice to Landlord. Such termination shall not excuse the performance by Tenant of those covenants which under the terms hereof survive termination. Rent shall be abated in proportion to the degree of interference during the period that there is such substantial interference with the conduct of Tenant's business at the Premises. Abatement of rent and Tenant's right of termination pursuant to this provision shall be Tenant's sole remedy for failure of Landlord to keep in good order, condition and repair the foundations and exterior walls of the Building, Building roof, utility systems outside the Building and the Common Areas.

9.2 Damage Caused by Tenant. Tenant's termination rights under Paragraph 9.1 shall not apply if the damage to the Premises or Building is the result of any act or omission of Tenant or of any of Tenant's agents, employees, customers, invitees or contractors ("Tenant Acts"). Any damage resulting from a Tenant Act shall be promptly repaired by Tenant. Landlord at its option may at Tenant's expense repair any damage caused by Tenant Acts. Tenant shall continue to pay all rent and other sums due hereunder and shall be liable to Landlord for all damages that Landlord may sustain resulting from a Tenant Act.

10. REAL PROPERTY TAXES.

10.1 Payment of Real Property Taxes. Landlord shall pay the Real Property Taxes due and payable during the term of this Lease and, except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.2 Real Property Tax Definition. As used herein, the term "Real Property Taxes" is any form of tax or assessment, general, special, ordinary or extraordinary, imposed or levied upon (a) the Industrial Center, (b) any interest of Landlord in the Industrial Center, (c) Landlord's right to rent or other income from the Industrial Center, and/or (d) Landlord's business of leasing the Premises. Real Property Taxes include (i) any license fee, commercial rental tax, excise tax, improvement bond or bonds, levy or tax; (ii) any tax or charge which replaces or is in addition to any of such above-described "Real Property Taxes" and (iii) any fees, expenses or costs (including attorney's fees, expert fees and the like) incurred by Landlord in protesting or contesting any assessments levied or any tax rate. The term "Real Property Taxes" shall also include any increase resulting from a change in the ownership of the Industrial Center or Building, the execution of this Lease or any modification, amendment or transfer thereof. Real Property Taxes for tax years commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date and Expiration Date.

10.3 Additional Improvements. Operating Expenses shall not include Real

Property Taxes attributable to improvements placed upon the Industrial Center by other tenants or by Landlord for the exclusive enjoyment of such other tenants. Notwithstanding Paragraph 10.1 hereof, Tenant shall, however, pay to Landlord at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed by reason of improvements placed upon the Premises by Tenant or at Tenant's request.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed.

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10.5 Tenant's Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant's improvements, fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or stored within the Industrial Center.

11. UTILITIES. Tenant shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security, gas and cleaning of the Premises, together with any taxes thereon.

12. ASSIGNMENT AND SUBLETTING.

12.1 Landlord's Consent Required.

(a) Tenant shall not assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assign") or sublet all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent which consent shall not be unreasonably withheld. Relevant criteria in determining reasonability of consent include, but are not limited to, credit history of a proposed assignee or sublessee, references from prior landlords, any change or intensification of use of the Premises or the Common Areas and any limitations imposed by the Internal Revenue Code and the Regulations promulgated thereunder relating to Real Estate Investment Trusts. Assignment or sublet shall not release Tenant from its obligations hereunder. Tenant shall not (i) sublet or assign or enter into other arrangements such that the amounts to be paid by the sublessee or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the sublessee or assignee; (ii) sublet the Premises or assign this Lease to any person in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code (the "Code"); or (iii) sublet the Premises or assign this Lease in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 12.1 shall apply to any further subleasing by any subtenant.

(b) A change in the control of Tenant shall constitute an assignment requiring Landlord's consent. The transfer, on a cumulative basis, of 50% or more of the voting or management control of Tenant shall constitute a change in control for this purpose.

12.2 Rent Adjustment. If, as of the effective date of any permitted assignment or subletting the then remaining term of this Lease is less than ONE (1) YEAR, Landlord may, as a condition to its consent: (i) require that the amount and adjustment schedule of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment schedule for property similar to the Premises as then constituted, as determined by Landlord; or (ii) terminate the Lease as of the date of assignment or subletting subject to the performance by Tenant of those covenants which under the terms hereof survive termination.

13. DEFAULT; REMEDIES.

13.1 Default. The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ("Default"):



(a) The abandonment of the Premises by Tenant;

(b) Failure to pay any installment of Base Rent, Additional Rent or any other monies due and payable hereunder, said failure continuing for a period of 3 business days after the same is due;

(c) A general assignment by Tenant or any guarantor for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Tenant or any guarantor, the filing of a voluntary petition for an arrangement, the filing of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by Tenant's creditors or guarantors;

(e) Receivership, attachment, of other judicial seizure of the Premises or all or substantially all of Tenant's assets on the Premises;

(f) Failure of Tenant to maintain insurance as required by Paragraph 8.2;

(g) Any breach by Tenant of its covenants under Paragraph 6.2;

(h) Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in other Paragraphs of this Paragraph 13.1 which shall be governed by such other Paragraphs), which failure continues for 10 days after written notice thereof from Landlord to Tenant provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such 10 day period despite reasonable diligence, Tenant shall not be in default under this subparagraph unless Tenant fails thereafter diligently and continuously to prosecute the cure to completion;

(i) Any transfer of a substantial portion of the assets of Tenant, or any incurrence of a material obligation by Tenant, unless such transfer or obligation is undertaken

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or incurred in the ordinary course of Tenants business or in good faith for equivalent consideration, or with Landlord's consent; and

(j) The default of any guarantors of Tenant's obligations hereunder under any guaranty of this Lease, or the attempted repudiation or revocation of any such guaranty.

13.2 Remedies. In the event of any Default by Tenant, Landlord shall have the remedies set forth in the Addendum attached hereto entitled "Landlord's Remedies in Event of Tenant Default".

13.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or other sum due from Tenant shall not be received by Landlord or Landlord's designee within 10 days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, IF TENANT IS DELINQUENT IN THE PAYMENT OF RENT AND IS SUBJECT TO A LATE CHARGE OR INTEREST FEE, LANDLORD AGREES TO WAIVE THE LATE CHARGE OR INTEREST FEE IF (i) TENANT HAS NOT BEEN LATE IN ITS PAYMENT OF RENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE RENT DELINQUENCY IN QUESTION AND (ii) THE RENT DUE IS PAID WITHIN FIVE (5) DAYS OF LANDLORD'S WRITTEN NOTICE TO THE TENANT OF THE DELINQUENCY AMOUNT OWED.

14. CONDEMNATION. If the Premises or any portion thereof are taken under the

power of eminent domain or sold under the threat of exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the portion of the Common Areas designated for Tenant's parking, is taken by condemnation, Tenant may, at Tenant's option, to be exercised in writing within 10 days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, provided, however, that Tenant shall be entitled to any compensation, separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenants trade fixtures. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of its net severance damages in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Tenant shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

15. ESTOPPEL CERTIFICATE AND FINANCIAL STATEMENTS.

15.1 Estoppel Certificate. Each party (herein referred to as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party, to the extent it can truthfully do so, an estoppel certificate, plus such additional information, confirmation and/or statements as be reasonably requested by the Requesting Party.

15.2 Financial Statement. If Landlord desires to finance, refinance, or sell the Building, Industrial Center or any part thereof, Tenant and all Guarantors shall deliver to any potential lender or purchaser designated by Landlord such financial statements of Tenant and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Tenant's financial statements for the past 3 years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

16. ADDITIONAL COVENANTS AND PROVISIONS.

16.1 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other provision hereof.

16.2 Interest on Past-Due Obligations. Any monetary payment due Landlord hereunder not received by Landlord within 10 days following the date on which it was due shall

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bear interest from the date due at 12% per annum, but not exceeding the maximum rate allowed by law in addition to the late charge provided for in Paragraph 13.3.

16.3 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

16.4 Landlord Liability. Tenant, its successors and assigns, shall not assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Industrial Center. Tenant agrees to look solely to such interest for the satisfaction of any liability or claim against Landlord under this Lease. In no event whatsoever shall Landlord (which term shall include, without limitation, any general or limited partner, trustees, beneficiaries, officers, directors, or stockholders

of Landlord) ever be personally liable for any such liability.

16.5 No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and supersedes all oral, written prior or contemporaneous agreements or understandings.

16.6 Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours, and shall be deemed sufficiently given if served in a manner specified in the Paragraph 16.6. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by written notice to Tenant.

16.7 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via hand or overnight delivery or certified mail. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

16.8 Waivers. No waiver by Landlord of a Default by Tenant shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default by Tenant of the same or any other term, covenant or condition hereof.

16.9 Holdover. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. If Tenant holds over with the consent of Landlord: (i) the Base Rent payable shall be increased to 150% of the Base Rent applicable during the month immediately preceding such expiration or earlier termination; (ii) Tenant's right to possession shall terminate on 30 days notice from Landlord and (iii) all other terms and conditions of this Lease shall continue to apply. Nothing contained herein shall be construed as a consent by Landlord to any holding over by Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

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

16.11 Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

16.12 Landlord. The covenants and obligations contained in this Lease on the part of Landlord are binding on Landlord, its successors and assigns, only during and in respect of their respective period of ownership of such interest in the Industrial Center. In the event of any transfer or transfers of such title to the Industrial Center, Landlord (and in case of any subsequent transfers or conveyances, the then grantor) shall be concurrently freed and relieved from and after the date of such transfer or conveyance, without any further instrument or

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agreement, of all liability with respect to the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

16.13 Attorneys' Fees and Other Costs. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding shall be entitled to reasonable attorneys' fees. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought. Landlord shall be entitled to attorneys' fees, costs and expenses incurred in preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting breach. Tenant shall reimburse Landlord on demand for all reasonable legal, engineering and other professional services expenses incurred by Landlord in connection with all requests by Tenant for consent or approval hereunder.

16.14 Landlord's Access; Showing Premises; Repairs. Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Landlord may reasonably deem necessary. Landlord may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Landlord may at any time during the last 180 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Landlord shall be without abatement of rent or liability to Tenant.

16.15 Signs. Tenant shall not place any signs at or upon the exterior of the Premises or the Building, except that Tenant may, with Landlord's prior written consent, install (but not on the roof) such signs as are reasonably required to advertise Tenant's own business so long as such signs are in a location designated by Landlord and comply with sign ordinances and the signage criteria established for the Industrial Center by Landlord.

16.16 Termination; Merger. Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Default by Tenant, shall terminate any sublease or lesser estate in the Premises; provided, however, Landlord shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies.

16.17 Quiet Possession. Upon payment by Tenant of the Base Rent and Additional Rent for the Premises and the performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

16.18 Subordination; Attornment; Non-Disturbance.

(a) Subordination. This Lease shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or mortgage (collectively, "Mortgage") now or hereafter placed by Landlord upon the real property of which the Premises are a part, to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant agrees that any person holding any Mortgage shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease. In the event of Landlord's default with respect to any such obligation, Tenant will give any Lender, whose name and address have previously in writing been furnished Tenant, notice of a default by Landlord. Tenant may not exercise any remedies for default by Landlord unless and until Landlord and the Lender shall have received written notice of such default and a reasonable time (not less than 60 DAYS) shall thereafter have elapsed without the default having been cured. If any Lender shall elect to have this Lease superior to the lien of its Mortgage and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such Mortgage. The provisions of a Mortgage relating to the disposition of condemnation and insurance proceeds shall prevail over any contrary provisions contained in this

Lease.

(b) Attornment. Subject to the non-disturbance provisions of subparagraph C of this Paragraph 16.18, Tenant agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Mortgage. In the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior Landlord, or (iii) be liable for security deposits or be bound by prepayment of more than one month's rent.

(c) Non-Disturbance. With respect to Mortgage 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 Mortgage holder that Tenant's

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possession and this Lease will not be disturbed so long as Tenant is not in default and attorns to the record owner of the Premises.

(d) Self-Executing. The agreements contained in this Paragraph 16.18 shall be effective without the execution of any further documents; provided, however, that upon written request from Landlord or a Lender in connection with a sale, financing or refinancing of Premises, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein. Landlord is hereby irrevocably vested with full power to subordinate this Lease to a Mortgage.

16.19 Rules and Regulations. Tenant agrees that it will abide by, and to cause its employees, suppliers, shippers, customers, tenants, contractors and invitees to abide by all reasonable rules and regulations ("Rules and Regulations") which Landlord may make from time to time for the management, safety, care, and cleanliness of the Common Areas, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Industrial Center and their invitees. Landlord shall not be responsible to Tenant for the non-compliance with said Rules and Regulations by other tenants of the Industrial Center.

16.20 Security Measures. Tenant acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or other security measures. Landlord has no obligations to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

16.21 Reservations. Landlord reserves the right to grant such easements that Landlord deems necessary and to cause the recordation of parcel maps, so long as such easements and maps do not reasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonable requested by Landlord to effectuate any such easements or maps.

16.22 Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

16.23 Offer. Preparation of this Lease by either Landlord or Tenant or Landlord's agent or Tenant's agent and submission of same to Tenant or Landlord shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

16.24 Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification.

16.25 Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as Tenant, the obligations of such persons shall be the joint and several responsibility of all persons or entities named herein as such Tenant.

16.26 Authority. Each person signing on behalf of Landlord or Tenant

warrants and represents that he or she is authorized to execute and deliver this Lease and to make it a binding obligation of Landlord or Tenant.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

LANDLORD:  
AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

By: /s/ JOHN L. ROSSI

-----  
John L. Rossi  
Its: Regional Manager

TENANT:  
HARMONIC, Inc.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

Its: Chief Financial Officer

By: -----

Its: -----

Telephone: (415) 394-9000

Telephone: (408) 542-2661

Facsimile: (415) 394-0903

Facsimile: (408) 542-2516

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5-12-00

Date: -----

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#### FIRST ADDENDUM TO LEASE

THIS FIRST ADDENDUM is dated for reference purposes as April 18, 2000, and is made a part of that Lease Agreement (the "Lease") dated April 18, 2000, by and between AMB PROPERTY L.P., a Delaware limited partnership ("LANDLORD") and HARMONIC, INC., a Delaware corporation ("Tenant") affecting certain real property commonly known as 603-611 Baltic Way, Sunnyvale, California, with reference to the following facts:

1. Base Monthly Rent:

January 1, 2002 - December 31, 2002:	\$2.20 NNN per square foot per month
January 1, 2003 - December 31, 2003:	\$2.30 NNN per square foot per month
January 1, 2004 - December 31, 2004:	\$2.40 NNN per square foot per month
January 1, 2005 - December 31, 2005:	\$2.50 NNN per square foot per month
January 1, 2006 - December 31, 2006:	\$2.60 NNN per square foot per month
August 2, 2006	Adjustment to Fair market Value (FMV)
January 1, 2007 - December 31, 2007:	\$2.70 NNN per square foot per month or FMV
January 1, 2008 - December 31, 2008:	\$2.80 NNN per square foot per month or FMV
January 1, 2009 - December 31, 2009:	\$2.90 NNN per square foot per month or FMV
January 1, 2010 - September 30, 2010:	\$3.00 NNN per square foot per month or FMV

A. The Base Monthly Rent for the Period after August 2, 2006 shall be the greater of (i) one hundred percent (100%) of the Base Monthly Rent Schedule, or (ii) one hundred percent (100%) of the then fair market monthly rent determined as of the commencement of the Period in question based upon like buildings with like improvements in the area within the boundaries of Highways 101, 880 and the San Francisco Bay. However, the Fair Market Value Rent

as determined by appraisal shall not exceed \$4.00 per square foot per month in August 2006 with 5% annual increases through the balance of the term. The Period shall contain no free rent and the Premises shall be taken "as-is". If the parties are unable to agree upon the fair market monthly rent for the Premises for the option period in question at least seventy-five (75) days prior to the commencement of the option period in question, then the fair market monthly rent shall be determined by appraisal conducted pursuant to subparagraph B.

B. In the event it becomes necessary to determine by appraisal the fair market rent of the Premises for the purpose of establishing the Base Monthly Rent during the Period, then such fair market monthly rent shall be determined by three (3) real estate appraisers, all of whom shall be members of the American Institute of Real Estate Appraisers with not less than five (5) years experience appraising real property (other than residential or agricultural property) located in Santa Clara County, California, in accordance with the following procedures:

(1) The party demanding an appraisal (the "Notifying Party") shall notify the other party (the "Non-Notifying Party") thereof by delivering a written demand for appraisal, which demand, to be effective, must give the name, address, and qualifications of an appraiser selected by the Notifying Party. Within ten (10) days of receipt of said demand, the Non-Notifying Party shall select its appraiser and notify the Notifying Party, in writing, of the name, address, and qualifications of an appraiser selected by it. Failure by the Non-Notifying Party to select a qualified appraiser within said ten (10) day period shall be deemed a waiver of its right to select a second appraiser on its own behalf and the Notifying Party shall select a second appraiser on behalf of the Non-Notifying Party within five (5) days after the expiration of said ten (10) day period. Within ten (10) days from the date the second appraiser shall have been appointed, the two (2) appraisers so selected shall appoint a third appraiser. If the two appraisers fail to select a third qualified appraiser, the third appraiser shall be selected by the American Arbitrations Association or if it shall refuse to perform this function, then at the request of either Landlord or Tenant, such third appraiser shall be promptly appointed by the then Presiding Judge of the Superior Court of the State of California for the County of Santa Clara.

(2) The three (3) appraisers so selected shall meet in San Jose, California, not later than twenty (20) days following the selection of the third appraiser. At said meeting the appraisers so selected shall attempt to determine the fair market monthly rent of the Premises for the period in question (including the timing and amount, periodic increases).

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(3) If the appraisers so selected are unable to complete their determinations in one meeting, they may continue to consult at such times as they deem necessary for a fifteen (15) day period from the date of the first meeting, in an attempt to have at least two (2) of them agree. If, at the initial meeting or at any time during said fifteen (15) day period, two (2) or more of the appraisers so selected agree on the fair market rent of the Leased Premises, such agreement shall be determinative and binding on the parties hereto, and the agreeing appraisers shall, in simple letter form executed by the agreeing appraisers, forthwith notify both Landlord and Tenant of the amount set by such agreement.

(4) If two (2) or more appraisers do not so agree within said fifteen (15) day period, then each appraiser shall, within five (5) days after the expiration of said fifteen (15) day period, submit his independent appraisal in simple letter form to Landlord and Tenant stating his determination of the fair market rent of the Premises for the period in question. The parties shall then determine the fair market rent for the Premises by determining the average of the fair market rent set by each of the appraisers. However, if the lowest appraisal is less than eighty-five percent (85%) of the middle appraisal then such lowest appraisal shall be disregarded and/or if the highest appraisal is greater than one hundred fifteen percent (115%) of the middle appraisal then such highest appraisal shall be disregarded. If the fair market rent set by any appraisal is so disregarded, then the average shall be determined by computing the average set by the other appraisals that have not been disregarded.

(5) Nothing contained herein shall prevent Landlord and

Tenant from jointly selecting a single appraiser to determine the fair market rent of the Premises, in which event the determination of such appraisal shall be conclusively deemed the fair market rent of the Premises.

(6) Each party shall bear the fees and expenses of the appraiser selected by or for it, and the fees and expenses of the third appraiser (or the joint appraiser if one joint appraiser is used) shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

2. Early Occupancy:

A. As consideration for Tenant's performance of all obligations to be performed by Tenant under the Lease, and upon receipt of (i) the first month's Base Monthly Rent and Security Deposit totaling \$221,850.00, and (ii) a certificate of insurance as provided by Article 9.1C of the Lease, Landlord shall permit Tenant to enter and use the Premises commencing thirty (30) days prior to Commencement until the Commencement Date (the "Early Occupancy Period"). Such occupancy during the Early Occupancy Period shall be subject to all of the terms, covenants and conditions of the Lease provided, however, that the rent payable during the Early Occupancy Period shall be waived.

B. In the event either party shall bring any action or legal proceeding for damages for alleged breach of any provision of this agreement, to recover rent, to terminate tenancy of the Premises, or to enforce, protect or establish any term or covenant of this agreement or the Lease or right of remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorney's fees and court costs as may be fixed by the court or jury.

C. In consideration of executing this Early Occupancy Agreement, Tenant agrees to indemnify and save Landlord harmless of and from any and all liability, damage, expense, cause of action, suits or claims or judgments resulting from injury to person or property arising from the use of the Premises by Tenant during the Early Occupancy Period, including loss or damage to Tenant, its equipment, materials or supplies.

D. Tenant agrees to cooperate with construction personnel completing the Interior Improvements in the Premises and not cause any delay in the completion of these improvements. It is the intent of Landlord and Tenant that Tenant's obligation to pay the Base Monthly Rent and all Additional Rent not be delayed by any cause or other act of Tenant and, if it is so delayed, and provided that Landlord promptly notifies Tenant in writing of each separate delay and the estimated period of delay, then Tenant's obligation to pay the Base Monthly Rent and all Additional Rent shall commence as of the date it would have commenced absent said delay caused by Tenant.

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E. During the Early Occupancy Period, Tenant shall arrange to have all utility services, including but not limited to gas, electric, water and trash, billed directly to Tenant for payment.

3. Tenant Maintenance: Tenant shall (i) maintain, repair and replace when necessary all HVAC equipment which services only the Premises, and shall keep the same in good condition through regular inspection and servicing, and (ii) maintain continuously throughout the Lease Term a service contract for the maintenance of all such HVAC equipment with a licensed HVAC repair and maintenance contractor approved by Landlord, which contract provides for the periodic inspection and servicing of the HVAC equipment at least once every sixty (60) days during the Lease Term. Tenant shall furnish Landlord with a copy of such service contract, which shall provide that it may not be cancelled or changed without at least thirty (30) day's prior written notice to Landlord. Notwithstanding the foregoing, Landlord may elect at any time to assume responsibility for the maintenance, repair and replacement of such HVAC equipment which serves only the Premises. Tenant shall maintain continuously through the Lease Term a service contract for the washing of all windows (both interior and exterior surfaces) in the Premises.

4. Landlord's Remedies in Event of Tenant Default: (AMB)

A. Termination. In the event of any Default by Tenant, then in



addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Landlord (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering or rehabilitating the Premises or any portion thereof, including such acts for reletting to a new lessee or lessees; (iii) for leasing commissions; or (iv) for any other costs necessary or appropriate to relet the Premises; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "worth at the time of award" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). 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.

B. Continuation of Lease. In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease,

Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided tenant has the right to sublet or assign, subject only to reasonable limitations).

C. Re-entry. In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to reenter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

D. Reletting. In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph a, Landlord may from time to time, without terminating

this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

E. Termination. No re-entry or taking of possession of the Premises by Landlord pursuant to this Addendum shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

F. Cumulative Remedies. The remedies herein provided are not exclusive and Landlord shall have any and all other remedies provided herein or by law or in equity.

G. No Surrender. No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant, voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

H. Notice Provisions. Tenant agrees that any notice given by Landlord pursuant to Paragraph 13.1 of the Lease shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

5. Year 2000 Disclaimer: Landlord hereby disclaims any liability for any and all damages, injuries or other losses, whether ordinary, special, consequential, punitive or otherwise, arising out of, relating to, or in connection with, (a) the failure of any automated, computerized and/or software system or other technology used in, on, or about the Property or relating to the management or operation of the Property to accurately receive, provide or

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process date/time data (including, but not limited to, calculating, comparing and sequencing) both before and after September 9, 1999, and before, after, during and between the years 1999 A. D. and 2000 A. D., and leap year calculations and, or (b) the malfunction, ceasing to function or providing of invalid or incorrect results by any such technology as a result of date/time data. The foregoing disclaimer shall apply to any such technology used in, on, or about the Property or that affects the Property, whether or not such technology is within the control of Owner or any of Owner's agents or representatives. THE FOREGOING DISCLAIMER INCLUDES A DISCLAIMER OF ALL

WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE MATTERS DESCRIBED HEREIN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LANDLORD:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

By: /s/ JOHN L. ROSSI

-----  
John L. Rossi  
Its: Regional Manager

Telephone: (415) 394-9000

-----  
Facsimile: (415) 394-0903

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Date: 5-12-00

TENANT:

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

Its: Chief Financial Officer

By: -----

Its: -----

Telephone: (408) 542-2661

-----  
Facsimile: (408) 542-2516

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: -----

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Exhibit "A"

Site Plan

PROJECT 8J01  
R&D

AMB PROPERTY, L.P.  
MBC/MOFFET BUSINESS CENTER  
TOTAL PROJECT SQUARE FOOTAGE: 285,480

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[DIAGRAM]

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EXHIBIT B

COMMENCEMENT DATE CERTIFICATE

THIS COMMENCEMENT DATE CERTIFICATE is made as of April 18, 2000, by and between the parties hereto with regard to that Lease dated April 18, 2000, by and between AMB PROPERTY, L.P., a Delaware limited partnership, as Landlord ("Landlord"), and HARMONIC, INC., a California corporation as Tenant ("Tenant"), affecting those Premises commonly known as 603-611 Baltic Way, Sunnyvale, California. The parties hereto agree as follows:

1. Possession of the Premises has been delivered to Tenant and Tenant has accepted and taken possession of the Premises.
2. The Commencement Date of the Lease Term is January 1, 2002 and the Lease Term shall expire on September 30, 2010 unless sooner terminated according to the terms of the Lease or by mutual agreement.

3. The Base Monthly Rent initially due pursuant to the Lease is Ninety-Five Thousand Seven Hundred and 00/100 Dollars (\$95,700.00) per month, subject to any subsequent adjustments required by the Lease.

4. Landlord has received a Security Deposit in the amount of One Hundred Thirty Thousand Five Hundred and 00/Dollars (\$130,500.00). In addition, Tenant has prepaid rent in the amount of Ninety-Five Thousand Seven Hundred and 00/Dollars (\$95,700.00), which shall be applied to the first installment of Base Monthly Rent.

5. The Lease is in full force and effect, neither party is in default of its obligations under the Lease, and Tenant has no setoffs, claims, or defenses to the enforcement of the Lease.

LANDLORD:

TENANT:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

HARMONIC, INC.  
a Delaware corporation

By: /s/ JOHN L. ROSSI

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

-----  
John L. Rossi  
Its: Regional Manager

Its: Chief Financial Officer

By: -----

Its: -----

Telephone: (415) 394-9000

Telephone: (408) 542-2661

Facsimile: (415) 394-0903

Facsimile: (408) 542-2516

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5-12-00

Date: -----

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EXHIBIT "C"

IMPROVEMENT AGREEMENT

NOT APPLICABLE

25

EXHIBIT "D"

APPROVED SPECIFICATIONS

NOT APPLICABLE

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EXHIBIT "E"

DESCRIPTION OF PRIVATE RESTRICTIONS

(NOT APPLICABLE)

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EXHIBIT "F"  
SIGN CRITERIA  
(NOT APPLICABLE)

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EXHIBIT "H"  
LEGAL DESCRIPTION  
NOT APPLICABLE

LEASE AGREEMENT

by and between

CARIBBEAN/GENEVA INVESTORS  
AND CROSSMAN PARTNERS, L.P.

("LANDLORD")

and

HARMONIC, INC.

("TENANT")

DATED AS OF MAY 24, 2000

EXHIBITS

- Exhibit "A" Premises
- Exhibit "B" Land
- Exhibit "C" Declaration of Covenants, Conditions and Restrictions
- Exhibit "D" Rules and Regulations
- Exhibit "E" Form of Tenant Estoppel Certificate
- Exhibit "F" Subordination, Nondisturbance and Attornment Agreement

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BASIC LEASE INFORMATION

Lease Date: May 24, 2000

Landlord: Caribbean/Geneva Investors, a California limited partnership, and Crossman Partners, L.P., a California limited partnership, Tenants In Common

Managing Agent: The Mozart Development Company

Landlord's and Managing Agent's Address: c/o The Mozart Development Company  
1068 East Meadow Circle  
Palo Alto, CA 94303  
Attn: James Freitas & John Mozart

Tenant: Harmonic, Inc., a Delaware corporation

TENANT'S ADDRESS:	FOR NOTICE 549 Baltic Way Sunnyvale, CA 94089 Attn: Robin Dickson, Chief Financial Officer	FOR BILLING 549 Baltic Way Sunnyvale, CA 94089 Attn: Robin Dickson, Chief Financial Officer
Building:	The building located at 1322 Crossman Avenue, Sunnyvale, California	
Premises:	The entire Building as depicted on Exhibit "A"	
Land:	The Real Property described on Exhibit "B"	
Rentable Area of the Premises:	52,325 rentable square feet ("Rentable Area")	
Parking Spaces:	All parking spaces located on the Land	
Tenant's Use of the Premises:	General office, research, development, manufacturing, storage and distribution, production, marketing and distribution	
Lease Term:	Ten (10) years (the "Initial Term"), with the right to extend for two (2) additional five (5) year terms (each an "Extension Term") in accordance with Paragraph 42. The Initial Term, and any Extension Term(s) shall collectively be defined as the "Term"	
Estimated Availability Date:	September 1, 2000	
Monthly Base Rent:	\$3.25 per rentable square foot of the Rentable Area of the Premises.	
Monthly Base Rent Adjustment:	On each anniversary of the Commencement Date, the Monthly Base Rent shall increase by four percent (4%) of the Monthly Base Rent for the immediately prior year	
Tenant's Share of Expenses and Taxes:	100%	
Security Deposit:	\$193,600	

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Guarantor of Lease:	None
Landlord's Broker:	None
Tenant's Broker:	Cornish & Carey
Broker's Fee or Commission, if any, paid by:	Landlord, pursuant to separate agreement

The foregoing Basic Lease Information is hereby incorporated into and made a part of this Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information hereinabove set forth and shall be construed to incorporate all of the terms provided under the particular paragraph pertaining to such information. In the event of any conflict between any Basic Lease Information and the Lease, the latter shall control.

LANDLORD:

CARIBBEAN/GENEVA INVESTORS  
a California Limited Partnership

By: /s/ JOHN MOZART

-----  
John Mozart, Trustee of the Mozart  
Family Trust dated September 8, 1977  
Its: General Partner

By: /s/ JOHN LOVEWELL

-----  
John Lovewell  
Its: General Partner

CROSSMAN PARTNERS, L.P.,  
a California Limited Partnership

By: /s/ JOHN MOZART

-----  
John Mozart, Trustee of the Mozart  
Family Trust dated September 8, 1977  
Its: General Partner

TENANT:

HARMONIC, INC.,  
a Delaware corporation

By: /s/ ANTHONY J. LEY

-----  
ANTHONY J. LEY

-----  
Its: PRESIDENT

By: /s/ ROBIN N. DICKSON

-----  
ROBIN N. DICKSON

-----  
Its: CHIEF FINANCIAL OFFICER

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of May 24, 2000, by and between CARIBBEAN/GENEVA INVESTORS, a California Limited Partnership and CROSSMAN PARTNERS, L.P., a California Limited Partnership, as Tenants in Common (herein collectively called "Landlord"), and HARMONIC, INC., a Delaware corporation (herein called "Tenant").

Upon and subject to the terms, covenants and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those premises (the "Premises") outlined on EXHIBIT A, comprising the entire rentable area in the Building located at 1322 Crossman Avenue in Sunnyvale, California (hereinafter referred to as the "Building") specified in the Basic Lease Information attached hereto. Prior to the execution of this Lease, Tenant has reviewed and approved the Rentable Area specified in the Basic Lease Information, which shall be conclusive and binding on the parties for purposes of calculating Rent and the Tenant Allowance hereunder notwithstanding any measurement or remeasurement by Landlord, Tenant or any other party that may now or hereafter indicate a different Rentable Area. The Building, together with the associated land specified in the Basic Lease Information and improvements is referred to as the "Project." The term "Common Area" shall mean all areas and facilities within the Project that are not designated by Landlord for the



exclusive use of Tenant or any other tenant or other occupant of the Project that are located outside the perimeter (including footings) of the Building, including the parking areas, access and perimeter roads, pedestrian sidewalks, landscaped areas, trash enclosures, recreation areas and the like.

1. OCCUPANCY AND USE. Tenant may use and occupy the Premises for the purposes specified in the Basic Lease Information ("Permitted Use"), subject to the terms and conditions of this Lease, and for no other use or purpose without the prior written consent of Landlord. Landlord shall have the right to grant or withhold consent to a use other than as specified in the Basic Lease Information in its sole discretion. Tenant shall be entitled to the nonexclusive use of the Common Area with Landlord and other occupants (if any) of the Project in accordance with the Rules and Regulations established by Landlord from time to time. Notwithstanding anything to the contrary in the Basic Lease Information or in this Lease, Tenant understands and agrees that the Declaration of Covenants, Conditions and Restrictions ("CC&Rs") described in EXHIBIT C encumbers the Project and that Tenant's Occupancy and Use of the Premises are restricted by, and Tenant shall fully comply with any and all restrictions on the use of the Premises specified in, such CC&Rs.

## 2. TERM AND POSSESSION.

(a) The term of this Lease (the "Term") shall be for the period specified in the Basic Lease Information (or until sooner terminated as herein provided), commencing on the Commencement Date and expiring on the Expiration Date. The "Commencement Date" shall be the earlier to occur of (i) thirty (30) days after the date on which Landlord gives Tenant written notice that the Premises is available for Tenant's occupancy, or (ii) any earlier date upon which Tenant actually occupies and conducts business in any portion of the Premises. Within five (5) business days after the Commencement Date, the parties shall execute a letter confirming the Commencement Date and certifying that Tenant has accepted delivery of the Premises (the "Commencement Date Memorandum"). Either party's failure to request execution of, or to execute, the Commencement Date Memorandum shall not in any way alter the Commencement Date. By occupying the Premises, Tenant shall be deemed to have accepted the same as suitable for the purpose herein intended. The "Expiration Date" shall be the date that is one day prior to the tenth anniversary of the Commencement Date (subject to extension in accordance with Paragraph 42 to the date that is one day prior to the fifth anniversary of any exercised Extension Term).

(b) Tenant is aware that the Premises is currently occupied by another tenant ("Existing Tenant"). Pursuant to a written agreement between Landlord and the Existing Tenant, the Existing Tenant has agreed to vacate the Premises on or before the Estimated Availability Date set forth in the Basic lease Information. If Landlord, for any reason whatsoever (including without limitation the failure of the Existing Tenant to surrender possession of the Premises on or before the Estimated Availability Date), cannot deliver possession of the Premises to Tenant by the Estimated Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be

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liable to Tenant for any loss or damage resulting therefrom. In that event, however, the Term of the Lease shall not commence until such commencement date as is determined pursuant to Paragraph 2(a). In such event, the Commencement Date and the Expiration Date shall be adjusted accordingly.

(c) The Premises shall be delivered by Landlord to Tenant in its "as-is, where-is condition, with all faults", but in "broom clean" condition. Tenant acknowledges that Landlord has not made any representation or warranty, express or implied, with respect to the condition of the Premises, the suitability or fitness of the Premises for the conduct of Tenant's Permitted Uses or for any other purposes, or the actual dimensions of the Premises. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use, that Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended use. In no event shall Landlord be liable for any defect in the Premises or for any limitations on the use of the Premises, except as expressly and specifically set forth in this Lease.

