SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended	Commission File Number
December 31, 1996	0-23490

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

Delaware	94-3136179
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification number)

545 Middlefield Road, Suite 200, Menlo Park, California 94025
(Address of principal executive offices and zip code)

(415) 325-5511
(Registrant's telephone number, including area code)

Securities registered pursuant to 12(b) of the Act:	None
Securities registered pursuant to Section 12(g) of the Act:	Common Stock, $.001 Par Value

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No
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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. _____

As of February 28, 1997, the aggregate market value of the voting stock held by non-affiliates of the Registrant was $632,342,107 (based upon the closing sales price of such stock as reported by The Nasdaq Stock Market on such date). Shares of Common Stock held by each officer, director, and holder of 5% or more of the outstanding Common Stock on that date have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 28, 1997, the number of outstanding shares of the Registrants' Common Stock was 16,426,606.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Items 6, 7 and 8 of Form 10-K is incorporated by reference from the Registrant's annual report to security holders furnished pursuant to Rule 14a-3 (the "Annual Report"). Certain information required by Items 10, 11, 12 and 13 of Form 10-K is incorporated by reference from the Registrant's proxy statement for the 1997 Annual Stockholders' Meeting (the "Proxy Statement"), which will be filed with the Securities and Exchange Commission within 120 days after the close of the Registrant's fiscal year ended December 31, 1996.

This Form 10-K contains forward looking statements that involve risks and uncertainties. The Company's actual results may differ significantly from

the results discussed in the forward looking statements. Factors that might cause such differences include, but are not limited to, the risk factors described beginning on page 15, in addition to the other information contained in this Form 10-K.

PART I

Item 1. BUSINESS.

OVERVIEW

VIVUS, Inc. ("VIVUS" or the "Company") is a leader in the development of advanced therapeutic systems for the treatment of erectile dysfunction. Erectile dysfunction, commonly referred to as impotence, is the inability to achieve and maintain an erection of sufficient rigidity for sexual intercourse. The Company's transurethral system for erection is a non-invasive, easy to use system that delivers pharmacologic agents topically to the urethral lining. In November 1996, the Company obtained regulatory marketing clearance by the U.S. Food and Drug Administration (the "FDA") to manufacture and market its first product, MUSE(R) (alprostadil). The Company commenced product shipments to wholesalers in December 1996 and commercially introduced MUSE (alprostadil) in the United States through its direct sales force beginning in January 1997. In addition, the Company submitted applications for regulatory approval to market MUSE (alprostadil) in the United Kingdom and Sweden in 1996 and Norway in January 1997. These applications will be subject to rigorous approval processes, and there can be no assurance such approval will be granted in a timely manner, if at all. Furthermore, the Company received FDA clearance in December 1996 for ACTIS(R), an adjustable elastomeric venous flow control device designed for those patients who suffer from veno-occlusive dysfunction (commonly referred to as venous leak syndrome). ACTIS is currently being studied for adjunctive use with MUSE.

In May 1996, the Company entered into an international marketing agreement with Astra AB ("Astra"). Astra will purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. As consideration for execution of the international marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra upon filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company will be paid up to an additional $10 million in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. In January 1997, the Company entered into an international marketing agreement with Janssen Pharmaceutica International ("Janssen"), a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. As consideration for execution of the international marketing agreement, Janssen paid the Company $5 million. The Company will receive additional payments in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. The Company began generating revenues from product sales in January 1997.

The Company has sought and will continue to seek pharmacologic agents suitable for transurethral delivery for which significant safety data already exists. The Company believes that such agents may progress rapidly through clinical development and the regulatory process due to the

preexisting safety data. The Company expects to begin a Phase III multi-center trial in 1997 for its second product candidate, a combination of alprostadil and prazosin delivered via the Company's transurethral system for erection. The Company has several other product candidates in preclinical development.

The Company has limited experience in manufacturing and selling MUSE (alprostadil) in commercial quantities. Whether the Company can successfully manage the transition to a large scale commercial enterprise will depend upon successful further development of its manufacturing capability and its distribution network, and attainment of foreign regulatory approvals for MUSE

(alprostadil). Failure to make such a transition successfully would have a material adverse effect on the Company's business, financial condition and results of operations.

Based on a published study of more than 1,200 men in Massachusetts, the Company estimates that more than 30% of males in the United States between the ages of 40 and 70 suffer from moderate to complete erectile dysfunction. The Company believes that similar rates of erectile dysfunction prevail outside the United States. An estimate from the National Institute of Health ("NIH") Consensus Statement on Impotence (1992) suggests that the number of men in the United States with erectile dysfunction may be 10 to 20 million. The rate of erectile dysfunction increases significantly with age. In addition to the Company's transurethral system for erection, the primary medical therapies currently used to treat erectile dysfunction are needle injection of pharmacologic agents into the penis, vacuum constriction devices, penile implants and oral medications. Despite the detrimental effect erectile dysfunction may have on a couple's quality of life, the Company believes that, due in part to the limitations of other therapies, less than 10% of men suffering from erectile dysfunction currently receive medical treatment. The Company believes that MUSE (alprostadil) could become first line therapy for erectile dysfunction and increase the number of men who will seek and receive medical treatment for erectile dysfunction.

BACKGROUND

Erectile dysfunction results from (i) an inadequate supply of blood to the penis, (ii) a failure to relax the smooth muscle tissue in the penis so it can become engorged with blood, or (iii) a failure to retain blood in the penis. Blood is carried to the penis in two large arteries that terminate in a maze of blood vessels contained in the three erectile bodies of the penis, the corpus spongiosum, which surrounds the urethra, and two corpora cavernosa. Smooth muscle tissue surrounds each individual blood vessel in the erectile bodies. When the penis is flaccid, the smooth muscle tissue is in a contracted state, which constricts the blood vessels resulting in reduced blood flow. During stimulation, a signal is sent to nerve endings in the penis that causes the smooth muscle tissue to relax. This relaxation allows the blood vessels to expand, and, as arterial blood fills the erectile bodies, the penis becomes engorged with blood and erect. As the erectile bodies expand, the venous outflow of blood is restricted so that the erection can be maintained.

Causes of Erectile Dysfunction

Historically, psychological factors were considered the primary cause of erectile dysfunction. It is now widely understood that a substantial majority of all cases have a physiological cause. The Company believes that its therapeutic treatments of erectile dysfunction can be effective, whether the

cause is psychological or physiological. The primary physiological causes of erectile dysfunction fall into the following general categories:

Vascular Diseases. Atherosclerosis, hypertension and other diseases can impede or obstruct the flow of blood to the penis.

Neurological Diseases. Multiple sclerosis, Parkinson's disease and other diseases can interrupt nerve impulses to the penis.

Diabetes. Diabetes mellitus can alter both nerve function and vascular flow, inhibiting the ability to achieve an erection.

Prescription Drugs. Certain antihypertensive and cardiac medications, as well as a number of other prescription drugs, can affect nerve function in the penis by altering neurotransmitter levels.

Spinal Injury. Injury to the spinal column can interrupt nerve impulses from the spinal cord to the penis.

Pelvic Surgery. Radical prostatectomies, cystoprostatectomies

and colectomies may traumatize or cut nerves or blood vessels to the penis.

Other Causes. Hormonal imbalance, renal failure and dialysis, and drug and substance abuse (particularly smoking) can also impair the neurovascular system and cause erectile dysfunction.

Market Size

Based on a published study of more than 1,200 men in Massachusetts, the Company estimates that over 30% of males in the United States between the ages of 40 to 70 suffer from moderate to complete erectile dysfunction. The Company believes that similar rates prevail outside the United States. An estimate from the NIH Consensus Statement on Impotence (1992) suggests that the number of men in the United States with erectile dysfunction may be 10 to 20 million men. The rate of erectile dysfunction increases significantly with age.

Current Therapies

Despite the detrimental effect erectile dysfunction may have on a couple's quality of life, the Company believes that, due in part to the limitations of other therapies, a large number of men suffering from erectile dysfunction currently do not seek medical treatment. In addition to the Company's recently introduced first product, MUSE (alprostadil), the primary physiological therapies currently utilized for the treatment of erectile dysfunction are:

Needle Injection Therapy. This form of treatment involves the needle injection of pharmacologic agents directly into the penis. These agents are generally vasoactive compounds such as alprostadil alone or in combination with phentolamine and papaverine. This form of treatment requires a prescription from a physician and

instruction on self-injection. Side effects may include pain associated with injection, local pain and aching, priapism (persistent prolonged erections), fibrosis (build-up of scar tissue) and bleeding.

Vacuum Constriction Devices. This form of treatment involves the use of a mechanical system that creates a vacuum around the penis, causing the erectile bodies to fill with blood. A constriction band is then placed around the base of the penis to impede blood drainage and maintain the erection. Vacuum constriction devices are large, mechanical devices that can be unwieldy and somewhat difficult to use. In addition, the erection may not seem natural since only the part of the penis beyond the constriction band is rigid, and the penis can become cold and discolored due to the constriction of blood flow. Complications encountered by some users of vacuum constriction devices include pain and difficulty ejaculating.

Penile Implants. This therapy involves the surgical implantation of a semi-rigid, rigid or inflatable device into the penile structure to mechanically simulate an erection. In addition to the risks associated with surgical procedures, there is a significant rate of complication with implants such as infection and mechanical failure of the device. This may necessitate a second surgical procedure to remove or reposition the device. In addition, due to the scarring associated with the implant procedure, the patient may no longer be a viable candidate for less radical therapies.