3. RENT; RENT ADJUSTMENTS; ADDITIONAL CHARGES FOR EXPENSES AND TAXES.

(a) MONTHLY BASE RENT AND ADDITIONAL CHARGES. Commencing on the Commencement Date and throughout the Term of this Lease, Tenant shall the monthly base rent specified in the Basic Lease Information, as adjusted pursuant to Paragraph 3(b) (as so adjusted from time to time, "Monthly Base Rent"), on the first day of each month, in advance, with the first month's Monthly Base Rent and Additional Charges for Expenses and Taxes (as defined below) due upon execution of this Lease, in lawful money of the United States (without any prior demand therefor and without deduction or offset whatsoever, except as expressly provided in Paragraphs 20 and 21) to Landlord or its Managing Agent at the address specified in the Basic Lease Information or to such other firm or to such other place as Landlord or its Managing Agent may from time to time designate in writing. In addition, Tenant shall pay to Landlord all charges and other amounts whatsoever as provided in this Lease ("Additional Charges") at the place where the Monthly Base Rent is payable, and Landlord shall have the same remedies for a Default in the payment of Additional Charges as for a Default in the payment of Monthly Base Rent. As used herein, the term "Rent" shall include all Monthly Base Rent and Additional Charges (including, without limitation, Additional Charges for Real Estate Taxes and Expenses pursuant to Paragraph 3(c) below, and Additional Charges pursuant to Paragraphs 6, 7(e), 8, 10(d) and 23). If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Monthly Base Rent and Additional Charges for such fractional month shall be prorated on a daily basis.

(b) ANNUAL ADJUSTMENTS IN MONTHLY BASE RENT. The Monthly Base Rent under Paragraph 3(a) shall be adjusted throughout the Term (including any Extension Term(s)) as provided in the Basic Lease Information under the heading "Monthly Base Rent Adjustment".

(c) ADDITIONAL CHARGES FOR EXPENSES AND TAXES.

(i) DEFINITIONS OF ADDITIONAL CHARGES. For purposes of this Paragraph 3(c), the following terms shall have the meanings hereinafter set forth:

(A) "TAX YEAR" shall mean each twelve (12) consecutive month period commencing January 1st of the calendar year during which the Commencement Date of this Lease occurs, provided that Landlord, upon notice to Tenant, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, Tenant's Share of Real Estate Taxes (as hereinafter defined) shall be equitably adjusted for the Tax Years involved in any such change.

(B) "TENANT'S SHARE" shall mean the percentage figure so specified in the Basic Lease Information.

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(C) "REAL ESTATE TAXES" shall mean all taxes, assessments and charges levied upon or with respect to the Project or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Project or such personal property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Project (provided, however, that any refunds of Real Estate Taxes paid by Tenant shall be credited against Tenant's further obligation to pay Real Estate Taxes during the Term or refunded to Tenant if received by Landlord within one year after the Expiration Date), service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease, or any other lease of space in the Building, or on the use or occupancy of the Building or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied or assessed against Landlord by the United

States of America, the State of California, or any political subdivision, public corporation, district or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. Real Estate Taxes shall not include franchise, transfer, inheritance or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax. Additionally, Real Estate Taxes shall not include any assessments or like charges to pay for any remediation of contamination from any Hazardous Substance (defined in Paragraph 40 hereof) existing at the Project as of the Commencement Date unless introduced in, on, under or about the Premises by Tenant or Tenant's employees, agents, contractors or invitees. Real Estate Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes; provided that such fees, costs and disbursements do not exceed the actual savings in Real Estate Taxes obtained by Tenant over the Term of the Lease. If any assessments are levied on the Project, Tenant shall have no obligation to pay more than that amount of annual installments of principal and interest that would become due during the Term had Landlord elected to pay the assessment in installment payments, even if Landlord pays the assessment in full.

(D) "EXPENSES" shall mean the total costs and expenses paid or incurred by Landlord in connection with the management, operation, maintenance and repair of the Project, including, without limitation (i) the cost of air conditioning, electricity, steam, heating, mechanical, ventilating, elevator systems and all other utilities, to the extent provided by Landlord, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of repairs and general maintenance and cleaning; (iii) the cost of fire, extended coverage, boiler, sprinkler, public liability, property damage, rent, earthquake (if Landlord elects to obtain it) and other insurance for the Project obtained by Landlord, or otherwise obtained by Landlord in connection with the Project, all including, without limitation, insurance premiums and any deductible amounts paid by Landlord, including, without limitation, the insurance required by Paragraph 10(f); (iv) fees, charges and other costs directly related to the operation of the Project (as distinct from the operation of the partnership which owns the Project), including management fees, consulting fees, legal fees and accounting fees, fees of all independent contractors engaged by Landlord directly related to the operation of the Project or reasonably charged by Landlord if Landlord performs management services in connection with the Project, (though the management fee shall not exceed the cap noted in the following paragraph); (v) the cost of any capital improvements made to the Project after the Commencement Date (excluding, however, any capital improvements required by Laws that are Tenant's responsibility under Paragraph 5, which shall be paid directly by Tenant pursuant to Paragraph 5), the cost of such capital improvements incurred by Landlord shall be amortized over the useful life of the capital item in question as determined in accordance with generally accepted accounting principles ("GAAP"), together with interest on the unamortized balance at the greater of (x) the rate paid

by Landlord on funds borrowed from an institutional lender for the purpose of constructing such capital improvements; or (y) 10% per annum; provided, however, the amount of the cost of capital improvements which may be included within Expenses pursuant to

this clause (v) shall be the greater of (I) the amount that would be payable pursuant to the foregoing amortization or (II) \$.02 per square foot of the Rentable Area of the Premises per month (and to the extent the amount under this clause (II) exceeds the amount that would be payable under clause (I), such excess shall be credited against the unamortized balance of the cost of capital improvements in the inverse order in which they would be payable by Tenant under clause (i)); and (vi) any other reasonable expenses of any other kind whatsoever reasonably incurred in managing, operating, maintaining and repairing the Project. Any "deductible" amounts relating to capital improvements required to be paid by Tenant hereunder in connection with any property or earthquake insurance policy carried by Landlord shall be amortized over the useful life of the restoration work to which such deductible amount relates in accordance with GAAP, in the same manner as other capital improvements that are included in Expenses as provided above.

Notwithstanding anything to the contrary herein contained, Expenses shall not include, and in no event shall Tenant have any obligation to pay for pursuant to this Paragraph 3 or Paragraph 7(a)7(b), (aa) any rent payable pursuant to a ground lease, and debt service (including, but without limitation, interest, principal and any impound payments) required to be made on any mortgage or deed of trust recorded with respect to all or any portion of the Project other than debt service and financing charges imposed pursuant to Paragraph 3(c) (i) (D) (v) above; (bb) depreciation; (cc) the portion of a management fee paid to Landlord or affiliate in excess of three percent (3%) of Monthly Base Rent and Additional Charges for Expenses and Taxes (excluding the management fee); (dd) costs occasioned by the fraud or willful misconduct under applicable laws of Landlord or its agents, servants, contractors, employees; (ee) costs for which Landlord has a right of and has received reimbursement from others; (ff) environmental pollution remediation related costs for which Landlord has indemnified Tenant pursuant to Paragraph 40(c); (gg) advertising or promotional expenditures; and (hh) leasing commissions. All costs and expenses shall be determined in accordance with GAAP which shall be consistently applied (with accruals appropriate to Landlord's business).

(E) "EXPENSE YEAR" shall mean each twelve (12) consecutive month period commencing January 1 of the calendar year during which the Commencement Date of the Lease occurs, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Expenses shall be equitably adjusted for the Expense Years involved in any such change.

(ii) PAYMENT OF REAL ESTATE TAXES. With reasonable promptness after Landlord has received the tax bills for any Tax Year, Landlord shall furnish Tenant with a statement (herein called "Landlord's Tax Statement") setting forth the amount of Real Estate Taxes for such Tax Year. Unless otherwise required pursuant to Paragraph 3(c) (v) below, Tenant shall pay to Landlord the full amount of said actual Real Estate Taxes no later than twenty (20) days prior to the due date of each installment of Real Estate Taxes. Notwithstanding the foregoing, Landlord shall have the right, upon the giving of written notice to Tenant, to require Tenant to pay the estimated amount of Real Estate Taxes; and if Landlord gives such notice, Tenant shall, commencing with the next succeeding calendar month, pay to Landlord as Additional Charges one-twelfth (1/12th) of the Real Estate Taxes for each Tax Year on or before the first day of each month during such Tax Year, in advance, in an amount reasonably estimated by Landlord and billed by Landlord to Tenant. Landlord shall have the right initially to determine monthly estimates and to revise such estimates from time to time. If the actual Real Estate Taxes for such Tax Year (as shown on Landlord's Tax Statement) exceed the estimated Real Estate Taxes paid by Tenant for such Tax Year, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual Real Estate Taxes within fifteen (15) days after the receipt of Landlord's Tax Statement, and if the total amount paid by Tenant for any such Tax Year shall exceed the actual Real Estate Taxes for such Tax Year, such excess

shall be credited against the next installment of Real Estate Taxes due from Tenant to Landlord hereunder or if the Term has ended it shall be returned to Tenant within thirty (30) days. If it has been determined that Tenant has overpaid Real Estate Taxes during the last year of the Lease Term, then Landlord shall reimburse Tenant for such overage on or before the thirtieth (30th) day following the Expiration Date. No delay by Landlord in providing Landlord's Tax Statement shall be deemed a default by Landlord or a waiver of Landlord's right to require payment of the actual or estimated sums of Real Estate Taxes.

(iii) PAYMENT OF INSURANCE COSTS. With reasonable promptness after Landlord has received an invoice for any fire, extended coverage, boiler, sprinkler, public liability, property damage, rent, earthquake (if Landlord elects to obtain it) and other insurance for the Project obtained by Landlord, or otherwise obtained by Landlord in connection with the Project, including, without limitation, the insurance required by Paragraph 10(f), Landlord shall furnish Tenant with a statement (herein called "Landlord's Insurance Statement") setting forth the amount of the premium for such insurance. Unless otherwise required pursuant to Paragraph 3(c)(v) below, Tenant shall pay to Landlord the full amount of said insurance premium no later than twenty (20) days prior to the due date of such insurance premium. Notwithstanding the foregoing, Landlord shall have the right, upon the giving of written notice to Tenant, to require Tenant to pay the estimated amount of Landlord's cost of insurance in monthly installments in accordance with the provisions of Paragraph 3(c)(iv) below.

(iv) PAYMENT OF EXPENSES. Commencing on the Commencement Date, Tenant shall pay to Landlord as Additional Charges one-twelfth (1/12th) of the Expenses (including insurance premiums if Landlord has made the election described in the last sentence of Paragraph 3(c)(iii) above) for each Expense Year on or before the first day of each month of such Expense Year, in advance, in an amount reasonably estimated by Landlord and billed by Landlord to Tenant, and Landlord shall have the right initially to determine monthly estimates and to revise such estimates from time to time. With reasonable promptness after the expiration of each Expense Year, Landlord shall furnish Tenant with a statement (herein called "Landlord's Expense Statement"), setting forth in reasonable detail the Expenses for such Expense Year. If the actual Expenses for such Expense Year exceed the estimated Expenses paid by Tenant for such Expense Year, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual Expenses within fifteen (15) days after the receipt of Landlord's Expense Statement, and if the total amount paid by Tenant for any such Expense Year shall exceed the actual Expenses for such Expense Year, such excess shall be credited against the next installment of the estimated Expenses due from Tenant to Landlord hereunder or if the Term has ended it shall be returned to Tenant within thirty (30) days. Any utility rebates for the Project which Landlord receives for payments made by Tenant shall be forwarded to Tenant so long as such rebate is received within one year following the Expiration Date or sooner termination of the Lease. If it has been determined that Tenant has overpaid Expenses during the last year of the Lease Term (including rebates of utilities applicable to Tenant), then Landlord shall reimburse Tenant for such overage on or before the thirtieth (30th) day following the Expiration Date.

(v) OTHER. To the extent any item of Real Estate Taxes or Expenses is payable by Landlord in advance of the period to which it is applicable (e.g. insurance and tax escrows required by Landlord's Lender), or to the extent that prepayment is customary for the service or matter, Landlord may (i) include such items in Landlord's estimate for periods prior to the date such item is to be paid by Landlord and (ii) to the extent Landlord has not collected the full amount of such item prior to the date such item is to be paid by Landlord, Landlord may include the balance of such full amount in a revised monthly estimate for Additional Charges. If the Commencement Date or Expiration Date shall occur on a date other than the first day of a Tax Year and/or Expense Year, Tenant's Share of Real Estate Taxes and Expenses, for the Tax Year and/or Expense Year in which the Commencement Date occurs shall

be prorated.

(vi) AUDIT. Within one hundred eighty (180) days after receipt of any Expense Statement or Tax Statement from Landlord, Tenant shall have the right to examine and copy Landlord's books and records relating to such Expense Statements and Tax Statements, or cause an independent audit thereof to be conducted by an accounting firm to be selected by Tenant and subject to the reasonable approval of Landlord. If the audit conclusively proves that Tenant has overpaid either Expenses or Real

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Estate Taxes, then Landlord shall reimburse Tenant within thirty (30) days for such overage together with interest on such overpayment at the Default Rate (as defined in 3(d) below), and if such overage exceeds five percent (5%) of the actual amount of Expenses or Real Estate Taxes paid by Landlord for the Tax or Expense Year covered by such audit, then Landlord shall bear the reasonable cost of such audit, up to a maximum cost of \$5,000. If Tenant fails to object to any such Expense Statement or Tax Statement or conduct an independent audit thereof within one hundred eighty (180) days after receipt thereof, such Expense Statement and/or Tax Statement shall be final and shall not be subject to any audit, challenge or adjustment. All information obtained through any audit by Tenant and any compromise, settlement or adjustment reached between Landlord and Tenant relative to the results of such audit shall be held in strict confidence by the Tenant.

(d) LATE CHARGES. Tenant recognizes that late payment of any Monthly Base Rent or Additional Charges will result in administrative expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if any Monthly Base Rent or Additional Charges remain unpaid five (5) days after such amount is due, the amount of such unpaid Monthly Base Rent or Additional Charges shall be increased by a late charge to be paid to Landlord by Tenant in an amount equal to four percent (4%) of the amount of the delinquent Monthly Base Rent or Additional Charges. In addition, any outstanding Monthly Base Rent, Additional Charges, late charges and other outstanding Rent amounts shall accrue interest at an annualized rate of the lesser of (i) the greater of 10% or The Federal Reserve Discount Rate plus 5%, until paid to Landlord, or (ii) the maximum rate permitted by law ("the Default Rate"). Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this Paragraph 3(d) in no way relieve Tenant of the obligation to pay Monthly Base Rent or Additional Charges on or before the date on which they are due, nor do the terms of this Paragraph 3(d) in any way affect Landlord's remedies pursuant to Paragraph 19 in the event any Monthly Base Rent or Additional Charges are unpaid after the date due.

4. RESTRICTIONS ON USE. Tenant shall not use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause or maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer the commission of any waste in, on or about the Premises.

#### 5. COMPLIANCE WITH LAWS.

(a) TENANT'S COMPLIANCE OBLIGATIONS. Tenant shall not use the Project or permit anything to be done in or about the Project which will in any way conflict with any present and future laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Project, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the parties hereto (collectively, "Laws"), and Tenant shall promptly, at its sole expense, maintain the Premises, any Alterations (as defined in Paragraph 6 below) permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all Laws. "Laws" shall include, without limitation, all Laws relating to health and safety (including, without limitation, the California Occupational Safety and Health Act of 1973 and the California Safe Drinking Water and Toxic Enforcement Act of 1986,

including posting and delivery of notices required by such Laws with respect to the Premises), disabled accessibility (including, without limitation, the Americans with Disabilities Act, 42 U.S.C. section 12101 et seq.), Hazardous Substances, and all present and future life safety, fire, sprinkler, seismic retrofit, building code and municipal code requirements; provided however, that Tenant's obligation to comply with Laws relating to Hazardous Substances is subject to the terms and conditions of Paragraph 40, and Tenant shall not be responsible for compliance with clean-up provisions of any Laws with respect to Hazardous Substances except to the extent of any release caused by the Tenant or any of its servants, employees, contractors, agents, licensees or invitees (collectively, including Tenant, the "Tenant Parties") or otherwise included in Tenant's indemnity contained in Paragraph 40. Notwithstanding the foregoing, Landlord, and not Tenant, shall be responsible for correcting any condition with respect to the exterior or structural portions of the Building (but not with respect to the interior of the Premises), which is in violation of applicable Laws (subject to Tenant's obligation to pay such costs to the extent they are included as Expenses under Paragraph 3(c)(i)(D) above), except to the extent such condition is caused by the negligent or intentional acts or omissions of the Tenant Parties, or such violation results from Tenant's particular

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use of the Premises, or such condition will be altered in connection with the installation of any Alterations. Any Alterations that are Tenant's responsibility pursuant to this Paragraph 5 shall be made in accordance with Paragraph 6 below, at Tenant's sole cost. The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided in this paragraph (subject to the limitations contained herein) is a material part of the bargained-for consideration under this Lease. Tenant's obligations under this Paragraph and under Paragraph 7(c) below shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises to the extent provided above, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, and the likelihood that the parties contemplated the particular Law involved.

(b) INSURANCE REQUIREMENTS. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the rate of any insurance upon the Project or any of its contents (unless Tenant agrees to pay for such increase) or cause a cancellation of any insurance on the Project or otherwise violate any requirements, guidelines, conditions, rules or orders with respect to such insurance. Tenant shall at its sole cost and expense promptly comply with the requirements of the Insurance Services Office (ISO), board of fire underwriters, or other similar body now or hereafter constituted relating to or affecting Tenant's use or occupancy of the Project (other than in situations where compliance involves repair, maintenance or replacement of items that Landlord is expressly required to repair, maintain or replace under this Lease).

(c) NO LIMITATION ON OBLIGATIONS. The provisions of this Paragraph 5 shall in no way limit Tenant's maintenance, repair and replacement obligations under Paragraph 7 or Tenant's obligation to pay Expenses under Paragraph 3(c). The judgment of any court of competent jurisdiction or the admission of Tenant in an action against Tenant, whether Landlord is a party thereto or not, that Tenant has so violated any such Law shall be conclusive of such violation as between Landlord and Tenant.

## 6. ALTERATIONS.

(a) Tenant shall not make or suffer to be made any additional alterations, additions or improvements ("Alterations") in, on or to the Premises or any part thereof without the prior written consent of Landlord. Failure of Landlord to give its approval within fifteen (15) calendar days after receipt of Tenant's written request for approval shall constitute disapproval by Landlord. Any Alterations in, on or to the Premises, except for Tenant's trade fixtures and movable furniture and equipment, shall be the property of Tenant during the Term and shall become Landlord's property at the end of the Term without compensation to Tenant. Landlord shall not unreasonably withhold or delay its consent to Alterations that (i) do not materially affect the structure of the

Building or its electrical, plumbing, HVAC, security or other systems, (ii) are not visible from the exterior of the Premises and do not otherwise affect the exterior appearance of the Building, (iii) are consistent with Tenant's Permitted Use hereunder; (iv) do not require any application to a political jurisdiction for rezoning, general plan amendment, variance, conditional use permit or architectural review approval, (v) will not interfere with the use and occupancy of any other portion of the Project by Landlord or by any other tenants or occupants or their invitees, or by any other party with the right to use any portion of the Project, (vi) comply with any ground lease, CC&Rs (including without limitation the CC&Rs described in EXHIBIT C) and Mortgages, and (vii) do not adversely affect the value or marketability of Landlord's reversionary interest upon termination or expiration of this Lease.

(b) If Landlord consents to the making of any Alterations by Tenant, the same shall be made by Tenant, at Tenant's sole cost and expense, in accordance with plans and specifications submitted by Tenant to Landlord concurrently with its request pursuant to Paragraph 6(a) and reasonably approved by Landlord, and any contractor or person selected by Tenant to make the same must first be reasonably approved in writing by Landlord. With respect to any Alterations that affect the structure of the Building, the Building Systems, or any portion of the Project outside the Premises, at Landlord's option the Alterations shall be made by Landlord, or by a contractor specified by Landlord, for Tenant's account and Tenant shall reimburse Landlord for the cost thereof (including a reasonable charge for Landlord's overhead) as an Additional Charge, within twenty (20) days after receipt of a statement from Landlord therefor.

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(c) Tenant shall reimburse Landlord upon demand for any reasonable out-of-pocket expenses incurred by Landlord in the review of any Alterations made by Tenant, including fees charged by Landlord's contractors or consultants to review plans and specifications, and such obligation shall be an Additional Charge. Landlord's consent to any Alterations shall not obligate Landlord to repair, maintain, insure or otherwise assume any responsibility or liability with respect to any such Alteration. In addition, notwithstanding Landlord's review, Tenant and not Landlord shall be responsible for compliance of the Alterations, and plans and specifications therefor, with all applicable Laws, and Landlord shall not be responsible for any omissions or errors therein.

(d) Upon the expiration or sooner termination of the Term, Tenant shall upon demand by Landlord, at Landlord's election either (i) at Tenant's sole cost and expense, forthwith and with all due diligence remove any Alterations made by or for the account of Tenant, designated by Landlord to be removed (provided, however, that upon the written request of Tenant prior to installation of such Alterations, Landlord shall advise Tenant at that time whether or not such Alterations must be removed upon the expiration or sooner termination of this Lease), and restore the Premises to substantially its original condition as of the Commencement Date, subject to normal wear and tear and the rights and obligations of Tenant concerning casualty damage pursuant to Paragraph 20 or (ii) pay Landlord the reasonable estimated cost thereof.

## 7. REPAIR AND MAINTENANCE.

### (a) LANDLORD'S OBLIGATIONS.

(i) Landlord shall maintain, repair and replace, except as provided in Paragraph 7(c), the exterior (excluding windows and window frames), roof structure (but not the roof membrane) and structural portions of the Building (including load bearing walls and foundations).

(ii) Landlord shall maintain, repair and replace the parking areas courtyards, sidewalks, entryways, lawns, fountains, landscaping and other similar facilities located in the Common Area.

All costs incurred by Landlord in connection with the foregoing obligations shall be payable by Tenant as Additional Charges in accordance with Paragraph 3(c) to the extent they are properly included in Expenses thereunder. Landlord's obligations under this Paragraph 7(a) with respect to any particular repair, replacement or maintenance requirement, shall not commence until Tenant notifies Landlord in writing of any circumstances which Tenant believes may trigger Landlord's obligations.



(b) TENANT'S OBLIGATIONS. Tenant shall maintain, repair and replace, at its sole cost and expense, all portions of the Premises which are not Landlord's obligations under Paragraph 7(a), including, without limitation, (i) the roof membrane, windows, and window frames; (ii) the building systems serving the Premises for electrical, mechanical, HVAC and plumbing and all controls appurtenant thereto, and any elevators in the Building (collectively, including elevators, "Building Systems"); and (iii) the interior portion of the Building, the Alterations, and any additional tenant improvements, alterations or additions installed by or on behalf of Tenant within the Premises. Tenant shall be responsible for the expense of installation, operation, and maintenance of its telephone and other communications cabling from the point of entry into the Building to the Premises and throughout the Premises, though Landlord shall have the right to perform such work on behalf of Tenant in Common Areas, provided Landlord performs such work in coordination with Tenant and its contractors in such a manner as will accommodate Tenant's reasonable objectives with respect thereto. The Premises shall at all times be maintained by Tenant in the condition of a first-class office building. Tenant's obligations under this Paragraph 7 include, without limitation, the replacement, at Tenant's sole cost and expense, of any portions of the Premises or Building Systems which are not Landlord's express responsibility under Paragraph 7(a), if it would be commercially prudent to replace, rather than repair, such portions of the Premises, regardless of whether such replacement would be considered a capital expenditure. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. In addition, Tenant hereby waives and releases its right to terminate this Lease under Section 1932(1) of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

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(c) ADDITIONAL OBLIGATIONS OF TENANT. The purpose of Paragraph 7(a) and 7(b) is to define the obligations of Landlord and Tenant to perform various repair and maintenance functions; the allocation of the costs therefor are covered under this Paragraph 7(c) and Paragraph 3. Tenant shall bear the full cost of repairs or maintenance interior or exterior, structural or otherwise, to preserve the Premises and the Building in good working order and first-class condition, arising out of (i) the existence, installation, use or operation of any Alterations or any of Tenant's trade fixtures or personal property, (ii) the moving of Tenant's property or fixtures in or out of the Building or Project or in and about the Premises (iii) the particular use or particular occupancy or manner of use or occupancy of the Premises by any Tenant Party; or (iv) except to the extent any claims arising from any of the foregoing are reimbursed by insurance carried by Landlord, are covered by the waiver of subrogation in Paragraph 11 or are otherwise provided for in Paragraph 20, the acts, omissions or negligence of any Tenant Parties.

(d) MAINTENANCE SERVICE CONTRACTS. In connection with Tenant's maintenance and repair obligations contained in this Paragraph 7, Tenant shall, at its own cost and expense, enter into regularly scheduled preventive maintenance service contracts with maintenance contractors approved by Landlord, in its reasonable discretion, for servicing all Building Systems, elevators and equipment within the Premises, and shall provide copies of such contracts and periodic maintenance reports to Landlord. At Landlord's option at any time in which Tenant is in Default hereunder, maintenance service contracts shall be prepaid on an annual basis. Each maintenance service contract shall specifically name Landlord as a third party beneficiary, with the right to receive copies of all notices delivered under such contract and the ability to exercise Tenant's rights thereunder, at Landlord's election, in connection with any cure of Tenant's default by Landlord, or any assumption by Landlord of Tenant's maintenance obligations with respect to Building Systems, pursuant to Paragraph 7(e) below.

(e) CURE RIGHTS. Tenant shall have a period of thirty (30) days from the date of written notice from Landlord within which to cure any failure to fulfill any of its obligations under this Paragraph 7; provided however, that if such failure is curable but cannot be cured within such thirty (30) day period, Tenant shall have such additional time as may be reasonably required to cure (not to exceed sixty (60) additional days) so long as Tenant commences such cure within such (30) day period and diligently prosecutes such cure to

completion. Landlord shall have the rights set forth in Paragraph 23 with respect to any failure of Tenant to perform its obligations under this Paragraph 7. In addition, Landlord may elect, by delivery of written notice to Tenant, to assume Tenant's maintenance obligations with respect to the Building Systems under item (ii) of Paragraph 7(b) if Tenant does not cure any breach of such obligations, or if Tenant has failed to perform such obligations more than once in any twelve month period (without benefit of cure periods) upon the second such failure. If Landlord assumes such obligations, all costs incurred by Landlord in connection therewith shall be included in Expenses payable by Tenant as Additional Charges in accordance with Paragraph 3(c). The remedies described in this paragraph are cumulative and in addition to any other remedies Landlord may have at law or under this Lease.

(f) NO ABATEMENT. Except to the extent any claims arising from any of the foregoing are reimbursed by rental abatement insurance proceeds actually received by Landlord, are covered by the waiver of subrogation in Paragraph 11 or are otherwise provided for in Paragraph 20, there shall be no abatement of Rent with respect to, and except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable for any injury to or interference with Tenant's business arising from, any repairs, maintenance, alteration or improvement in or to any portion of the Project, including the Premises, or in or to the fixtures, appurtenances and equipment therein.

8. LIENS. Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including without limitation by the payment of the claim giving rise to such lien or by the posting of a bond. All such sums paid by Landlord and all expenses incurred by Landlord in connection therewith shall be considered Additional Charges and shall be payable to Landlord by Tenant on demand with interest from the date incurred by Landlord at the Default Rate. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Premises, the Project and any other

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party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give written notice to Landlord at least fifteen (15) business days' prior to commencement of any construction on the Premises.

#### 9. ASSIGNMENT AND SUBLETTING.

(a) Except as otherwise provided in this Paragraph 9, Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively, "Assignment"), or permit the Premises to be occupied by anyone other than Tenant or sublet the Premises or any portion thereof (collectively, "Sublease"), without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld; provided, however, that Tenant shall have the right to enter into an Assignment or Sublease to any affiliate of Tenant pursuant to Paragraph 9(f) below or a Permitted Transfer pursuant to Paragraph 9(d) below. Without otherwise limiting the criteria upon which Landlord may withhold its consent to any proposed Sublease or Assignment, if Landlord withholds its consent where either (i) the creditworthiness of the proposed Sublessee or Assignee is not reasonably acceptable to Landlord, or (ii) the proposed Sublessee's or Assignee's use of the Premises is not in compliance with the Permitted Use as described in the Basic Lease Information, such withholding of consent shall be presumptively reasonable. If Landlord consents to the Sublease or Assignment, Tenant may thereafter enter into a valid Sublease or Assignment upon the terms and conditions set forth in this Paragraph 9.

(b) If Tenant desires at any time to enter into an Assignment of this Lease or a Sublease of the Premises or any portion thereof for which Landlord's consent is required, it shall first give written notice to Landlord of its desire to do so, which notice shall contain (i) the name of the proposed

assignee, subtenant or occupant; (ii) the name of the proposed assignee's, subtenant, or occupant's business to be carried on in the Premises; (iii) the terms and provisions of the proposed Assignment or Sublease; and (iv) such financial information as Landlord may reasonably request concerning the proposed assignee, subtenant or occupant.

At any time within fifteen (15) days after Landlord's receipt of the notice specified in Paragraph 9(b), Landlord may by written notice to Tenant elect to (i) consent to the Sublease or Assignment; or (ii) disapprove the Sublease or Assignment. In addition, Landlord may elect to terminate this Lease as to the portion of the Premises that is specified in such notice, with a proportionate abatement in Monthly Base Rent and Additional Charges for Expenses and Taxes, if such notice is with respect to (x) any proposed Assignment, or (y) any proposed Sublease and either (I) such Sublease has a term (including any renewal or extension options) that either is coterminous with the Term or expires within the last two years of the Term, or (II) after giving effect to such Sublease, the original Tenant will occupy less than fifty percent (50%) of the Rentable Area of the Premises. If Landlord elects to terminate the Lease as to a portion of the Premises pursuant to the immediately preceding sentence, Tenant shall at all times provide reasonable and appropriate access to such portion of the Premises and use of any common facilities within the Building. Promptly after request from Landlord, Tenant shall enter into any amendment to this Lease or other documentation reasonably requested by Landlord in connection with any such termination of this Lease as to a portion of the Premises. Failure by Landlord to either consent to or disapprove a proposed Assignment or Sublease within the fifteen (15) day time period specified above shall be deemed to be Landlord's disapproval thereof. At Tenant's option, Tenant may notify Landlord in writing if Tenant wishes to Assign or Sublease any portion of the Premises, prior to commencing negotiations for an Assignment or Sublease with another party, if such Assignment or Sublease would be subject to Landlord's termination right provided above (such notice being the "Availability Notice"), and Landlord shall have the option, by written notice to Tenant within fifteen (15) days after receiving any Availability Notice, to terminate this Lease with respect to the portion of the Premises as provided above. If Landlord declines or fails timely to elect to terminate this Lease with respect to such portion of the Premises, Tenant shall have the right, within one hundred twenty (120) days after the expiration of such fifteen (15) day period, to enter into an Assignment or Sublease with respect to the portion of the Premises designated in the Availability Notice, subject to Landlord's consent and the other provisions of this Paragraph 9, except that Landlord shall not have the further right to terminate with respect to such Assignment or Sublease. If Tenant fails to enter into an Assignment or Sublease within such one hundred twenty (120) day period, or upon expiration of any Sublease entered into within such one hundred twenty (120) day period, Landlord's rights under this Paragraph 9 to terminate the Lease with respect to the portion of the Premises upon any future proposed Sublease or Assignment shall revive. If Landlord consents to the Sublease or Assignment within fifteen (15) days

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after receipt of Tenant's notice as provided above, Tenant may thereafter within one hundred twenty (120) days after Landlord's consent, but not later than the expiration of said one hundred twenty (120) days, enter into such Assignment or Sublease of the Premises or portion thereof upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to Paragraph 9(b). However, Tenant shall pay to Landlord seventy-five percent (75%) of any rent or other consideration realized by Tenant under any and all Subleases in excess of the Monthly Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease(s)), including, without limitation, any sums paid for the sale or rental of any Alterations, after first deducting from such excess costs reasonably incurred for tenant improvements installed by Tenant (commensurate with a standard office build-out) to obtain the Sublease or Assignment in question, each of which are installed in that portion of the Premises which is the subject of the Sublease or Assignment and which unamortized costs shall be amortized on a straight line basis (without interest) over the term of the Sublease or Assignment in equal installments, and after deducting therefrom any customary brokers' commissions that Tenant has incurred in connection with such Sublease amortized on a straight line basis (without interest) over the term of the Sublease.

(c) No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this Paragraph 9 shall be void and, at the option of Landlord, shall constitute a material Default by Tenant under this Lease. The acceptance of Monthly Base Rent or Additional Charges by Landlord from a proposed assignee or sublessee shall not constitute the consent to such Assignment or Sublease by Landlord.

(d) The following shall be deemed a voluntary assignment of Tenant's interest in this Lease: (i) any dissolution, merger, consolidation, or other reorganization of Tenant; and (ii) if the capital stock of Tenant is not publicly traded, the sale or transfer to one person or entity stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Tenant's stock issued, outstanding and entitled to vote for the election of directors. Notwithstanding anything to the contrary contained in this Paragraph 9, Tenant may enter into any of the following transfers (a "Permitted Transfer") without Landlord's prior written consent: (1) Tenant may assign its interest in the Lease to a corporation, partnership, limited liability company, or limited liability partnership ("Transfer Entity") which results from a merger, consolidation or other reorganization, so long as the surviving Transfer Entity has a net worth immediately following such transaction that is equal to or greater than the net worth of Tenant as of the date immediately prior to such transaction; and (2) Tenant may assign this Lease to a Transfer Entity which purchases or otherwise acquires all or substantially all of the assets of Tenant, so long as such acquiring Transfer Entity has a net worth immediately following such transaction that is equal to or greater than the net worth of Tenant as of the date immediately prior to such transaction.

(e) Each assignee pursuant to an Assignment as provided in this Paragraph 9 shall assume all obligations of Tenant under this Lease, and shall be and remain liable jointly and severally with Tenant for the payment of Monthly Base Rent and Additional Charges, and for the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. No Assignment shall be binding on Landlord unless the assignee or Tenant shall deliver to Landlord a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the assignee satisfactory in substance and form to Landlord, consistent with the requirements of this Paragraph 9(e), but the failure or refusal of the assignee to execute such instrument of assumption shall not release or discharge the assignee from its liability as set forth above. Notwithstanding anything to the contrary in this Lease, no Sublease shall be binding on Landlord unless and until Landlord shall agree in writing following termination of this Lease to recognize such sublessee and such sublessee agrees in writing to attorn to Landlord on the terms and conditions of the sublease (including the obligations under this Lease to the extent that they relate to the portion of the Premises subleased), and any Sublease entered into by Tenant hereunder shall include an obligation by the sublessee to so attorn to Landlord if Landlord, in Landlord's sole discretion, elects to recognize such Sublease upon any termination of this Lease.

(f) Tenant shall have the right, without Landlord's consent and without triggering Landlord's rights under Paragraph 9(b), but with written notice to Landlord at least ten (10) days prior thereto, to enter into an

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Assignment of Tenant's interest in the Lease or a Sublease of all or any portion of the Premises to an Affiliate (as defined below) of Tenant, provided that (i) in connection with an Assignment that is not a Sublease, the Affiliate delivers to Landlord concurrent with such Assignment a written notice of the Assignment and an assumption agreement whereby the Affiliate assumes and agrees to perform, observe and abide by the terms, conditions, obligations, and provisions of this Lease arising from and after the effective date of the assignment; and (ii) the assignee or sublessee remains an Affiliate throughout the term of this Lease (and, in connection with an Assignment that is not a Sublease, the assumption agreement shall contain provisions consistent with the provisions of this subparagraph allowing Landlord to terminate this Lease at such time as the

entity is no longer an Affiliate of the original Tenant). If this Lease is assigned or sublet to an Affiliate and thereafter any circumstance occurs which causes such assignee or sublessee to no longer be an Affiliate of the assigning or subleasing Tenant, Tenant shall give written notice thereof to Landlord, which notice, to become effective, shall refer to Landlord's right to terminate this Lease pursuant to this subparagraph, in the event of an Assignment, or to cause Tenant to terminate the Sublease, in the event of a Sublease ("Affiliation Termination Notice"). Following occurrence of the circumstance giving rise to the discontinuation of such assignee or sublessee being an Affiliate ("Affiliate Termination") of the assigning or subleasing Tenant, Landlord shall be entitled to terminate this Lease in the event of an Assignment, or to cause Tenant to terminate the Sublease in the event of a Sublease, unless Landlord has given its prior written consent to such circumstance which consent shall not be unreasonably withheld by Landlord so long as, in the event of an Assignment, such assignee (after giving effect to such circumstance) has financial strength (as demonstrated by audited financial statements) equal to or greater than the assigning or subleasing Tenant (including its net worth) as of the date of execution of this Lease, or the assigning or subleasing Tenant executes a guaranty in usual form reasonably acceptable to Landlord (however, this does not imply that Tenant would be released without such guaranty). No Sublease or Assignment by Tenant made pursuant to this paragraph shall relieve Tenant of Tenant's obligations under this Lease. As used in this paragraph, the term "Affiliate" shall mean and collectively refer to a corporation or other entity which controls, is controlled by or is under common control with Tenant, by means of an ownership of either (aa) more than fifty percent (50%) of the outstanding voting shares of stock or partnership or other ownership interests, or (bb) stock, or partnership or other ownership interests, which provide the right to control the operations, transactions and activities of the applicable entity.

#### 10. INSURANCE AND INDEMNIFICATION.

(a) Except to the extent caused by the negligence or willful misconduct of Tenant Parties or Tenant's breach of this Lease, Landlord shall indemnify and hold Tenant harmless from and defend Tenant against any and all claims or liability for any injury or damage to any person or property including any reasonable attorney's fees (but excluding any consequential damages or loss of business) occurring in, on, or about the Project to the extent such injury or damage is caused by the gross negligence or willful misconduct of: (i) Landlord; or (ii) Landlord's agents, servants, contractors or employees (collectively, together with Landlord, "Landlord Parties"), provided, however, that in no event shall Landlord be liable to Tenant for any losses arising from any interruption of Tenant's business, or for lost profits, or for charges or expenses which continue but would have been earned if the business had gone on without interruption, or for any other loss, claim, cost, expense or damage which would be covered by a standard policy of business interruption insurance, even if such lost profits, charges, expenses, losses, claims, costs or damages caused by the gross negligence or willful misconduct of Landlord's agents, servants, contractors or employees.

(b) Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord Parties for any injury or damage to any person or property in or about the Premises by or from any cause whatsoever (other than the gross negligence or willful misconduct of Landlord Parties), and without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, basement, or other portion of the Premises or the Building, or caused by gas, fire, oil, electricity, or any cause whatsoever, in, on, or about the Premises, the Project or any part thereof (other than that caused by the gross negligence or willful misconduct of Landlord Parties); provided, however, that in no event shall Landlord be liable to Tenant for any losses arising from any interruption of Tenant's business, or for lost profits, or for charges or expenses which continue but would have been earned if the business had gone on without interruption, or for any other loss, claim, cost, expense or damage which would be covered by a standard policy of business interruption insurance, even if caused by the gross negligence or willful misconduct of Landlord's agents, servants, contractors or employees.

installed by Tenant or Tenant's personal property located within the Premises (except as provided in Paragraph 10(f) below). Tenant shall be required to maintain the insurance described in Paragraph 10(d) below during the Term.

(c) Except to the extent caused by the gross negligence or willful misconduct of Landlord Parties, Tenant shall indemnify and hold Landlord harmless from and defend Landlord against any and all claims or liability for any injury or damage to any person or property whatsoever: (i) occurring in or on the Premises; or (ii) occurring in, on, or about any other portion of the Project to the extent such injury or damage shall be caused by the negligence or willful misconduct by the Tenant Parties. Tenant further agrees to indemnify and hold Landlord harmless from, and defend Landlord against, any and all claims, losses, or liabilities (including damage to Landlord's property) arising from (x) any breach of this Lease by Tenant, (y) any matter referred to in Paragraph 10(g), and/or (z) the conduct of any work or business of Tenant Parties in or about the Project, including, but not limited to any release, discharge, storage or use of any Hazardous Substance. In the event of a discrepancy between the terms of this paragraph and the terms of Paragraph 40 of the Lease concerning Hazardous Substance liability, the latter shall control. Notwithstanding the foregoing, however, Tenant shall so indemnify, hold harmless and defend Landlord with respect to losses arising from any interruption of Tenant's business, or for lost profits, or for charges or expenses which continue but would have been earned if the business had gone on without interruption, or for any other loss, claim, cost, expense or damage which would be covered by a standard policy of business interruption insurance, even if such losses resulted from the gross negligence or willful misconduct of Landlord's agents, servants, contractors or employees.

(d) Tenant shall procure at its cost and expense and keep in effect during the Term the following insurance:

(i) Commercial general liability insurance on an occurrence form, including contractual liability, with a minimum combined single limit of liability of Three Million Dollars (\$3,000,000). Such insurance shall name Landlord, any Mortgagee, any ground lessor, and such other parties as Landlord may request as additional insureds, shall specifically include the liability assumed hereunder by Tenant, and shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing and applicable insurance in force for or on behalf of Landlord, and shall provide that Landlord shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage. The limits of such insurance shall not limit the liability of Tenant hereunder, and Tenant is responsible for ensuring that the amount of liability insurance carried by Tenant is sufficient for Tenant's purposes.

(ii) Intentionally Omitted;

(iii) "Special" (also known as "all risk") property insurance (including, without limitation, boiler and machinery (if applicable); sprinkler damage, vandalism and malicious mischief) on all of Tenant's personal property. Such insurance shall be in an amount equal to full replacement cost of the aggregate of the foregoing and shall provide coverage comparable to the coverage in the standard ISO All Risk form, when such form is supplemented with the coverages required above;

(iv) Worker's compensation insurance with limits as may be required by law.

(v) Such other insurance as may be required by Laws, or by Landlord to the extent it is commercially reasonable for tenants to be required to carry such other insurance under similar leases with respect to similar property in similar locations.

Insurance required under this Paragraph 10(d) shall be in companies rated "A"X or better in "Best's Insurance Guide." Tenant shall deliver copies of policies of such insurance and certificates naming the additional insureds thereof to Landlord on or before the Commencement Date, and thereafter at least thirty (30) days before the expiration dates of expiring policies; and, in the event Tenant shall fail to procure such insurance, or to deliver such

policies or certificates, Landlord may, at its option after written notice to Tenant, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Charges within five (5) days after delivery to Tenant of bills therefor.

(e) The provisions of this Paragraph 10 shall survive the expiration or termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

(f) Landlord shall maintain insurance on the Project, including the Building, and any Alterations installed in the Premises by Tenant at its expense to the extent Tenant provides Landlord with all information reasonably required by Landlord or its insurer in connection therewith (with the entire cost of any such insurance on Alterations to be payable directly by Tenant to Landlord as an Additional Charge, including the incremental cost to add such insurance to Landlord's policies and any deductibles payable with respect to such Alterations), against fire and risks covered by "special" coverage (also known as "all risk") (excluding earthquake and flood, though Landlord, at its sole option, may include this coverage) on a 100% of "replacement cost" basis (though reasonable deductibles may be included under such coverage). Landlord's insurance shall also have a building ordinance provision and shall provide for rental interruption insurance covering a period of twelve (12) full months. In no event shall Landlord be deemed a co-insurer under such policy. Landlord shall also maintain commercial general liability insurance on an occurrence basis in amounts not less than Three Million Dollars (\$3,000,000) per occurrence with respect to bodily injury or death and property damage in the Project. Notwithstanding the foregoing obligations of Landlord to carry insurance, Landlord may modify the foregoing coverages if and to the extent it is commercially reasonable to do so. Landlord agrees to provide Tenant, upon written request, with certificates of insurance evidencing the foregoing coverages. Tenant acknowledges that, notwithstanding any provision of this Paragraph 10(f) or any other provision of this Lease, Landlord currently intends to carry earthquake insurance on the Project during the Term of this Lease.

(g) Tenant acknowledges that even if Landlord installs and operates security cameras or other security equipment and/or provides any other services that could be construed as being intended to enhance security, Landlord shall have no obligation to Tenant or to any of Tenant's Parties for any damage, claim, loss or liability related to any claim that Landlord had a duty to provide security or that the equipment or services provided by Landlord were inadequate, inoperative or otherwise failed to provide adequate security. Any such claim made against Landlord by any employee, customer or invitee of Tenant shall be included within Tenant's obligation of indemnity and defense set forth in Paragraph 10(c) above.

11. WAIVER OF SUBROGATION. Notwithstanding anything to the contrary in this Lease, the parties hereto release each other (including Landlord Parties and Tenant Parties) and their respective agents, employees, successors, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk (i) which is actually insured against, to the extent of receipt of payment under such policy (unless the failure to receive payment under any such policy results from a failure of the insured party to comply with or observe the terms and conditions of the insurance policy covering such liability, in which event, such release shall not be so limited), (ii) which is required to be insured against under this Lease, without regard to the negligence or willful misconduct of the entity so released, or (iii) which would normally be covered by the standard form of "special" or "all risk" coverage property insurance. Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, and other property insurance maintained by either of them at any time during the Term insuring or covering the Building, the Premises, or the Project or any portion thereof of its contents therein, a waiver of all rights of subrogation which the insurer of one party might otherwise, if at all, have against the other party and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

## 12. SERVICES AND UTILITIES.

(a) Landlord shall provide the maintenance and repairs described in Paragraph 7(a), except for damage occasioned by the act or omission of Tenant or for which Tenant is responsible pursuant to Paragraph 10(c), which damage shall be repaired by Landlord at Tenant's expense.

(b) Subject to the provisions elsewhere herein contained and to the Rules and Regulations, Tenant shall be responsible for arranging for, and direct payment of any and all cost of, garbage pickup, recycling, janitorial, security, transportation management programs, water, electricity, gas, telephone, cable and digital services, and Tenant shall provide the maintenance, repair and replacement of Building Systems in connection with such utilities and services, and Tenant shall provide the maintenance, repair and services as described in Paragraph 7(b). Landlord shall cooperate with Tenant's efforts to arrange all such services. If Landlord assumes Tenant's maintenance obligations with respect to the Building Systems pursuant to Paragraph 7(e), Tenant shall cooperate fully with Landlord and abide by all the reasonable regulations and requirements that Landlord may prescribe for the proper functioning and protection of the Building Systems.

(c) Tenant will not without the written consent of Landlord, which consent shall not be unreasonably withheld or delayed, use any apparatus or device in the Premises which, when used, puts an excessive load on the Building or its structure or systems, including, without limitation, electronic data processing machines, punch card machines and machines using excess lighting or voltage in excess of the amount for which the Building is designed.

(d) Landlord shall not be in default hereunder, nor be deemed to have evicted Tenant, nor be liable for any damages directly or indirectly resulting from, nor shall the rental herein reserved be abated, except as expressly provided for in the last sentence of this paragraph, by reason of (i) the installation, use or interruption of use of any equipment in connection with the foregoing utilities and services; (ii) failure to furnish or delay in furnishing any services to be provided by Landlord when such failure or delay is caused by Acts of God or the elements, labor disturbances of any character, any other accidents or other conditions beyond the reasonable control of Landlord, or by the making of repairs or improvements to the Premises or to the Building (except in the case of Landlord's gross negligence or willful misconduct); or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or the Project. Furthermore, Landlord shall be entitled to cooperate with the mandatory requirements of national, state or local governmental agencies or utilities suppliers in connection with reducing energy or other resources consumption. If the Premises become unsuitable for Tenant's use as a consequence of cessation of gas and electric utilities or other services provided to the Premises resulting from a casualty covered by Landlord's insurance, then Tenant's Monthly Base Rent and Additional Charges shall abate during the period of time in which Tenant cannot occupy the Premises for the Permitted Uses, but only to the extent of rental abatement insurance proceeds received by Landlord.

13. TENANT'S CERTIFICATES. Tenant, at any time and from time to time, within ten (10) days from receipt of written notice from Landlord, will execute, acknowledge and deliver to Landlord and, at Landlord's request, to any prospective tenant, purchaser, ground or underlying lessor or mortgagee of any part of the Project any other party acquiring an interest in Landlord, a certificate of Tenant substantially in the form attached as EXHIBIT E and also containing any other information that may reasonably be required by any of such persons. It is intended that any such certificate of Tenant delivered pursuant to this Paragraph 13 may be relied upon by Landlord and any prospective tenant, purchaser, ground or underlying lessor or mortgagee of any part of the Project, or such other party.

14. HOLDING OVER. If Tenant (directly or through any successor-in-interest of Tenant) remains in possession of all or any portion of the Premises after the expiration of the Term or the termination of this Lease with the written consent of Landlord, such continued possession shall be construed to be a tenancy from month to month at one hundred twenty-five percent (125%) of the Monthly Base Rent payable in the last full month prior to such termination or expiration (and shall be increased in accordance with Paragraph 3(b)), together with an amount estimated by Landlord for the monthly Additional Charges for Expenses and Taxes payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable. If Tenant (directly or through any successor-in-interest of Tenant) remains in possession



of all or any portion of the Premises after the expiration of the Term or the termination of this Lease without the written consent of Landlord, Tenant's continued possession shall be on the basis of a tenancy at the sufferance of Landlord. In such event, Tenant shall continue to comply with or perform all the terms and obligations of Tenant under this Lease, except that the Monthly Base Rent during Tenant's holding over shall be the greater of the then fair market rent for the Premises (as reasonably determined by

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Landlord) or one hundred fifty percent (150%) of the Monthly Base Rent and Additional Charges for Expenses and Taxes payable in the last full month prior to the termination or expiration of this Lease (and shall be increased in accordance with Paragraph 3(b)). In addition to Rent, Tenant shall pay Landlord for all damages proximately caused by reason of the Tenant's retention of possession. Landlord's acceptance of Rent after the expiration of the Term or termination of the Term of this Lease shall not constitute a renewal of this Lease, and nothing contained in this provision shall be deemed to waive Landlord's right of re-entry or any other right hereunder or at law. Tenant acknowledges that, in Landlord's marketing and re-leasing efforts for the Premises, Landlord is relying on Tenant's vacation of the Premises on the Expiration Date. Accordingly, Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, liabilities, losses, costs, expenses and damages arising or resulting directly or indirectly from Tenant's failure to timely surrender the Premises, including (i) any loss, cost or damages suffered by any prospective tenant of all or any part of the Premises, and (ii) Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of all or any portion of the Premises by reason of such failure of Tenant to timely surrender the Premises.

15. SUBORDINATION. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, 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 all or any portion of the Project, (ii) any CC&Rs (including without limitation the CC&Rs described in EXHIBIT C), and (iii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which all or any portion of the Project, ground leases or underlying leases, or Landlord's interest or estate in any of said items, is specified as security (any of the foregoing, a "Mortgage", and the beneficiary or mortgagee under any of the foregoing, a "Mortgagee"). Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such Mortgages to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any Mortgage is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord at the option of such successor in interest. Notwithstanding anything to the contrary contained herein, this Lease shall not be subject or subordinate to any ground or underlying lease or to any Mortgage, unless the ground lessor or Mortgagee executes a reasonable recognition and non-disturbance agreement which provides that Tenant shall be entitled to continue in possession of the Premises on the terms and conditions of this Lease if and for so long as Tenant fully performs all of its obligations hereunder. Landlord and Tenant covenant and agree to cooperate in efforts to obtain a mutually acceptable form of subordination, non-disturbance and attornment agreement from Landlord's current Mortgagee, and Tenant covenants and agrees to execute and deliver upon demand by Landlord and in the form requested by Landlord and reasonably acceptable to Tenant (Tenant has approved the form of the subordination, non-disturbance and attornment agreement attached as EXHIBIT F, without limiting Tenant's future approval of any additional or substitute form), any customary additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such Mortgage. Tenant shall execute, deliver and record any such documents within ten (10) days after Landlord's written request.

16. RULES AND REGULATIONS. Tenant shall faithfully observe and comply with the rules and regulations attached to this Lease as EXHIBIT D and all reasonable modifications thereof and additions thereto from time to time put into effect by Landlord. Landlord shall not be responsible for the nonperformance by any other Tenant or occupant of the Building or the Project of any said rules and regulations. In the event of an express and direct conflict

between the terms, covenants, agreements and conditions of this Lease and those set forth in the rules and regulations, as modified and amended from time to time by Landlord, this Lease shall control.

17. RE-ENTRY BY LANDLORD. Landlord reserves and shall at all reasonable times, upon reasonable prior notice (except in the case of an emergency), and subject to Tenant's reasonable security precautions and the right of Tenant to accompany Landlord at all times, have the right to re-enter the Premises to inspect the same, to supply janitor service and any other service to be provided by Landlord to Tenant hereunder (unless Tenant is supplying such service), to show the Premises to prospective purchasers, Mortgagees or tenants (as to prospective tenants, only during the last eighteen (18) months of the Term), to post notices of nonresponsibility or as otherwise required or allowed by this Lease or by law, and to alter, improve or repair the Premises and any portion of the Building and may for that purpose erect, use, and maintain scaffolding, pipes, conduits, and other necessary

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structures in and through the Premises where reasonably required by the character of the work to be performed. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising from Landlord's entry and acts pursuant to this paragraph and Tenant shall not be entitled to an abatement or reduction of Monthly Base Rent or Additional Charges if Landlord exercises any rights reserved in this paragraph. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, except to the extent caused by Landlord's gross negligence or willful misconduct. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, or special security areas (designated in advance), and Landlord shall have the right to use any end all means which Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portion thereof obtained by Landlord by any of said means, or otherwise, shall not under any emergency circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof. Landlord shall use commercially reasonable efforts during re-entry to not unreasonably interfere with Tenant's use of the Premises or its business conducted therein.

18. INSOLVENCY OR BANKRUPTCY. The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment of Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization or other debtor relief proceedings, whether now existing or hereafter amended or enacted, shall at Landlord's option constitute a breach of this Lease by Tenant (provided that, with respect to a petition in bankruptcy, or receiver attachment, or other remedy pursued by a third party, such event shall not constitute a breach of this Lease so long as it is discharged within sixty (60) days). Upon the happening of any such event or at any time thereafter, this Lease shall terminate five (5) days after written notice of termination from Landlord to Tenant. In no event shall this Lease be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

19. DEFAULT.

(a) The failure to perform or honor any covenant, condition or representation made under this Lease shall constitute a "Default" hereunder by Tenant upon expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of five (5) days from the date of written notice from Landlord (which notice shall be in lieu of and not in addition to the notice required by Section 1161 of the California Code of Civil Procedure) within which to cure any failure to pay Monthly Base Rent or Additional Charges; provided, however, that Landlord shall not be required to provide such notice more than two (2) times during any two (2) year period during the Term with respect to

non-payment of Monthly Base Rent or Additional Charges, the third such non-payment constituting Default without requirement of notice. Tenant shall have a period of thirty (30) days from the date of receipt of written notice from Landlord within which to cure any other Default under this Lease; provided, however, that with respect to any curable Default other than the payment of Monthly Base Rent or Additional Charges that cannot reasonably be cured within thirty (30) days, the cure period shall be extended for an additional period of time reasonably required to cause such cure if Tenant commences to cure within thirty (30) days from Landlord's notice and continues to prosecute diligently the curing thereof, provided that such cure period shall in no event extend beyond ninety (90) days after Landlord's notice. Notwithstanding the foregoing, (i) if a different cure period is specified elsewhere in this Lease with respect to any specific obligation of Tenant, such specific cure period shall apply with respect to a failure of such obligation in lieu of, and not in addition to, the cure period provided in this Paragraph 19(a); and (ii) the cure periods specified in Paragraphs 7(e) and 23 shall apply with respect to Landlord's rights to cure Tenant's failure to perform pursuant to Paragraphs 7(e) and 23, respectively. Upon a Default of this Lease by Tenant, Landlord shall have the following rights and remedies in addition to any other rights or remedies available to Landlord at law or in equity:

(i) The rights and remedies provided by California Civil Code, Section 1951.2, including but not limited to, recovery of the worth at the time of award of the amount by which the unpaid

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Monthly Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that the Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of said Section 1951.2;

(ii) The rights and remedies provided by California Civil Code, Section 1951.4, that allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Monthly Base Rent and Additional Charges as they become due, for so long as Landlord does not terminate Tenant's right to possession; provided, however, if Landlord elects to exercise its remedies described in this Paragraph 19(a)(ii) and Landlord does not terminate this Lease, and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises at such time as Tenant is in Default, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's rights to possession;

(iii) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law;

(iv) If Landlord elects to terminate this Lease, the right and power to enter the Premises and remove therefrom all persons and property and, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply such proceeds therefrom pursuant to applicable California law.

(b) Landlord shall have a period of thirty (30) days from the date of written notice from Tenant within which to cure any default of Landlord under this Lease; provided, however, that with respect to any default that cannot reasonably be cured within thirty (30) days, the default shall not be deemed to be uncured if Landlord commences to cure within thirty (30) days from Tenant's notice and continues to prosecute diligently the curing thereof. Tenant agrees to deliver to any Mortgagee a copy of any Notice of Default served upon the Landlord in the manner prescribed by Paragraph 26 hereof, provided that prior to such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of such Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee shall have an additional thirty (30) days (provided that Tenant notifies Mortgagee concurrently with Tenant's notice to Landlord at the beginning of Landlord's

thirty (30) day period; otherwise Mortgagee shall have sixty (60) days from the date on which it is noticed) within which to cure such default or if such default cannot be cured within that time, then such additional time as may be reasonably necessary to cure such default shall be granted if within such applicable period Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued.

## 20. DAMAGE BY FIRE, ETC.

(a) RESTORATION OR TERMINATION. If the Premises or the Building are damaged by fire or other casualty, Landlord shall forthwith repair the same, provided that such repairs can be made within one hundred eighty (180) days after the date of such damage under the laws and regulations of the federal, state and local governmental authorities having jurisdiction thereof. In such event, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Monthly Base Rent and Additional Charges while such repairs to be made hereunder by Landlord are being made. Such reduction of Monthly Base Rent and Additional Charges, if any, shall be based upon the greater of (i) the proportion that the area of the Premises rendered untenable by such damage bears to the total area of the Premises; or (ii) the extent to which such damage and the making of such repairs by Landlord shall interfere with the business carried on by Tenant in the Premises, and shall be limited to the extent of rental abatement insurance proceeds actually received by Landlord under Landlord's casualty insurance policy. Within thirty (30) days after the date of such damage, Landlord shall notify Tenant whether or not in Landlord's reasonable opinion such repairs can be made within one hundred eighty

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(180) days after the date of such damage and Landlord's reasonable estimate of the time needed for such repairs. If such repairs cannot be made within one hundred eighty (180) days from the date of such damage, Landlord shall within thirty (30) days after the date of such damage elect either to: (i) notify Tenant of Landlord's intention to repair such damage and diligently prosecute such repairs, in which event this Lease shall continue in full force and effect and the Monthly Base Rent and Additional Charges shall be reduced as provided herein; or (ii) notify Tenant of Landlord's election to terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after such notice is given and this Lease shall terminate on the date specified in such notice. If Landlord notifies Tenant that restoration or repair of the Premises will take more than one hundred eighty (180) days, Tenant shall have a right to terminate the Lease within fifteen (15) days following receipt of Landlord's notice, by providing Landlord with written notice of its election to do so. In such event (and also in the event Landlord terminates the Lease pursuant to the immediately preceding sentence), Tenant shall have no liability for payment of the deductible under Landlord's insurance relating to such damage. In case of termination by either event, the Monthly Base Rent and Additional Charges shall be reduced by a proportionate amount based upon the extent to which such damage interfered with the business carried on by Tenant in the Premises, and Tenant shall pay such reduced Monthly Base Rent and Additional Charges up to the date of termination. Landlord agrees to refund to Tenant any Monthly Base Rent and Additional Charges previously paid for any period of time subsequent to such date of termination. The repairs to be made hereunder by Landlord shall not include, and Landlord shall not be required to repair, any damage by fire or other cause to the property of Tenant or any repairs or replacements of any paneling, decorations, railings, floor coverings or any alterations, additions, fixtures or improvements installed on the Premises by or at the expense of Tenant; provided, however, that to the extent Landlord's insurance policies cover any Alterations pursuant to Paragraph 10(f), Landlord shall make available to Tenant any available insurance proceeds with respect to any damage or destruction that affects such Alterations, after deducting therefrom the cost, if any, to Landlord for the recovery of such proceeds and/or of any repair to the Building or Premises or Project for which Landlord is responsible hereunder, in order for Tenant to repair and restore such Alterations, pursuant to disbursement procedures established by Landlord and/or any Mortgagee. Tenant hereby waives the provisions of Section 1932.2, and Section 1933.4, of the Civil Code of California. Notwithstanding anything contained herein to the contrary, if a

Major Casualty (as defined below) occurs with respect to any portion of the Building, and the net insurance proceeds obtained as a result of such casualty are ninety percent (90%) or a lesser percentage of the cost of restoration, rebuilding or replacement, then Landlord shall not be obligated to undertake such restoration, rebuilding or replacement unless Landlord elects to do so in writing, provided that Landlord's election not to restore shall be deemed Landlord's election to terminate. For the purpose of this Lease, a "Major Casualty" shall mean a casualty that renders unusable twenty percent (20%) or more of the Net Rentable Area of the Building or which materially adversely affects the use of such Building.

(b) CASUALTY AT END OF TERM. Notwithstanding anything to the contrary contained in this Lease, if during the twelve (12) months prior to the expiration of the Term, either of the Building or a substantial portion thereof are damaged or destroyed by fire or other casualty, either Tenant or Landlord shall have the option to terminate this Lease as of the date of such damage or destruction by written notice to the other party given within thirty (30) days after such damage or destruction, in which event Landlord shall make a proportionate refund to Tenant of such Rent as may have been paid in advance. For purposes of this paragraph, a "substantial portion" shall mean fifty percent (50%) of the Building.

(c) UNINSURED CASUALTY. Notwithstanding Paragraph 20(a), and subject to the termination right in Paragraph 20(b), in the event of a total or partial destruction of the Premises (i) by a casualty of a type not required to be insured against by Landlord under the terms of this Lease, or (ii) under circumstances where Landlord has been required by any Mortgagee to utilize substantially all of the insurance proceeds to pay down the Mortgage, which destruction exceeds five percent (5%) of the replacement cost of the Building, this Lease shall automatically terminate, unless (x) Landlord elects to reconstruct the Building, and (y) the damage can be reconstructed within one hundred eighty (180) days after the date of such damage. If Landlord elects to reconstruct, the cost incurred by Landlord for such reconstruction shall be amortized over the useful life of the Building and such amortization shall be reimbursed by Tenant to Landlord as an Additional Charge together with interest at the Default Rate; provided, however, that Tenant shall not be obligated to pay for any portion of the useful life of the Building which extends beyond the Expiration Date.

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21. EMINENT DOMAIN. If any part over fifteen percent (15%) of the Premises shall be taken or appropriated under the power of eminent domain or conveyed in lieu thereof, Tenant shall have the right to terminate this Lease at its option. In such event, Landlord shall receive (and Tenant shall assign to Landlord upon demand from Landlord) any income, rent, award or any interest therein which may be paid in connection with the exercise of such power of eminent domain, and Tenant shall have no claim against Landlord for any part of sum paid by virtue of such proceedings, whether or not attributable to the value of the unexpired term of this Lease except that Tenant shall be entitled to petition the condemning authority for the following: (i) the then unamortized cost of any Alterations paid for by Tenant from its own funds (as opposed to any allowance, including the Tenant Allowance, provided by Landlord); (ii) the value of Tenant's trade fixtures; (iii) Tenant's relocation costs; and (iv) Tenant's goodwill, loss of business and business interruption. If a part of the Premises shall be so taken or appropriated or conveyed and neither party hereto shall elect to terminate this Lease and the Premises have been damaged as a consequence of such partial taking or appropriation or conveyance, Landlord shall restore the Premises continuing under this Lease at Landlord's cost and expense; provided, however, that Landlord shall not be required to repair or restore any injury or damage to the property of Tenant or to make any repairs or restoration of any Alterations installed on the Premises by or at the expense of Tenant. Thereafter, the Monthly Base Rent and Additional Charges to be paid under this Lease for the remainder of the Term shall be proportionately reduced, such that thereafter the amounts to be paid by Tenant shall be in the ratio that they are of the portion of the Premises not so taken bears to the total area of the Premises prior to such taking. Notwithstanding anything to the contrary contained in this Paragraph 21, if the temporary use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Monthly Base Rent and

Additional Charges payable hereunder by Tenant during the Term. In the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the Term, and Landlord shall be entitled to receive that portion of any award which represents the cost of restoration of the Premises and the use and occupancy of the Premises after the end of the Term. If such temporary taking is for a period longer than two hundred and seventy (270) days and unreasonably interferes with Tenant's use of the Premises or the Common Area, then Tenant shall have the right to terminate the Lease. Landlord and Tenant understand and agree that the provisions of this Paragraph 21 are intended to govern fully the rights and obligations of the parties in the event of a Taking of all or any portion of the Premises. Accordingly, the parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

22. SALE BY LANDLORD. If Landlord sells or otherwise conveys its interest in the Premises, Landlord shall be relieved of its obligations under the Lease from and after the date of sale or conveyance (including the obligations of Landlord under Paragraph 40), only when the successor assumes in writing the obligations to be performed by Landlord on and after the effective date of the transfer, whereupon Tenant shall attorn to such successor.

23. RIGHT OF LANDLORD TO PERFORM. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Monthly Base Rent or Additional Charges. If Tenant shall default in the payment of any sum of money, other than Monthly Base Rent or Additional Charges, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder (including, without limitation, Tenant's obligation to maintain and repair the Premises and Building Systems pursuant to Paragraph 7(b)), and either (i) such failure continues, and Tenant does not commence cure of such failure, for ten (10) days after notice thereof by Landlord as provided in Paragraph 19(a) (except in the event of emergency, when no cure period shall be required but Landlord shall make reasonable good faith efforts to notify Tenant prior to commencing such emergency cure), or (ii) having commenced such cure Tenant does not diligently prosecute the curing thereof, or (iii) if Landlord is, in Landlord's reasonable business judgment, in a better position to accomplish such cure or can accomplish such cure in a more efficient or cost-effective manner than Tenant, or (iv) if a default under any Mortgage is, in Landlord's reasonable judgment, likely to occur due to Tenant's failure to cure such failure in a timely manner, then in any such situation Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease. All sums so paid and costs so incurred by Landlord, together with interest thereon at the Default Rate

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from the date Landlord makes such payment or incurs such cost, shall be payable as Additional Charges to Landlord within thirty (30) days after receipt by Tenant of a bill or statement therefor.

#### 24. SURRENDER OF PREMISES.

(a) At the end of the Term or any renewal thereof or other sooner termination of this Lease, Tenant will peaceably deliver to Landlord possession of the Premises, together with all improvements or additions upon or belonging to Landlord, by whomsoever made, in substantially the same condition as received, or first installed, subject to the terms of Paragraphs 6, 21 and 40, subject to normal wear and tear and the rights and obligations of Tenant concerning casualty damage pursuant to Paragraph 20. Tenant may, upon the termination of this Lease, remove all movable furniture and equipment belonging to Tenant, at Tenant's sole cost, provided that Tenant repairs any damage caused by such removal. Property not so removed by the Expiration Date (or in the event of an earlier termination, within five (5) days of such earlier termination date) shall be deemed abandoned by Tenant, and title to the same shall thereupon pass to Landlord. Upon such expiration or sooner termination of the Term, Tenant shall upon demand by Landlord, at Landlord's election either (i) at Tenant's sole cost and expense, forthwith and with all due diligence remove any

Alterations made by or for the account of Tenant, designated by Landlord to be removed (provided, however, that upon the written request of Tenant prior to installation of such Alterations, Landlord shall advise Tenant at that time whether or not such Alterations must be removed upon the expiration or sooner termination of this Lease), and restore the Premises to its original condition as of the Delivery Date, subject to the foregoing; or (ii) pay Landlord the reasonable estimated cost thereof.

(b) The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

25. WAIVER. If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. Furthermore, the acceptance of Rent or Additional Charges by Landlord shall not constitute a waiver of any preceding breach by Tenant of any tenor, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such Monthly Base Rent or Additional Charges. Failure by Landlord to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant or condition contained in this Lease may only be made by a written document signed by Landlord.

26. NOTICES. Except as otherwise expressly provided in this Lease, any bills, statements, notices, demands, requests or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing, sent by certified mail, return receipt requested, reputable overnight carrier, or delivered personally, (i) to Tenant (A) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (B) at the Premises if sent subsequent to Tenant's taking possession of the Premises, or (C) at any place where Tenant may be found if sent subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or (ii) to Landlord at Landlord's address set forth in the Basic Lease Information; or (iii) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Paragraph 26. Any such bill, statement, notice, demand, request or other communication shall be deemed to have been rendered or given on the date the return receipt indicates delivery of or refusal of delivery if sent by certified mail, the day upon which recipient accepts and signs for delivery from a reputable overnight carrier, or on the date a reputable overnight carrier indicates refusal of delivery, or upon the date personal delivery is made. If Tenant is notified in writing of the identity and address of any Mortgagee or ground or underlying lessor, Tenant shall give to such Mortgagee or ground or underlying lessor notice of any Default by Landlord under the terms of this Lease in writing sent by registered or certified mail, and such Mortgagee or ground or underlying lessor shall be given the opportunity to cure such Default (as defined in Paragraph 19(a)) prior to Tenant exercising any remedy available to it.