Oral Medications. Yohimbine is the primary oral medication currently prescribed in the United States for the treatment of erectile dysfunction. While easily administered, yohimbine must be taken multiple times daily and may cause irritability,

sweating, nausea and possibly hypertension. The Company believes that, for patients with physiologic erectile dysfunction, the efficacy of currently available oral medications is not significantly greater than placebo. See "Business - Competition" for discussion about oral medications under development by other companies for the treatment of erectile dysfunction.

THE VIVUS SOLUTION

VIVUS intends to address the significant market opportunity for erectile dysfunction therapy with its transurethral system for erection. The Company's transurethral system for erection represents a unique approach to treating erectile dysfunction and is based on the discovery that the urethra, although an excretory duct, can absorb certain pharmacologic agents into the surrounding erectile tissues. This results in enhanced blood flow to the penis. The Company believes that MUSE (alprostadil), recently introduced in the United States, could become first line therapy and increase the number of men who seek and receive treatment for erectile dysfunction. The Company's transurethral system for erection is designed to overcome the limitations of other available therapies through its unique product attributes which include:

Ease of Administration. The Company's transurethral system for erection is easy to use with minimal instruction, unlike needle injection therapy that requires precise injection into a corpus cavernosum.

Non-invasive. The Company's transurethral system for erection utilizes urethral delivery, permitting topical application to the urethral lining.

Discreet. The Company's transurethral system for erection utilizes a small, easily carried, single-use disposable applicator that can be discreetly applied and is easily integrated into the normal sexual life of the patient. Administration takes less than a minute.

Quality of Erection. The Company's transurethral system for erection therapy mimics the normal vasoactive process, producing an erection that is more natural than those resulting from needle injection therapy, vacuum constriction devices or penile implants.

THE TRANSURETHRAL SYSTEM FOR ERECTION

Administration. Administration of the transurethral system for erection is an easy and painless procedure. The end of the applicator is less than half the diameter of a man's urine stream and is inserted approximately three centimeters into the urethra. To use the transurethral system for erection, a patient urinates, shakes the penis to remove excess urine, inserts the transurethral system for erection into the urethra, releases the medication and then rolls the penis between the hands for 10 seconds to distribute the medication.

The application process takes less than a minute. Once administered, the pharmacologic agent dissolves in the small amount of urine that remains in the urethra. The pharmacologic agent is absorbed by the urethral mucosa and moves across the adjacent tissue and into the erectile bodies. When successful, an erection is produced within 15 minutes of administration and lasts approximately 30-60 minutes. Many patients experience transient penile pain and/or local aching after administration and during intercourse.

Initial Pharmacologic Agent. Alprostadil is the first pharmacologic agent used in the transurethral system for erection. Alprostadil is the generic name for the synthetic version of prostaglandin E1, a naturally occurring vasodilator present throughout the body and at high levels in seminal fluid.

Other Pharmacologic Agents. The Company is also engaged in the evaluation and development of additional pharmacologic agents to treat erectile dysfunction either alone or in combination with other agents. One such agent is prazosin, a generic alpha-blocker that can be delivered by the transurethral system for erection, both alone and in combination with alprostadil. The Company has several other product candidates in preclinical development.

THE VIVUS STRATEGY

The Company's objective is to become the leading developer, manufacturer and supplier of products for the treatment of erectile dysfunction. The Company is pursuing this objective with the following strategies:

Focus on Clinical Development and Regulatory Review. The Company has sought and plans to continue to seek additional pharmacologic agents suitable for transurethral

delivery for which significant safety data already exists. The Company believes that such agents may progress rapidly through the clinical development and regulatory process due to the preexisting safety data.

Expand the Market. The Company is seeking to increase the number of men receiving treatment for erectile dysfunction by developing safe, effective, discreet, easy to use, non-invasive products and by heightening physician and consumer awareness of erectile dysfunction through education.

Maintain Proprietary Technology. The Company has sought and will continue to seek a strong proprietary position for the Company's transurethral system for erection by pursuing patent protection in the United States and key international countries.

Develop Novel Pharmacologic Agents. The Company is engaged in the research and development of and may seek to license novel pharmacologic agents that may provide an enhanced therapeutic benefit in the treatment of erectile dysfunction, either alone or in combination with other agents.

Achieve Broad Distribution. The Company is initially marketing and selling its products through a direct sales force in the United States, and through distribution, co-promotion or license agreements with corporate partners in foreign markets. In May 1996, the Company completed an international marketing agreement with Astra AB (Astra) where Astra will purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. In January 1997, the Company signed an international marketing agreement with Janssen, a subsidiary of Johnson & Johnson, where Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa.

MANUFACTURING AND RAW MATERIALS

The Company has limited experience in manufacturing MUSE (alprostadil) in commercial quantities. Since the commercial launch of its product in January 1997, the Company has experienced shortages on certain dosage strengths due to higher than expected demand. The Company has leased two adjacent buildings in New Jersey, totalling 90,000 square feet, that will be built out to support expansion of the Company's manufacturing capabilities. If the Company encounters any manufacturing difficulties, including problems involving production yields, quality control and assurance, supplies of components or raw materials or shortages of qualified personnel, regulatory approval of its new facility, it could have a material adverse effect on the Company's business, financial condition and results of operations.

The Company obtains its supply of alprostadil from two sources. The first is Spolana Chemical Works AS in Neratovice, Czech Republic ("Spolana") pursuant to a supply agreement that expires at the end of 1997. A renewal agreement is currently being negotiated. In January 1996, the Company entered into a long-term alprostadil supply agreement with CHINOIN Pharmaceutical and Chemical Works Co., Ltd. ("Chinoin"). Chinoin is the Hungarian subsidiary of the French pharmaceutical company Sanofi Winthrop.

While the Company is seeking additional sources of alprostadil, there can be no assurance that it will be able to identify and qualify such sources. Alprostadil, a generic drug, is extremely difficult to manufacture and is only available to the Company from a limited number of other suppliers, none of which currently produce it in commercial quantities. The Company is required to identify its suppliers to the FDA. The FDA may require additional clinical trials or other studies prior to accepting any new supplier. Unless the Company secures and qualifies additional sources of alprostadil, it will be entirely dependent upon Spolana and Chinoin for the delivery of alprostadil. If interruptions in the supply of alprostadil were to occur for any reason, including, but not limited to, a decision by Spolana and/or Chinoin to discontinue manufacture, political unrest, labor disputes, or a failure of Spolana and/or Chinoin to follow regulatory guidelines, the development and commercial marketing of MUSE (alprostadil) and other potential products could be delayed or prevented. An interruption in the Company's supply of alprostadil would have a material adverse effect on the Company's business, financial condition and results of operations.

The formulation, filling, packaging and testing of the MUSE (alprostadil) is performed by Paco Pharmaceutical Services, Inc. ("Paco") at its facility in Lakewood, New Jersey. In April 1995, Paco was acquired by The West Company. In June 1995, the Company completed construction of its approximately 6,000 square feet of dedicated manufacturing and testing space within Paco's facility. This space is dedicated to manufacturing and testing activities for the Company. Until the Company develops an in-house manufacturing capability, it will be entirely dependent upon Paco for the manufacture of its products. There can be no assurance that the Company's reliance on Paco will not result in problems with product supply. Interruptions in the availability of MUSE (alprostadil) and other potential products could have a material adverse effect on the Company's business, financial condition and results of operations.

The Company obtains the necessary raw materials and components for the manufacture of MUSE (alprostadil) from third parties. The Company currently contracts with contract manufacturing organizations, including foreign manufacturers, that are required to comply with strict standards established by the Company. All contract manufacturers are required by the Federal Food, Drug, and Cosmetic Act, as amended, and by FDA regulations to follow current Good Manufacturing Practices ("cGMP") and are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMPs and other applicable regulations. The FDA stringently applies regulatory standards for manufacturing. The Company's third party contract manufacturers were inspected for cGMP compliance as part of the approval process. However, upon routine re-inspection of the manufacturing facilities, there can be no assurance that the FDA will find the manufacturing process or facilities to be in compliance with cGMPs and other regulations. Failure to achieve satisfactory cGMP compliance as confirmed by routine inspections could become a significant adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious case, result in the issuance of a regulatory warning letter or seizure or recall of products, injunction and/or civil fines.

The Company's New Jersey manufacturing facility at Paco Pharmaceutical Services Inc. was inspected by the FDA for the first time after the preapproval inspection during 12 days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive Form FDA 483, which detailed specific areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of the cGMP regulations. A corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and

the Company submitted a written response to the Form FDA 483 and requested a meeting with the FDA District Office officials to discuss the matter. There can be no assurance that the FDA will accept the Company's corrective action plan or the time frame for completing the corrective action plan. If the corrective action plan is accepted it is likely that the FDA would reinspect the facility shortly after completion of the corrective action plan. The scope of any FDA reinspection could be more comprehensive than the initial inspection. Failure to adequately address these cGMP deficiencies within a reasonable time frame would have an adverse effect on the Company's ability to supply its product, which would have a material adverse effect on the Company's business, financial condition and results of operations. Accordingly, the Company has undertaken a complete review of its cGMP compliance. However, there can be no assurance that the FDA will deem the Company's corrective action or the timing for the corrective action to be adequate or that additional corrective action, in areas not addressed by Form FDA 483, will not be required. Failure to achieve satisfactory cGMP compliance would have a material adverse effect on the Company's ability to continue to market and distribute its products and in the most serious cases, could result in the issuance of a Warning Letter, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

SALES AND MARKETING

Before commercially launching its first product, MUSE (alprostadil), in January 1997, the Company had no experience in the sale, marketing and distribution of pharmaceutical products. The Company is marketing and selling its products initially through a direct sales force in the United States. There can be no assurance that the Company's domestic sales and marketing efforts will be successful.

The Company intends to market and sell its products in other foreign markets through distribution, co-promotion or license agreements with corporate partners. To date, the Company has

entered into international marketing agreements with Astra and Janssen. There can be no assurance that the Company will be able to successfully enter into additional agreements with corporate partners upon reasonable terms, if at all. To the extent that the Company enters into distribution, co-promotion or license agreements for the sale of its products, the Company will be dependent upon the efforts of third parties. There can be no assurance that such efforts will be successful.

In February 1996, the Company entered into a distribution agreement with CORD Logistics, Inc. ("CORD"), a wholly-owned subsidiary of Cardinal Health, Inc. Under this agreement, CORD warehouses the Company's finished goods, takes customer orders, picks, packs and ships its product, invoices customers and collects related receivables. The Company also has access to CORD information systems that support these functions. As a result of this distribution agreement with CORD, the Company is heavily dependent on CORD's efforts. There can be no assurance such efforts will be successful.

In May 1996, the Company entered into an international marketing agreement with Astra to purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. As consideration for execution of the marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra upon filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company will be paid up to an additional $10 million in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. As a result of this marketing agreement with Astra, the Company is dependent on Astra's efforts to market, distribute and sell the Company's products effectively in the above mentioned markets. There can be no assurance that such efforts will be successful.

In July 1996, the Company entered into a distribution agreement with Alternate Site Distributors, Inc. ("ASD"), a subsidiary of Bergen Brunswig Corporation. ASD provides "direct-to-physician" distribution, telemarketing and customer service capabilities in support of the U.S. marketing and sales efforts. Pursuant to the terms of this agreement, ASD developed a customer service organization to respond to all the Company's sales representative and physician inquiries. A central feature of this customer service is a dedicated

Company owned toll free number with an automated response menu covering various options. As a result of this distribution agreement with ASD, the Company is dependent on ASD's efforts to distribute, telemarket, and provide customer service effectively. There can be no assurance that such efforts will be successful.

In January 1997, the Company signed an international marketing agreement with Janssen, a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. As consideration for execution of the international marketing agreement, Janssen paid the Company $5 million. The Company will receive additional payments in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. As a result of this distribution agreement with Janssen, the Company is dependent on Janssen's efforts to distribute and sell the Company's products effectively in the above mentioned markets. There can be no assurance that such efforts will be successful.

CLINICAL STUDIES

In mid-1995, the Company completed its Phase III Confirmatory studies for MUSE (alprostadil) that were used as a basis for the New Drug Application ("NDA") submitted to the FDA in March 1996. MUSE (alprostadil) was cleared for marketing by the FDA in November 1996. Successful intercourse was reported by 64.9 percent of participants using MUSE (alprostadil) versus 18.6 percent receiving placebo. Of all active doses administered, 50.2 percent resulted in intercourse, compared to 10.4 percent of placebo doses. No increased risk of serious adverse events due to MUSE (alprostadil) was found, and there were no reports of priapism (persistent abnormal erection) or penile scarring. Eighty-eight (88) percent of patient couples that commenced the pivotal Phase III Confirmation Study completed it. The most common side effect reported was transient penile pain and less than one percent of participants discontinued use due to discomfort. In patients who responded to treatment with MUSE (alprostadil), there was a statistically significant improvement in the patient's perception of his emotional well-being ($p<0.004$) and in his relationship with his partner ($p<0.001$) compared to patients treated with placebo. From the partner's perspective, there also was a statistically significant improvement in her relationship with the patient ($p<0.001$) compared to partners in the placebo group. The Company has continued open label Extended Maintenance studies for those patients electing to continue treatment.

The Company's ongoing clinical trials will evaluate the long-term safety of MUSE (alprostadil) for both the patient and his partner. Additional adverse side effects may arise during the course of ongoing clinical trials. There can be no assurance that additional adverse side effects will not arise that result in the FDA requiring limitations on use or warnings that make the Company's products not commercially viable. Any additional adverse side effects could have a material adverse effect on the Company's business, financial condition and results of operations.

LICENSED PATENTS AND PROPRIETARY RIGHTS

The Company's policy is to aggressively maintain its patent protection and to enforce all of its intellectual property rights.

The Company is the exclusive licensee of United States and Canadian patents originally filed in the name of Dr. Gene Voss. These patents claim methods of treating erectile dysfunction by the topical application of an ointment containing a vasodilator. There are also claims to methods of treatment involving the insertion of a catheter into the urethra to deliver vasodilators.

The Company is the exclusive licensee of patents and patent applications filed in the name of Dr. Nils Kock in numerous countries. Patents have issued in Australia, Canada, Japan, New Zealand, Sweden, South Africa and Europe (Austria, Belgium, Germany, France, Great Britain, Ireland, Italy, Luxembourg, Netherlands, Sweden, Greece and Spain). Patent applications are pending in Denmark, Finland, and the United States. The European patents claim

compositions for the treatment of erectile dysfunction through the urethra of certain active substances including alpha-receptor blockers, vasoactive polypeptides, prostaglandins or nitroglycerin dispersed in a hydrophilic vehicle. A competitor has filed a patent opposition against this patent with the European Patent Office. The Company is vigorously defending this patent, however, an adverse decision could affect the Company's ability, based on its patent rights, to prevent potential competition in Europe.

The Company is the exclusive assignee of two United States patents and divisional patent applications from Alza Corporation ("Alza"), covering inventions of Dr. Virgil Place made while he was an employee of Alza. The patents and patent applications describe dosage forms for administering a therapeutic agent to the urethra, methods for treating erectile dysfunction and specific drug formulations that can be delivered transurethrally for the treatment of erectile dysfunction. Five additional divisional or continuation applications claiming subject matter disclosed but not claimed in the issued patents or applications were filed in the United States on June 7, 1995. Patent applications filed before June 8, 1995, if approved, will have a patent life of 17 years from the patent issue date. Patent applications filed after June 8, 1995, if approved, will have a patent life of 20 years from the filing date. Foreign patents have been issued in South Africa and Australia and foreign applications are pending in Canada, Finland, Ireland, Mexico, Portugal, New Zealand, Japan, South Korea, Norway and Europe (Austria, Belgium, Switzerland, Germany, Denmark, Spain, France, United Kingdom, Italy, Luxembourg, Netherlands, Sweden and Greece).

The Company's license and assignment agreements for these patents and patent applications are royalty bearing and do not expire until the licensed patents expire. These license and assignment agreements provide that the Company may assume responsibility for the maintenance and prosecution of the patents and bring infringement actions.

In addition, the Company filed two patent applications in the United States, eleven patent applications in foreign jurisdictions, and two patent cooperation treaty applications in 1996. These patents further address the treatment and diagnosis of erectile dysfunction.

The Company's success will depend in large part on the strength of its current and future patent position relating to the transurethral delivery of pharmacologic agents for the treatment of erectile dysfunction. The Company's patent position, like other pharmaceutical companies, is highly uncertain and involves complex legal and factual questions. Claims made under patent applications may be denied or significantly narrowed and the issued patents may not provide significant commercial protection to the Company. The Company could incur substantial costs in proceedings before the United States Patent Office, including interference proceedings. These proceedings could also result in adverse decisions as to the priority of the Company's licensed or assigned inventions. There is no assurance that the Company's patents will not be successfully challenged or designed around by others. The Company is aware of a patent application involving the transurethral application of prostaglandin E2. However, the Company believes that its licensed patents will block the issuance of such patent.

There can be no assurance that the Company's products do not or will not infringe on the patent or proprietary rights of others. The Company may be required to obtain additional licenses to the patents, patent applications or other proprietary rights of others. There can be no assurance that any such licenses would be made available on terms acceptable to the Company, if at all. If the Company does not obtain such licenses, it could encounter delays in product introductions while it attempts to design around such patents, or the development, manufacture or sale of products requiring such licenses could be precluded. The Company believes there will continue to be significant litigation in the pharmaceutical industry regarding patent and other intellectual property rights.

A former consultant to the Company has claimed that he is the inventor of certain technology disclosed in two of the Company's patents. The former consultant further claims that the Company defrauded him by allegedly failing to inform him that it intended to use and patent this technology and

by failing to compensate him for the technology in the manner allegedly promised. The Company has filed a complaint for declaratory judgment against the former consultant in the United States District Court for the Northern District of California, which seeks a declaration from the court that the former consultant is not an inventor of any of the technology disclosed in the patents. The former consultant has filed a counterclaim that seeks unspecified monetary damages and to have two of the Company's patents declared invalid on the grounds that they fail to list him as an inventor.

In a separate matter, licensors in an agreement by which the Company acquired a patent license have filed a lawsuit in the United States District Court for the Western District of Texas that alleges that they were defrauded in connection with the renegotiation of the license agreement between the Company and the licensors. In addition to monetary damages, the licensors seek to return to the terms of the original license agreement.

The Company has conducted a review of the circumstances surrounding these two matters and believes that the allegations are without merit. Although the Company believes that it should prevail, the uncertainties inherent in litigation prevent the Company from giving any assurances about the outcome of such litigation.