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27. TAXES PAYABLE BY TENANT. Prior to delinquency Tenant shall pay all taxes levied or assessed upon Tenant's equipment, furniture, fixtures and other personal property located in or about the Premises. If the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon Tenant's equipment, furniture, fixtures or other personal property, Tenant shall pay to Landlord, upon written demand, the taxes so levied against Landlord, or the proportion thereof resulting from said increase in assessment

28. ABANDONMENT. Tenant shall not abandon the Premises and cease performing its financial and maintenance obligations under this Lease at any time during the Term, and if Tenant shall abandon and cease performing its financial and maintenance obligations under this Lease, or surrender the Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall, at the option of Landlord, be deemed to be abandoned and title thereto shall thereupon pass to

Landlord. Notwithstanding anything to the contrary contained herein, Tenant shall not be allowed to vacate the Premises for any period of time unless either (a) such vacation would not result in a termination of, limitation on, or other adverse effect on, Landlord's insurance policies, or (b) Tenant pays the incremental premium costs, and assumes responsibility for any increased deductible amounts, to the extent required to cause Landlord's insurance policies to not be terminated, limited or adversely affected as a result of such vacation. For purposes of this Paragraph 28, the Tenant shall not be deemed to have abandoned the Premises solely because the Tenant is not occupying the Premises.

29. SUCCESSORS AND ASSIGNS. Subject to the provisions of Paragraph 9, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective legal and personal representatives, successors and assigns.

30. ATTORNEY'S FEES. If Tenant or Landlord brings any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Premises, the losing party shall pay to the prevailing party a reasonable sum for attorney's fees and costs, which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not the action is prosecuted to judgment.

31. LIGHT AND AIR Tenant covenants and agrees that no diminution of light, air or view by any structure which may hereafter be lawfully erected (whether or not by Landlord) shall entitle Tenant to any reduction of rent under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder. Landlord has informed Tenant that it has no intention of constructing additional facilities at the Project except those facilities needed to service the Project.

32. SECURITY DEPOSIT. Concurrently with execution hereof, Tenant has paid to Landlord the Security Deposit specified in the Basic Lease Information as security for the full and faithful performance of Tenant's obligations under this Lease. If a default occurs under this Lease, or if Tenant is the subject of an Insolvency Proceeding, Landlord may use the Security Deposit to remedy any such default and to compensate Landlord for damages incurred. If Landlord uses any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall deposit additional cash with Landlord in an amount equal to restore the Security Deposit to its original amount within ten (10) days of notice from Landlord; and Tenant's failure to do so shall become be a material breach of this Lease. Landlord shall hold the Security Deposit for the foregoing purposes; provided, however, that Landlord shall have no obligation to segregate the Security Deposit from its general finds or to pay interest thereon. Within sixty (60) days after the expiration of the Term or earlier termination, the Security Deposit shall be returned to Tenant, reduced by those amounts that may be required by Landlord to remedy defaults on the part of Tenant in the payment of Rent, to repair damages to the Premises caused by Tenant and to clean the Premises. If Landlord conveys or transfers its interest in the Leased Premises, and as a part of such conveyance or transfer, assigns its interest in this Lease and Security Deposit, or any portion thereof not previously applied, the Security Deposit shall be transferred to Landlord's successor and Landlord shall be released and discharged from any further liability to Tenant with respect to such Security Deposit. In no event shall any mortgagee or beneficiary under a mortgage or deed of trust encumbering all or any portion of the Project, or any purchaser of all or any portion of the Project at a public or private foreclosure sale under such mortgage or deed of trust, have any liability or obligation whatsoever to Tenant or Tenant's successors or assigns for the return of all or any part of the Security Deposit in the event any such mortgagee, beneficiary or purchaser becomes a mortgagee in possession or succeeds

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to the interest of Landlord under this Lease unless, and then only to the extent that, such mortgagee, beneficiary or purchaser has received all or any part of the Security Deposit.

33. CORPORATE AUTHORITY; FINANCIAL INFORMATION. If Tenant signs as a corporation each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing



corporation, that Tenant has and is qualified to do business in California, that the corporation has full right and authority to enter into this Lease, and that each and both of the persons signing on behalf of the corporation were authorized to do so. If Tenant signs as a partnership or limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing partnership or limited liability company, as applicable, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and both of the persons signing on behalf of the Tenant were authorized to do so and by their signatures bind the Tenant. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties. Tenant hereby further covenants and warrants to Landlord that all financial information and other descriptive information regarding Tenant's business, which has been or shall be furnished to Landlord, is and shall be accurate and complete at the time of delivery to Landlord. If Landlord signs as a corporation each of the persons executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing corporation, that Landlord has and is qualified to do business in California, that the corporation has full right and authority to enter into this Lease, and that each and both of the persons signing on behalf of the corporation were authorized to do so. Upon Tenant's request, Landlord shall provide Tenant with evidence reasonably satisfactory to Tenant confirming the foregoing covenants and warranties.

34. PARKING. Tenant shall have the right to use, and Landlord shall maintain for use by Tenant pursuant to the provisions of Paragraph 7, all of the parking spaces located on the Project. Landlord agrees that so long as not required by an applicable governmental entity, there shall be no additional Monthly Base Rent charged for parking (not to be confused with the Expenses charged pursuant to Paragraph 3).

35. MISCELLANEOUS.

(a) The term "Premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) the office space demised and improvements now or at any time hereafter comprising or built in the space hereby demised. The paragraph headings herein are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. The term "Landlord" shall include Landlord and its successors and assigns. In any case where this Lease is signed by more than one person, the obligations hereunder shall be joint and several. The term "Tenant" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their and each of their respective successors, executors, administrators, and permitted assigns, according to the context hereof.

(b) Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the State of California. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or Tenant or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument by the parties hereto.

(c) If for any reason whatsoever any of the provisions hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

(d) Upon Tenant paying the Monthly Base Rent and Additional Charges and performing all of Tenant's obligations under this Lease, Tenant shall have quiet and peaceful enjoyment of the Premises during the Term as against all persons or entities lawfully claiming by, through or under Landlord; subject, however, to the provisions of this Lease.

36. TENANT'S REMEDIES. If any default hereunder by Landlord is not cured within the applicable cure period provided in Paragraph 19(b) (including any Mortgagee's additional cure period), Tenant's exclusive remedies shall be (i) an action for specific performance, or (ii) an action for actual damages. Tenant shall look solely to Landlord's interest in the Project for the recovery of any judgment from Landlord. Landlord, or if Landlord is a partnership its partners whether general or limited, or if Landlord is a corporation its directors, officers or shareholders, or if Landlord is a limited liability company its members or managers, shall never be personally liable for any such judgment. Any lien obtained to enforce such judgment and any levy of execution thereon shall be subject and subordinate to any Mortgage (excluding any Mortgage which was created as part of an effort to defraud creditors, i.e., a fraudulent conveyance); provided, however that any such judgement and any such levy of execution thereon shall not be subject or subordinated to any Mortgage that is created or recorded in the official records of the county in which the Project is located after the date of the judgement giving rise to such lien. Landlord's interest in the Project shall include any insurance proceeds received by Landlord which are not controlled by any Mortgagee or other lender. Tenant hereby waives the benefit of any Laws granting it (A) the right to perform Landlord's obligations, or (B) the right to terminate this Lease or withhold Rent on account of any Landlord default, including, without limitation, Sections 1932(1), 1941 and 1942 of the California Civil Code.

37. REAL ESTATE BROKERS. Each party represents that it has not had dealings with any real estate broker, finder or other person with respect to this Lease in any manner, except for any broker named in the Basic Lease Information, whose fees or commission, if earned, shall be paid as provided in the Basic Lease Information. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any other broker, finder or other person with whom the other party has or purportedly has dealt.

38. LEASE EFFECTIVE DATE. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

39. SIGNAGE. Tenant shall be allowed to use a monument sign near the Project's entrance, and to install exterior signage and signage in the lobby of the Building, subject to this Paragraph 39. Tenant shall be responsible for the costs related to such signage. Such signage shall be subject to approval from Landlord of the exact number, size, location and materials therefor (which consent shall not be unreasonably withheld), approval from the City of Sunnyvale and compliance with applicable governmental restrictions, including but not limited to, ordinances of the City of Sunnyvale.

40. HAZARDOUS SUBSTANCE LIABILITY. Tenant has received from Landlord a copy of the Phase I Environmental Assessment of Two Office Buildings located at 1322 Crossman Avenue and 1341 Orleans Drive, Sunnyvale, California, dated August 7, 1997, prepared by McLaren Hart (the "Environmental Report").

(a) DEFINITION OF HAZARDOUS SUBSTANCES. For the purpose of this Lease, "Hazardous Substances" shall be defined, collectively, as oil, flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under applicable environmental laws, ordinance or regulation.

(b) TENANT INDEMNITY. Tenant releases Landlord from any liability for, waives all claims against Landlord and shall indemnify, defend and hold harmless Landlord, its employees, partners, agents, subsidiaries and affiliate organizations against any and all claims, suits, loss, costs (including costs of investigation, clean up, monitoring, restoration and reasonably attorney fees), damage or liability, whether foreseeable or unforeseeable, by reason of property damage (including diminution in the value of the property of Landlord), personal injury or death directly arising from or related to Hazardous Substances released, manufactured, discharged, disposed, used or stored on, in, or under the Project or Premises during the Term by any Tenant Parties. The provisions of this Tenant Indemnity regarding Hazardous Substances shall survive the termination of the Lease.

(c) LANDLORD INDEMNITY. Landlord releases Tenant from any liability for, waives all claims against Tenant and shall indemnify, defend and hold harmless Tenant, its officers, employees, and agents to the extent of Landlord's interest in the Project, against any and all actions by any governmental agency for clean up of Hazardous Substances on or under the Project, including costs of legal proceedings, investigation, clean up, monitoring, and restoration, including reasonable attorney fees, if, and to the extent, arising from the presence of Hazardous Substances on, in or under the Project or Premises as of the date of this Lease. The provisions of this Landlord Indemnity regarding Hazardous Substances shall survive the termination of the Lease.

Tenant's use of Hazardous Substances beyond very immaterial amounts of toxic materials incidental to its office use (e.g., copier toner) shall be subject to Landlord's prior written approval and shall comply with any applicable laws.

41. SATELLITE ANTENNAE. During the Term of this Lease, Tenant shall have the right, subject to relevant regulatory approvals and Landlord's consent (with Landlord's consent not to be unreasonably withheld, conditioned or delayed), to install satellite antennae ("Antennae") on the roof of the Building in a location satisfactory to both Landlord and Tenant. Without otherwise limiting the criteria upon which Landlord may withhold its consent to any proposed Antennae, if Landlord withholds its consent due to concerns regarding the appearance of the Antennae or the impact on structural aspects of the Building, such withholding of consent shall be presumptively reasonable. Tenant shall not be charged additional rent for roof space. Prior to submitting any plans to the City of Sunnyvale or proceeding with any installation of the Antennae, Tenant shall submit to Landlord elevations and specifications for the Antennae. Tenant shall install the Antennae at its sole expense and shall be responsible for any damage caused by the installation of the Antennae or related to the Antennae. At the end of the Term, Tenant shall remove the Antennae from their locations and repair any damage caused by such removal.

42. OPTION TO RENEW. Upon condition that (i) no Default is continuing under this Lease at the time of exercise or at the commencement of the option term and (ii) Tenant continues to physically occupy the entire Premises, then Tenant shall have the right to extend the Term for two (2) periods of five (5) years each (each, an "Extension Term") following the initial Expiration Date or the Expiration Date as extended by the first Extension Term, as applicable, by giving written notice ("Exercise Notice") to Landlord at least eighteen (18) months prior to the Expiration of the immediately preceding Term.

43. RENT DURING EXTENSION TERM. The initial Monthly Base Rent (subject to Paragraph 3(b)) during each five (5) year Extension Term shall be the greater of the Base Rent paid during the last month of the immediately preceding Term or the Fair Market Rental Value for the Premises as of the commencement of the option term, as determined below:

(a) Within thirty (30) days after receipt of Tenant's Exercise Notice Landlord shall notify Tenant of Landlord's estimate of the Fair Market Rental Value for the Premises, as determined below, for determining Monthly Base Rent during the ensuing Extension Term; provided, however, if Tenant's Exercise Notice is given more than eighteen (18) months before the Expiration Date, Landlord's estimate of Fair Market Rental value may, but need not be given more than eighteen (18) months before the Expiration Date. Within fifteen (15) days after receipt of such notice from Landlord, Tenant shall notify Landlord in writing that it (i) agrees with such rental rate or (ii) disagrees with such rental rate. No response shall constitute agreement. In the event that Tenant disagrees with Landlord's estimate of Fair Market Rental Value for the Premises, then the parties shall meet and endeavor to agree within fifteen (15) days after Landlord receives Tenant's notice described in the immediately preceding sentence. If the parties cannot agree upon the Fair Market Rental Value within said fifteen (15) day period, then the parties shall submit the matter to binding appraisal in accordance with the following procedure except that in any event neither party shall be obligated to start such procedure sooner than eighteen (18) months before the expiration of the Lease Term. Within fifteen (15) days of the conclusion of the period during which the two parties fail to agree (but not sooner than eighteen (18) months before the expiration of the Lease Term), the parties shall either (i) jointly appoint an appraiser for this purpose or (ii) failing this joint action, each separately designate a disinterested appraiser. No person shall be appointed or designated an appraiser unless such person has at least five (5) years experience in appraising major commercial property in Santa Clara County and is a member of a recognized

society of real estate appraisers. If within thirty (30) days after the appointment, the two appraisers reach agreement on the Fair Market Rental Value for the Premises, that value shall be binding and conclusive upon

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the parties. If the two appraisers thus appointed cannot reach agreement on the Fair Market Rental Value for the Premises within thirty (30) days after their appointment, then the appraisers thus appointed shall appoint a third disinterested appraiser having like qualifications within five (5) days. If within thirty (30) days after the appointment of the third appraiser a majority of the appraisers agree on the Fair Market Rental Value of the Premises, that value shall be binding and conclusive upon the parties. If within thirty (30) days after the appointment of the third appraiser a majority of the appraisers cannot reach agreement on the Fair Market Rental Value for the Premises, then the three appraisers shall each simultaneously submit their independent appraisal to the parties, the appraisal farthest from the median of the three appraisals shall be disregarded, and the mean average of the remaining two appraisals shall be deemed to be the Fair Market Rental Value for the Premises and shall be binding and conclusive upon the parties. Each party shall pay the fees and expenses of the appraiser appointed by it and shall share equally the fees and expenses of the third appraiser. If the two appraisers appointed by the parties cannot agree on the appointment of the third appraiser, they or either of them shall give notice of such failure to agree to the parties and if the parties fail to agree upon the selection of such third appraiser within ten (10) days after the appraisers appointed by the parties give such notice, then either of the parties, upon notice to the other party, may request such appointment by the American Arbitration Association or, on its failure, refusal or inability to act, may apply for such appointment to the presiding judge of the Superior Court of Santa Clara County, California.

(b) Wherever used throughout this paragraph (Rent during Extension Term) the term "Fair Market Rental Value" shall mean the fair market rental value of the Premises, using as a guide the rate of monthly base rent which would be charged during the Extension Term in the City of Sunnyvale and adjacent cities for comparable high image, Class A office space in comparable condition, of comparable quality, as of the time that the Extension Term commences, with appropriate adjustments regarding taxes, insurance and operating expenses as necessary to insure comparability to this Lease, as the case may be, and also taking into consideration amount and type of parking, location, the existence of any leasehold improvements (regardless of who paid for them and with the assumption, for purposes of determining the Fair Market Rental Value, that they are fully usable by Tenant), proposed term of lease, amount of space leased, extent of service provided or to be provided, and any other relevant terms or conditions (including consideration of whether or not the monthly base rent is fixed).

(c) In the event of a failure, refusal or inability of any appraiser to act, his successor shall be appointed by the party who originally appointed him, but in the case of the third appraiser, his successor shall be appointed in the same manner as provided for appointment of the third appraiser.

(d) The appraisers shall render their appraisals in writing with counterpart copies to Landlord and Tenant. The appraisers shall have no power to modify the provisions of this Lease.

(e) To the extent that a binding appraisal has not been completed prior to the expiration of any preceding period for which Monthly Base Rent has been determined, Tenant shall pay Monthly Base Rent at the rate estimated by Landlord, with an adjustment to be made once Fair Market Rental Value is ultimately determined by binding appraisal. In no event shall any such adjustment result in a decrease of the Monthly Base Rent for the Premises below the amount payable by Tenant as of the period immediately preceding the ensuing Extension Term.

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(f) From and after the commencement of the Extension Term, all of the other terms, covenants and conditions of the Lease shall also apply; provided, however, that during the second Extension Term Tenant shall have no further rights to extend the Term.

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

LANDLORD:

CARIBBEAN/GENEVA INVESTORS,  
a California Limited Partnership

By: /s/ JOHN MOZART

-----  
John Mozart, Trustee of the Mozart  
Family Trust dated September 8, 1977  
Its: General Partner

By: /s/ JOHN LOVEWELL

-----  
John Lovewell  
Its: General Partner

CROSSMAN PARTNERS, L.P.,  
a California Limited Partnership

By: /s/ JOHN MOZART

-----  
John Mozart, Trustee of the Mozart  
Family Trust dated September 8, 1977  
Its: General Partner

TENANT:

HARMONIC, INC.,  
a Delaware corporation

By: /s/ ANTHONY J. LEY

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ANTHONY J. LEY  
-----  
Its: PRESIDENT  
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By: /s/ ROBIN N. DICKSON

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ROBIN N. DICKSON  
-----  
Its: CHIEF FINANCIAL OFFICER  
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EXHIBIT "A"

PREMISES

[See attached Site Plan]

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BUILDING C

52,325 +/- Sq.Ft.

[SITE PLAN]

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EXHIBIT "B"

LEGAL DESCRIPTION OF THE LAND

REAL PROPERTY in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel 6, as shown on that certain Map entitled which was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on July 18, 1978 in Book 423 of Maps, page(s) 13.

APN: 110-36-003

ARB: 10-04-23.02.02 (23.02, 23)

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EXHIBIT "C"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any material term, covenant or condition of the Lease on Tenant's part to the performed, (a) Tenant's possession of the Demised Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof or acquisition of additional space which may be effected in accordance with any option therefor in the Lease, shall not be diminished or interfered with by Mortgagee in the exercise of any of its rights under the Mortgage, and (b) Mortgagee will not join Tenant as a party defendant in any action or proceeding for the purposes of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage, however Mortgagee may join Tenant as a party defendant in any action or proceeding to enforce the Mortgage or any other instrument given as security for the loan to Landlord, if such is done only for purposes of procedure and required completeness and not for the purposes of canceling the Lease or Tenant's rights under such Lease.

3. In the event any proceedings are brought for the foreclosure of the Mortgage, or if the Mortgaged Property be sold pursuant to a trustee's sale under the Mortgage or if the Mortgagee becomes owner of the Mortgaged Property by acceptance of a deed or assignment in lieu of foreclosure or otherwise, Tenant shall attorn to the purchaser or Mortgagee, as the case may be, upon any such foreclosure sale or trustee's sale or acceptance by Mortgagee of a deed or assignment in lieu of foreclosure and Tenant shall recognize such purchaser or Mortgagee, as the case may be, as the landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of

Landlord or of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage or any such purchaser, any instrument or certificate which, in the reasonable judgment of Landlord or of such holder(s) or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

4. If Mortgagee shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Demised Premises upon any foreclosure of the Mortgage or any trustee's sale under the Mortgage, Mortgagee or such purchaser, as the case may be, in the event of attornment shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if Mortgagee or such purchaser had not succeeded to the interest of Landlord. From and after any such attornment, Mortgagee or such purchaser shall be bound to Tenant under all the terms, covenants, and conditions of the Lease, and Tenant shall, from and after the succession to the interest of Landlord under the Lease by Mortgagee or such purchaser, have the same remedies against Mortgagee or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Mortgagee or such purchaser had not succeeded to the interest of Landlord; provided, however, the Mortgagee or such purchaser shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord); or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

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(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord).

5. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed.

6. This Agreement and the Lease may not be amended or modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Mortgaged Property, and their respective heirs, personal representatives, successors and assigns.

7. To the extent that the Lease shall entitle the Tenant to notice of any mortgage, and/or the address of the Mortgagee, this Agreement shall constitute such notice to the Tenant with respect to the Mortgage and to the address of the Mortgagee.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

TENANT:

NAME

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

Name:  
Title:

MORTGAGEE:

GENERAL AMERICAN LIFE INSURANCE COMPANY

By: \_\_\_\_\_  
Title: Vice President/Authorized Representative  
Address: 700 Market Street  
St. Louis, Missouri 63101

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D 511 PAGE 396

5947371  
RECORDED AT THE REQUEST OF  
Title Insurance and Trust Company  
MAR 8 1978 801AM  
George A. Mann, Recorder  
SANTA CLARA COUNTY, OFFICIAL RECORDS

When recorded mail to:

Prudential Insurance Co.  
155 Moffett Park Drive  
Bldg. A  
Suite 101  
Sunnyvale, CA  
Attn: Lee Cashion

DECLARATION OF PROTECTIVE COVENANTS  
MOFFETT INDUSTRIAL PARK NO. 5

6227353

THIS DECLARATION, made this March 1, 1978 9:00 by THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (hereinafter called Prudential), a New Jersey Corporation,

W I T N E S S E T H  
- - - - -

WHEREAS Prudential is the owner of that certain real property located in the City of Sunnyvale, County of Santa Clara, State of California, described in Exhibit "A" (hereinafter called Moffett Industrial Park No. 5), and .

WHEREAS Prudential proposes to subdivide Moffett Industrial Park No. 5 and to subject it to the following restrictions:

NOW, THEREFORE, Prudential hereby declares that Moffett Industrial Park No. 5 is and shall be held, conveyed, encumbered, leased and used subject to the following uniform restrictions, covenants and equitable servitudes in furtherance of a plan for the subdivision, improvement and sale thereof and to enhance the value, desirability and attractiveness of Moffett Industrial Park No. 5, the restrictions set forth herein shall run with the real property included within Moffett Industrial Park No. 5 shall be binding upon all persons having or acquiring any interest in such real property or any part thereof, shall inure to the benefit of every portion of Moffett Industrial Park No. 5 and any interest therein and shall inure to the benefit of and be binding upon each successor in interest of Prudential and may be enforced by Prudential or its successors in interest or by any Owner (as defined in Article 1 below) or his successors in interest.

I. GENERAL PROVISIONS.

A. Definitions.

1. "Architectural Control Committee" means Prudential, or any committee which Prudential may appoint by an appropriate instrument recorded with the Santa Clara County Recorder.
2. "Lot" means each lot shown on the parcel or subdivision cap, or cape for Moffett Industrial Park No. 5.
3. "Site" means a parcel consisting either of a Lot, a portion of



a Lot, contiguous Lots, or portions of contiguous Lots.

4. "Improvements" means all improvements to a Site including, but without limitation, buildings loading areas, trackage, parking areas, pavement, poles, fences landscaping, signs and structures of any type.
5. "Building" means the main portion of any building or similar structure and all projections or extensions thereof, including garages, outside platforms and docks.
6. "Owner" means the person or persons, partnership or corporation in when title to a Site is vested, as shown by the official records of the Office of the County Recorder of Santa Clara County, "Owner" does not mean mortgages, trustees and beneficiaries of deeds of trust or holders of any indebtedness secured by a mortgage or deed of trust.

B. Purposes of Restrictions.

The purpose of these covenants, conditions and restrictions is to insure proper development and use of Moffett Industrial Park No. 5, to protect the Owner of each Site against such improper development and use of other Sites as will depreciate the value of his Site, to prevent the erection of structure of unsuitable

THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT THE LEGAL DESCRIPTION

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or inharmonious design or construction, to secure and maintain sufficient setbacks from streets and between structures, to maintain Comcon Landscaping (as defined in Article V) and in general to provide for a high quality of improvement of Moffett Industrial Park No. 5 in accordance with a general plan.

II. REGULATION OF IMPROVEMENTS.

A. Minimum Setback Lines.

No Improvement shall be constructed upon any Site within fifty (50) feet of the right-of-way line of any public street. No Improvement other than landscaping, paving and fences shall be constructed upon any Site within twenty (20) feet of any other Site. The Architectural Control Committee may approve lesser setback lines if in its opinion a variation would be compatible with the general development of Moffett Industrial Park No. 5.

B. Ground Coverage.

No more than forty-five percent (45%) of the surface of any Site shall be covered with a Building or Buildings.

C. Construction Operations.

Construction of all Improvements shall be expedited so that none shall remain in a partially finished condition any longer than reasonably necessary for the completion thereof.

D. Excavation.

No excavation shall be made on, and no sand, gravel or soil shall be removed from, any Site, except in connection with the construction of Improvements, and upon completion thereof, exposed openings shall be backfilled, and disturbed ground shall be graded, leveled and paved or landscaped.

E. Landscaping.

Within ninety (90) days of the occupancy or completion of any Building on a Site, whichever occurs first, such Site shall be landscaped in accordance with plans approved by the Architectural Control Committee. The Owner of the Site shall maintain such landscaping in good order and condition.

F. Signs.

No billboard or advertising signs shall be permitted on any Site other than those approved by the Architectural Control Committee which identify the name, business and products of the person or firm occupying the Site or offer the Site for sale or lease.

G. Parking Areas.

Each Site shall have facilities for parking sufficient to serve the business conducted thereon without using adjacent streets thereof, and no use shall be made of any Site which would require parking in excess of the parking spaces on the Site. In any event, the number and size of the parking spaces on each Site shall conform with all ordinances of the City of Sunnyvale applicable with respect thereto. Parking areas shall be laid out and constructed according to plans approved by the Architectural Control Committee and shall be maintained thereafter in good condition. Except with the approval of the Architectural Control Committee no parking shall be permitted within fifty (50) feet of the right-of-way line of any street or between any Building and any street.

H. Loading Areas.

All vehicle loading and unloading in connection with an Owner's business shall be conducted upon his Site, and sufficient space shall be provided therefor. Loading Areas shall be screened from view from streets and adjoining properties by a visual barrier not less than six (6) feet in height. Except with the prior written approval of the Architectural Control Committee, loading areas shall not be located between any Building and any street or any closer than seventy-five (75) feet to the right-of-way line of any street.

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I. Storage Areas.

No materials, supplies, equipment or trash containers shall be stored on a Site except inside a Building, or behind a visual barrier not less than six (6) feet in height or rising two (2) feet above the stored materials, supplies or equipment, whichever is higher, screening such storage areas from view from streets and adjoining Sites. Except with the prior written approval of the Architectural Control Committee, storage areas shall not be located between any Building and any street.

J. Building Regulations.

All Buildings shall be constructed and maintained in accordance with the following standards unless an exception is approved in writing by the Architectural Control Committee:

1. Exterior walls shall be of masonry, concrete or approved equal material.
2. Exterior walls shall be painted or otherwise finished in a manner acceptable to the Architectural Control Committee. Exterior walls shall not be repainted or refinished unless and until the Architectural Control Committee shall have approved the color or refinishing materials to be used.
3. All Buildings shall be maintained in good order and repair and condition. All exterior painted surfaces shall be maintained in first-class condition and shall be repainted at least once every five (5) years.
4. All electrical, telephone and other utility lines shall be underground and shall not be exposed on the exterior of any Building.
5. All electrical and mechanical apparatus, equipment, fixtures (other than lighting fixtures) conduit, ducts, vents, flues and pipes located on the exterior of any Building shall be concealed

from view and shall be architecturally treated in a manner acceptable to the Architectural Control Committee.

### III. APPROVAL OF PLANS.

No Improvement shall be erected, placed, altered, maintained or permitted to remain on any Site until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural design, signs and landscaping shall have been submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be submitted in writing over the signature of the Owner of the Site or his authorized agent. Approval shall be based, among other things, on adequacy of Site dimensions; adequacy of structural design; effect of location and use of improvements on neighboring Sites; improvement operations, and uses; relation of topography, grade, and finished ground elevation of the Site being improved to that of neighboring Sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Architectural Control Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications. If the Architectural Control Committee fails either to approve or disapprove such plans and specifications with thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the Architectural Control Committee has approved said plans and specifications, subject, however, to the restrictions contained in Article II and IV hereof.

Neither the Architectural Control Committee nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to the Architectural Control Committee for approval agrees, by submission of such plans, and every Owner agrees, by acquiring title to a Site, that he will not bring any action or suit against the Architectural Control Committee to recover any such damages.

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Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of issuance of a building permit by municipal or other governmental authority for any improvement, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article III, unless actual notice of such noncompliance or noncompletion, executed by the Architectural Control Committee, shall appear of record in the Office of the Recorder of Santa Clara County, California, or unless legal proceedings shall have been instituted to enforce compliance or completion.

### IV. REGULATION OF OPERATIONS AND USES.

#### A. Permitted Operations and Uses.

Except as provided in paragraphs B and C below, any industrial use will be permitted on a Site including, but without limitation, manufacturing, processing, storage, wholesale, office, laboratory, professional and research and development. Such retail uses as may be required for the convenience of Owners and their employees shall be permitted and such retail uses may include, but without limitation, restaurants, drug stores, barber and beauty shops, shoe repair shops, cleaners, hotels, post offices, banks and automobile service stations. Such municipal, governmental and public utility uses as may be necessary or appropriate shall be permitted.

#### B. Prohibited Operations and Uses.

No Site shall be used as a junk yard, stock yard, or slaughter yard or for commercial excavation of building or construction materials, fat rendering or distillation of bones, dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or refuse, or the smelting of iron, tin, zinc or other ores or the prospecting, or drilling for natural gas, oil or like substances, except with the

prior written permission of the Architectural Control Committee, and then only in such manner as will not materially inconvenience other Owners or materially depreciate the value of adjacent property.

C. Nuisance.

No noxious or offensive activity shall be carried on nor shall anything be done on any Site which may be or become an annoyance or nuisance to the Owners or occupants of other Sites or which will be offensive by reason of odor, fumes, dust, dirt, fly-ash, smoke, noise, glare or which will be hazardous by reason of danger of fire or explosion.

V. COMMON LANDSCAPING.

The Owner of each Site shall maintain landscaping existing thereon at the time of purchase ("Common Landscaping") in a condition that meets the approval of the Architectural Control Committee. In the event that the Owner of any Site does not maintain Common Landscaping in such condition or the landscaping described in Article II E as therein provided, Prudential or its agents shall have the right to maintain such landscaping in such condition. Prudential or its Agents shall have the right at any reasonable time to enter into any Site for the purpose of such maintenance and for such other purposes as are reasonably related thereto. Prudential shall use due diligence and reasonable care in repairing, maintaining and installing Common Landscaping to see that such repair, maintenance and installation does not interfere with the Owner's use of its Site. In the event that Prudential or its Agents should undertake any such maintenance on any such Site, the Owner thereof shall reimburse Prudential for all of Prudential's costs incurred in such maintenance. In any legal proceeding brought by Prudential to recover such costs, the Owner shall be obligated to pay for the costs and expenses of such proceeding, including reasonable attorneys' fees.

VI. ENFORCEMENT.

A. Interpretation.

In case of uncertainty as to the meaning of any article, section, subsection, paragraph, sentence, clause, phrase or word of this Declaration the interpretation of Prudential shall be final, conclusive and binding upon all interested parties.

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B. Abatement and Suit.

Violation or breach of any restriction herein contained shall give to Prudential and every Owner the right to enter the property upon or as to which said violation or breach exists and to summarily abate and remove at the expense of the Owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provision hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

In any legal or equitable proceeding for the enforcement of this Declaration the losing party or parties shall pay the attorneys' fees of the prevailing party or parties, in such amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

C. Inspection.

Prudential may from time to time at any reasonable hour or hours, enter and inspect any property subject to these restrictions to ascertain compliance therewith.

D. Failure to Enforce Not a Waiver of Rights.

Except as provided in the last paragraph of Article III hereof, the

failure of Prudential or any Owner to enforce any restriction contained herein shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction contained herein.

VII. EXTINGUISHMENT, CONTINUATION AND MODIFICATION.

This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of forty (40) years from the date hereof; provided, however, that this Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified, or amended with the written consent of the Owners of sixty-five percent (65%) of the land in Moffett Industrial Park No. 5 (exclusive of portions thereof now or hereafter dedicated to public use); provided, further, that so long as Prudential owns at least twenty percent (20%) of Moffett Industrial Park No. 5, no such termination, extension, modification or amendment shall be effective without the written consent of Prudential. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Recorder of Santa Clara County, California.

VIII. MOFFETT INDUSTRIAL PARK NO. 5 OWNERS ASSOCIATION.

A. Membership.

Each Owner shall be a member of the Moffett Industrial Park No. 5 Owners Association, an unincorporated association (hereinafter called the "Association").

B. Transfer of Rights and Duties.

The rights and duties of Prudential under this Declaration shall be transferred to and automatically assumed by the Association upon the earliest of the following to occur:

1. The sale of ninety percent (90%) of Moffett Industrial Park No. 5 by Prudential to Owners as evidenced by the official records of the Santa Clara County Recorder; or
2. The recordation by Prudential of an appropriate instrument with the Santa Clara County Recorder transferring the rights and duties of Prudential under this Declaration to the Association.

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c. Organization.

The members of the Association may at any time meet and adopt by-laws or rules of procedure to govern the operation of the Association. Until such by-laws or rules of procedures are adopted, meetings of the Association may be called by any member thereof upon seven (7) days' written notice to each member setting forth the time and place thereof, provided that notice may be waived in writing at any time by any member or members not so notified; twenty-five percent (25%) of the members of the Association shall constitute a quorum; and the Association may set by a vote of a majority of its members present at a meeting, duly called, at which a quorum is present or without a meeting by unanimous written consent of its members.

IX. ASSIGNABILITY OF PRUDENTIAL'S RIGHTS AND DUTIES.

Any and all of the rights, powers and reservations of Prudential herein contained may be assigned to any person, corporation or entity which assumes in writing the duties of Prudential pertaining to the particular rights, powers and reservations assigned, and thereafter to the extent of such assignment, such person, corporation or entity shall have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by Prudential.

X. CONSTRUCTIVE NOTICE AND ACCEPTANCE.

Every Owner is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Owner acquired an interest in any portion of Moffett Industrial Park No. 5.

IN WITNESS WHEREOF, Prudential, the declarent herein, has caused its name to be hereunto subscribed as of the day and year first above written.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: /s/ L.R. CASHION

-----  
L.R. Cashion, General Manager

RECORDER'S MEMO  
[ILLEGIBLE]

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On this 1st day of December in the year one thousand nine hundred and 78, before me, Matthew Nicoll, a Notary Public, State of California, duly commissioned and sworn, personally appeared L.R. Cashion known to me to be the General Manager of the corporation described in and that executed the within instrument and also known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the said County of Santa Clara the day and year in this certificate ??? above written.

OFFICIAL SEAL  
[SEAL WORDING ILLEGIBLE]

MATTHEW NICOLL

-----  
Notary Public State of California

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EXHIBIT "A"

All that certain real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

All of Parcels 1, A and B, as shown upon that certain map entitled, "Parcel Map being a resubdivision of Parcel 7 as shown on map recorded in Book 214 of Maps at Page 23 Santa Clara County Records", which map was filed for record in the office of the recorder of the County of Santa Clara, State of California on March 1, 1978 in Book 413 of Maps at page 54.

All of Parcel 5, as shown upon that certain map entitled, "Parcel Map being a resubdivision of Parcel 6 as shown on map recorded in Book 214 of maps at page 23 Santa Clara County records", which map was filed for record in the office of the recorder of the County of Santa Clara, State of California, on March 1, 1978 in Book 413 of Maps, at page 53.

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RECORDED AT THE REQUEST OF  
TITLE INSURANCE AND TRUST CO.

DEC 12 1978 2:01AM

GEORGE A. MANN, Recorder

[FLOOR PLAN]

1322 CROSSMAN AVE.  
52,325 (plus or minus) SQUARE FEET

EXHIBIT "D"

RULES AND REGULATIONS

1. Sidewalks, halls, passages, exits, entrances, elevators, escalators and stairways shall not be obstructed by Tenant or used by Tenant for any purpose other than for ingress to and egress from the Premises. Tenant, and Tenant's employees or invitees, shall not go upon the roof of the Building, except as authorized by Landlord or as expressly set forth in the Lease.

2. Except as expressly permitted in the Lease, no sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises shall be inscribed, painted, affixed, installed or otherwise displayed by Tenant on any part of the Building without the prior written consent of Landlord, and Landlord shall have the right to remove any such sign, placard, picture, name, advertisement or notice without notice to and at the expense of Tenant.

If Landlord shall have given consent relating to a sign to Tenant at any time, whether before or after the execution of the Lease, such consent shall not in any way operate as a waiver or release of any of the provisions hereof or of the Lease, and shall be deemed to relate only to the particular sign, placard, picture, name, advertisement or notice so consented to by Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Landlord with respect to any other such sign, placard, picture, name, advertisement or notice. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant.

3. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be attached to, hung or placed in, or used in connection with, any window, door or patio on the Premises without the prior written consent of Landlord. In any event with the prior written consent of Landlord, all such items shall be installed inboard of Landlord's window coverings and shall not in any way be visible from the exterior of the Building. No articles shall be placed or kept on the window sills so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which might appear unsightly from outside the Building.

4. Tenant shall see that the doors of the Premises are closed and securely locked and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or its employees leave such Premises, and that all utilities shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness the Tenant shall make good all injuries sustained by other tenants or occupants of the Building or Landlord.

5. [Intentionally deleted]

6. Tenant shall have the right to install its own security system for the Premises so long as Tenant shall furnish Landlord with a key or other access device for any such lock.

7. If Tenant shall alter any lock or access device or install a new or additional lock or access device, Tenant shall in each case furnish Landlord with a key for any such lock. Tenant, upon the termination of the tenancy, shall deliver to Landlord all the keys or access devices for the Building, offices, rooms and toilet rooms which shall have been furnished to Tenant or which Tenant shall have had made. In the event of the loss of any keys or access devices so furnished by Landlord, Tenant shall pay Landlord therefor.

8. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were

constructed and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule by Tenant or Tenant's employees or invitees shall be borne by Tenant.

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9. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities necessary for the operation or maintenance of office or office equipment. Tenant shall not use any method of heating or air conditioning other than supplied pursuant to the Lease.

10. Tenant shall not use, keep or permit to be used or kept in the Premises any foul or noxious gas or substance or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors and/or vibrations or interfere in any way with anyone having business in the Project, nor shall any animals or birds be brought or kept in or about the Premises or the Building.

11. Except with the prior written consent of Landlord, Tenant shall not sell, or permit the sale, at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on the Premises, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of occupants of any other portion of the Building other than as set forth in Tenant's permitted use herein, nor shall the Premises be used for the storage of merchandise or for manufacturing of any kind, or the business of a public barber shop or beauty parlor, nor shall the Premises be used for any improper, immoral or objectionable purpose, or any business or activity other than that specifically provided for in the Lease.

12. Except for Tenant's right to install Antennae pursuant to the Lease, Tenant shall not install any radio or television antenna, loudspeaker or any other device on the exterior walls or the roof of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

13. Tenant shall not lay linoleum, tile, carpet or any other floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved in writing by Landlord. The expense of repairing any damage resulting from a violation of this rule by Tenant or Tenant's contractors, employees or invitees or the removal of any floor covering shall be borne by Tenant. Tenant shall use chair pads if needed to avoid excess wear and tear to the floor coverings.

14. Landlord shall have the right to prescribe the weight, size, and position of all safes, furniture or other heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as determined by Landlord to be necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe, equipment or property from any cause, and all damage done to the Building by moving or maintaining any such safe, equipment or other property shall be repaired at the expense of Tenant.

Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be reasonably acceptable to Landlord.

15. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Tenant shall not mark, use double-sided adhesive tape on, or drive nails, screw or drill into, the partitions, woodwork or plaster or in any way deface the Premises or any part thereof. Tenant may hang pictures on walls in the Premises. Any damage to the walls caused by molley bolts, or like hanging materials, will be repaired by Tenant.

16. Tenant shall not install, maintain or operate upon the Premises any



vending machine other than those for the exclusive use of Tenant's or its subtenant's employees without the written consent of Landlord.

17. There shall not be used in any space, or in the public areas of the Building, either by Tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material-handling

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equipment as Landlord may approve. No other vehicles of any kind shall be brought by Tenant into or kept in or about the Premises.

18. Tenant shall store all trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the jurisdiction in which the Premises is located, without violation of any law or ordinance governing such disposal.

19. Canvassing, soliciting, distribution of handbills or any other written material and peddling in the Building are prohibited, and Tenant shall cooperate to prevent the same.

20. Landlord shall have the right to change the name and address of the Building, subject to providing reasonable notice to Tenant.

21. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in excessive violation of any of the rules or regulations of the Building. Excessive violation shall mean that Tenant has been provided with repeated notice of such violation and such violation is continued.

22. Without the prior written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address. Tenant may use Project's name on its stationery and business cards.

23. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

24. Tenant assumes any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

25. Landlord reserves the right to make such other and reasonable, uniformly applied and nondiscriminatory enforced rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinafter stated and any additional rules and regulations which are adopted. No new Rule or Regulation shall be designed to discriminate solely against Tenant.

26. Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

27. Unless otherwise defined, terms used in these Rules and Regulations shall have the same meaning as in the Lease.

28. In the event of a conflict between the Lease and the Rules and Regulations, then the Lease shall control.

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EXHIBIT "E"

FORM OF TENANT ESTOPPEL CERTIFICATE

Date: \_\_\_\_\_, 2000

Conning Asset Management Company,  
As authorized lender representative  
700 Market Street  
St. Louis, Missouri 63101

C/O CONNING ASSET MANAGEMENT,  
ITS AUTHORIZED REPRESENTATIVE  
2682 BISHOP DRIVE, SUITE 209  
SAN RAMON, CA 94583

Re: Loan No. \_\_\_\_\_ - Application No. \_\_\_\_  
Lease dated \_\_\_\_\_ between  
\_\_\_\_\_  
Lessor/Landlord,  
and \_\_\_\_\_  
Lessee/Tenant,  
on premises located and addressed as  
\_\_\_\_\_

Gentlemen:

The undersigned, as Lessee/Tenant, hereby confirms and represents to you the following:

1. That it has accepted possession of the premises demised pursuant to the terms of the aforesaid lease.
2. That the building(s), improvements and space required to be furnished according to the aforesaid lease have been satisfactorily completed in all respects.
3. That the Lessor/Landlord has fulfilled all of its duties of an inducement nature, and is not in default in any manner in the performance of any of the terms, covenants or provisions of said lease.
4. That the aforesaid lease has not been modified, altered or amended except by agreement dated \_\_\_\_\_.
5. That there are no offsets or credits against rentals, nor have rentals been prepaid, except as provided by the lease terms.
6. That said rentals commence to accrue on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
The primary lease term expires on \_\_\_\_\_, 20\_\_. The fixed monthly rental is \$\_\_\_\_\_.
7. That we have no notice of an assignment, hypothecation or pledge of rents or the lease, except to your Company.
8. WE CERTIFY THAT THE ATTACHED LEASE IS A TRUE AND COMPLETE COPY OF THE LEASE AND HAS NOT BEEN MODIFIED, ALTERED AND/OR AMENDED EXCEPT AS DESCRIBED ABOVE.

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The above statements are made upon the understanding that your Company will rely on them in connection with the making of a loan collaterally secured by an assignment of our lease, and that these statements are true to the best of our knowledge and belief.

Sincerely,

By:

-----  
(authorized rep.)

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EXHIBIT "F"

FORM OF SUBORDINATION, NONDISTURBANCE AND ATTORNEY AGREEMENT

SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between  
GENERAL AMERICAN LIFE INSURANCE COMPANY (hereinafter called "Mortgagee") and  
\_\_\_\_\_  
(hereinafter called "Tenant").

WITNESSETH:

RECITALS

A. Mortgagee is now the owner and holder of a Deed of Trust (hereinafter called the "Mortgage") dated \_\_\_\_\_, covering the real property described in Exhibit "A" attached hereto and made a part hereof and the buildings and improvements thereon (hereinafter collectively called the "Mortgaged Property") securing the payment of a promissory note in the stated principal amount of \$ \_\_\_\_\_ payable to the order of Mortgagee.

B. Tenant is the holder of a leasehold estate pursuant to a lease (hereinafter called the "Lease") dated \_\_\_\_\_, with \_\_\_\_\_ as landlord (said landlord and its successors and assigns occupying the position of landlord under the Lease hereinafter called "Landlord"), covering the Mortgaged Property (hereinafter called the "Demised Premises").

C. Tenant and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Mortgagee and Tenant hereby agree and covenant as follows:

1. The Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect, to the Mortgage and to any and all liens, interests and rights created thereby and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, provided that any and all such increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to the terms of this Agreement.

LEASE  
 DATED APRIL 18, 2000  
 BY AND BETWEEN

AMB PROPERTY, L.P.  
 as Landlord

and

HARMONIC, INC.  
 as Tenant

AFFECTING PREMISES COMMONLY KNOWN AS  
 646 CARIBBEAN DRIVE  
 SUNNYVALE, CALIFORNIA

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AMB PROPERTY CORPORATION  
INDUSTRIAL MULTI-TENANT LEASE

1. BASIC PROVISIONS ("Basic Provisions").

1.1 Parties: This Lease ("Lease") dated April 18, 2000, is made by and between AMB PROPERTY, L.P., a Delaware limited partnership, ("Landlord") and HARMONIC, INC., a Delaware corporation ("Tenant") (collectively the "Parties," or individually a "Party").

1.2 Premises: The area consisting of 88,320 square feet of leasable area as outlined on Exhibit A attached hereto ("Premises"), of the building ("Building") located at 646 Caribbean Drive in the City of Sunnyvale, State of California. The Building is located in the industrial center commonly known as MBC/Moffett Business Center (the "Industrial Center"). Tenant shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.3 below), but shall not have any rights to the roof, exterior walls or utility raceways of the Building or to any other buildings in the Industrial Center. The Premises, the Building, the Common Areas, the land upon which they are located and all other buildings and improvements thereon are herein collectively referred to as the "Industrial Center."

1.3 Term: Ten (10) years and Zero (0) months ("Term") commencing September 8, 2000 ("Commencement Date") and ending September 30, 2010 ("Expiration Date").

1.4 Base Rent: \$176,640.00 per month ("Base Rent"). \$176,640.00 payable on execution of this Lease for THE FIRST FULL MONTH OF RENT.

1.5 Tenant's Share of Operating Expenses ("Tenant's Share"):

(a) Industrial Center	30.94%
(b) Building	100%

1.6 Tenant's Estimated Monthly Rent Payment: Following is the estimated monthly Rent payment to Landlord pursuant to the provisions of this Lease. This estimate is made at the inception of the Lease and is subject to adjustment pursuant to the provisions of this Lease:

(a) Base Rent (Paragraph 4.1)	\$176,640.00
(b) Operating Expenses (Paragraph 4.2; excluding Real Property Taxes, Landlord Insurance)	\$ 5,833.00
(c) Landlord Insurance (Paragraph 8.3)	\$ 567.00
(d) Real Property Taxes (Paragraph 10)	\$ 7,238.00
Estimated Monthly Payment	\$190,278.00

1.7 Security Deposit: \$264,960.00 ("Security Deposit").

1.8 Permitted Use ("Permitted Use") Research and development, manufacturing, storage and distribution, offices and marketing and other legal related uses.

1.9 Guarantor: N/A

1.10 Addenda and Exhibits: Attached hereto are the following Addenda and Exhibits, all of which constitute a part of this Lease:

- (a) Addenda: First Addendum to Lease
- (b) Exhibits: Exhibit A: Diagram of Premises.  
Exhibit B: Commencement Date Certificate.  
Exhibit C:  
Exhibit D:  
Exhibit E:  
Exhibit F:  
Exhibit G: Hazardous Materials Questionnaire.  
Exhibit H:  
Exhibit I: Rules and Regulations.

1.11 Address for Rent Payments: All amounts payable by Tenant to Landlord shall until further notice from Landlord be paid to AMB PROPERTY L. P./MBC MOFFETT BUSINESS CENTER, C/O ORCHARD PROPERTIES at the following address:

File No.: 3750789034  
P.O. Box 840349  
Dallas, TX 75284-0349

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## 2. PREMISES, PARKING AND COMMON AREAS.

2.1 Letting. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon all of the terms, covenants and conditions set forth in this Lease. Any statement of square footage set forth in this Lease or that may have been used in calculating Base Rent and/or Operating Expenses is an approximation which Landlord and Tenant agree is reasonable and the Base Rent and Tenant's Share based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Common Areas - Definition. "Common Areas" are all areas and facilities outside the Premises and within the exterior boundary line of the Industrial Center and interior utility raceways within the Premises that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Industrial Center and their respective employees, suppliers, shippers, tenants, contractors and invitees.

2.3 Common Areas - Tenant's Rights. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or covenants, conditions and restrictions governing the use of the Industrial Center.

2.4 Common Areas - Rules and Regulations. Landlord shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 16.19.

2.5 Common Area Chances. Landlord shall have the right, in Landlord's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the locations, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress,

egress, direction of traffic, landscaped areas, walkways and utility raceways;

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

(c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Industrial Center, or any portion thereof and

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

### 3. TERM.

3.1 Term. The Commencement Date, Expiration Date and Term of this Lease are as specified in Paragraph 1.3.

3.2 Delay in Possession. If for any reason Landlord cannot deliver possession of the Premises to Tenant by the Commencement Date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder. In such case, Tenant shall not, except as otherwise provided herein, be obligated to pay Rent or perform any other obligation of Tenant under the terms of this Lease until Landlord delivers possession of the Premises to Tenant. The term of the Lease shall commence 30 days following notice to Tenant that Landlord is prepared to tender possession of the Premises to Tenant. If possession of the Premises is not delivered to Tenant within 120 days after the Commencement Date and such delay is not due to Tenant's acts, failure to act or omissions Tenant may by notice in writing to Landlord within 10 days after the end of said 120 day period cancel this Lease and the parties shall be discharged from all obligations hereunder. If such written notice of Tenant is not received by Landlord within said 10 day period, Tenant's right to cancel this Lease shall terminate.

3.3 Commencement Date Certificate. At the request of Landlord, Tenant shall execute and deliver to Landlord a completed certificate ("Commencement Date Certificate") in the form attached hereto as Exhibit B.

### 4. RENT.

4.1 Base Rent. Tenant shall pay to Landlord Base Rent and other monetary obligations of Tenant to Landlord under the terms of this Lease (such other monetary obligations are herein referred to as "Additional Rent") in lawful money of the United States, without offset or deduction, in advance on or before the first day of each month. Base Rent and Additional Rent for any period during the term hereof which is for less than one full month shall be prorated based upon the actual number of days of the month involved. Payment of

Base Rent and Additional Rent shall be made to Landlord at its address stated herein or to such other persons or at such other addresses as Landlord may from time to time designate in writing to Tenant. Base Rent and Additional Rent are collectively referred to as "Rent". All monetary obligations of Tenant to Landlord under the terms of this Lease are deemed to be rent.

4.2 Operating Expenses. Tenant shall pay to Landlord on the first day of each month during the term hereof, in addition to the Base Rent, Tenant's Share of all Operating Expenses in accordance with the following provisions:

(a) "Operating Expenses" are all costs incurred by Landlord relating to the ownership, management and operation of the Industrial Center, Building and Premises including, but not limited to, the following:



(i) The management, operation, repair, maintenance and replacement in neat, clean, good order and condition of the Common Areas, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, drainage systems, lighting facilities, fences and gates, exterior signs and tenant directories.

(ii) Water, gas, electricity, telephone and other utilities servicing the Common Areas.

(iii) Trash disposal, janitorial services, snow removal, property management and security services.

(iv) Reserves set aside for maintenance, repair and replacement of the Common Areas and Building.

(v) Real Property Taxes.

(vi) Premiums for the insurance policies maintained by Landlord under Paragraph 8 hereof.

(vii) Environmental monitoring and insurance programs.

(viii) Monthly amortization of capital improvements to the Common Areas and the Building. The monthly amortization of any given capital improvement shall be the sum of the (i) quotient obtained by dividing the cost of the capital improvement by Landlord's estimate of the number of months of useful life of such improvement plus (ii) an amount equal to the cost of the capital improvement times 1/12 of the lesser of 12% or the maximum annual interest rate permitted by law.

(ix) Maintenance of the Building including, but not limited to, painting, caulking and repair and replacement of Building components, including, but not limited to, roof, elevators and fire detection and sprinkler systems.

(x) If Tenant fails to maintain the Premises, any expense incurred by Landlord for such maintenance.

(b) Tenant's Share of Operating Expenses that are not specifically attributed to the Premises or Building ("Common Area Operating Expenses") shall be that percentage shown in Paragraph 1.5(a). Tenant's Share of Operating Expenses that are attributable to the Building ("Building Operating Expenses") shall be that percentage shown in Paragraph 1.5(b). Landlord in its sole discretion shall determine which Operating Expenses are Common Area Operating Expenses, Building Operating Expenses or expenses to be entirely borne by Tenant.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose any obligation upon Landlord to either have said improvements or facilities or to provide those services.

(d) Tenant shall pay monthly in advance on the same day as the Base Rent is due Tenant's Share of estimated Operating Expenses in the amount set forth in Paragraph 1.6. Landlord shall deliver to Tenant within 90 days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual Operating Expenses incurred during the preceding year. If Tenant's estimated payments under this Paragraph 4(d) during the preceding year exceed Tenant's Share as indicated on said statement, Tenant shall be credited the amount of such overpayment against Tenant's Share of Operating Expenses next becoming due. If Tenant's estimated payments under this Paragraph 4.2(d) during said preceding year were less than Tenant's Share as indicated on said statement, Tenant shall pay to Landlord the amount of the deficiency within 30 days after delivery by Landlord to Tenant of said statement. At any time Landlord may adjust the amount of the estimated Tenant's Share of Operating Expenses to reflect Landlord's estimate of such expenses for the year.

5. SECURITY DEPOSIT. Tenant shall deposit with Landlord prior to Commencement Date or Early Occupancy the Security Deposit set forth in Paragraph 1.7 as security for Tenant's faithful performance of Tenant's obligations under this Lease. If Tenant fails to pay Base Rent or Additional Rent or otherwise defaults under this Lease (as defined in Paragraph 13.1), Landlord may use the Security Deposit for the payment of any amount due Landlord or to reimburse or compensate

Landlord for any liability, cost, expense, loss or damage (including attorney's fees) which Landlord may suffer or incur by reason thereof. Tenant shall on demand

pay Landlord the amount so used or applied so as to restore the Security Deposit to the amount set forth in Paragraph 1.7. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall, at the expiration or earlier termination of the term hereof and after Tenant has vacated the Premises, return to Tenant that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest, or to be prepayment for any monies to be paid by Tenant under this Lease.

#### 6. USE.

6.1 Permitted Use. Tenant shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8. Tenant shall not commit any nuisance, permit the emission of any objectionable noise or odor, suffer any waste, make any use of the Premises which is contrary to any law or ordinance or which will invalidate or increase the premiums for any of Landlord's insurance. Tenant shall not service, maintain or repair vehicles on the Premises, Building or Common Areas. Tenant shall not store foods, pallets, drums or any other materials outside the Premises.

#### 6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or byproducts thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, but upon notice to Landlord and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of the Permitted Use, so long as such use is not a Reportable Use and does not expose the Premises, or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) Duty to Inform Landlord. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance is located in, under or about the Premises or the Building, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given

to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) Indemnification by Tenant. Tenant shall indemnify, protect, defend and hold Landlord, Landlord's affiliates, Lenders, and the officers, directors, shareholders, partners, employees, managers, independent contractors, attorneys and agents of the foregoing ("Landlord Entities") and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by any of Tenant's employees, agents, contractors or invitees. Tenant's obligations under this Paragraph 6.2(c) shall include, but not be limited to, the effects

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of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved. Tenant's obligations under this Paragraph 6.2(c) shall survive the expiration or earlier termination of this Lease.

(D). LANDLORD'S REPRESENTATION REGARDING HAZARDOUS MATERIALS. LANDLORD HEREBY MAKES THE FOLLOWING REPRESENTATIONS TO TENANT AS OF THE EFFECTIVE DATE WITHOUT HAVING MADE ANY INVESTIGATION THEREOF (AND WITHOUT BEING REQUIRED TO MAKE OR BEING DEEMED TO HAVE MADE ANY SUCH INVESTIGATION) TO VERIFY THE ACCURACY THEREOF AND IS SUBJECT TO AND QUALIFIED BY ALL INFORMATION AND DISCLOSURES MADE TO TENANT BY LANDLORD. TO THE BEST OF THE LANDLORD'S KNOWLEDGE:

1. THE SOIL AND GROUNDWATER ON OR UNDER THE PROJECT DOES NOT CONTAIN HAZARDOUS MATERIALS IN AMOUNTS WHICH VIOLATE ANY HAZARDOUS MATERIALS LAWS TO THE EXTENT THAT ANY GOVERNMENTAL ENTITY COULD REQUIRE EITHER LANDLORD OR TENANT TO TAKE ANY REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS.

2. DURING THE TIME THAT LANDLORD HAS OWNED THE PROJECT, LANDLORD HAS RECEIVED NO WRITTEN NOTICE OF: (I) ANY VIOLATION, OR ALLEGED VIOLATION, OF ANY HAZARDOUS MATERIALS LAW WITH RESPECT TO THE PROJECT THAT HAS NOT BEEN REMEDIATED TO THE EXTENT THAT NO OTHER REMEDIATION IS THEN LEGALLY REQUIRED BY APPLICABLE LAW; (II) ANY PENDING CLAIMS RELATING TO THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROJECT; OR, (III) ANY PENDING INVESTIGATION BY ANY GOVERNMENTAL AGENCY CONCERNING THE PROJECT RELATING TO HAZARDOUS MATERIALS.

6.3 Tenant's Compliance with Requirements. Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the reasonable recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within 5 days after receipt of Landlord's written request, provide Landlord with copies of all documents and information evidencing Tenant's compliance with any Applicable Requirements and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

6.4 Inspection: Compliance with Law. In addition to Landlord's environmental monitoring and insurance program, the cost of which is included in Operating Expenses, Landlord and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times PROVIDED LANDLORD HAS PROVIDED TWENTY-FOUR (24) HOUR NOTICE TO TENANT, for

the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements. Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The cost and expenses of any such inspections shall be paid by the party requesting same unless a violation of Applicable Requirements exists or is imminent or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall upon request reimburse Landlord or Landlord's Lender, as the case may be, for the costs and expenses of such inspections.

#### 7. MAINTENANCE, REPAIRS, TRADE FIXTURES AND ALTERATIONS.

7.1 Tenant's Obligations. Subject to the provisions of Paragraph 7.2 (Landlord's Obligations), Paragraph 9 (Damage or Destruction) and Paragraph 14 (Condemnation), Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonable or readily accessible to Tenant and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connectors if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord pursuant to Paragraph 7.2 I

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below. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

7.2 Landlord's Obligations. Subject to the provisions of Paragraph 6 (Use), Paragraph 7.1 (Tenant's Obligations), Paragraph 9 (Damage or Destruction) and Paragraph 14 (Condemnation), Landlord at its expense and not subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations and exterior walls of the Building and utility systems outside the Building. Landlord, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the Building roof and Common Areas.

7.3 Alterations. Construction by Tenant of Alterations shall be governed by the following:

A. Except as set forth below, Tenant shall not construct any Tenant Alterations or otherwise alter, improve, modify, or perform any work of improvement to the Premises without Landlord's prior written approval. However, Tenant shall be entitled, without Landlord's prior approval, to make Tenant Alterations (i) which do not affect the structural or exterior parts or water tight character of the Building, and (ii) the reasonably estimated cost of which, plus the original cost of any part of the Premises removed or materially altered in connection with such Tenant Alterations, together do not exceed the Permitted Tenant Alterations Limit per work of improvement. In the event Landlord's approval for any Tenant Alterations is required, Tenant shall not construct the Tenant Alterations until Landlord has approved in writing the plans and specifications therefor. Such Tenant Alterations shall be constructed substantially in compliance with such approved plans and specifications by a licensed contractor first approved by Landlord. All Tenant Alterations (whether Landlord's consent is required or not) shall be constructed by a licensed contractor in accordance with all Laws (including the ADA) using new materials of good quality.

B. Tenant shall not commence construction of any Tenant Alterations until (i) all required governmental approvals and permits have been obtained, (ii) all requirements regarding insurance imposed by this Lease have been satisfied, (iii) Tenant has given Landlord at least five days' prior written notice of its intention to commence such construction, and (iv) if requested by Landlord, Tenant has obtained contingent liability and broad form builders' risk insurance in an amount reasonably satisfactory to Landlord if

there are any perils relating to the proposed construction not covered by insurance carried pursuant to the Lease.

C. All Tenant Alterations shall remain the property of Tenant during the Lease Term but shall not be altered or removed from the Premises except with Landlord's advance written permission. At the expiration or sooner termination of the Lease Term, all Tenant Alterations shall be surrendered to Landlord as part of the realty and shall then become Landlord's property, and Landlord shall have no obligation to reimburse Tenant for all or any portion of the value or cost thereof, provided, however, that if Landlord requires Tenant to remove any Tenant Alterations, Tenant shall so remove such Tenant Alterations prior to the expiration or sooner termination of the Lease Term. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Tenant Alterations with respect to which the following is true: (i) Tenant was required, or elected, to obtain the approval of Landlord to the installation of the Leasehold Improvement in question; (ii) at the time Tenant requested Landlord's approval, Tenant requested of Landlord in writing that Landlord inform Tenant of whether or not Landlord would require Tenant to remove such Leasehold Improvement at the expiration of the Lease Term; and (iii) at the time Landlord granted its approval, it did not inform Tenant that it would require Tenant to remove such Leasehold Improvement at the expiration of the Lease Term.

D. Landlord's consent to the construction of Tenant Alterations may be withheld in Landlord's sole discretion. Landlord's consent to construction of Tenant Alterations and Landlord's approval of plans and specifications for Tenant Alterations shall not create any responsibility or liability on Landlord's part in regard to the completeness, competency, design sufficiency, or compliance with Law of such Tenant Alterations or the plans and specifications therefor.

7.4 Surrender/Restoration. Tenant shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair ordinary wear and tear excepted. Without limiting the generality of the above, Tenant shall remove all personal property, trade fixtures and floor bolts, patch all floors and cause all lights to be in good operating condition.

#### 8. INSURANCE; INDEMNITY.

8.1 Payment of Premiums. The cost of the premiums for the insurance policies maintained by Landlord under this Paragraph 8 shall be a Common Area Operating Expense pursuant to Paragraph 4.2 hereof. Premiums for policy periods commencing prior to, or

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extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date of Expiration Date.

#### 8.2 Tenant's Insurance.

(i) At its sole cost and expense, Tenant shall maintain in full force and effect during the Term of the lease the following insurance coverages insuring against claims which may arise from or in connection with the Tenant's operation and use of the leased premises.

(a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence; \$3,000,000 general aggregate for bodily injury, personal injury and property damage. If required by Landlord, liquor liability coverage will be included.

(b) Workers' Compensation insurance with statutory limits and Employers Liability with a \$1,000,000 per accident limit for bodily injury or disease.

(c) Automobile Liability covering all owned, non-owned and hired vehicles with a \$1,000,000 per accident limit for bodily injury and property damage.

(d) Property insurance against all risks of loss to any tenant improvements or betterments and business personal property on a full replacement cost basis with no coinsurance penalty provision; and Business

Interruption Insurance with a limit of liability representing loss of at least approximately THREE months of income.

(ii) Tenant shall deliver to AMB certificates of all insurance reflecting evidence of required coverages prior to initial occupancy; and annually thereafter.

(iii) If, in the opinion of Landlord's insurance advisor, the amount of scope of such coverage is deemed inadequate at any time during the Term, Tenant shall increase such coverage to such reasonable amounts or scope as Landlord's advisor deems adequate.

(iv) All insurance required under Paragraph 8.2 (i) shall be primary and non-contributory (ii) shall provide for severability of interests, (iii) shall be issued by insurers, licensed to do business in the state in which the Premises are located and which are rated A:VII or better by Best's Key Rating Guide, (iv) shall be endorsed to include Landlord and such other persons or entities as Landlord may from time to time designate, as additional insureds (Commercial General Liability only), and (v) shall be endorsed to provide at least 30-days prior notification of cancellation or material change in coverage to said additional insureds.

8.3 Landlord's Insurance. Landlord may, but shall not be obligated to, maintain all risk, including earthquake and flood, insurance covering the buildings within the Industrial Center, Commercial General Liability and such other insurance in such amounts and covering such other liability or hazards as deemed appropriate by Landlord. The amount and scope of coverage of Landlord's insurance shall be determined by Landlord from time to time in its sole discretion and shall be subject to such deductible amounts as Landlord may elect. Landlord shall have the right to reduce or terminate any insurance or coverage. Premiums for any such insurance shall be a Common Area Operating Expense.

8.4 Waiver of Subrogation. To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other on account of any and all claims Landlord or Tenant may have against the other with respect to property insurance actually carried, or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage.

8.5 Indemnity. TO THE FULLEST EXTEND PERMITTED BY LAW, TENANT HEREBY AGREES TO DEFEND (WITH ATTORNEYS ACCEPTABLE TO LANDLORD), INDEMNIFY, PROTECT AND HOLD HARMLESS LANDLORD AND LANDLORD'S AGENTS AND ANY SUCCESSORS TO ALL OR ANY PORTION OF LANDLORD'S INTEREST IN THE PREMISES AND THEIR DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AUTHORIZED AGENTS, REPRESENTATIVES, AFFILIATES AND MORTGAGES, FROM AND AGAINST ANY AND ALL DAMAGE, LOSS, CLAIM, LIABILITY AND EXPENSE INCLUDING, BUT NOT LIMITED TO, ACTUAL ATTORNEY'S FEES AND LEGAL COSTS, INCURRED DIRECTLY OR INDIRECTLY BY REASON OF ANY CLAIM, SUIT OR JUDGMENT BROUGHT BY OR ON BEHALF OF (I) ANY PERSON OR PERSONS FOR DAMAGE, LOSS OR EXPENSE DUE TO, BUT NOT LIMITED TO, BODILY INJURY OR PROPERTY DAMAGE SUSTAINED BY SUCH PERSON OR PERSONS WHICH ARISE OUT OF, ARE OCCASIONED BY, OR ARE IN ANY WAY ATTRIBUTABLE TO THE CONDITION, USE OR OCCUPANCY OF THE PREMISES OR THE ACTS OR OMISSIONS OF THE TENANT OR TENANT'S AGENTS IN OR ABOUT THE PREMISES OR THE PROJECT (INCLUDING BUT NOT LIMITED TO ANY EVENT OF DEFAULT HEREUNDER), OR (II) TENANT OR TENANT'S AGENTS FOR DAMAGE, LOSS OR EXPENSE DUE TO, BUT NOT LIMITED TO, BODILY INJURY OR PROPERTY DAMAGE WHICH ARISE OUT OF, ARE OCCASIONED BY, OR ARE IN ANY WAY ATTRIBUTABLE TO THE USE IF ANY OF THE COMMON AREA, EXCEPT TO THE EXTENT CAUSED SOLELY BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD SHALL NOT BE RELEASED OR INDEMNIFIED FROM, AND SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS TENANT FROM, ALL DAMAGES, LIABILITIES, JUDGMENTS, ACTIONS, CLAIMS, ATTORNEY'S FEES, CONSULTANTS' FEES, PAYMENTS, COSTS AND EXPENSES ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL

MISCONDUCT OF LANDLORD OR ITS AGENTS, CONTRACTORS OR LICENSEES, OR LANDLORD'S VIOLATION OR APPLICABLE LAW.

8.6 Exemption of Landlord from Liability. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Landlord Entities shall not be liable for and Tenant waives any claims against Landlord Entities for

injury or damage to the person or the property of Tenant, Tenant's employees, contractors, invitees, customers or any other person in or about the Premises, Building or Industrial Center from any cause whatsoever, including, but not limited to, damage or injury which is caused by or results from (i) fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or (ii) from the condition of the Premises, other portions of the Building or Industrial Center. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord nor from the failure by Landlord to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business, for any loss of income or profit therefrom or any indirect, consequential or punitive damages.

#### 9. DAMAGE OR DESTRUCTION.

9.1 Termination Right. Tenant shall give Landlord immediate written notice of any damage to the Premises. Subject to the provisions of Paragraph 9.2, if the Premises or the Building shall be damaged to such an extent that there is substantial interference for a period exceeding 90 consecutive days with the conduct by Tenant of its business at the Premises, Tenant, at any time prior to commencement of repair of the Premises and following 10 days written notice to Landlord, may terminate this Lease effective 30 days after delivery of such notice to Landlord. Such termination shall not excuse the performance by Tenant of those covenants which under the terms hereof survive termination. Rent shall be abated in proportion to the degree of interference during the period that there is such substantial interference with the conduct of Tenant's business at the Premises. Abatement of rent and Tenant's right of termination pursuant to this provision shall be Tenant's sole remedy for failure of Landlord to keep in good order, condition and repair the foundations and exterior walls of the Building, Building roof, utility systems outside the Building and the Common Areas.