The Company also relies on trade secrets and other unpatented proprietary technology. No assurance can be given that the Company can meaningfully protect its rights in such unpatented proprietary technology or that others will not independently develop substantially equivalent proprietary products and processes or otherwise gain access to the Company's proprietary technology. The Company seeks to protect its trade secrets and proprietary know-how, in part, with confidentiality agreements with employees and consultants. There can be no assurance that the agreements will not be breached, that the Company will have adequate remedies for any breach or that the Company's trade secrets will not otherwise become known or be independently developed by competitors. In addition, protracted and costly litigation may be necessary to enforce and determine the scope and validity of the Company's proprietary rights.

COMPETITION

Competition in the pharmaceutical and medical products industries is intense and characterized by extensive research efforts and rapid technological progress. Certain treatments for erectile dysfunction exist, such as needle injection therapy, vacuum constriction devices, penile implants and oral medications, and the manufacturers of these products will continue to improve these therapies. In July 1995, the FDA approved the use of alprostadil in The Upjohn Company's needle injection therapy product for erectile dysfunction. Previously, Upjohn had obtained approval in a number of European countries. Additional competitive therapies under development include an oral medication by Pfizer, Inc., which is currently in Phase III clinical trials. Other large pharmaceutical companies are also actively engaged in the development of therapies for the treatment of erectile dysfunction. These companies have substantially greater research and development capabilities as well as substantially greater marketing, financial and human resources than the Company. In addition, these companies have significantly greater experience than the Company in undertaking preclinical testing, human clinical trials and other regulatory approval procedures. There are also small companies, academic institutions, governmental agencies and other research organizations that are conducting research in the area of erectile dysfunction. For instance, Zonagen, Inc. and Pentech Pharmaceutical, Inc. have oral medications under development. These entities may also market commercial products either on their own or through

collaborative efforts. The Company's competitors may develop technologies and products that are more effective than those being developed by the Company. Such developments would render the Company's products less competitive or possibly obsolete. The Company is also competing with respect to marketing capabilities and manufacturing efficiency, areas in which it has limited experience.

GOVERNMENT REGULATION

The production and marketing of the Company's proposed products and its research and development activities are subject to regulation for safety, effectiveness and quality by numerous governmental authorities in the United States and other countries. In the United States, drugs are subject to rigorous FDA regulation. The Federal Food, Drug, and Cosmetic Act, as amended, the regulations promulgated thereunder, and other federal and state statutes and regulations, govern, among other things, the testing, manufacture, safety, effectiveness, labeling, storage, record keeping, advertising and promotion of the Company's products. Product development and approval within this regulatory framework takes a number of years and involves the expenditure of substantial resources.

The steps required before a pharmaceutical agent may be marketed in the United States include (i) preclinical laboratory tests, in vivo preclinical studies and formulation studies, (ii) the submission to the FDA of an Investigational New Drug ("IND") application for human clinical testing, which must become effective before human clinical trials commence, (iii) adequate and well-controlled human clinical trials to establish the safety and effectiveness of the drug, (iv) the submission of an NDA to the FDA, and (v) the FDA clearance for marketing of the NDA prior to any commercial sale or shipment of the drug. In addition to obtaining FDA approval for each product, each domestic drug manufacturing establishment must be registered with, and approved by, the FDA. Domestic manufacturing establishments are subject to biennial inspections by the FDA and must comply with cGMP for both drugs and devices. To supply products for use in the United States, foreign manufacturing establishments must comply with cGMP and are subject to periodic inspection by the FDA or by corresponding regulatory agencies in such countries under reciprocal agreements with the FDA. The Company's contract manufacturing site, located in New Jersey, must also be licensed by the State of New Jersey and must comply with New Jersey's separate regulatory requirements.

Preclinical tests include laboratory evaluation of product chemistry and formulation, as well as animal studies to assess the potential safety and effectiveness of the product. Compounds must be adequately manufactured and preclinical safety tests must be conducted by laboratories that comply with FDA regulations. The results of the preclinical tests are submitted to the FDA as part of an IND and are reviewed by the FDA prior to the commencement of human clinical trials. There can be no assurance that submission of an IND will result in FDA authorization to commence clinical trials.

Clinical trials involve the administration of the investigational new drug to patients, under the supervision of a qualified principal investigator. Clinical trials are conducted in accordance with Good Clinical Practices under protocols that detail the objectives of the study, the parameters to be used to monitor safety and the effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND. Further, each clinical study must be conducted under the auspices of an independent Institutional Review Board ("IRB") at the institution at which the study will be conducted. The IRB will consider, among other things, ethical factors, the safety of human subjects and the possible liability of the institution.

Clinical trials are typically conducted in three sequential phases, but the phases may overlap. In Phase I, the initial introduction of the drug into healthy subjects, the drug is tested for safety, dosage tolerance, absorption, distribution, metabolism, excretion and pharmacodynamics (clinical pharmacology). Phase II involves studies in a limited patient population to (i) determine the effectiveness of the drug for specific, targeted indications, (ii) determine dosage tolerance and optimal dosage and (iii) identify possible adverse effects and safety risks. When a compound is found to be effective and

to have an acceptable safety profile in Phase II evaluations, Phase III trials are undertaken to further evaluate clinical effectiveness and to further test for safety within an expanded patient population at geographically dispersed clinical study sites. There can be no assurance that Phase I, Phase II or Phase III testing will be completed within any specific time period, if at all, with respect to any of the Company's products subject to such testing. Furthermore, the Company or the FDA may suspend clinical trials at any time if it is believed that the patients are being exposed to an unacceptable health risk.

The results of the pharmaceutical development, preclinical studies and clinical studies are submitted to the FDA in the form of an NDA for approval of the marketing and commercial shipment of the drug. The Company submitted an NDA for MUSE (alprostadil) in March 1996, and the FDA approved the NDA in November 1996. Although MUSE (alprostadil) received FDA approval, the testing and approval process for the Company's other potential products will require substantial time and effort, and there can be no assurance that any approval will be granted on a timely basis, if at all. The FDA may deny an NDA if applicable regulatory criteria are not satisfied, require additional testing or information, or require postmarketing testing and surveillance to monitor the safety of the Company's products if they do not view the NDA as containing adequate evidence of the safety and effectiveness of the drug. Notwithstanding the submission of such data, the FDA may ultimately decide that the application does not satisfy its regulatory criteria for approval. Moreover, if regulatory approval of a drug is granted, such approval may entail limitations on the indicated uses for which it may be marketed. Finally, approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems occur following initial marketing.

Among the conditions for an NDA approval is the requirement that the prospective manufacturer's quality control and manufacturing procedures conform to cGMP. In complying with standards set forth in these regulations, manufacturers must continue to expend time, money and effort in the area of production and quality control to ensure full technical compliance.

The Company and all its third party contract manufacturers are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMPs and other applicable regulations. The FDA stringently applies regulatory standards for manufacturing. The Company's third party contract manufacturers were inspected for cGMP compliance as part of the approval process. However, upon routine re-inspection of its contract manufacturers, there can be no assurance that the FDA will find the manufacturing process or facilities to be in compliance with cGMPs and other regulations. Failure to achieve satisfactory cGMP compliance as confirmed by routine regulatory inspections could become a significant adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious cases, result in the issuance of regulatory warning letter or seizure or recall of products, injunction and/or civil fines.

The Company's New Jersey manufacturing facility at Paco Pharmaceutical Services Inc. was inspected by the FDA for the first time after the preapproval inspection during 12 days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive Form FDA 483, which detailed specific areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of the cGMP regulations. A corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and the Company submitted a written response to the Form FDA 483 and requested a meeting with the FDA District Office officials to discuss the matter. There can be no assurance that the FDA will accept the Company's corrective action plan or the time frame for completing the corrective action plan. If the corrective action plan is accepted it is likely that the FDA would reinspect the facility shortly after completion of the corrective action plan. The scope of any FDA reinspection could be more comprehensive than the initial inspection. Failure to adequately address these cGMP deficiencies within a reasonable time frame would have an adverse effect on the Company's ability to supply its product, which would have a material adverse effect on the Company's business, financial condition and results of operations. Accordingly, the Company has undertaken a complete review of its cGMP compliance. However, there can be no assurance that the FDA will deem the Company's corrective action or the timing for the corrective action to be adequate or that additional corrective action, in areas are not addressed by Form FDA 483, will not be required. Failure to achieve satisfactory cGMP compliance would have a material adverse effect on the Company's ability to continue to market and distribute its products and in the most serious cases, could result in the issuance of a Warning Letter, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

For clinical investigation and marketing in Europe, the Company also is subject to foreign regulatory requirements governing human clinical trials and marketing approval for drugs. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary widely for European countries both within and outside the European Union ("EU"). The Company's approach to the European regulatory process involved the identification of respected clinical investigators in the member states of the EU and other European countries to conduct clinical studies. The Company designed these studies to meet FDA, EU and other European countries' standards. Within the EU, while marketing authorizations must be supported by clinical trial data of a type and extent set out by EU directives and guidelines, the approval process for the commencement of clinical trials is just beginning to be harmonized by EU law, and still varies from country to country. The system for obtaining marketing authorizations within the EU changed on January 1, 1995 pursuant to recently adopted EU legislation. The new EU registration system is a dual one in which certain products, such as

biotechnology and high-technology products and those containing new active substances, have access to a central regulatory system that provides registration throughout the entire EU. Other products will be registered by national authorities in individual EU member states, operating on a principle of mutual recognition. As far as possible, the Company's studies were designed to develop a regulatory package sufficient for multi-country approval in the European markets without the need to duplicate studies for individual country approvals. The Company submitted applications for approval of MUSE (alprostadil) in the United Kingdom and Sweden in 1996 and Norway in 1997. These applications will be subject to rigorous approval processes, and there can be no assurance such approval will be granted in a timely manner, if at all.