9.2 Damage Caused by Tenant. Tenant's termination rights under Paragraph 9.1 shall not apply if the damage to the Premises or Building is the result of any act or omission of Tenant or of any of Tenant's agents, employees, customers, invitees or contractors ("Tenant Acts"). Any damage resulting from a Tenant Act shall be promptly repaired by Tenant. Landlord at its option may at Tenant's expense repair any damage caused by Tenant Acts. Tenant shall continue to pay all rent and other sums due hereunder and shall be liable to Landlord for all damages that Landlord may sustain resulting from a Tenant Act.

#### 10. REAL PROPERTY TAXES.

10.1 Payment of Real Property Taxes. Landlord shall pay the Real Property Taxes due and payable during the term of this Lease and, except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.2 Real Property Tax Definition. As used herein, the term "Real Property Taxes" is any form of tax or assessment, general, special, ordinary or extraordinary, imposed or levied upon (a) the Industrial Center, (b) any interest of Landlord in the Industrial Center, (c) Landlord's right to rent or other income from the Industrial Center, and/or (d) Landlord's business of leasing the Premises. Real Property Taxes include (i) any license fee, commercial rental tax, excise tax, improvement bond or bonds, levy or tax; (ii) any tax or charge which replaces or is in addition to any of such above-described "Real Property Taxes" and (iii) any fees, expenses or costs (including attorney's fees, expert fees and the like) incurred by Landlord in protesting or contesting any assessments levied or any tax rate. The term "Real Property Taxes" shall also include any increase resulting from a change in the ownership of the Industrial Center or Building, the execution of this Lease or any modification, amendment or transfer thereof. Real Property Taxes for tax years commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date and Expiration Date.

10.3 Additional Improvements. Operating Expenses shall not include Real Property Taxes attributable to improvements placed upon the Industrial Center by other tenants or by Landlord for the exclusive enjoyment of such other tenants. Notwithstanding Paragraph 10.1 hereof, Tenant shall, however, pay to Landlord at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed by reason of improvements placed

upon the Premises by Tenant or at Tenant's request.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed.

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10.5 Tenant's Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant's improvements, fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or stored within the Industrial Center.

#### 11. UTILITIES.

Tenant shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security, gas and cleaning of the Premises, together with any taxes thereon.

#### 12. ASSIGNMENT AND SUBLETTING.

##### 12.1 Landlord's Consent Required.

(a) Tenant shall not assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assign") or sublet all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent which consent shall not be unreasonably withheld. Relevant criteria in determining reasonability of consent include, but are not limited to, credit history of a proposed assignee or sublessee, references from prior landlords, any change or intensification of use of the Premises or the Common Areas and any limitations imposed by the Internal Revenue Code and the Regulations promulgated thereunder relating to Real Estate Investment Trusts. Assignment or sublet shall not release Tenant from its obligations hereunder. Tenant shall not (i) sublet or assign or enter into other arrangements such that the amounts to be paid by the sublessee or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the sublessee or assignee; (ii) sublet the Premises or assign this Lease to any person in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code (the "Code"); or (iii) sublet the Premises or assign this Lease in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 12.1 shall apply to any further subleasing by any subtenant.

(b) A change in the control of Tenant shall constitute an assignment requiring Landlord's consent. The transfer, on a cumulative basis, of 50% or more of the voting or management control of Tenant shall constitute a change in control for this purpose.

12.2 Rent Adjustment. If, as of the effective date of any permitted assignment or subletting the then remaining term of this Lease is less than ONE (1) YEAR, Landlord may, as a condition to its consent: (i) require that the amount and adjustment schedule of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment schedule for property similar to the Premises as then constituted, as determined by Landlord; or (ii) terminate the Lease as of the date of assignment or subletting subject to the performance by Tenant of those covenants which under the terms hereof survive termination.

#### 13. DEFAULT; REMEDIES.

13.1 Default. The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ("Default"):

(a) The abandonment of the Premises by Tenant;

(b) Failure to pay any installment of Base Rent, Additional Rent or any other monies due and payable hereunder, said failure continuing for a



period of 3 BUSINESS days after the same is due;

(c) A general assignment by Tenant or any guarantor for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Tenant or any guarantor, the filing of a voluntary petition for an arrangement, the filing of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by Tenant's creditors or guarantors;

(e) Receivership, attachment, of other judicial seizure of the Premises or all or substantially all of Tenant's assets on the Premises;

(f) Failure of Tenant to maintain insurance as required by Paragraph 8.2;

(g) Any breach by Tenant of its covenants under Paragraph 6.2;

(h) Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in other Paragraphs of this Paragraph 13.1 which shall be governed by such other Paragraphs), which failure continues for 10 days after written notice thereof from Landlord to Tenant provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such 10 day period despite reasonable diligence, Tenant shall not be in default under this subparagraph unless Tenant fails thereafter diligently and continuously to prosecute the cure to completion;

(i) Any transfer of a substantial portion of the assets of Tenant, or any incurrence of a material obligation by Tenant, unless such transfer or obligation is undertaken

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or incurred in the ordinary course of Tenants business or in good faith for equivalent consideration, or with Landlord's consent; and

(j) The default of any guarantors of Tenant's obligations hereunder under any guaranty of this Lease, or the attempted repudiation or revocation of any such guaranty.

13.2 Remedies. In the event of any Default by Tenant, Landlord shall have the remedies set forth in the Addendum attached hereto entitled "Landlord's Remedies in Event of Tenant Default".

13.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or other sum due from Tenant shall not be received by Landlord or Landlord's designee within 10 days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, IF TENANT IS DELINQUENT IN THE PAYMENT OF RENT AND IS SUBJECT TO A LATE CHARGE OR INTEREST FEE, LANDLORD AGREES TO WAIVE THE LATE CHARGE OR INTEREST FEE IF (i) TENANT HAS NOT BEEN LATE IN ITS PAYMENT OF RENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE RENT DELINQUENCY IN QUESTION AND (ii) THE RENT DUE IS PAID WITHIN FIVE (5) DAYS OF LANDLORD'S WRITTEN NOTICE TO THE TENANT OF THE DELINQUENCY AMOUNT OWED.

#### 14. CONDEMNATION.

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession,

whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the portion of the Common Areas designated for Tenant's parking, is taken by condemnation, Tenant may, at Tenant's option, to be exercised in writing within 10 days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, provided, however, that Tenant shall be entitled to any compensation, separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenants trade fixtures. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of its net severance damages in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Tenant shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

#### 15. ESTOPPEL CERTIFICATE AND FINANCIAL STATEMENTS.

15.1 Estoppel Certificate. Each party (herein referred to as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party, to the extent it can truthfully do so, an estoppel certificate, plus such additional information, confirmation and/or statements as be reasonably requested by the Requesting Party.

15.2 Financial Statement. If Landlord desires to finance, refinance, or sell the Building, Industrial Center or any part thereof, Tenant and all Guarantors shall deliver to any potential lender or purchaser designated by Landlord such financial statements of Tenant and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Tenant's financial statements for the past 3 years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

#### 16. ADDITIONAL COVENANTS AND PROVISIONS.

16.1 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other provision hereof.

16.2 Interest on Past-Due Obligations. Any monetary payment due Landlord hereunder not received by Landlord within 10 days following the date on which it was due shall,

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bear interest from the date due at 12% per annum, but not exceeding the maximum rate allowed by law in addition to the late charge provided for in Paragraph 13.3.

16.3 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

16.4 Landlord Liability. Tenant, its successors and assigns, shall not assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Industrial Center. Tenant agrees to look solely to such interest for the satisfaction of any liability or claim against Landlord under this Lease. In no event whatsoever shall Landlord (which term shall include, without limitation, any general or limited partner, trustees, beneficiaries, officers, directors, or stockholders of Landlord) ever be personally liable for any such liability.

16.5 No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and supersedes

all oral, written prior or contemporaneous agreements or understandings.

16.6 Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours, and shall be deemed sufficiently given if served in a manner specified in the Paragraph 16.6. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by written notice to Tenant.

16.7 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via hand or overnight delivery or certified mail. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

16.8 Waivers. No waiver by Landlord of a Default by Tenant shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default by Tenant of the same or any other term, covenant or condition hereof.

16.9 Holdover. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. If Tenant holds over with the consent of Landlord: (i) the Base Rent payable shall be increased to 150% of the Base Rent applicable during the month immediately preceding such expiration or earlier termination; (ii) Tenant's right to possession shall terminate on 30 days notice from Landlord and (iii) all other terms and conditions of this Lease shall continue to apply. Nothing contained herein shall be construed as a consent by Landlord to any holding over by Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

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

16.11 Binding Effect: Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

16.12 Landlord. The covenants and obligations contained in this Lease on the part of Landlord are binding on Landlord, its successors and assigns, only during and in respect of their respective period of ownership of such interest in the Industrial Center. In the event of any transfer or transfers of such title to the Industrial Center, Landlord (and in case of any subsequent transfers or conveyances, the then grantor) shall be concurrently freed and relieved from and after the date of such transfer of conveyance, without any further instrument or

agreement, of all liability with respect to the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

16.13 Attorneys' Fees and Other Costs. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding shall be entitled to reasonable attorneys' fees. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought. Landlord shall be entitled to attorneys' fees, costs and expenses incurred in preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting breach. Tenant shall reimburse Landlord on demand for all reasonable legal, engineering and other professional services expenses incurred by Landlord in connection with all requests by Tenant for consent or approval hereunder.

16.14 Landlord's Access: Showing Premises: Repairs. Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Landlord may reasonably deem necessary. Landlord may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Landlord may at any time during the last 180 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Landlord shall be without abatement of rent or liability to Tenant.

16.15 Signs. Tenant shall not place any signs at or upon the exterior of the Premises or the Building, except that Tenant may, with Landlord's prior written consent, install (but not on the roof) such signs as are reasonably required to advertise Tenant's own business so long as such signs are in a location designated by Landlord and comply with sign ordinances and the signal criteria established for the Industrial Center by Landlord.

16.16 Termination: Merger. Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Default by Tenant, shall terminate any sublease or lesser estate in the Premises; provided, however, Landlord shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies.

16.17 Quiet Possession. Upon payment by Tenant of the Base Rent and Additional Rent for the Premises and the performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

16.18 Subordination: Attainment; Non-Disturbance.

(a) Subordination. This Lease shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or mortgage (collectively, "Mortgage") now or hereafter placed by Landlord upon the real property of which the Premises are a part, to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant agrees that any person holding any Mortgage shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease. In the event of Landlord's default with respect to any such obligation, Tenant will give any Lender, whose name and address have previously in writing been furnished Tenant, notice of a default by Landlord. Tenant may not exercise any remedies for default by Landlord unless and until Landlord and the Lender shall have received written notice of such default and a reasonable time (not less than 60 DAYS) shall thereafter have elapsed without the default having been cured. If any Lender shall elect to have this Lease superior to the lien of its Mortgage and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such Mortgage. The provisions of a Mortgage relating to the disposition of condemnation and insurance proceeds shall prevail over any contrary provisions contained in this Lease.

(b) Attornment. Subject to the non-disturbance provisions of subparagraph C of this Paragraph 16.18, Tenant agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a

foreclosure of a Mortgage. In the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior Landlord, or (iii) be liable for security deposits or be bound by prepayment of more than one month's rent.

(c) Non-Disturbance. With respect to Mortgage 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 Mortgage holder that Tenant's

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possession and this Lease will not be disturbed so long as Tenant is not in default and attorns to the record owner of the Premises.

(d) Self-Executing. The agreements contained in this Paragraph 16.18 shall be effective without the execution of any further documents; provided, however, that upon written request from Landlord or a Lender in connection with a sale, financing or refinancing of Premises, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein. Landlord is hereby irrevocably vested with full power to subordinate this Lease to a Mortgage.

16.19 Rules and Regulations. Tenant agrees that it will abide by, and to cause its employees, suppliers, shippers, customers, tenants, contractors and invitees to abide by all reasonable rules and regulations ("Rules and Regulations") which Landlord may make from time to time for the management, safety, care, and cleanliness of the Common Areas, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Industrial Center and their invitees. Landlord shall not be responsible to Tenant for the non-compliance with said Rules and Regulations by other tenants of the Industrial Center.

16.20 Security Measures. Tenant acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or other security measures. Landlord has no obligations to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

16.21 Reservations. Landlord reserves the right to grant such easements that Landlord deems necessary and to cause the recordation of parcel maps, so long as such easements and maps do not reasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonable requested by Landlord to effectuate any such easements or maps.

16.22 Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

16.23 Offer. Preparation of this Lease by either Landlord or Tenant or Landlord's agent or Tenant's agent and submission of same to Tenant or Landlord shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

16.24 Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification.

16.25 Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as Tenant, the obligations of such persons shall be the joint and several responsibility of all persons or entities named herein as such Tenant.

16.26 Authority . Each person signing on behalf of Landlord or Tenant warrants and represents that he or she is authorized to execute and deliver this Lease and to make it a binding obligation of Landlord or Tenant.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

LANDLORD:  
AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

TENANT:  
HARMONIC, INC.  
a Delaware corporation  
By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

By: /s/ JOHN L. ROSSI

Its: Chief Financial Officer

-----  
John L. Rossi

Its: Regional Manager

By:  
-----

Its:  
-----

Telephone: (415)394-9000  
Facsimile: (415)394-0903

Telephone: (408)542-2661  
Facsimile: (408)542-2516

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5/12/00

Date:

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FIRST ADDENDUM TO LEASE

THIS FIRST ADDENDUM is dated for reference purposes as April 18, 2000, and is made a part of that Lease Agreement (the "Lease") dated April 18, 2000, by and between AMB PROPERTY L.P., a Delaware limited partnership ("Landlord") and HARMONIC, INC., a Delaware corporation ("Tenant") affecting certain real property commonly known as 646 Caribbean Drive, Sunnyvale, California, with reference to the following facts:

1. Base Monthly Rent:

October 1, 2000 - December 31, 2000:	\$2.00 NNN per square foot per month
January 1, 2001 - December 31, 2001:	\$2.10 NNN per square foot per month
January 1, 2002 - December 31, 2002:	\$2.20 NNN per square foot per month
January 1, 2003 - December 31, 2003:	\$2.30 NNN per square foot per month
January 1, 2004 - December 31, 2004:	\$2.40 NNN per square foot per month
January 1, 2005 - December 31, 2005:	\$2.50 NNN per square foot per month
January 1, 2006 - December 31, 2006:	\$2.60 NNN per square foot per month
August 2, 2006	Adjustment to Fair market Value (FMV)
January 1, 2007 - December 31, 2007:	\$2.70 NNN per square foot per month or FMV
January 1, 2008 - December 31, 2008:	\$2.80 NNN per square foot per month of FMV
January 1, 2009 - December 31, 2009:	\$2.90 NNN per square foot per month or FMV
January 1, 2010 - September 30, 2010:	\$3.00 NNN per square foot per month or FMV

A. The Base Monthly Rent for the Period after August 2, 2006 shall be the greater of (i) one hundred percent (100%) of the Base Monthly Rent Schedule, or (ii) one hundred percent (100%) of the then fair market monthly rent determined as of the commencement of the Period in question based upon like buildings with like improvements in the area within the boundaries of Highways 101, 880 and the San Francisco Bay. However, the Fair Market Value Rent as

determined by appraisal shall not exceed \$4.00 per square foot per month in August 2006 with 5% annual increases through the balance of the term. The Period shall contain no free rent and the Premises shall be taken "as-is". If the parties are unable to agree upon the fair market monthly rent for the Premises for the option period in question at least seventy-five (75) days prior to the commencement of the option period in question, then the fair market monthly rent shall be determined by appraisal conducted pursuant to subparagraph B.

B. In the event it becomes necessary to determine by appraisal the fair market rent of the Premises for the purpose of establishing the Base Monthly Rent during the Period, then such fair market monthly rent shall be determined by three (3) real estate appraisers, all of whom shall be members of the American Institute of Real Estate Appraisers with not less than five (5) years experience appraising real property (other than residential or agricultural property) located in Santa Clara County, California, in accordance with the following procedures:

(1) The party demanding an appraisal (the "Notifying Party") shall notify the other party (the "Non-Notifying Party") thereof by delivering a written demand for appraisal, which demand, to be effective, must give the name, address, and qualifications of an appraiser selected by the Notifying Party. Within ten (10) days of receipt of said demand, the Non-Notifying Party shall select its appraiser and notify the Notifying Party, in writing, of the name, address, and qualifications of an appraiser selected by it. Failure by the Non-Notifying Party to select a qualified appraiser within said ten (10) day period shall be deemed a waiver of its right to select a second appraiser on its own behalf and the Notifying Party shall select a second appraiser on behalf of the Non-Notifying Party within five (5) days after the expiration of said ten (10) day period. Within ten (10) days from the date the second appraiser shall have been appointed, the two (2) appraisers so selected shall appoint a third appraiser. If the two appraisers fail to select a third qualified appraiser, the third appraiser shall be selected by the American Arbitrations Association or if it shall refuse to perform this function, then at the request of either Landlord or Tenant, such third appraiser shall be promptly appointed by the then Presiding Judge of the Superior Court of the State of California for the County of Santa Clara.

(2) The three (3) appraisers so selected shall meet in San Jose, California, not later than twenty (20) days following the selection of the third appraiser. At said

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meeting the appraisers so selected shall attempt to determine the fair market monthly rent of the Premises for the period in question (including the timing and amount of periodic increases).

(3) If the appraisers so selected are unable to complete their determinations in one meeting, they may continue to consult at such times as they deem necessary for a fifteen (15) day period from the date of the first meeting, in an attempt to have at least two (2) of them agree. If, at the initial meeting or at any time during said fifteen (15) day period, two (2) or more of the appraisers so selected agree on the fair market rent of the Leased Premises, such agreement shall be determinative and binding on the parties hereto, and the agreeing appraisers shall, in simple letter form executed by the agreeing appraisers, forthwith notify both Landlord and Tenant of the amount set by such agreement.

(4) If two (2) or more appraisers do not so agree within said fifteen (15) day period, then each appraiser shall, within five (5) days after the expiration of said fifteen (15) day period, submit his independent appraisal in simple letter form to Landlord and Tenant stating his determination of the fair market rent of the Premises for the period in question. The parties shall then determine the fair market rent for the Premises by determining the average of the fair market rent set by each of the appraisers. However, if the lowest appraisal is less than eighty-five percent (85%) of the middle appraisal then such lowest appraisal shall be disregarded and/or if the highest appraisal is greater than one hundred fifteen percent (115%) of the middle appraisal then such highest appraisal shall be disregarded. If the fair market rent set by any appraisal is so disregarded, then the average shall be determined by computing the average set by the other appraisals that have not been disregarded.

(5) Nothing contained herein shall prevent Landlord and Tenant from jointly selecting a single appraiser to determine the fair market

rent of the Premises, in which event the determination of such appraisal shall be conclusively deemed the fair market rent of the Premises.

(6) Each party shall bear the fees and expenses of the appraiser selected by or for it, and the fees and expenses of the third appraiser (or the joint appraiser if one joint appraiser is used) shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

## 2. Early Occupancy:

A. As consideration for Tenant's performance of all obligations to be performed by Tenant under the Lease, and upon receipt of (i) the first month's Base Monthly Rent and Security Deposit totaling \$221,850.00, and (ii) a certificate of insurance as provided by Article 9.1 C of the Lease, Landlord shall permit Tenant to enter and use the Premises commencing thirty (30) days prior to Commencement until the Commencement Date (the "Early Occupancy Period"). Such occupancy during the Early Occupancy Period shall be subject to all of the terms, covenants and conditions of the Lease provided, however, that the rent payable during the Early Occupancy Period shall be waived.

B. In the event either party shall bring any action or legal proceeding for damages for alleged breach of any provision of this agreement, to recover rent, to terminate tenancy of the Premises, or to enforce, protect or establish any term or covenant of this agreement or the Lease or right of remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorney's fees and court costs as may be fixed by the court or jury.

C. In consideration of executing this Early Occupancy Agreement, Tenant agrees to indemnify and save landlord harmless of and from any and all liability, damage, expense, cause of action, suits or claims or judgments resulting from injury to person or property arising from the use of the Premises by Tenant during the Early Occupancy Period, including loss or damage to Tenant, its equipment, materials or supplies.

D. Tenant agrees to cooperate with construction personnel completing the Interior Improvements in the Premises and not cause any delay in the completion of these improvements. It is the intent of Landlord and Tenant that Tenant's obligation to pay the Base Monthly Rent and all Additional Rent not be delayed by any cause or other act of Tenant and, if it is so delayed, and provided that Landlord promptly notifies Tenant in writing of each separate delay and the estimated period of delay, then Tenant's obligation to pay the Base

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Monthly Rent AND all Additional Rent shall commence as of the date it would have commenced absent said delay caused by Tenant.

E. During the Early Occupancy Period, Tenant shall arrange to have all utility services, including but not limited to gas, electric, water and trash, billed directly to Tenant for payment.

3. Tenant Maintenance: Tenant shall (i) maintain, repair and replace when necessary all HVAC equipment which services only the Premises, and shall keep the same in good condition through regular inspection and servicing, and (ii) maintain continuously throughout the Lease Term a service contract for the maintenance of all such HVAC equipment with a licensed HVAC repair and maintenance contractor approved by Landlord, which contract provides for the periodic inspection and servicing of the HVAC equipment at least once every sixty (60) days during the Lease Term. Tenant shall furnish Landlord with a copy of such service contract, which shall provide that it may not be cancelled or changed without at least thirty (30) days' prior written notice to Landlord. Notwithstanding the foregoing, Landlord may elect at any time to assume responsibility for the maintenance, repair and replacement of such HVAC equipment which serves only the Premises. Tenant shall maintain continuously through the Lease Term a service contract for the washing of all windows (both interior and exterior surfaces) in the Premises.

## 4. Landlord's Remedies in Event of Tenant Default: (AMB)

A. Termination. In the event of any Default by Tenant, then in



addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Landlord (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering or rehabilitating the Premises or any portion thereof, including such acts for reletting to a new lessee or lessees; (iii) for leasing commissions; or (iv) for any other costs necessary or appropriate to relet the Premises; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "worth at the time of award" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). 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.

B. Continuation of Lease. In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided tenant has the right to sublet or assign, subject only to reasonable limitations).

C. Re-entry. In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

D. Reletting. In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph a, Landlord may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in

its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

E. Termination. No re-entry or taking of possession of the Premises by Landlord pursuant to this Addendum shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

F. Cumulative Remedies. The remedies herein provided are not exclusive and Landlord shall have any and all other remedies provided herein or by law or in equity.

G. No Surrender. No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant, voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

H. Notice Provisions. Tenant agrees that any notice given by Landlord pursuant to Paragraph 13.1 of the Lease shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

5. Year 2000 Disclaimer: Landlord hereby disclaims any liability for any and all damages, injuries or other losses, whether ordinary, special, consequential, punitive or

otherwise, arising out of, relating to, or in connection with, (a) the failure of any automated, computerized and/or software system or other technology used in, on, or about the Property or relating to the management or operation of the Property to accurately receive, provide or process date/time data (including, but not limited to, calculating, comparing and sequencing) both before and after September 9, 1999, and before, after, during and between the years 1999 A. D. and 2000 A. D., and leap year calculations and, or (b) the malfunction, ceasing to function or providing of invalid or incorrect results by any such technology as a result of date/time data. The foregoing disclaimer shall apply to any such technology used in, on, or about the Property or that affects the Property, whether or not such technology is within the control of Owner or any of Owner's agents or representatives. THE FOREGOING DISCLAIMER INCLUDES A DISCLAIMER OF ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE MATTERS DESCRIBED HEREIN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LANDLORD:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

By: /s/ JOHN L. ROSSI

-----  
John L. Rossi

Its: Regional Manager

Telephone: (415)394-9000  
Facsimile: 415 394-0903

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Date: 5/12/00  
-----

TENANT:

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

Its: Chief Financial Officer  
-----

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

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

Telephone: (408)542-2661  
Facsimile: (408)542-2516

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

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

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EXHIBIT "A"

SITE PLAN

PROJECT 8J01  
R & D

AMB PROPERTY, L.P.  
MBC/MOFFETT BUSINESS CENTER  
TOTAL PROJECT SQUARE FOOTAGE: 285,480  
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[DIAGRAM]

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EXHIBIT B

COMMENCEMENT DATE CERTIFICATE

THIS COMMENCEMENT DATE CERTIFICATE is made as of April 18, 2000, by and between the parties hereto with regard to that Lease dated April 18, 2000, by and between AMB PROPERTY, L.P., a Delaware limited partnership, as Landlord ("Landlord"), and HARMONIC, INC., a California corporation as Tenant ("Tenant"), affecting those Premises commonly known as 646 Caribbean Drive, Sunnyvale, California. The parties hereto agree as follows:

1. Possession of the Premises has been delivered to Tenant and Tenant has accepted and taken possession of the Premises.
2. The Commencement Date of the Lease Term is September 8, 2000 and the Lease Term shall expire on September 30, 2010 unless sooner terminated according to the terms of the Lease or by mutual agreement.
3. The Base Monthly Rent initially due pursuant to the Lease is One Hundred Seventy-Six Thousand Six Hundred Forty and 00/100 Dollars (\$176,640.00)

per month, subject to any subsequent adjustments required by the Lease.

4. Landlord has received a Security Deposit in the amount of Two Hundred Sixty-Four Thousand Nine Hundred Sixty and 00/Dollars (\$264,960.00). In addition, Tenant has prepaid rent in the amount of One Hundred Seventy-Six Thousand Six Hundred Forty and 00/Dollars (\$176,640.00), which shall be applied to the first installment of Base Monthly Rent.

5. The Lease is in full force and effect, neither party is in default of its obligations under the Lease, and Tenant has no setoffs, claims, or defenses to the enforcement of the Lease.

LANDLORD:

TENANT:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

By: /s/ JOHN L. ROSSI

Its: Chief Financial Officer

-----  
John L. Rossi

Its: Regional Manager

By:

-----  
Its:

Telephone: (415)394-9000  
Facsimile: (415)394-0903  
Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Telephone: (408)542-2661  
Facsimile: (408)542-2516  
Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5/12/00

Date: -----

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EXHIBIT "C"  
IMPROVEMENT AGREEMENT

NOT APPLICABLE

25

EXHIBIT "D"  
APPROVED SPECIFICATIONS

NOT APPLICABLE

26

EXHIBIT "E"  
DESCRIPTION OF PRIVATE RESTRICTIONS

(NOT APPLICABLE)

27

EXHIBIT "F"  
SIGN CRITERIA

(NOT APPLICABLE)

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EXHIBIT "H"  
LEGAL DESCRIPTION

NOT APPLICABLE

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EXHIBIT I  
RULES AND REGULATIONS

This Exhibit sets forth the rules and regulations governing Tenant's use of the Common Areas and the Premises leased to Tenant pursuant to the terms, covenants and conditions of the Lease to which this Exhibit is attached. Unless otherwise defined, capitalized terms used herein shall have the same meanings as set forth in the Lease. In the event of any conflict or inconsistency between this Exhibit and the Lease, the Lease shall control.

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.

2. The walls, walkways, sidewalks, entrance passages, courts and vestibules shall not be obstructed or used for any purpose other than ingress and egress of pedestrian travel to and from the Premises, and shall not be used for loitering or gathering, or to display, store or place any merchandise, equipment or devices, or for any other purpose. The walkways, entrance passages, courts, vestibules and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contain shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. No tenant or employee or invitee of any tenant shall be permitted upon the roof of the Building.

3. No awnings or other projection shall be attached to the outside walls of the Building. No security bars or gates, curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises without the prior written consent of Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the express written consent of Landlord.

4. Tenant shall not in any way deface any part of the Premises or the Building. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord in writing. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by Tenant.

5. The toilet rooms, urinals, wash bowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant.

6. Landlord shall direct electricians as to the manner and location of any future telephone wiring. No boring or cutting for wires will be allowed without the prior consent of Landlord. The locations of the telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

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7. No exterior storage shall be allowed at any time without the prior written approval of Landlord. The Premises shall not be used for cooking or washing clothes without the prior written consent of Landlord, or for lodging or sleeping or for any immoral or illegal purposes.

8. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, machinery, or otherwise. Tenant shall not use, keep or permit to be used, or kept, any foul or obnoxious gas or substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of this or neighboring buildings or premises by reason of any odors, fumes or gases.

9. Neither Tenant nor any of Tenant's Agents shall at any time bring or keep upon the Premises any toxic, hazardous, inflammable, combustible or explosive fluid, chemical or substance without the prior written consent of Landlord.

10. No animals shall be permitted at any time within the Premises.

11. Tenant shall not use the name of the Building or the Project in connection with or in promoting or advertising the business of Tenant, except as Tenant's address, without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising by Tenant which uses the name of, or uses pictures or depictions of, the Building or the Project if such advertising in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability for its intended uses, and upon written notice from Landlord Tenant shall refrain from or discontinue such advertising.

12. Canvassing, soliciting, peddling, parading, picketing, demonstrating or otherwise engaging in any conduct that unreasonably impairs the value or use of the Premises or the Project are prohibited and Tenant shall cooperate to prevent the same.

13. All equipment of any electrical or mechanical nature shall be placed by Tenant on the Premises in such a way as to best minimize, absorb and prevent any vibration, noise or annoyance. No equipment of any type shall be placed on the Premises which in Landlord's opinion exceeds the load limits of the floor or otherwise threatens the soundness of the structure or improvements of the Building.

14. All furniture, equipment and freight shall be moved in and out of the Building only at hours and in accordance with rules established by Landlord, and shall not impair vehicular and pedestrian circulation in the Common Area. Landlord will not be responsible for loss or damage to any furniture, equipment, or other personal property of Tenant from any cause.

15. No air conditioning unit or other similar apparatus shall be installed or used by Tenant without the prior written consent of Landlord.

16. No aerial antenna shall be erected on tile roof or exterior walls of the Premises, or on the grounds, without in each instance the prior written consent of Landlord. Any aerial or antenna so installed by or on behalf of Tenant without such written consent shall be subject to removal by Landlord at any time without prior notice at the expense of Tenant, and Tenant shall upon Landlord's demand pay a reasonable removal fee to Landlord.

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17. The entire Premises, including vestibules, entrances, doors, fixtures, windows and plate glass, shall at all times be maintained in a safe, neat and clean condition by Tenant. All trash, refuse and waste materials shall be regularly removed from the Premises by Tenant and placed in the containers at the locations designated by Landlord for refuse collection. All cardboard boxes must be "broken down" prior to being placed in the trash containers. All styrofoam chips must be bagged or otherwise contained prior to placement in the

trash containers, so as not to constitute a nuisance. Pallets may not be disposed of in the trash containers or enclosures. The burning of trash, refuse or waste materials is prohibited.

18. All keys for the Premises shall be provided to Tenant by Landlord and Tenant shall return to Landlord any of such keys so provided upon the termination of the Lease. Tenant shall not change locks or install other locks on doors of the Premises without the prior written consent of Landlord, except for Secure Areas within the Premises. In the event of loss of any keys furnished by Landlord for Tenant, Tenant shall pay to Landlord the costs thereof.

19. No person shall enter or remain within the Project while intoxicated or under the influence of liquor or drugs. Landlord shall have the right to exclude or expel from the Project any person who, in the absolute discretion of Landlord, is under the influence of liquor or drugs.

Tenant agrees to comply with all of the foregoing Rules and Regulations. Should Tenant not abide by these Rules and Regulations, Landlord or any "Operator," "Association" or "Declarant" under any Restrictions may serve a notice to correct the deficiencies. If Tenant has not corrected the deficiencies by the end of the notice period set forth in Section 15.1(g) of the Lease, Tenant will be in default of the Lease, and Landlord and/or its designee shall have the right, without further notice, to cure the violation at Tenant's expense.

Landlord reserves the right to amend or supplement the foregoing Rules and Regulations and to adopt and promulgate additional reasonable rules and regulations applicable to the Premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Tenant. Notwithstanding anything to the contrary herein or in the Lease, Tenant shall not be required to comply with any new rules, regulations or restrictions, unless the same apply generally and non-discriminatorily to the occupants of the Project, do not unreasonably interfere with Tenant's use of the Premises or Tenant's parking rights and do not materially increase Tenant's obligations or decrease Tenant's rights under this Lease.

Neither Landlord nor Landlord's Agents or any other person or entity shall be responsible to Tenant or to any other person for the ignorance or violation of these Rules and Regulations by any other tenant or other person. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition precedent, waivable only by Landlord, to Tenant's occupancy of the Premises.

LEASE

DATED APRIL 18, 2000

BY AND BETWEEN

AMB PROPERTY, L. P.  
as Landlord

and

HARMONIC, INC.  
as Tenant

AFFECTING PREMISES COMMONLY KNOWN AS

632 CARIBBEAN DRIVE  
SUNNYVALE, CALIFORNIA

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AMB PROPERTY CORPORATION  
INDUSTRIAL MULTI-TENANT LEASE

1. BASIC PROVISIONS ("Basic Provisions").

1.1 Parties: This Lease ("Lease") dated April 18, 2000, is made by and between AMB PROPERTY, L.P., a Delaware limited partnership, ("Landlord") and HARMONIC, INC., a Delaware corporation ("Tenant") (collectively the "Parties," or individually a "Party").

1.2 Premises: The area consisting of 43,500 square feet of leasable area as outlined on Exhibit A attached hereto ("Premises"), of the building ("Building") located at 632 Caribbean Drive in the City of Sunnyvale, State of California. The Building is located in the industrial center commonly known as MBC/Moffett Business Center (the "Industrial Center"). Tenant shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.3 below), but shall not have any rights to the roof, exterior walls or utility raceways of the Building or to any other buildings in the Industrial Center. The Premises, the Building, the Common Areas, the land upon which they are located and all other buildings and improvements thereon are herein collectively referred to as the "Industrial Center."

1.3 Term: Seven (7) years and Six (6) months ("Term") commencing April 1, 2003 ("Commencement Date") and ending September 30, 2010 ("Expiration Date").

1.4 Base Rent: \$91,350.00 per month ("Base Rent"). \$91,350.00 payable on execution of this Lease for period April 1, 2003 through and including April 30, 2003.

1.5 Tenant's Share of Operating Expenses ("Tenant's Share"):

(a) Industrial Center	15.24%
(b) Building	100%

1.6 Tenant's Estimated Monthly Rent Payment: Following is the estimated monthly Rent payment to Landlord pursuant to the provisions of this Lease. This estimate is made at the inception of the Lease and is subject to adjustment pursuant to the provisions of this Lease:

(a) Base Rent (Paragraph 4.1)	\$91,350.00
(b) Operating Expenses (Paragraph 4.2; excluding Real Property Taxes, Landlord Insurance)	\$ 2,972.00
(c) Landlord Insurance (Paragraph 8.3)	\$ 254.00
(d) Real Property Taxes (Paragraph 10)	\$ 3,565.00

Estimated Monthly Payment

\$98,141.00

1.7 Security Deposit: \$130,500.00 ("Security Deposit").

1.8 Permitted Use ("Permitted Use") Research and development, manufacturing, storage and distribution, offices and marketing and other legal related uses.

1.9 Guarantor: N/A

1.10 Addenda and Exhibits: Attached hereto are the following Addenda and Exhibits, all of which constitute a part of this Lease:

(a) Addenda: First Addendum to Lease

(b) Exhibits: Exhibit A: Diagram of Premises.  
Exhibit B: Commencement Date Certificate.  
Exhibit C:  
Exhibit D:  
Exhibit E:  
Exhibit F:  
Exhibit G: Hazardous Materials Questionnaire.  
Exhibit H:  
Exhibit I: Rules and Regulations.

1.11 Address for Rent Payments: All amounts payable by Tenant to Landlord shall until further notice from Landlord be paid to AMB PROPERTY L. P./MBC MOFFETT BUSINESS CENTER, C/O ORCHARD PROPERTIES at the following address:

File No.: 3750789034  
P.O. Box 840349  
Dallas, TX 75284-0349

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## 2. PREMISES, PARKING AND COMMON AREAS.

2.1 Letting. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon all of the terms, covenants and conditions set forth in this Lease. Any statement of square footage set forth in this Lease or that may have been used in calculating Base Rent and/or Operating Expenses is an approximation which Landlord and Tenant agree is reasonable and the Base Rent and Tenant's Share based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Common Areas - Definition. "Common Areas" are all areas and facilities outside the Premises and within the exterior boundary line of the Industrial Center and interior utility raceways within the Premises that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Industrial Center and their respective employees, suppliers, shippers, tenants, contractors and invitees.

2.3 Common Areas - Tenant's Rights. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or covenants, conditions and restrictions governing the use of the Industrial Center.

2.4 Common Areas - Rules and Regulations. Landlord shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 16.19.

2.5 Common Area Changes. Landlord shall have the right, in Landlord's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the locations, size, shape and number of driveways,

entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

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

(c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Industrial Center, or any portion thereof; and

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

### 3. TERM.

3.1 Term. The Commencement Date, Expiration Date and Term of this Lease are as specified in Paragraph 1.3.

3.2 Delay in Possession. If for any reason Landlord cannot deliver possession of the Premises to Tenant by the Commencement Date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder. In such case, Tenant shall not, except as otherwise provided herein, be obligated to pay Rent or perform any other obligation of Tenant under the terms of this Lease until Landlord delivers possession of the Premises to Tenant. The term of the Lease shall COMMENCE 30 days following notice to Tenant that Landlord is prepared to tender possession of the Premises to Tenant. If possession of the Premises is not delivered to Tenant within 120 days after the Commencement Date and such delay is not due to Tenant's acts, failure to act or omissions Tenant may by notice in writing to Landlord within 10 days after the end of said 120 day period cancel this Lease and the parties shall be discharged from all obligations hereunder. If such written notice of Tenant is not received by Landlord within said 10 day period, Tenant's right to cancel this Lease shall terminate.

3.3 Commencement Date Certificate. At the request of Landlord, Tenant shall execute and deliver to Landlord a completed certificate ("Commencement Date Certificate") in the form attached hereto as Exhibit B.

### 4. RENT.

4.1 Base Rent. Tenant shall pay to Landlord Base Rent and other monetary obligations of Tenant to Landlord under the terms of this Lease (such other monetary obligations are herein referred to as "Additional Rent") in lawful money of the United States, without offset or deduction, in advance on or before the first day of each month. Base Rent and Additional Rent for any period during the term hereof which is for less than one full month shall be prorated based upon the actual number of days of the month involved. Payment of

Base Rent and Additional Rent shall be made to Landlord at its address stated herein or to such other persons or at such other addresses as Landlord may from time to time designate in writing to Tenant. Base Rent and Additional Rent are collectively referred to as "Rent". All monetary obligations of Tenant to Landlord under the terms of this Lease are deemed to be rent.

4.2 Operating Expenses. Tenant shall pay to Landlord on the first day of each month during the term hereof, in addition to the Base Rent, Tenant's Share of all Operating Expenses in accordance with the following provisions:

(a) "Operating Expenses" are all costs incurred by Landlord relating to the ownership, management and operation of the Industrial Center, Building and Premises including, but not limited to, the following:

(i) The management, operation, repair, maintenance and replacement in neat, clean, good order and condition of the Common Areas, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, drainage systems, lighting facilities, fences and gates, exterior signs and tenant directories.

(ii) Water, gas, electricity, telephone and other utilities servicing the Common Areas.

(iii) Trash disposal, janitorial services, snow removal, properly management and security services.

(iv) Reserves set aside for maintenance, repair and replacement of the Common Areas and Building.

(v) Real Property Taxes.

(vi) Premiums for the insurance policies maintained by Landlord under Paragraph 8 hereof.

(vii) Environmental monitoring and insurance programs.

(viii) Monthly amortization of capital improvements to the Common Areas and the Building. The monthly amortization of any given capital improvement shall be the sum of the (i) quotient obtained by dividing the cost of the capital improvement by Landlord's estimate of the number of months of useful life of such improvement plus (ii) an amount equal to the cost of the capital improvement times 1/12 of the lesser of 12% or the maximum annual interest rate permitted by law.

(ix) Maintenance of the Building including, but not limited to, painting, caulking and repair and replacement of Building components, including, but not limited to, roof, elevators and fire detection and sprinkler systems.

(x) If Tenant fails to maintain the Premises, any expense incurred by Landlord for such maintenance.

(b) Tenant's Share of Operating Expenses that are not specifically attributed to the Premises or Building ("Common Area Operating Expenses") shall be that percentage shown in Paragraph 1.5(a). Tenant's Share of Operating Expenses that are attributable to the Building ("Building Operating Expenses") shall be that percentage shown in Paragraph 1.5(b). Landlord in its sole discretion shall determine which Operating Expenses are Common Area Operating Expenses, Building Operating Expenses or expenses to be entirely borne by Tenant.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose any obligation upon Landlord to either have said improvements or facilities or to provide those services.

(d) Tenant shall pay monthly in advance on the same day as the Base Rent is due Tenant's Share of estimated Operating Expenses in the amount set forth in Paragraph 1.6. Landlord shall deliver to Tenant within 90 days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual Operating Expenses incurred during the preceding year. If Tenant's estimated payments under this Paragraph 4(d) during the preceding year exceed Tenant's Share as indicated on said statement, Tenant shall be credited the amount of such overpayment against Tenant's Share of Operating Expenses next becoming due. If Tenant's estimated payments under this Paragraph 4.2(d) during said preceding year were less than Tenant's Share as indicated on said statement, Tenant shall pay to Landlord the amount of the deficiency within 30 days after delivery by Landlord to Tenant of said statement. At any time Landlord may adjust the amount of the estimated Tenant's Share of Operating Expenses to reflect Landlord's estimate of such expenses for the year.

5. SECURITY DEPOSIT. Tenant shall deposit with Landlord prior to Commencement Date or Early Occupancy the Security Deposit set forth in Paragraph 1.7 as security for Tenant's faithful performance of Tenant's obligations under this Lease. If Tenant fails to pay Base Rent or Additional Rent or otherwise defaults under this Lease (as defined in Paragraph 13.1), Landlord may use the

Security Deposit for the payment of any amount due Landlord or to reimburse or compensate Landlord for any liability, cost, expense, loss or damage (including attorney's fees) which Landlord may suffer or incur by reason thereof. Tenant shall on demand

pay Landlord the amount so used or applied so as to restore the Security Deposit to the amount set forth in Paragraph 1.7. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall, at the expiration or earlier termination of the term hereof and after Tenant has vacated the Premises, return to Tenant that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest, or to be prepayment for any monies to be paid by Tenant under this Lease.

6. USE.

6.1 Permitted Use. Tenant shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8. Tenant shall not commit any nuisance, permit the emission of any objectionable noise or odor, suffer any waste, make any use of the Premises which is contrary to any law or ordinance or which will invalidate or increase the premiums for any of Landlord's insurance. Tenant shall not service, maintain or repair vehicles on the Premises, Building or Common Areas. Tenant shall not store foods, pallets, drums or any other materials outside the Premises.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, but upon notice to Landlord and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of the Permitted Use, so long as such use is not a Reportable Use and does not expose the Premises, or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) Duty to Inform Landlord. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance is located in, under or about the Premises or the Building, Tenant shall immediately give Landlord written notice

thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) Indemnification by Tenant. Tenant shall indemnify, protect, defend and hold Landlord, Landlord's affiliates, Lenders, and the officers, directors, shareholders, partners, employees, managers, independent contractors, attorneys and agents of the foregoing ("Landlord Entities") and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by any of Tenant's employees, agents, contractors or invitees. Tenant's obligations under this Paragraph 6.2(c) shall include, but not be limited to, the effects

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of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved. Tenant's obligations under this Paragraph 6.2(c) shall survive the expiration or earlier termination of this Lease.

(D). LANDLORD'S REPRESENTATION REGARDING HAZARDOUS MATERIALS. LANDLORD HEREBY MAKES THE FOLLOWING REPRESENTATIONS TO TENANT AS OF THE EFFECTIVE DATE WITHOUT HAVING MADE ANY INVESTIGATION THEREOF (AND WITHOUT BEING REQUIRED TO MAKE OR BEING DEEMED TO HAVE MADE ANY SUCH INVESTIGATION) TO VERIFY THE ACCURACY THEREOF AND IS SUBJECT TO AND QUALIFIED BY ALL INFORMATION AND DISCLOSURES MADE TO TENANT BY LANDLORD. TO THE BEST OF THE LANDLORD'S KNOWLEDGE:

1. THE SOIL AND GROUNDWATER ON OR UNDER THE PROJECT DOES NOT CONTAIN HAZARDOUS MATERIALS IN AMOUNTS WHICH VIOLATE ANY HAZARDOUS MATERIALS LAWS TO THE EXTENT THAT ANY GOVERNMENTAL ENTITY COULD REQUIRE EITHER LANDLORD OR TENANT TO TAKE ANY REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS.

2. DURING THE TIME THAT LANDLORD HAS OWNED THE PROJECT, LANDLORD HAS RECEIVED NO WRITTEN NOTICE OF: (i) ANY VIOLATION, OR ALLEGED VIOLATION, OF ANY HAZARDOUS MATERIALS LAW WITH RESPECT TO THE PROJECT THAT HAS NOT BEEN REMEDIATED TO THE EXTENT THAT NO OTHER REMEDIATION IS THEN LEGALLY REQUIRED BY APPLICABLE LAW; (ii) ANY PENDING CLAIMS RELATING TO THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROJECT; OR, (iii) ANY PENDING INVESTIGATION BY ANY GOVERNMENTAL AGENCY CONCERNING THE PROJECT RELATING TO HAZARDOUS MATERIALS.

6.3 Tenant's Compliance with Requirements. Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the REASONABLE recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within 5 days after receipt of Landlord's written request, provide Landlord with copies of all documents and information evidencing Tenant's compliance with any Applicable Requirements and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

6.4 Inspection; Compliance with Law. In addition to Landlord's environmental monitoring and insurance program, the cost of which is included in Operating Expenses, Landlord and the holders of any mortgages, deeds of trust or

ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times PROVIDED LANDLORD HAS PROVIDED TWENTY-FOUR (24) HOUR NOTICE TO TENANT, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements. Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The cost and expenses of any such inspections shall be paid by the party requesting same unless a violation of Applicable Requirements exists or is imminent or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall upon request reimburse Landlord or Landlord's Lender, as the case may be, for the costs and expenses of such inspections.

7. MAINTENANCE, REPAIRS, TRADE FIXTURES AND ALTERATIONS.

7.1 Tenant's Obligations. Subject to the provisions of Paragraph 7.2 (Landlord's Obligations), Paragraph 9 (Damage or Destruction) and Paragraph 14 (Condemnation), Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonable or readily accessible to Tenant and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connectors if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord pursuant to Paragraph 7.2

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below. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

7.2 Landlord's Obligations. Subject to the provisions of Paragraph 6 (Use), Paragraph 7.1 (Tenant's Obligations), Paragraph 9 (Damage or Destruction) and Paragraph 14 (Condemnation), Landlord at its expense and not subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations and exterior walls of the Building and utility systems outside the Building. Landlord, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the Building roof and Common Areas.

7.3 Alterations. Construction by Tenant of Alterations shall be governed by the following:

A. Except as set forth below, Tenant shall not construct any Tenant Alterations or otherwise alter, improve, modify, or perform any work of improvement to the Premises without Landlord's prior written approval. However, Tenant shall be entitled, without Landlord's prior approval, to make Tenant Alterations (i) which do not affect the structural or exterior parts or water tight character of the Building, and (ii) the reasonably estimated cost of which, plus the original cost of any part of the Premises removed or materially altered in connection with such Tenant Alterations, together do not exceed the Permitted Tenant Alterations Limit per work of improvement. In the event Landlord's approval for any Tenant Alterations is required, Tenant shall not construct the Tenant Alterations until Landlord has approved in writing the plans and specifications therefor. Such Tenant Alterations shall be constructed substantially in compliance with such approved plans and specifications by a licensed contractor first approved by Landlord. All Tenant Alterations (whether Landlord's consent is required or not) shall be constructed by a licensed contractor in accordance with all Laws (including the ADA) using new materials of good quality.

B. Tenant shall not commence construction of any Tenant Alterations until (i) all required governmental approvals and permits have been obtained, (ii) all requirements regarding insurance imposed by this Lease have been



satisfied, (iii) Tenant has given Landlord at least five days' prior written notice of its intention to commence such construction, and (iv) if requested by Landlord, Tenant has obtained contingent liability and broad form builders' risk insurance in an amount reasonably satisfactory to Landlord if there are any perils relating to the proposed construction not covered by insurance carried pursuant to the Lease.

C. All Tenant Alterations shall remain the property of Tenant during the Lease Term but shall not be altered or removed from the Premises except with Landlord's advance written permission. At the expiration or sooner termination of the Lease Term, all Tenant Alterations shall be surrendered to Landlord as part of the realty and shall then become Landlord's property, and Landlord shall have no obligation to reimburse Tenant for all or any portion of the value or cost thereof; provided, however, that if Landlord requires Tenant to remove any Tenant Alterations, Tenant shall so remove such Tenant Alterations prior to the expiration or sooner termination of the Lease Term. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Tenant Alterations with respect to which the following is true: (i) Tenant was required, or elected, to obtain the approval of Landlord to the installation of the Leasehold Improvement in question; (ii) at the time Tenant requested Landlord's approval, Tenant requested of Landlord in writing that Landlord inform Tenant of whether or not Landlord would require Tenant to remove such Leasehold Improvement at the expiration of the Lease Term; and (iii) at the time Landlord granted its approval, it did not inform Tenant that it would require Tenant to remove such Leasehold Improvement at the expiration of the Lease Term.

D. Landlord's consent to the construction of Tenant Alterations may be withheld in Landlord's sole discretion. Landlord's consent to construction of Tenant Alterations and Landlord's approval of plans and specifications for Tenant Alterations shall not create any responsibility or liability on Landlord's part in regard to the completeness, competency, design sufficiency, or compliance with Law of such Tenant Alterations or the plans and specifications therefor.

7.4 Surrender/Restoration. Tenant shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair ordinary wear and tear excepted. Without limiting the generality of the above, Tenant shall remove all personal property, trade fixtures and floor bolts, patch all floors and cause all lights to be in good operating condition.

8. INSURANCE; INDEMNITY.

8.1 Payment of Premiums. The cost of the premiums for the insurance policies maintained by Landlord under this Paragraph 8 shall be a Common Area Operating Expense pursuant to Paragraph 4.2 hereof. Premiums for policy periods commencing prior to, or

extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date of Expiration Date.

8.2 Tenant's Insurance.

(i) At its sole cost and expense, Tenant shall maintain in full force and effect during the Term of the lease the following insurance coverages insuring against claims which may arise from or in connection with the Tenant's operation and use of the leased premises.

(a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence; \$3,000,000 general aggregate for bodily injury, personal injury and property damage. If required by Landlord, liquor liability coverage will be included.

(b) Workers' Compensation insurance with statutory limits and Employers Liability with a \$1,000,000 per accident limit for bodily injury or disease.

(c) Automobile Liability covering all owned, non-owned and hired vehicles with a \$1,000,000 per accident limit for bodily injury and

property damage.

(d) Property insurance against all risks of loss to any tenant improvements or betterments and business personal property on a full replacement cost basis with no coinsurance penalty provision; and Business Interruption Insurance with a limit of liability representing loss of at least approximately THREE months of income.

(ii) Tenant shall deliver to AMB certificates of all insurance reflecting evidence of required coverages prior to initial occupancy; and annually thereafter.

(iii) If, in the opinion of Landlord's insurance advisor, the amount of scope of such coverage is deemed inadequate at any time during the Term, Tenant shall increase such coverage to such reasonable amounts or scope as Landlord's advisor deems adequate.

(iv) All insurance required under Paragraph 8.2 (i) shall be primary and non-contributory (ii) shall provide for severability of interests, (iii) shall be issued by insurers, licensed to do business in the state in which the Premises are located and which are rated A:VII or better by Best's Key Rating Guide, (iv) shall be endorsed to include Landlord and such other persons or entities as Landlord may from time to time designate, as additional insureds (Commercial General Liability only), and (v) shall be endorsed to provide at least 30-days prior notification of cancellation or material change in coverage to said additional insureds.

8.3 Landlord's Insurance. Landlord may, but shall not be obligated to, maintain all risk, including earthquake and flood, insurance covering the buildings within the Industrial Center, Commercial General Liability and such other insurance in such amounts and covering such other liability or hazards as deemed appropriate by Landlord. The amount and scope of coverage of Landlord's insurance shall be determined by Landlord from time to time in its sole discretion and shall be subject to such deductible amounts as Landlord may elect. Landlord shall have the right to reduce or terminate any insurance or coverage. Premiums for any such insurance shall be a Common Area Operating Expense.

8.4 Waiver of Subrogation. To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other on account of any and all claims Landlord or Tenant may have against the other with respect to property insurance actually carried, or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage.

8.5 Indemnity. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY AGREES TO DEFEND (WITH ATTORNEYS ACCEPTABLE TO LANDLORD), INDEMNIFY, PROTECT AND HOLD HARMLESS LANDLORD AND LANDLORD'S AGENTS AND ANY SUCCESSORS TO ALL OR ANY PORTION OF LANDLORD'S INTEREST IN THE PREMISES AND THEIR DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AUTHORIZED AGENTS, REPRESENTATIVES, AFFILIATES AND MORTGAGES, FROM AND AGAINST ANY AND ALL DAMAGE, LOSS, CLAIM, LIABILITY AND EXPENSE INCLUDING, BUT NOT LIMITED TO, ACTUAL ATTORNEY'S FEES AND LEGAL COSTS, INCURRED DIRECTLY OR INDIRECTLY BY REASON OF ANY CLAIM, SUIT OR JUDGMENT BROUGHT BY OR ON BEHALF OF (I) ANY PERSON OR PERSONS FOR DAMAGE, LOSS OR EXPENSE DUE TO, BUT NOT LIMITED TO, BODILY INJURY OR PROPERTY DAMAGE SUSTAINED BY SUCH PERSON OR PERSONS WHICH ARISE OUT OF, ARE OCCASIONED BY, OR ARE IN ANY WAY ATTRIBUTABLE TO THE CONDITION, USE OR OCCUPANCY OF THE PREMISES OR THE ACTS OR OMISSIONS OF THE TENANT OR TENANT'S AGENTS IN OR ABOUT THE PREMISES OR THE PROJECT (INCLUDING BUT NOT LIMITED TO ANY EVENT OF DEFAULT HEREUNDER), OR (II) TENANT OR TENANT'S AGENTS FOR DAMAGE, LOSS OR EXPENSE DUE TO, BUT NOT LIMITED TO, BODILY INJURY OR PROPERTY DAMAGE WHICH ARISE OUT OF, ARE OCCASIONED BY, OR ARE IN ANY WAY ATTRIBUTABLE TO THE USE IF ANY OF THE COMMON AREA, EXCEPT TO THE EXTENT CAUSED SOLELY BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD SHALL NOT BE RELEASED OR INDEMNIFIED FROM, AND SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS TENANT FROM, ALL DAMAGES, LIABILITIES, JUDGMENTS, ACTIONS, CLAIMS, ATTORNEY'S FEES, CONSULTANTS' FEES, PAYMENTS, COSTS AND EXPENSES ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL

MISCONDUCT OF LANDLORD OR ITS AGENTS, CONTRACTORS OR LICENSEES, OR LANDLORD'S VIOLATION OR APPLICABLE LAW.

8.6 Exemption of Landlord from Liability. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Landlord Entities shall not be liable for and Tenant waives any claims against Landlord Entities for injury or damage to the person or the property of Tenant, Tenant's employees, contractors, invitees, customers or any other person in or about the Premises, Building or Industrial Center from any cause whatsoever, including, but not limited to, damage or injury which is caused by or results from (i) fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or (ii) from the condition of the Premises, other portions of the Building or Industrial Center. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord nor from the failure by Landlord to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business, for any loss of income or profit therefrom or any indirect, consequential or punitive damages.

9. DAMAGE OR DESTRUCTION.

9.1 Termination Right. Tenant shall give Landlord immediate written notice of any damage to the Premises. Subject to the provisions of Paragraph 9.2, if the Premises or the Building shall be damaged to such an extent that there is substantial interference for a period exceeding 90 consecutive days with the conduct by Tenant of its business at the Premises, Tenant, at any time prior to commencement of repair of the Premises and following 10 days written notice to Landlord, may terminate this Lease effective 30 days after delivery of such notice to Landlord. Such termination shall not excuse the performance by Tenant of those covenants which under the terms hereof survive termination. Rent shall be abated in proportion to the degree of interference during the period that there is such substantial interference with the conduct of Tenant's business at the Premises. Abatement of rent and Tenant's right of termination pursuant to this provision shall be Tenant's sole remedy for failure of Landlord to keep in good order, condition and repair the foundations and exterior walls of the Building, Building roof, utility systems outside the Building and the Common Areas.

9.2 Damage Caused by Tenant. Tenant's termination rights under Paragraph 9.1 shall not apply if the damage to the Premises or Building is the result of any act or omission of Tenant or of any of Tenant's agents, employees, customers, invitees or contractors ("Tenant Acts"). Any damage resulting from a Tenant Act shall be promptly repaired by Tenant. Landlord at its option may at Tenant's expense repair any damage caused by Tenant Acts. Tenant shall continue to pay all rent and other sums due hereunder and shall be liable to Landlord for all damages that Landlord may sustain resulting from a Tenant Act.

10. REAL PROPERTY TAXES.

10.1 Payment of Real Property Taxes. Landlord shall pay the Real Property Taxes due and payable during the term of this Lease and, except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.2 Real Property Tax Definition. As used herein, the term "Real Property Taxes" is any form of tax or assessment, general, special, ordinary or extraordinary, imposed or levied upon (a) the Industrial Center, (b) any interest of Landlord in the Industrial Center, (c) Landlord's right to rent or other income from the Industrial Center, and/or (d) Landlord's business of leasing the Premises. Real Property Taxes include (i) any license fee, commercial rental tax, excise tax, improvement bond or bonds, levy or tax; (ii) any tax or charge which replaces or is in addition to any of such above-described "Real Property Taxes" and (iii) any fees, expenses or costs (including attorney's fees, expert fees and the like) incurred by Landlord in protesting or contesting any assessments levied or any tax rate. The term "Real Property Taxes" shall also include any increase resulting from a change in the ownership of the Industrial Center or Building, the execution of this Lease or any modification, amendment or transfer thereof. Real Property Taxes for tax years commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date and Expiration Date.

10.3 Additional Improvements. Operating Expenses shall not include Real Property Taxes attributable to improvements placed upon the Industrial Center by other tenants or by Landlord for the exclusive enjoyment of such other tenants. Notwithstanding Paragraph 10.1 hereof, Tenant shall, however, pay to Landlord at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed by reason of improvements placed upon the Premises by Tenant or at Tenant's request.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed.

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10.5 Tenant's Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant's improvements, fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or stored within the Industrial Center.

11. UTILITIES. Tenant shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security, gas and cleaning of the Premises, together with any taxes thereon.

12. ASSIGNMENT AND SUBLETTING.

12.1 Landlord's Consent Required.

(a) Tenant shall not assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assign") or sublet all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent which consent shall not be unreasonably withheld. Relevant criteria in determining reasonability of consent include, but are not limited to, credit history of a proposed assignee or sublessee, references from prior landlords, any change or intensification of use of the Premises or the Common Areas and any limitations imposed by the Internal Revenue Code and the Regulations promulgated thereunder relating to Real Estate Investment Trusts. Assignment or sublet shall not release Tenant from its obligations hereunder. Tenant shall not (i) sublet or assign or enter into other arrangements such that the amounts to be paid by the sublessee or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the sublessee or assignee; (ii) sublet the Premises or assign this Lease to any person in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code (the "Code"); or (iii) sublet the Premises or assign this Lease in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 12.1 shall apply to any further subleasing by any subtenant.

(b) A change in the control of Tenant shall constitute an assignment requiring Landlord's consent. The transfer, on a cumulative basis, of 50% or more of the voting or management control of Tenant shall constitute a change in control for this purpose.

12.2 Rent Adjustment. If, as of the effective date of any permitted assignment or subletting the then remaining term of this Lease is less than ONE (1) YEAR, Landlord may, as a condition to its consent: (i) require that the amount and adjustment schedule of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment schedule for property similar to the Premises as then constituted, as determined by Landlord; or (ii) terminate the Lease as of the date of assignment or subletting subject to the performance by Tenant of those covenants which under the terms hereof survive termination.

13. DEFAULT; REMEDIES.

13.1 Default. The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ("Default"):

(a) The abandonment of the Premises by Tenant;

(b) Failure to pay any installment of Base Rent, Additional Rent or any other monies due and payable hereunder, said failure continuing for a period of 3 BUSINESS days after the same is due;

(c) A general assignment by Tenant or any guarantor for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Tenant or any guarantor, the filing of a voluntary petition for an arrangement, the filing of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by Tenant's creditors or guarantors;

(e) Receivership, attachment, of other judicial seizure of the Premises or all or substantially all of Tenant's assets on the Premises;

(f) Failure of Tenant to maintain insurance as required by Paragraph 8.2;

(g) Any breach by Tenant of its covenants under Paragraph 6.2;

(h) Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in other Paragraphs of this Paragraph 13.1 which shall be governed by such other Paragraphs), which failure continues for 10 days after written notice thereof from Landlord to Tenant provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such 10 day period despite reasonable diligence, Tenant shall not be in default under this subparagraph unless Tenant fails thereafter diligently and continuously to prosecute the cure to completion;

(i) Any transfer of a substantial portion of the assets of Tenant, or any incurrence of a material obligation by Tenant, unless such transfer or obligation is undertaken

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or incurred in the ordinary course of Tenants business or in good faith for equivalent consideration, or with Landlord's consent; and

(j) The default of any guarantors of Tenant's obligations hereunder under any guaranty of this Lease, or the attempted repudiation or revocation of any such guaranty.

13.2 Remedies. In the event of any Default by Tenant, Landlord shall have the remedies set forth in the Addendum attached hereto entitled "Landlord's Remedies in Event of Tenant Default".

13.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or other sum due from Tenant shall not be received by Landlord or Landlord's designee within 10 days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, IF TENANT IS DELINQUENT IN THE PAYMENT OF RENT AND IS SUBJECT TO A LATE CHARGE OR INTEREST FEE, LANDLORD AGREES TO WAIVE THE LATE CHARGE OR INTEREST FEE IF (I) TENANT HAS NOT BEEN LATE IN ITS PAYMENT OF RENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE RENT DELINQUENCY IN QUESTION AND (II) THE RENT DUE IS PAID WITHIN FIVE (5) DAYS OF LANDLORD'S WRITTEN NOTICE TO THE TENANT OF THE DELINQUENCY AMOUNT OWED.

14. CONDEMNATION. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the portion of the Common Areas designated for Tenant's parking, is taken by condemnation, Tenant may, at Tenant's option, to be exercised in writing within 10 days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, provided, however, that Tenant shall be entitled to any compensation, separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenants trade fixtures. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of its net severance damages in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Tenant shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

15. ESTOPPEL CERTIFICATE AND FINANCIAL STATEMENTS.

15.1 Estoppel Certificate. Each party (herein referred to as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party, to the extent it can truthfully do so, an estoppel certificate, plus such additional information, confirmation and/or statements as be reasonably requested by the Requesting Party.

15.2 Financial Statement. If Landlord desires to finance, refinance, or sell the Building, Industrial Center or any part thereof, Tenant and all Guarantors shall deliver to any potential lender or purchaser designated by Landlord such financial statements of Tenant and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Tenant's financial statements for the past 3 years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

16. ADDITIONAL COVENANTS AND PROVISIONS.

16.1 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other provision hereof.

16.2 Interest on Past-Due Obligations. Any monetary payment due Landlord hereunder not received by Landlord within 10 days following the date on which it was due shall

bear interest from the date due at 12% per annum, but not exceeding the maximum rate allowed by law in addition to the late charge provided for in Paragraph 13.3.

16.3 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

16.4 Landlord Liability. Tenant, its successors and assigns, shall not assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Industrial Center. Tenant agrees to look solely to such interest for the satisfaction of any liability or claim against Landlord under this Lease. In no event whatsoever shall Landlord (which term shall include, without limitation, any general or

limited partner, trustees, beneficiaries, officers, directors, or stockholders of Landlord) ever be personally liable for any such liability.

16.5 No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and supersedes all oral, written prior or contemporaneous agreements or understandings.

16.6 Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours, and shall be deemed sufficiently given if served in a manner specified in the Paragraph 16.6. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by written notice to Tenant.

16.7 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via hand or overnight delivery or certified mail. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

16.8 Waivers. No waiver by Landlord of a Default by Tenant shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default by Tenant of the same or any other term, covenant or condition hereof.

16.9 Holdover. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. If Tenant holds over with the consent of Landlord: (i) the Base Rent payable shall be increased to 150% of the Base Rent applicable during the month immediately preceding such expiration or earlier termination; (ii) Tenant's right to possession shall terminate on 30 days notice from Landlord and (iii) all other terms and conditions of this Lease shall continue to apply. Nothing contained herein shall be construed as a consent by Landlord to any holding over by Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

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

16.11 Binding-Effect: Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

16.12 Landlord. The covenants and obligations contained in this Lease on the part of Landlord are binding on Landlord, its successors and assigns, only during and in respect of their respective period of ownership of such interest in the Industrial Center. In the event of any transfer or transfers of such title to the Industrial Center, Landlord (and in case of any subsequent transfers or conveyances, the then grantor) shall be concurrently freed and relieved from and after the date of such transfer or conveyance, without any further instrument or

agreement, of all liability with respect to the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

16.13 Attorneys' Fees and Other Costs. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding shall be entitled to reasonable attorneys' fees. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought. Landlord shall be entitled to attorneys' fees, costs and expenses incurred in preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting breach. Tenant shall reimburse Landlord on demand for all reasonable legal, engineering and other professional services expenses incurred by Landlord in connection with all requests by Tenant for consent or approval hereunder.

16.14 Landlord's Access; Showing Premises; Repairs. Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Landlord may reasonably deem necessary. Landlord may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Landlord may at any time during the last 180 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Landlord shall be without abatement of rent or liability to Tenant.

16.15 Signs. Tenant shall not place any signs at or upon the exterior of the Premises or the Building, except that Tenant may, with Landlord's prior written consent, install (but not on the roof) such signs as are reasonably required to advertise Tenant's own business so long as such signs are in a location designated by Landlord and comply with sign ordinances and the signage criteria established for the Industrial Center by Landlord.

16.16 Termination; Mercer. Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Default by Tenant, shall terminate any sublease or lesser estate in the Premises; provided, however, Landlord shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies.

16.17 Quiet Possession. Upon payment by Tenant of the Base Rent and Additional Rent for the Premises and the performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

16.18 Subordination; Attornment; Non-Disturbance.

(a) Subordination. This Lease shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or mortgage (collectively, "Mortgage") now or hereafter placed by Landlord upon the real property of which the Premises are a part, to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant agrees that any person holding any Mortgage shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease. In the event of Landlord's default with respect to any such obligation, Tenant will give any Lender, whose name and address have previously in writing been furnished Tenant, notice of a default by Landlord. Tenant may not exercise any remedies for default by Landlord unless and until Landlord and the Lender shall have received written notice of such default and a reasonable time (not less than 60 days) shall thereafter have elapsed without the default having been cured. If any Lender shall elect to have this Lease superior to the lien of its Mortgage and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such Mortgage. The provisions of a Mortgage relating to the disposition of condemnation and



insurance proceeds shall prevail over any contrary provisions contained in this Lease.

(b) Attornment. Subject to the non-disturbance provisions of subparagraph C of this Paragraph 16.18, Tenant agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Mortgage. In the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior Landlord, or (iii) be liable for security deposits or be bound by prepayment of more than one month's rent.

(c) Non-Disturbance. With respect to Mortgage 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 Mortgage holder that Tenant's

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possession and this Lease will not be disturbed so long as Tenant is not in default and attorns to the record owner of the Premises.

(d) Self-Executing. The agreements contained in this Paragraph 16.18 shall be effective without the execution of any further documents; provided, however, that upon written request from Landlord or a Lender in connection with a sale, financing or refinancing of Premises, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein. Landlord is hereby irrevocably vested with full power to subordinate this Lease to a Mortgage.

16.19 Rules and Regulations. Tenant agrees that it will abide by, and to cause its employees, suppliers, shippers, customers, tenants, contractors and invitees to abide by all reasonable rules and regulations ("Rules and Regulations") which Landlord may make from time to time for the management, safety, care, and cleanliness of the Common Areas, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Industrial Center and their invitees. Landlord shall not be responsible to Tenant for the non-compliance with said Rules and Regulations by other tenants of the Industrial Center.

16.20 Security Measures. Tenant acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or other security measures. Landlord has no obligations to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

16.21 Reservations. Landlord reserves the right to grant such easements that Landlord deems necessary and to cause the recordation of parcel maps, so long as such easements and maps do not reasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonable requested by Landlord to effectuate any such easements of maps.

16.22 Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

16.23 Offer. Preparation of this Lease by either Landlord or Tenant or Landlord's agent or Tenant's agent and submission of same to Tenant or Landlord shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

16.24 Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification.

16.25 Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as Tenant, the obligations of such persons shall be the joint and several responsibility of all persons or entities named herein as such Tenant.