Outside the United States and Europe, the Company's ability to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authority. This foreign regulatory approval process includes all of the risks associated with FDA approval previously discussed.

EMPLOYEES

As of March 1, 1997 the Company employed 107 persons, of whom two are part-time. Of these employees, seven are in manufacturing, twelve are in clinical and regulatory affairs, three are in research and development, three are in development and preclinical studies, three are in quality assurance, 66 are in sales and marketing, one is in corporate development and twelve are in finance and administration. None of the Company's current employees are represented by a labor union or are the subject of a collective bargaining agreement. The Company believes that it maintains good relations with its employees.

This Annual Report on Form 10-K contains forward looking statements that involve risks and uncertainties. The Company's actual results could differ from those set forth in such forward looking statements as a result of certain factors, including those set forth in this Risk Factors section.

RISK FACTORS

LIMITED MANUFACTURING EXPERIENCE AND DEPENDENCE ON SOLE CONTRACT MANUFACTURER

The Company has only limited experience in manufacturing MUSE (alprostadil) in commercial quantities. Since the commercial launch of its product in January 1997, the Company has experienced shortages on certain

dosage strengths due to higher than expected demand. If the Company encounters any manufacturing difficulties, including problems involving production yields, quality control and assurance, supplies of components or raw materials or shortages of qualified personnel, it could have a material adverse effect on the Company's business, financial condition and results of operations.

The formulation, filling, packaging and testing of MUSE (alprostadil) is performed by Paco Pharmaceutical Services, Inc. ("Paco"), a wholly owned subsidiary of The West Company, at its facility in Lakewood, New Jersey. In June 1995, the Company completed construction of its approximately 6,000 square feet of dedicated manufacturing and testing space within Paco's facility. Due to higher than expected demand, the Company has leased two adjacent buildings in New Jersey, totalling 90,000 square feet, that will be built out to support expansion of the Company's manufacturing capabilities. Until the Company develops an in-house manufacturing capability, it will be entirely dependent upon Paco for the manufacture of its products. There can be no assurance that the Company's reliance on Paco for the manufacture of its products will not result in problems with product supply, and there can be no assurance that the Company will be able to establish a second manufacturing facility. Interruptions in the availability of products could delay or prevent the development and commercial marketing of MUSE (alprostadil) and other potential products and would have a material adverse effect on the Company's business, financial condition and results of operations.

The Company and all its third party contract manufacturers are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMPs and other applicable regulations. The FDA stringently applies regulatory standards for manufacturing. The Company's third party contract manufacturers were inspected for cGMP compliance as part of the approval process. However, upon routine re-inspection of its contract manufacturers, there can be no assurance that the FDA will find the manufacturing process or facilities to be in compliance with cGMPs and other regulations. Failure to achieve satisfactory cGMP compliance as confirmed by routine regulatory inspections could become a significant adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious cases, result in the issuance of regulatory warning letter seizure or recall of products, injunction and/or civil fines.

The Company's New Jersey manufacturing facility at Paco Pharmaceutical Services Inc. was inspected by the FDA for the first time after the preapproval inspection during 12 days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive Form FDA 483, which detailed specific areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of the cGMP regulations. A corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and the Company submitted a written response to the Form FDA 483 and requested a meeting with the FDA District Office officials to discuss the matter. There can be no assurance that the FDA will accept the Company's corrective action plan or the time frame for completing the corrective action plan. If the corrective action plan is accepted it is likely that the FDA would reinspect the facility shortly after completion of the corrective action plan. The scope of any FDA reinspection could be more comprehensive than the initial inspection. Failure to adequately address these cGMP deficiencies within a reasonable time frame would have an adverse effect on the Company's ability to supply its product, which would have a material adverse effect on the Company's business, financial condition and results of operations. Accordingly, the Company has undertaken a complete review of its cGMP compliance. However, there can be no assurance that the FDA will deem the Company's corrective action or the timing for the corrective action to be adequate or that additional corrective action, in areas not addressed by Form FDA 483, will not be required. Failure to achieve satisfactory cGMP compliance would have a material adverse effect on the Company's ability to continue to market and distribute its products and in the most serious cases, could result in the issuance of a Warning Letter, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

LIMITED SALES AND MARKETING EXPERIENCE

Before commercially launching its first product, MUSE (alprostadil), in January 1997, the Company had no experience in the sale, marketing and distribution of pharmaceutical products. The Company is marketing and selling its products initially through a direct sales force in the United States. There can be no assurance that the Company's domestic sales and marketing efforts will be successful.

In February 1996, the Company entered into a distribution agreement with CORD Logistics, Inc. ("CORD"), a wholly owned subsidiary of Cardinal Health, Inc. Under this agreement, CORD warehouses the Company's finished goods, takes customer orders, picks, packs and ships its product, invoices customers and collects related receivables. The Company also has access to CORD's information systems that support these functions. As a result of this distribution agreement with CORD, the Company is heavily dependent on CORD's efforts to fulfill orders and warehouse its products effectively. There can be no assurance such efforts will be successful.

In May 1996, the Company entered into an international marketing agreement with Astra to purchase the Company's products for resale in Europe, South America, Central America, Australia and

New Zealand. As consideration for execution of the international marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra upon filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company will be paid up to an additional $10 million in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. The marketing agreement does not have minimum purchase commitments, and Astra may take up to twelve months to introduce a product in a given country following regulatory approval in such country. As a result of this marketing agreement with Astra, the Company is dependent on Astra's efforts to market, distribute and sell the Company's products effectively in the above mentioned markets. There can be no assurance that such efforts will be successful.

In July 1996, the Company entered into a distribution agreement with ASD, a subsidiary of Bergen Brunswig Corporation. ASD provides "direct-to-physician" distribution, telemarketing and customer service capabilities in support of the U.S. marketing and sales efforts. Pursuant to the terms of this agreement, ASD developed a customer service organization to respond to all the Company's sales representative and physician inquiries. A central feature of this customer service is a dedicated Company owned toll free number with an automated response menu covering various options. As a result of this distribution agreement with ASD, the Company is dependent on ASD's efforts to distribute, telemarket, and provide customer service effectively. There can be no assurance that such efforts will be successful.

In January 1997, the Company signed an international marketing agreement with Janssen, a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. As consideration for execution of the international marketing agreement, Janssen paid the Company $5 million. The Company will receive additional payments in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. As a result of this distribution agreement with Janssen, the Company is dependent on Janssen's efforts to distribute and sell the Company's products effectively in the above mentioned markets. There can be no assurance that such efforts will be successful.

The Company intends to market and sell its products in other foreign markets through distribution, co-promotion or license agreements with corporate partners. To date, the Company has entered into international marketing agreements with Astra and Janssen. There can be no assurance that the Company will be able to successfully enter into additional agreements with corporate partners upon reasonable terms, if at all. To the extent that the Company enters into distribution, co-promotion or license agreements for the sale of its products, the Company will be dependent upon the efforts of third parties. These third parties may have other commitments, and there can be no assurance that they will commit the necessary resources to effectively market, distribute and sell the Company's product.

DEPENDENCE ON THE COMPANY'S TRANSURETHRAL SYSTEM FOR ERECTION

The Company currently relies upon a single therapeutic approach to treat erectile dysfunction, its transurethral system for erection. Certain side effects have been found to occur with the use of MUSE (alprostadil). Mild to moderate transient penile/perineal pain was suffered by 21% to 42% of patients (depending on dosage) treated with MUSE (alprostadil) in the Company's Phase II/III Dose Ranging study. Moderate to severe (i.e., syncope) decreases in blood pressure were experienced by 1% to 4% of patients (depending on dosage) treated with MUSE (alprostadil) in such study. The existence of side effects or dissatisfaction with product results may impact a patient's decision to use or continue to use, or a physician's decision to recommend, MUSE (alprostadil) as a therapy for the treatment of erectile dysfunction thereby affecting the commercial viability of MUSE (alprostadil). In addition, technological changes or medical advancements could diminish or eliminate the commercial viability of the Company's products. As a result of the Company's single therapeutic approach and its current focus on MUSE (alprostadil), the failure to successfully commercialize such product would have an adverse effect on the Company and could threaten the Company's ability to continue as a viable entity.

GOVERNMENT REGULATION AND UNCERTAINTY OF PRODUCT APPROVALS

The Company's research, preclinical development, clinical trials, manufacturing and marketing of its products are subject to extensive regulation by numerous governmental authorities in the United States and other countries. Clinical trials, manufacturing and marketing of the Company's products will be subject to the rigorous testing and approval processes of the FDA and equivalent foreign regulatory agencies. The process of obtaining FDA and other required regulatory approvals is lengthy and expensive. The Company completed pivotal clinical trials in 1995 and submitted an NDA for its first product, MUSE (alprostadil), to the FDA in March 1996. In November 1996, the Company received final marketing clearance from the FDA for MUSE (alprostadil). In addition, the Company submitted applications for approval of MUSE (alprostadil) in the United Kingdom and Sweden in 1996 and Norway in January 1997. These applications will be subject to rigorous approval processes. There can be no assurance that approval in these or other countries will be granted on a timely basis, if at all, or if granted, that such approval will not contain significant limitations in the form of warnings, precautions or contraindications with respect to condition of use. Any delay in obtaining, or failure to obtain, such approval would adversely affect the Company's ability to generate product revenue.