16.26 Authority. Each person signing on behalf of Landlord or Tenant warrants and represents that he or she is authorized to execute and deliver this Lease and to make it a binding obligation of Landlord or Tenant.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

LANDLORD:

TENANT:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

By: /s/ JOHN L. ROSSI

Its: Chief Financial Officer

-----  
John L. Rossi

Its: Regional Manager

By:

-----  
Its:

Telephone: (415)394-9000

Telephone: (408)542-2661

-----  
Facsimile: (415)394-0903

-----  
Facsimile: (408)542-2516

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5/12/00

Date: -----

FIRST ADDENDUM TO LEASE

THIS FIRST ADDENDUM is dated for reference purposes as April 18, 2000, and is made a part of that Lease Agreement (the "Lease") dated April 18, 2000, by and between AMB PROPERTY L.P., a Delaware limited partnership ("Landlord") and HARMONIC, INC., a Delaware corporation ("Tenant") affecting certain real property commonly known as 632 Caribbean Drive, Sunnyvale, California, with reference to the following facts:

1. Base Monthly Rent:

- April 1, 2003 - December 31, 2003: \$2.30 NNN per square foot per month
- January 1, 2004 - December 31, 2004: \$2.40 NNN per square foot per month
- January 1, 2005 - December 31, 2005: \$2.50 NNN per square foot per month
- January 1, 2006 - December 31, 2006: \$2.60 NNN per square foot per month
- August 2, 2006 Adjustment to Fair market Value (FMV)
- January 1, 2007 - December 31, 2007: \$2.70 NNN per square foot per month or FMV
- January 1, 2008 - December 31, 2008: \$2.80 NNN per square foot per month or FMV
- January 1, 2009 - December 31, 2009: \$2.90 NNN per square foot per month or FMV
- January 1, 2010 - September 30, 2010: \$3.00 NNN per square foot per month or FMV

A. The Base Monthly Rent for the Period after August 2, 2006 shall be the greater of (i) one hundred percent (100%) of the Base Monthly Rent Schedule, or (ii) one hundred percent (100%) of the then fair market monthly rent determined as of the commencement of the Period in question based upon like buildings with like improvements in the area within the boundaries of Highways 101, 880 and the San Francisco Bay. However, the Fair Market Value Rent as determined by appraisal shall not exceed \$4.00 per square foot per month in August 2006 with 5% annual increases through the balance of the term. The Period shall contain no free rent and the Premises shall be taken "as-is". If the

parties are unable to agree upon the fair market monthly rent for the Premises for the option period in question at least seventy-five (75) days prior to the commencement of the option period in question, then the fair market monthly rent shall be determined by appraisal conducted pursuant to subparagraph B.

B. In the event it becomes necessary to determine by appraisal the fair market rent of the Premises for the purpose of establishing the Base Monthly Rent during the Period, then such fair market monthly rent shall be determined by three (3) real estate appraisers, all of whom shall be members of the American Institute of Real Estate Appraisers with not less than five (5) years experience appraising real property (other than residential or agricultural property) located in Santa Clara County, California, in accordance with the following procedures:

(1) The party demanding an appraisal (the "Notifying Party") shall notify the other party (the "Non-Notifying Party") thereof by delivering a written demand for appraisal, which demand, to be effective, must give the name, address, and qualifications of an appraiser selected by the Notifying Party. Within ten (10) days of receipt of said demand, the Non-Notifying Party shall select its appraiser and notify the Notifying Party, in writing, of the name, address, and qualifications of an appraiser selected by it. Failure by the Non-Notifying Party to select a qualified appraiser within said ten (10) day period shall be deemed a waiver of its right to select a second appraiser on its own behalf and the Notifying Party shall select a second appraiser on behalf of the Non-Notifying Party within five (5) days after the expiration of said ten (10) day period. Within ten (10) days from the date the second appraiser shall have been appointed, the two (2) appraisers so selected shall appoint a third appraiser. If the two appraisers fail to select a third qualified appraiser, the third appraiser shall be selected by the American Arbitrations Association or if it shall refuse to perform this function, then at the request of either Landlord or Tenant, such third appraiser shall be promptly appointed by the then Presiding Judge of the Superior Court of the State of California for the County of Santa Clara.

(2) The three (3) appraisers so selected shall meet in San Jose, California, not later than twenty (20) days following the selection of the third appraiser. At said meeting the appraisers so selected shall attempt to determine the fair market monthly rent of the Premises for the period in question (including the timing and amount of periodic increases).

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(3) If the appraisers so selected are unable to complete their determinations in one meeting, they may continue to consult at such times as they deem necessary for a fifteen (15) day period from the date of the first meeting, in an attempt to have at least two (2) of them agree. If, at the initial meeting or at any time during said fifteen (15) day period, two (2) or more of the appraisers so selected agree on the fair market rent of the Leased Premises, such agreement shall be determinative and binding on the parties hereto, and the agreeing appraisers shall, in simple letter form executed by the agreeing appraisers, forthwith notify both Landlord and Tenant of the amount set by such agreement.

(4) If two (2) or more appraisers do not so agree within said fifteen (15) day period, then each appraiser shall, within five (5) days after the expiration of said fifteen (15) day period, submit his independent appraisal in simple letter form to Landlord and Tenant stating his determination of the fair market rent of the Premises for the period in question. The parties shall then determine the fair market rent for the Premises by determining the average of the fair market rent set by each of the appraisers. However, if the lowest appraisal is less than eighty-five percent (85%) of the middle appraisal then such lowest appraisal shall be disregarded and/or if the highest appraisal is greater than one hundred fifteen percent (115%) of the middle appraisal then such highest appraisal shall be disregarded. If the fair market rent set by any appraisal is so disregarded, then the average shall be determined by computing the average set by the other appraisals that have not been disregarded.

(5) Nothing contained herein shall prevent Landlord and Tenant from jointly selecting a single appraiser to determine the fair market rent of the Premises, in which event the determination of such appraisal shall be conclusively deemed the fair market rent of the Premises.

(6) Each party shall bear the fees and expenses of the appraiser selected by or for it, and the fees and expenses of the third appraiser (or the joint appraiser if one joint appraiser is used) shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

## 2. Early Occupancy:

A. As consideration for Tenant's performance of all obligations to be performed by Tenant under the Lease, and upon receipt of (i) the first month's Base Monthly Rent and Security Deposit totaling \$221,850.00, and (ii) a certificate of insurance as provided by Article 9.1 C of the Lease, Landlord shall permit Tenant to enter and use the Premises commencing thirty (30) days prior to Commencement until the Commencement Date (the "Early Occupancy Period"). Such occupancy during the Early Occupancy Period shall be subject to all of the terms, covenants and conditions of the Lease provided, however, that the rent payable during the Early Occupancy Period shall be waived.

B. In the event either party shall bring any action or legal proceeding for damages for alleged breach of any provision of this agreement, to recover rent, to terminate tenancy of the Premises, or to enforce, protect or establish any term or covenant of this agreement or the Lease or right of remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorney's fees and court costs as may be fixed by the court or jury.

C. In consideration of executing this Early Occupancy Agreement, Tenant agrees to indemnify and save Landlord harmless of and from any and all liability, damage, expense, cause of action, suits or claims or judgments resulting from injury to person or property arising from the use of the Premises by Tenant during the Early Occupancy Period, including loss or damage to Tenant, its equipment, materials or supplies.

D. Tenant agrees to cooperate with construction personnel completing the Interior Improvements in the Premises and not cause any delay in the completion of these improvements. It is the intent of Landlord and Tenant that Tenant's obligation to pay the Base Monthly Rent and all Additional Rent not be delayed by any cause or other act of Tenant and, if it is so delayed, and provided that Landlord promptly notifies Tenant in writing of each separate delay and the estimated period of delay, then Tenant's obligation to pay the Base Monthly Rent and all Additional Rent shall commence as of the date it would have commenced absent said delay caused by Tenant.

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E. During the Early Occupancy Period, Tenant shall arrange to have all utility services, including but not limited to gas, electric, water and trash, billed directly to Tenant for payment.

3. Tenant Maintenance: Tenant shall (i) maintain, repair and replace when necessary all HVAC equipment which services only the Premises, and shall keep the same in good condition through regular inspection and servicing, and (ii) maintain continuously throughout the Lease Term a service contract for the maintenance of all such HVAC equipment with a licensed HVAC repair and maintenance contractor approved by Landlord, which contract provides for the periodic inspection and servicing of the HVAC equipment at least once every sixty (60) days during the Lease Term. Tenant shall furnish Landlord with a copy of such service contract, which shall provide that it may not be cancelled or changed without at least thirty (30) day's prior written notice to Landlord. Notwithstanding the foregoing, Landlord may elect at any time to assume responsibility for the maintenance, repair and replacement of such HVAC equipment which serves only the Premises. Tenant shall maintain continuously through the Lease Term a service contract for the washing of all windows (both interior and exterior surfaces) in the Premises.

## 4. Landlord's Remedies in Event of Tenant Default: (AMB)

A. Termination. In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate

this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Landlord (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering or rehabilitating the Premises or any portion thereof, including such acts for reletting to a new lessee or lessees; (iii) for leasing commissions; or (iv) for any other costs necessary or appropriate to relet the Premises; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "worth at the time of award" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). 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.

B. Continuation of Lease. In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease,

Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided tenant has the right to sublet or assign, subject only to reasonable limitations).

C. Re-entry. In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

D. Reletting. In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph a, Landlord may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect to so relet,

then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

E. Termination. No re-entry or taking of possession of the Premises by Landlord pursuant to this Addendum shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

F. Cumulative Remedies. The remedies herein provided are not exclusive and Landlord shall have any and all other remedies provided herein or by law or in equity.

G. No Surrender. No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant, voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

H. Notice Provisions. Tenant agrees that any notice given by Landlord pursuant to Paragraph 13.1 of the Lease shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

5. Year 2000 Disclaimer: Landlord hereby disclaims any liability for any and all damages, injuries or other losses, whether ordinary, special, consequential, punitive or otherwise, arising out of, relating to, or in connection with, (a) the failure of any automated, computerized and/or software system or other technology used in, on, or about the Property or relating to the management or operation of the Property to accurately receive, provide or

process date/time data (including, but not limited to, calculating, comparing and sequencing) both before and after September 9, 1999, and before, after, during and between the years 1999 A. D. and 2000 A. D., and leap year calculations and, or (b) the malfunction, ceasing to function or providing of invalid or incorrect results by any such technology as a result of date/time data. The foregoing disclaimer shall apply to any such technology used in, on, or about the Property or that affects the Property, whether or not such technology is within the control of Owner or any of Owner's agents or representatives. THE FOREGOING DISCLAIMER INCLUDES A DISCLAIMER OF ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE MATTERS DESCRIBED HEREIN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LANDLORD:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

TENANT:

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

By: /s/ JOHN L. ROSSI

-----  
John L. Rossi

Its: Chief Financial Officer

Its: Regional Manager

By: -----

Its: -----

Telephone: (415)394-9000

Telephone: (408)542-2661

Facsimile: (415)394-0903

Facsimile: (408)542-2516

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5/12/00

Date: -----

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EXHIBIT "A"

SITE PLAN

PROJECT 8J01  
R&D

AMB PROPERTY, L.P.  
MBC/MOFFETT BUSINESS CENTER  
TOTAL PROJECT SQUARE FOOTAGE: 285,480

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[FLOOR PLAN]

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EXHIBIT B

COMMENCEMENT DATE CERTIFICATE

THIS COMMENCEMENT DATE CERTIFICATE is made as of April 18, 2000, by and between the parties hereto with regard to that Lease dated April 18, 2000, by and between AMB PROPERTY, L.P., a Delaware limited partnership, as Landlord ("Landlord"), and HARMONIC, INC., a California corporation as Tenant ("Tenant"), affecting those Premises commonly known as 632 Caribbean Drive, Sunnyvale, California. The parties hereto agree as follows:

1. Possession of the Premises has been delivered to Tenant and Tenant has accepted and taken possession of the Premises.
2. The Commencement Date of the Lease Term is April 1, 2003 and the Lease Term shall expire on September 30, 2010 unless sooner terminated according to the terms of the Lease or by mutual agreement.
3. The Base Monthly Rent initially due pursuant to the Lease is Ninety-One Thousand Three Hundred Fifty and 00/100 Dollars (\$91,350.00) per

month, subject to any subsequent adjustments required by the Lease.

4. Landlord has received a Security Deposit in the amount of One Hundred Thirty Thousand Five Hundred and 00/Dollars (\$130,500.00). In addition, Tenant has prepaid rent in the amount of Ninety-One Thousand Three Hundred Fifty and 00/Dollars (\$91,350.00), which shall be applied to the first installment of Base Monthly Rent.

5. The Lease is in full force and effect, neither party is in default of its obligations under the Lease, and Tenant has no setoffs, claims, or defenses to the enforcement of the Lease.

LANDLORD:

TENANT:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson

By: /s/ JOHN L. ROSSI

Its: Chief Financial Officer

-----  
John L. Rossi

Its: Regional Manager

By: -----

Its: -----

Telephone: (415)394-9000

Telephone: (408)542-2661

Facsimile: (415)394-0903

Facsimile: (408)542-2516

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Executed at: 632 Caribbean Avenue  
Sunnyvale, CA 94089

Date: 5/12/00

Date: -----

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EXHIBIT "C"

IMPROVEMENT AGREEMENT

NOT APPLICABLE

25

EXHIBIT "D"

APPROVED SPECIFICATIONS

NOT APPLICABLE

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EXHIBIT "E"

DESCRIPTION OF PRIVATE RESTRICTIONS

(NOT APPLICABLE)



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EXHIBIT "F"  
SIGN CRITERIA  
(NOT APPLICABLE)

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EXHIBIT "H"  
LEGAL DESCRIPTION  
NOT APPLICABLE

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EXHIBIT 1  
RULES AND REGULATIONS

This Exhibit sets forth the rules and regulations governing Tenant's use of the Common Area and the Premises leased to Tenant pursuant to the terms, covenants and conditions of the Lease to which this Exhibit is attached. Unless otherwise defined, capitalized terms used herein shall have the same meanings as set forth in the Lease. In the event of any conflict or inconsistency between this Exhibit and the Lease, the Lease shall control.

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.

2. The walls, walkways, sidewalks, entrance passages, courts and vestibules shall not be obstructed or used for any purpose other than ingress and egress of pedestrian travel to and from the Premises, and shall not be used for loitering or gathering, or to display, store or place any merchandise, equipment or devices, or for any other purpose. The walkways, entrance passageways, courts, vestibules and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. No tenant or employee or invitee of any tenant shall be permitted upon the roof of the Building.

3. No awnings or other projection shall be attached to the outside walls of the Building. No security bars or gates, curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises without prior written consent of the Landlord. Neither the interior or exterior of any windows shall be coated or otherwise sunscreened without the express written consent of Landlord.

4. Tenant shall not in any way deface any part of the Premises or the Building. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord in writing. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by Tenant.

5. The toilet rooms, urinals, wash bowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant.

6. Landlord shall direct electricians as to the manner and location of any future telephone wiring. No boring or cutting for wires will be allowed without the prior consent of Landlord. The locations of the telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

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7. No exterior storage shall be allowed at any time without the prior written approval of Landlord. The Premises shall not be used for cooking or washing clothes without the prior written consent of Landlord, or for lodging or sleeping or for any immoral or illegal purposes.

8. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, machinery, or otherwise. Tenant shall not use, keep or permit to be used, or kept, any foul or obnoxious gas or substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of this or neighboring buildings or premises by reason of any odors, fumes or gases.

9. Neither Tenant nor any of Tenant's Agents shall at any time bring or keep upon the Premises any toxic, hazardous, inflammable, combustible or explosive fluid, chemical or substance without the prior written consent of Landlord.

10. No animals shall be permitted at any time within the Premises.

11. Tenant shall not use the name of the Building or the Project in connection with or in promoting or advertising the business of Tenant, except as Tenant's address, without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising by Tenant which uses the name of, or uses pictures or depictions of, the Building or the Project if such advertising in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability for its intended uses, and upon written notice from Landlord Tenant shall refrain from or discontinue such advertising.

12. Canvassing, soliciting, peddling, parading, picketing, demonstrating or otherwise engaging in any conduct that unreasonably impairs the value or use of the Premises or the Project are prohibited and Tenant shall cooperate to prevent the same.

13. All equipment of any electrical or mechanical nature shall be placed by Tenant on the Premises in such a way as to best minimize, absorb and prevent any vibration, noise or annoyance. No equipment of any type shall be placed on the Premises which in Landlord's opinion exceeds the load limits of the floor or otherwise threatens the soundness of the structure or improvements of the Building.

14. All furniture, equipment and freight shall be moved in and out of the Building only at hours and in accordance with rules established by Landlord, and shall not impair vehicular and pedestrian circulation in the Common Area. Landlord will not be responsible for loss or damage to any furniture, equipment, or other personal property of Tenant from any cause.

15. No air conditioning unit or other similar apparatus shall be installed or used by Tenant without the prior written consent of Landlord.

16. No aerial antenna shall be erected on tile roof or exterior walls of the Premises, or on the grounds, without in each instance the prior written consent of Landlord. Any aerial or antenna so installed by or on behalf of Tenant without such written consent shall be subject to removal by Landlord at any time without prior notice at the expense of Tenant, and Tenant shall upon Landlord's demand pay a reasonable removal fee to Landlord.

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17. The entire Premises, including vestibules, entrances, doors, fixtures, windows and plate glass, shall at all times be maintained in a safe, neat and clean condition by Tenant. All trash, refuse and waste materials shall be regularly removed from the Premises by Tenant and placed in the containers at the locations designated by Landlord for refuse collection. All cardboard boxes must be "broken down" prior to being placed in the trash containers. All styrofoam chips must be bagged or otherwise contained prior to placement in the trash containers, so as not to constitute a nuisance. Pallets may not be disposed of in the trash containers or enclosures. The burning of trash, refuse or waste materials is prohibited.

18. All keys for the Premises shall be provided to Tenant by Landlord and Tenant shall return to Landlord any of such keys so provided upon the termination of the Lease. Tenant shall not change locks or install other locks on doors of the Premises without the prior written consent of Landlord, except for Secure Areas within the Premises. In the event of loss of any keys furnished by Landlord for Tenant, Tenant shall pay to Landlord the costs thereof.

19. No person shall enter or remain within the Project while intoxicated or under the influence of liquor or drugs. Landlord shall have the right to exclude or expel from the Project any person who, in the absolute discretion of Landlord, is under the influence of liquor or drugs.

Tenant agrees to comply with all of the foregoing Rules and Regulations. Should Tenant not abide by these Rules and Regulations, Landlord or any "Operator," "Association" or "Declarant" under any Restrictions may serve a notice to correct the deficiencies. If Tenant has not corrected the deficiencies by the end of the notice period set forth in Section 15.1(g) of the Lease, Tenant will be in default of the Lease, and Landlord and/or its designee shall have the right, without further notice, to cure the violation at Tenant's expense.

Landlord reserves the right to amend or supplement the foregoing Rules and Regulations and to adopt and promulgate additional reasonable rules and regulations applicable to the Premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Tenant. Notwithstanding anything to the contrary herein or in the Lease, Tenant shall not be required to comply with any new rules, regulations or restrictions, unless the same apply generally and non-discriminatorily to the occupants of the Project, do not unreasonably interfere with Tenant's use of the Premises or Tenant's parking rights and do not materially increase Tenant's obligations or decrease Tenant's rights under this Lease.

Neither Landlord nor Landlord's Agents or any other person or entity shall be responsible to Tenant or to any other person for the ignorance or violation of these Rules and Regulations by any other tenant or other person. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition precedent, waivable only by Landlord, to Tenant's occupancy of the Premises.

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE is dated for reference purposes only as April 18, 2000, and is part of that Lease dated January 12, 1996 together with the Lease and Exhibits (collectively, the "Lease") by and between AMB PROPERTY, L.P., a Delaware limited partnership ("Landlord") Successor-in-Interest to EASTRICH NO. 137 CORPORATION, c/o Insignia-O'Donnell Commercial Group, Inc. and HARMONIC, INC., a Delaware corporation ("Tenant"), and is made with reference to the following facts:

A. The Premises currently leased by Tenant pursuant to the Lease consists of 110,160 rentable square feet commonly known as 549 Baltic Way, City of Sunnyvale, California.

B. The Lease Term for said Premises currently expires on August 1, 2006.

C. Tenant and Landlord wish to amend the Lease on the Terms and Conditions set forth in this First Amendment to Lease.

NOW, THEREFORE, Landlord and Tenant hereby agree that the Lease Terms are amended as follows:

1. Lease Term: Article 8 is hereby amended to provide that the Lease Term shall be extended through and including September 30, 2010.

2. Base Monthly Rent: Commencing August 2, 2006, Article 9 is hereby amended to provide for the Base Monthly Rent as follows:

August 2, 2006 -----	Adjustment to Fair market Value (FMV) -----
August 2, 2006 - December 31, 2006:	\$2.60 NNN per square foot per month or FMV
January 1, 2007 - December 31, 2007:	\$2.70 NNN per square foot per month or FMV
January 1, 2008 - December 31, 2008:	\$2.80 NNN per square foot per month or FMV
January 1, 2009 - December 31, 2009:	\$2.90 NNN per square foot per month or FMV
January 1, 2010 - September 30, 2010:	\$3.00 NNN per square foot per month or FMV

A. The Base Monthly Rent for the Period after August 2, 2006 shall be the greater of (i) one hundred percent (100%) of the Base Monthly Rent Schedule, or (ii) one hundred percent (100%) of the then fair market monthly rent determined as of the commencement of the Period in question based upon like buildings with like improvements in the area within the boundaries of Highways 101, 880 and the San Francisco Bay. However, the Fair Market Value Rent as determined by appraisal shall not exceed \$4.00 per square foot per month in August 2006 with 5% annual increases through the balance of the term. The Period shall contain no free rent and the Premises shall be taken "as-is". If the parties are unable to agree upon the fair market monthly rent for the Premises for the option period in question at least seventy-five (75) days prior to the commencement of the option period in question, then the fair market monthly rent shall be determined by appraisal conducted pursuant to subparagraph B.

B. In the event it becomes necessary to determine by appraisal the fair market rent of the Premises for the purpose of establishing the Base Monthly Rent during the Period, then such fair market monthly rent shall be determined by three (3) real estate appraisers, all of whom shall be members of the American Institute of Real Estate Appraisers with not less than five (5) years experience appraising real property (other than residential or agricultural property) located in Santa Clara County, California, in accordance with the following procedures:

(1) The party demanding an appraisal (the "Notifying Party") shall notify the other party (the "Non-Notifying Party") thereof by

delivering a written demand for appraisal, which demand, to be effective, must give the name, address, and qualifications of an appraiser selected by the Notifying Party. Within ten (10) days of receipt of said demand, the Non-Notifying Party shall select its appraiser and notify the Notifying Party, in writing, of the name, address, and qualifications of an appraiser selected by it. Failure by the Non-Notifying Party to select a qualified appraiser within said ten (10) day period shall be deemed a waiver of its right to select a second appraiser on its own behalf and the Notifying Party shall select a second appraiser on behalf of the Non-Notifying Party within five (5) days after the expiration of said ten

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(10) day period. Within ten (10) days from the date the second appraiser shall have been appointed, the two (2) appraisers so selected shall appoint a third appraiser. If the two appraisers fail to select a third qualified appraiser, the third appraiser shall be selected by the American Arbitrations Association or if it shall refuse to perform this function, then at the request of either Landlord or Tenant, such third appraiser shall be promptly appointed by the then Presiding Judge of the Superior Court of the State of California for the County of Santa Clara.

(2) The three (3) appraisers so selected shall meet in San Jose, California, not later than twenty (20) days following the selection of the third appraiser. At said meeting the appraisers so selected shall attempt to determine the fair market monthly rent of the Premises for the period in question (including the timing and amount of periodic increases).

(3) If the appraisers so selected are unable to complete their determinations in one meeting, they may continue to consult at such times as they deem necessary for a fifteen (15) day period from the date of the first meeting, in an attempt to have at least two (2) of them agree. If, at the initial meeting or at any time during said fifteen (15) day period, two (2) or more of the appraisers so selected agree on the fair market rent of the Leased Premises, such agreement shall be determinative and binding on the parties hereto, and the agreeing appraisers shall, in simple letter form executed by the agreeing appraisers, forthwith notify both Landlord and Tenant of the amount set by such agreement.

(4) If two (2) or more appraisers do not so agree within said fifteen (15) day period, then each appraiser shall, within five (5) days after the expiration of said fifteen (15) day period, submit his independent appraisal in simple letter form to Landlord and Tenant stating his determination of the fair market rent of the Premises for the period in question. The parties shall then determine the fair market rent for the Premises by determining the average of the fair market rent set by each of the appraisers. However, if the lowest appraisal is less than eighty-five percent (85%) of the middle appraisal then such lowest appraisal shall be disregarded and/or if the highest appraisal is greater than one hundred fifteen percent (115%) of the middle appraisal then such highest appraisal shall be disregarded. If the fair market rent set by any appraisal is so disregarded, then the average shall be determined by computing the average set by the other appraisals that have not been disregarded.

(5) Nothing contained herein shall prevent Landlord and Tenant from jointly selecting a single appraiser to determine the fair market rent of the Premises, in which event the determination of such appraisal shall be conclusively deemed the fair market rent of the Premises.

(6) Each party shall bear the fees and expenses of the appraiser selected by or for it, and the fees and expenses of the third appraiser (or the joint appraiser if one joint appraiser is used) shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

3. Security Deposit: Article 10 is hereby amended to provide for an increase in the Security Deposit of \$227,480.00 which Tenant has provided Landlord upon signature hereon, for a total of \$330,480.00.

4. Retained Real Estate Brokers: Article 12 is amended to provide that Tenant is represented exclusively by Cornish & Carey and Landlord is represented exclusively by Orchard Properties.

5. Condition of Premises: Tenant is fully familiar with the Premises by way of its occupancy and accepts the Premises for the extended term

created hereby in their as-is condition, with all latent and patent faults, without warranty or obligation on the part of Landlord to provide or pay for any interior improvements or tenant improvement allowances. Upon timely exercise of the option to extend, Tenant shall take the Premises for the Extended Term on the same basis.

6. Year 2000 Disclaimer: Landlord hereby disclaims any liability for any and all damages, injuries or other losses, whether ordinary, special, consequential, punitive or otherwise, arising out of, relating to, or in connection with, (a) the failure of any automated,

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computerized and/or software system or other technology used in, on, or about the Property or relating to the management or operation of the Property to accurately receive, provide or process date/time data (including, but not limited to, calculating, comparing and sequencing) both before and after September 9, 1999, and before, after, during and between the years 1999 A. D. and 2000 A. D., and leap year calculations and, or (b) the malfunction, ceasing to function or providing of invalid or incorrect results by any such technology as a result of date/time data. The foregoing disclaimer shall apply to any such technology used in, on, or about the Property or that affects the Property, whether or not such technology is within the control of Owner or any of Owner's agents or representatives. THE FOREGOING DISCLAIMER INCLUDES A DISCLAIMER OF ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE MATTERS DESCRIBED HEREIN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. Continuing Obligation: Except as expressly set forth in this Amendment, all terms and conditions of the Lease remain in full force and effect, and all terms and conditions of the Lease are incorporated herein as though set forth at length.

8. Effect of Amendment: This Amendment modifies the Lease. In the event of any conflict or discrepancy between the Lease and/or any other previous documents between the parties and the provisions of this Amendment, then the provisions of this Amendment shall control. Except as modified herein, the Lease shall remain in full force and effect.

9. Authority: Each individual executing this Amendment on behalf of Tenant represents and warrants that he or she is duly authorized to and does execute and deliver this Amendment pursuant to express authority from Tenant pursuant to and in accordance with the By-Laws and the other organic documents of the Tenant corporation.

10. Entire Agreement: The Lease, as modified by this Amendment, constitutes and contains the entire agreement between the parties, and there are no binding agreements or representations between the parties except as expressed herein. Tenant acknowledges that neither Landlord nor Landlord's Agents have made any legally binding representations or warranties as to any matter except for such matters binding representations or warranties as to any matter except for such matters which are expressly set forth herein, including any representations or warranties relating to the condition of the Premises or the improvements thereto or the suitability of the Premises or the Project for Tenant's business.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment to be effective as of the date first set forth above.

LANDLORD:

AMB PROPERTY, L.P.  
a Delaware limited partnership  
By: AMB Property Corporation,  
a Maryland corporation

By: /s/ JOHN L. ROSSI

-----  
John L. Rossi  
Its: Regional Manager

Telephone: (415)394-9000  
-----

TENANT:

HARMONIC, INC.  
a Delaware corporation

By: /s/ ROBIN N. DICKSON

-----  
Robin N. Dickson  
Its: Chief Financial Officer

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

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

Facsimile: (415)394-0903

Telephone: (408)542-2661

Executed at: 505 Montgomery Street  
6th Floor  
San Francisco, CA 94111

Facsimile: (408)542-2516

Date: 5/12/00

Executed at: 549 Baltic Way  
Sunnyvale, CA 94089

Date:

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EXHIBIT I  
RULES AND REGULATIONS

This Exhibit sets forth the rules and regulations governing Tenant's use of the Common Area and the Premises leased to Tenant pursuant to the terms, covenants and conditions of the Lease to which this Exhibit is attached. Unless otherwise defined, capitalized terms used herein shall have the same meanings as set forth in the Lease. In the event of any conflict or inconsistency between this Exhibit and the Lease, the Lease shall control.

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.

2. The walls, walkways, sidewalks, entrance passages, courts and vestibules shall not be obstructed or used for any purpose other than ingress and egress of pedestrian travel to and from the Premises, and shall not be used for loitering or gathering, or to display, store or place any merchandise, equipment or devices, or for any other purpose. The walkways, entrance passageways, courts, vestibules and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. No tenant or employee or invitee of any tenant shall be permitted upon the roof of the Building.

3. No awnings or other projection shall be attached to the outside walls of the Building. No security bars or gates, curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises without the prior written consent of Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the express written consent of Landlord.

4. Tenant shall not in any way deface any part of the Premises or the Building. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord in writing. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by Tenant.

5. The toilet rooms, urinals, wash bowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant.

6. Landlord shall direct electricians as to the manner and location of any future telephone wiring. No boring or cutting for wires will be allowed without the prior consent of Landlord. The locations of the telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

7. No exterior storage shall be allowed at any time without the prior written approval of Landlord. The Premises shall not be used for cooking or washing clothes without the prior written consent of Landlord, or for lodging or sleeping or for any immoral or illegal purposes.

8. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, machinery, or otherwise. Tenant shall not use, keep or permit to be used, or kept, any foul or obnoxious gas or substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of this or neighboring buildings or premises by reason of any odors, fumes or gases.

9. Neither Tenant nor any of Tenant's Agents shall at any time bring or keep upon the Premises any toxic, hazardous, inflammable, combustible or explosive fluid, chemical or substance without the prior written consent of Landlord.

10. No animals shall be permitted at any time within the Premises.

11. Tenant shall not use the name of the Building or the Project in connection with or in promoting or advertising the business of Tenant, except as Tenant's address, without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising by Tenant which uses the name of, or uses pictures or depictions of, the Building or the Project if such advertising in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability for its intended uses, and upon written notice from Landlord Tenant shall refrain from or discontinue such advertising.

12. Canvassing, soliciting, peddling, parading, picketing, demonstrating or otherwise engaging in any conduct that unreasonably impairs the value or use of the Premises or the Project are prohibited and Tenant shall cooperate to prevent the same.

13. All equipment of any electrical or mechanical nature shall be placed by Tenant on the Premises in such a way as to best minimize, absorb and prevent any vibration, noise or annoyance. No equipment of any type shall be placed on the Premises which in Landlord's opinion exceeds the load limits of the floor or otherwise threatens the soundness of the structure or improvements of the Building.

14. All furniture, equipment and freight shall be moved in and out of the Building only at hours and in accordance with rules established by Landlord, and shall not impair vehicular and pedestrian circulation in the Common Area. Landlord will not be responsible for loss or damage to any furniture, equipment, or other personal property of Tenant from any cause.

15. No air conditioning unit or other similar apparatus shall be installed or used by Tenant without the prior written consent of Landlord.

16. No aerial antenna shall be erected on tile roof or exterior walls of the Premises, or on the grounds, without in each instance the prior written consent of Landlord. Any aerial or antenna so installed by or on behalf of Tenant without such written consent shall be subject to removal by Landlord at any time without prior notice at the expense of Tenant, and Tenant shall upon Landlord's demand pay a reasonable removal fee to Landlord.

17. The entire Premises, including vestibules, entrances, doors, fixtures, windows and plate glass, shall at all times be maintained in a safe, neat and clean condition by Tenant. All trash, refuse and waste materials shall be regularly removed from the Premises by Tenant and placed in the containers at the locations designated by Landlord for refuse collection. All cardboard boxes must be "broken down" prior to being placed in the trash containers. All styrofoam chips must be bagged or otherwise contained prior to placement in the trash containers, so as not to constitute a nuisance. Pallets may not be disposed of in the trash containers or enclosures. The burning of trash, refuse



or waste materials is prohibited.

18. All keys for the Premises shall be provided to Tenant by Landlord and Tenant shall return to Landlord any of such keys so provided upon the termination of the Lease. Tenant shall not change locks or install other locks on doors of the Premises without the prior written consent of Landlord, except for Secure Areas within the Premises. In the event of loss of any keys furnished by Landlord for Tenant, Tenant shall pay to Landlord the costs thereof.

19. No person shall enter or remain within the Project while intoxicated or under the influence of liquor or drugs. Landlord shall have the right to exclude or expel from the Project any person who, in the absolute discretion of Landlord, is under the influence of liquor or drugs.

Tenant agrees to comply with all of the foregoing Rules and Regulations. Should Tenant not abide by these Rules and Regulations, Landlord or any "Operator," "Association" or "Declarant" under any Restrictions may serve a notice to correct the deficiencies. If Tenant has not corrected the deficiencies by the end of the notice period set forth in Section 15.1(g) of the Lease, Tenant will be in default of the Lease, and Landlord and/or its designee shall have the right, without further notice, to cure the violation at Tenant's expense.

Landlord reserves the right to amend or supplement the foregoing Rules and Regulations and to adopt and promulgate additional reasonable rules and regulations applicable to the Premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Tenant. Notwithstanding anything to the contrary herein or in the Lease, Tenant shall not be required to comply with any new rules, regulations or restrictions, unless the same apply generally and non-discriminatorily to the occupants of the Project, do not unreasonably interfere with Tenant's use of the Premises or Tenant's parking rights and do not materially increase Tenant's obligations or decrease Tenant's rights under this Lease.

Neither Landlord nor Landlord's Agents or any other person or entity shall be responsible to Tenant or to any other person for the ignorance or violation of these Rules and Regulations by any other tenant or other person. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition precedent, waivable only by Landlord, to Tenant's occupancy of the Premises.

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