The Company's clinical trials for future products will seek safety data as well as efficacy data and will require substantial time and significant funding. There is no assurance that clinical trials related to future products will be completed successfully within any specified time period, if at all. Furthermore, the FDA may suspend clinical trials at any time if it is believed that the subjects participating in such trials are being exposed to unacceptable health risks. There can be no assurance that FDA or other regulatory approvals for any products developed by the Company will be granted on a timely basis, if at all, or if granted, that such approval will not contain significant limitations in the form of warnings, precautions or contraindications with respect to conditions of use. Any delay in obtaining, or failure to obtain, such approvals would adversely affect the Company's ability to generate product revenue. Failure to comply with the applicable regulatory requirements can, among other things, result in fines, suspensions of regulatory approvals, product recalls, operating restrictions and criminal prosecution. In addition, the marketing and manufacturing of pharmaceutical products are subject to continuing FDA review, and later discovery of previously unknown problems with a product, manufacturer or facility may result in the FDA requiring further clinical research or restrictions on the product or the

manufacturer, including withdrawal of the product from the market. The

restriction, suspension or revocation of regulatory approvals or any other failure to comply with regulatory requirements would have a material adverse effect on the Company's business, financial condition and results of operations.

The Company obtains the necessary raw materials and components for the manufacture of MUSE (alprostadil) from third parties. The Company currently contracts with contract manufacturing organizations, including foreign manufacturers, that are required to comply with strict standards established by the Company. All contract manufacturers are required by the Federal Food, Drug, and Cosmetic Act, as amended, and by FDA regulations to follow current Good Manufacturing Practices ("cGMP") and are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMPs and other applicable regulations. The FDA stringently applies regulatory standards for manufacturing. The Company's third party contract manufacturers were inspected for cGMP compliance as part of the approval process. However, upon routine re-inspection of the manufacturing facilities there can be no assurance that the FDA will find the manufacturing process or facilities to be in compliance with cGMPs and other regulations. Failure to achieve satisfactory cGMP compliance as confirmed by routine inspections could become a significant adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious case, result in the issuance of a regulatory warning letter or seizure or recall of products, injunction and/or civil fines.

The Company's New Jersey manufacturing facility at Paco Pharmaceutical Services Inc. was inspected by the FDA for the first time after the preapproval inspection during 12 days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive Form FDA 483, which detailed specific areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of the cGMP regulations. A corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and the Company submitted a written response to the Form FDA 483 and requested a meeting with the FDA District Office officials to discuss the matter. There can be no assurance that the FDA will accept the Company's corrective action plan or the time frame for completing the corrective action plan. If the corrective action plan is accepted it is likely that the FDA would reinspect the facility shortly after completion of the corrective action plan. The scope of any FDA reinspection could be more comprehensive than the initial inspection. Failure to adequately address these cGMP deficiencies within a reasonable time frame would have an adverse effect on the Company's ability to supply its product, which would have a material adverse effect on the Company's business, financial condition and results of operations. Accordingly, the Company has undertaken a complete review of its cGMP compliance. However, there can be no assurance that the FDA will deem the Company's corrective action or the timing for the corrective action to be adequate or that additional corrective action, in areas not addressed by Form FDA 483, will not be required. Failure to achieve satisfactory cGMP compliance would have a material adverse effect on the Company's ability to continue to market and distribute its products and in the most serious cases, could result in the issuance of a Warning Letter, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

INTENSE COMPETITION

Competition in the pharmaceutical and medical products industries is intense and is characterized by extensive research efforts and rapid technological progress. Certain treatments for erectile dysfunction exist, such as needle injection therapy, vacuum constriction devices, penile implants and oral medications, and the manufacturers of these products will continue to improve these therapies. In July 1995, the FDA approved the use of alprostadil in The Upjohn Company's needle injection therapy product for erectile dysfunction. Previously, Upjohn had obtained approval in a number of European countries. Additional competitive therapies under development include an oral medication by Pfizer, Inc., which is currently in Phase III clinical trials. Other large pharmaceutical companies are also actively engaged in the development of therapies for the treatment of erectile dysfunction. These companies have substantially greater research and development capabilities as well as substantially greater marketing, financial and human resources than the Company. In addition, these companies have significantly greater experience than the Company in undertaking preclinical testing, human clinical trials and other regulatory approval procedures. There are also small companies, academic institutions, governmental agencies and other research organizations that are conducting research in the area of erectile dysfunction. For instance, Zonagen, Inc. and Pentech Pharmaceutical, Inc. have oral medications under development.

These entities may also market commercial products either on their own or through collaborative efforts. The Company's competitors may develop technologies and products that are more effective than those being developed by the Company. Such developments would render the Company's products less competitive or possibly obsolete. The Company is also competing with respect to marketing capabilities and manufacturing efficiency, areas in which it has limited experience.

PROPRIETARY RIGHTS AND RISK OF LITIGATION

The Company's success will depend, in large part, on the strength of its current and future patent position relating to the transurethral delivery of pharmacologic agents for the treatment of erectile dysfunction. The Company's patent position, like that of other pharmaceutical companies, is highly uncertain and involves complex legal and factual questions. Claims made under patent applications may be denied or significantly narrowed and issued patents may not provide significant commercial protection to the Company. The Company could incur substantial costs in proceedings before the United States Patent Office, including interference proceedings. These proceedings could also result in adverse decisions as to the priority of the Company's licensed or assigned inventions. There is no assurance that the Company's patents will not be successfully challenged or designed around by others. The Company is aware of a patent application involving the transurethral application of prostaglandin E2. The corresponding application in Europe has been abandoned. Failure of the Company's licensed patents to block issuance of such patent could have a material adverse effect on the Company's business, financial condition and results of operations.

There can be no assurance that the Company's products do not or will not infringe on the patent or proprietary rights of others. A patent opposition to the Company's exclusively licensed European patents has been filed with the European Patent Office. The Company is vigorously defending the patents, however an adverse decision could affect the Company's ability, based on its patent rights, to limit potential competition in Europe. The Company may be required to obtain additional licenses to the patents, patent applications or other proprietary rights of others. There can be no assurance that any such licenses would be made available on terms acceptable to the Company, if at all. If the Company does not obtain such licenses, it could encounter delays in product introductions while it attempts to design around such patents, or the development, manufacture or sale of products requiring such licenses could be precluded. The Company believes there will continue to be significant litigation in the pharmaceutical industry regarding patent and other intellectual property rights.

A former consultant to the Company has claimed that he is the inventor of certain technology disclosed in two of the Company's patents. The former consultant further claims that the Company defrauded him by allegedly failing to inform him that it intended to use and patent this technology and by failing to compensate him for the technology in the manner allegedly promised. The Company has filed a complaint for declaratory judgment against the former consultant in the United States District Court for the Northern District of California, which seeks a declaration from the court that the former consultant is not an inventor of any of the technology disclosed in the patents. The former consultant has filed a counterclaim that seeks unspecified monetary damages and to have two of the Company's patents declared invalid on the grounds that they fail to list him as an inventor.

In a separate matter, licensors in an agreement by which the Company acquired a patent license have filed a lawsuit in the United States District Court for the Western District of Texas that alleges that they were defrauded in connection with the renegotiation of the license agreement between the Company and the licensors. In addition to monetary damages, the licensors seek to return to the terms of the original license agreement.

The Company has conducted a review of the circumstances surrounding these two matters and believes that the allegations are without merit. Although the Company believes that it should prevail,

the uncertainties inherent in litigation prevent the Company from giving any assurances about the outcome of such litigation.

The Company also relies on trade secrets and other unpatented proprietary technology. No assurance can be given that the Company can meaningfully protect its rights in such unpatented proprietary technology or that others will not independently develop substantially equivalent proprietary products and processes or otherwise gain access to the Company's proprietary technology. The Company seeks to protect its trade secrets and proprietary know-how, in part, with confidentiality agreements with employees and consultants. There can be no assurance that these agreements will not be breached, that the Company will have adequate remedies for any breach or that the Company's trade secrets will not otherwise become known or be independently developed by competitors. In addition, protracted and costly litigation may be necessary to enforce and determine the scope and validity of the Company's proprietary rights.

DEPENDENCE ON DUAL SOURCE OF SUPPLY

To date, the Company has obtained its supply of alprostadil from two sources. The first is Spolana Chemical Works AS ("Spolana") pursuant to a supply agreement that expires at the end of 1997. A renewal agreement is currently being negotiated. In January 1996, the Company entered into a long-term alprostadil supply agreement with Chinoin. Chinoin is the Hungarian subsidiary of the French pharmaceutical company Sanofi Winthrop. Alprostadil, a generic drug, is extremely difficult to manufacture and is only available to the Company from a limited number of other suppliers, none of which currently produce it in commercial quantities. While the Company is seeking additional sources, there can be no assurance that it will be able to identify and qualify such sources. The Company is required to identify its suppliers to the FDA. The FDA may require additional clinical trials or other studies prior to accepting a new supplier. Unless the Company secures and qualifies additional sources of alprostadil, it will be entirely dependent upon Spolana and Chinoin for the delivery of alprostadil. If interruptions in the supply of alprostadil were to occur for any reason, including a decision by Spolana and/or Chinoin to discontinue manufacturing, political unrest, labor disputes or a failure of Spolana and/or Chinoin to follow regulatory guidelines, the development and commercial marketing of MUSE (alprostadil) and other potential products could be delayed or prevented. An interruption in the Company's supply of alprostadil would have a material adverse effect on the Company's business, financial condition and results of operations.

HISTORY OF LOSSES AND LIMITED OPERATING HISTORY

The Company has generated a cumulative net loss of $66.2 million for the period from its inception through December 31, 1996. To achieve profitability, the Company must successfully manufacture and market MUSE (alprostadil). The Company is subject to a number of risks including its ability to scale-up manufacturing capabilities and secure adequate supplies of raw materials, its ability to successfully market, distribute and sell its product, its reliance on a single therapeutic approach to erectile dysfunction and intense competition. There can be no assurance that the Company will be able to achieve profitability on a sustained basis. Accordingly, there can be no assurance of the Company's future success.

The Company began generating revenues from product sales in January 1997. The Company has limited experience in manufacturing and selling MUSE (alprostadil) in commercial quantities. Whether

the Company can successfully manage the transition to a large scale commercial enterprise will depend upon successful further development of its manufacturing

capability and its distribution network and attainment of foreign regulatory approvals for MUSE (alprostadil). Failure to make such a transition successfully would have a material adverse effect on the Company's business, financial condition and results of operations.

FUTURE CAPITAL NEEDS AND UNCERTAINTY OF ADDITIONAL FINANCING

The Company expects to incur substantial additional costs, including expenses related to building its marketing and sales organization, a second manufacturing plant in the United States and one in Europe, new product preclinical and clinical costs, ongoing research and development activities, and general corporate purposes. The Company anticipates that its existing capital resources will be sufficient to support the Company's operations through commercial introduction of MUSE (alprostadil) in Europe but may not be sufficient for the introduction of any additional future products. Accordingly, the Company anticipates that it may be required to issue additional equity or debt securities and may use other financing sources including, but not limited to, corporate alliances and lease financings to fund the future development and possible commercial launch of its products. The sale of additional equity securities would result in additional dilution to the Company's stockholders. There can be no assurance that such funds will be available on terms satisfactory to the Company, or at all. Failure to obtain adequate funding could cause a delay or cessation of the Company's product development and marketing efforts and would have a material adverse effect upon the Company's business, financial condition and results of operations. The Company's working capital and additional funding requirements will depend upon numerous factors, including: (i) the level of resources that the Company devotes to sales and marketing capabilities; (ii) the level of resources that the Company devotes to expanding manufacturing capacity; (iii) the activities of competitors; (iv) the progress of the Company's research and development programs; (v) the timing and results of preclinical testing and clinical trials; and (vi) technological advances.

DEPENDENCE ON KEY PERSONNEL

The Company's progress to date has been highly dependent upon the skills of a limited number of key management personnel. To reach its future business objectives, the Company will need to hire numerous other qualified personnel in the areas of sales, manufacturing, clinical trial management and preclinical testing. There can be no assurance that the Company will be able to hire such personnel, as the Company must compete with other companies, academic institutions, government entities and other agencies. The loss of any of the Company's key personnel or the failure to attract or retain necessary new employees could have an adverse effect on the Company's research, product development and business operations.

RISKS RELATING TO INTERNATIONAL OPERATIONS

In the event the Company receives necessary foreign regulatory approvals, the Company plans to market its products internationally. Changes in overseas economic and political conditions, currency exchange rates, foreign tax laws or tariffs or other trade regulations could have a material adverse effect on the Company's business, financial condition and results of operations. The anticipated international nature of the Company's business is also expected to subject it and its representatives, agents and distributors to laws and regulations of the foreign jurisdictions in which they operate or the Company's products are sold. The regulation of drug therapies in a number of such jurisdictions, particularly in the European Union, continues to develop, and there can be no assurance that new laws or regulations will not have a material adverse effect on the Company's business, financial condition and results of operations. In addition, the laws of certain foreign countries do not protect the Company's intellectual property rights to the same extent as do the laws of the United States.

PRODUCT LIABILITY AND AVAILABILITY OF INSURANCE

The use of the Company's products in clinical trials and commercially may expose the Company to product liability claims and possible adverse

publicity. The Company currently maintains product liability insurance coverage. There can be no assurance that the Company's present or future insurance will provide adequate coverage or be available at a reasonable cost or that product liability claims would not adversely affect the business or financial condition of the Company.

UNCERTAINTY OF PHARMACEUTICAL PRICING AND REIMBURSEMENT

In the United States and elsewhere, sales of pharmaceutical products currently are dependent, in part, on the availability of reimbursement to the consumer from third party payors, such as government and private insurance plans. Third party payors are increasingly challenging the prices charged for medical products and services. There can be no assurance that the Company's products will be considered cost effective and that reimbursement to the consumer will be available or sufficient to allow the Company to sell its products on a competitive basis.

In addition, certain health care providers are moving towards a managed care system in which such providers contract to provide comprehensive health care services, including prescription drugs, for a fixed cost per person. The Company hopes to further qualify its transurethral system for erection for reimbursement in the managed care environment. However, the Company is unable to predict the reimbursement policies employed by third-party health care payors. Furthermore, attempts at qualifying its transurethral system for erection for reimbursement could be adversely affected by changes in reimbursement policies of governmental or private health care payors.

UNCERTAINTY AND POSSIBLE NEGATIVE EFFECTS OF HEALTHCARE REFORM

The healthcare industry is undergoing fundamental changes that are the result of political, economic and regulatory influences. The levels of revenue and profitability of pharmaceutical companies may be affected by the continuing efforts of governmental and third party payors to contain or reduce healthcare costs through various means. Reforms that have been and may be considered include mandated basic healthcare benefits, controls on healthcare spending through limitations on the

increase in private health insurance premiums and Medicare and Medicaid spending, the creation of large insurance purchasing groups and fundamental changes to the healthcare delivery system. Due to uncertainties regarding the outcome of healthcare reform initiatives and their enactment and implementation, the Company cannot predict which, if any, of the reform proposals will be adopted or the effect such adoption may have on the Company. There can be no assurance that future healthcare legislation or other changes in the administration or interpretation of government healthcare or third-party reimbursement programs will not have a material adverse effect on the Company. Healthcare reform is also under consideration in some other countries.

CONTROL BY EXISTING STOCKHOLDERS

As of March 1, 1997, the Company's executive officers and current directors and certain of their affiliates, beneficially owned approximately 11.1% of the Company's outstanding Common Stock. Such concentration of ownership may have the effect of delaying, defining or preventing a change in control of the Company. Additionally, these stockholders will have significant influence over the election of directors of the Company. This concentration of ownership may allow significant influence and control over Board decisions and corporate actions.

POTENTIAL VOLATILITY OF STOCK PRICE

The stock market has recently experienced significant price and volume fluctuations unrelated to the operating performance of particular companies. In addition, the market price of the Company's Common Stock, like the securities of other therapeutic companies without approved products, has been highly volatile and is likely to continue to be so. Factors such as variations in the Company's financial results, comments by security analysts, the

Company's ability to scale up its manufacturing capability to commercial levels, the Company's ability to successfully sell its product in the United States and Europe, any loss of key management, the results of the Company's clinical trials or those of its competition, adverse regulatory actions or decisions, announcements of technological innovations or new products by the Company or its competition, changing governmental regulations, patents or other proprietary rights, product or patent litigation or public concern as to the safety of products developed by the Company, may have a significant effect on the market price of the Company's Common Stock.

ANTI-TAKEOVER EFFECT OF SHAREHOLDER RIGHTS PLAN AND CERTAIN CHARTER AND BYLAW PROVISIONS

In February 1996, the Company's Board of Directors authorized its reincorporation in the State of Delaware (the "Reincorporation") and adopted a Shareholder Rights Plan. The Shareholder Rights Plan provides for a dividend distribution of one Preferred Shares Purchase Right (a "Right") on each outstanding share of the Company's Common Stock. The Rights will become exercisable following the tenth day after a person or group announces acquisition of 20% or more of the Company's Common Stock, or announces commencement of a tender offer, the consummation of which would result in ownership by the person or group of 20% or more of the Company's Common Stock. The Company will be entitled to redeem the Rights at $0.01 per Right at any time on or before the tenth day following acquisition by a person or group of 20% of more of the Company's Common Stock. The Company's reincorporation into the State of Delaware was approved by its stockholders and effective in May 1996.

The Shareholder Rights Plan and certain provisions of the Company's Certificate of Incorporation and Bylaws may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of the Company. The Company's Certificate of Incorporation allows the Company to issue Preferred Stock without any vote or further action by the stockholders, and certain provisions of the Company's Certificate of Incorporation and Bylaws eliminate the right of stockholders to act by written consent without a meeting, specify procedures for director nominations by stockholders and submission of other proposals for consideration at stockholder meetings, and eliminate cumulative voting in the election of directors. Certain provisions of Delaware law could also delay or make more difficult a merger, tender offer or proxy contest involving the Company, including Section 203, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years unless certain conditions are met. The Shareholder Rights Plan, the possible issuance of Preferred Stock, the procedures required for director nominations and stockholder proposals and Delaware law could have the effect of delaying, deferring or preventing a change in control of the Company, including without limitation, discouraging a proxy contest or making more difficult the acquisition of a substantial block of the Company's Common Stock. These provisions could also limit the price that investors might be willing to pay in the future for shares of the Company's Common Stock.

Item 2. PROPERTIES

The Company currently occupies 18,316 square feet of administrative space in Menlo Park, California under a lease which expires in December 1997. The Company's facility serves as the principal site for administration, clinical trial management, regulatory affairs and monitoring of product production and quality control. In March 1997, the Company signed a fifteen year lease (expected to commence in December 1997) for a 53,361 square foot building in Mountain View, California that will become its new principal administrative and research and development laboratory facility.

In June 1995, the Company completed constructing and equipping to its specifications approximately 6,000 square feet of manufacturing and testing space within Paco's facility in Lakewood, New Jersey. In January and February 1997, the Company executed a five year lease for two buildings in New Jersey totalling 90,000 square feet that will be built out to support expansion of the Company's manufacturing capabilities.

The Company is currently leasing 6,228 square feet of laboratory space in Sunnyvale, California under a lease which expires in September 1999.

Item 3. LEGAL PROCEEDINGS

A former consultant to the Company has claimed that he is the inventor of certain technology disclosed in two of the Company's patents. The former consultant further claims that the Company defrauded him by allegedly failing to inform him that it intended to use and patent this technology and by failing to compensate him for the technology in the manner allegedly promised. The Company has filed a complaint for declaratory judgment against the former consultant in the United States District Court for the Northern District of California, which seeks a declaration from the court that the former consultant is not an inventor of any of the technology disclosed in the patents. The former consultant has filed a counterclaim that seeks unspecified monetary damages and to have two of the Company's patents declared invalid on the grounds that they fail to list him as an inventor.

In a separate matter, licensors in an agreement by which the Company acquired a patent license have filed a lawsuit in the United States District Court for the Western District of Texas that alleges that they were defrauded in connection with the renegotiation of the license agreement between the Company and the licensors. In addition to monetary damages, the licensors seek to return to the terms of the original license agreement.

The Company has conducted a review of the circumstances surrounding these two matters and believes that the allegations are without merit. Although the Company believes that it should prevail, the uncertainties inherent in litigation prevent the Company from giving any assurances about the outcome of such litigation.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of the Company's stockholders during the quarter ended December 31, 1996.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

The Company's Common Stock trades publicly on The Nasdaq Stock Market under the symbol "VVUS." The following table sets forth for the periods indicated the quarterly high and low closing sales prices of the Common Stock on The Nasdaq Stock Market.

	THREE MONTHS ENDED			
1996	MARCH 31	JUNE 30	SEPTEMBER 30	DECEMBER 31
High	$31.25	$34.00	$42.00	$40.25
Low	23.50	25.25	28.00	27.88
1995				

High	$19.00	$17.50	$24.00	$31.25
Low	13.00	11.25	14.00	16.75

As of February 28, 1997, there were no outstanding shares of Preferred Stock and 456 holders of record of 16,426,606 shares of outstanding Common Stock. The Company has not paid any dividends since its inception and does not intend to pay any dividends on its Common Stock in the foreseeable future.

Item 6. SELECTED FINANCIAL DATA

The information required by this item is incorporated by reference from the section captioned "Selected Financial Data" of the Registrant's Annual Report. Such information is also set forth in Exhibit 13.1 attached hereto.

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

The information required by this item is incorporated by reference from the section captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations" of the Registrant's Annual Report. Such information is also set forth in Exhibit 13.1 attached hereto.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTAL DATA

The information required by this item is incorporated by reference from the sections captioned "Consolidated Balance Sheets", "Consolidated Statements of Operations", "Consolidated Statements of Shareholders' Equity", "Consolidated Statements of Cash Flows", "Notes to Consolidated Financial Statements" and "Report of Independent Public Accountants" of the Registrant's Annual Report. Such information is also set forth in Exhibit 13.1 attached hereto.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

PART III

Item 10. EXECUTIVE OFFICERS AND DIRECTORS OF THE REGISTRANT

The information required by this item is incorporated by reference from the discussion in the Proxy Statement captioned "Proposal One: Election of Directors."

Item 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference from the discussion in the Proxy Statement captioned "Executive Compensation."

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this item is incorporated by reference from the discussion in the Proxy Statement captioned "Record Date and Share Ownership."

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

This information required by this item is incorporated by reference from the discussion in the Proxy Statement captioned "Certain Transactions and Reports."

PART IV

Item 14. EXHIBITS, FINANCIAL STATEMENTS SCHEDULES AND REPORTS ON FORM 8-K

(a) The following documents are filed as part of this Report:

1. FINANCIAL STATEMENTS

Financial statements have been incorporated by reference to the Registrant's Annual Report.

2. FINANCIAL STATEMENT SCHEDULES

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or notes thereto incorporated by reference herein.

3. EXHIBITS

Number	
#3.1	Certificate of Incorporation of the Company, as currently in effect
3.2	Form of Amended and Restated Certificate of Incorporation of the Company, to be filed immediately following the Company's Annual Meeting of Stockholders if the stockholders approve Proposal 2 in the Company's Proxy
#3.3	Bylaws of the Registrant, as amended
*4.1	Specimen Common Stock Certificate of the Registrant
*4.2	Registration Rights, as amended
**4.3	Form of Agreement Not to Sell by and between the Registrant and certain shareholders and option holders
*4.4	Form of Preferred Stock Purchase Warrant issued by the Registrant to Invemed Associates, Inc., Frazier Investment Securities, L.P. and Cristina H. Kepner
*+10.1	Assignment Agreement by and between Alza Corporation and the Registrant dated December 31, 1993
*+10.2	Memorandum of Understanding by and between Ortho Pharmaceutical Corporation and the Registrant dated February 25, 1992
*10.3	Assignment by and between Ortho Pharmaceutical Corporation and the Registrant dated June 9, 1992
*+10.4	License Agreement by and between Gene A. Voss, M.D., Allen C. Eichler, M.D., and the Registrant dated December 28, 1992
*+10.5	License Agreement by and between Ortho Pharmaceutical Corporation and Kjell Holmquist AB dated June 23, 1989
*+10.5B	Amendment by and between Kjell Holmquist AB and the Registrant dated July 3, 1992
*10.5C	Amendment by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
*+10.5D	Stock Purchase Agreement by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
*+10.6A	License Agreement by and between AMSU, Ltd., and Ortho Pharmaceutical Corporation dated June 23, 1989
*+10.6B	Amendment by and between AMSU, Ltd., and the Registrant dated July 3, 1992
*10.6C	Amendment by and between AMSU, Ltd., and the Registrant dated April 22, 1992
*+10.6D	Stock Purchase Agreement by and between AMSU, Ltd., and the Registrant dated July 10, 1992
*10.7	Supply Agreement by and between Paco Pharmaceutical Services, Inc., and the Registrant dated November 10, 1993
*+10.8	Agreement by and among Pharmatech, Inc., Spolana Chemical Works AS, and the Registrant dated June 23, 1993
*10.9	Master Services Agreement by and between the Registrant and Teknekron Pharmaceutical Systems dated August 9, 1993
*10.10	Lease by and between McCandless-Triad and the Registrant dated November 23, 1992, as amended

***10.11	Form of Indemnification Agreements by and among the Registrant and the Directors and Officers of the Registrant
**10.12	1991 Incentive Stock Plan and Form of Agreement, as amended

*10.13	1994 Director Option Plan and Form of Agreement
*10.14	Form of 1994 Employee Stock Purchase Plan and Form of Subscription Agreement
*10.15	Stock Restriction Agreement between the Company and Virgil A. Place, M.D. dated November 7, 1991
*10.16	Stock Purchase Agreement between the Company and Leland F. Wilson dated June 26, 1991, as amended
*10.17	Letter Agreement between the Registrant and Leland F. Wilson dated June 14, 1991 concerning severance pay
*10.18	Letter Agreement between the Registrant and Paul C. Doherty dated January 26, 1994 concerning severance pay
**10.19	Guaranteed Maximum Price Contract by and between the Registrant and Marshall Contractors, Inc. dated January 27, 1995
**10.20	Sub-sublease by and among the Registrant, Argonaut Technologies, Inc., ESCAgenetics Corp. and Tanklage Construction Co. dated January 31, 1995
****+10.21	Distribution Services Agreement between the Registrant and Synergy Logistics, Inc. (a wholly-owned subsidiary of Cardinal Health, Inc.) dated February 9, 1996
****+10.22	Manufacturing Agreement between the Registrant and CHINOIN Pharmaceutical and Chemical Works Co., Ltd. dated December
###+10.23	Distribution and Services Agreement between the Registrant and Alternate Site Distributors, Inc. dated July 17, 1996
##+10.24	Distribution Agreement made as of May 29, 1996 between the Registrant and Astra AB
###10.25	Menlo McCandless Office Lease made as of August 30, 1996 by and between Registrant and McCandless - Triad
###10.26	Sublease Agreement made as of August 22, 1996 by and between Registrant and Plant Research Technologies
++10.27	Distribution Agreement made as of January 22, 1997 between the Registrant and Janssen Pharmaceutica International, a division of Cilag AG International
10.28	Lease Agreement made as of January 1, 1997 between the Registrant and Airport Associates
10.29	Lease Amendment No. 1 as of February 15, 1997 between Registrant and Airport Associates
10.30	Lease Agreement by and between 605 East Fairchild Associates, L.P. and Registrant dated as of March 7, 1997
11.1	Computation of net loss per share
13.1	Portions of the 1996 Annual Report to Security Holders
**16.1	Letter regarding change in independent public accountants
*21.1	Certificate of Incorporation of VIVUS International Limited
21.2	List of Subsidiaries
23.1	Consent of Independent Public Accountants
24.1	Power of Attorney (See "Power of Attorney")
27.1	Financial Data Schedule

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* Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-75698.

** Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-90390, filed with the Securities and Exchange Commission on March 16, 1995.

*** Incorporated by reference to the same-numbered exhibit filed with the Registrant's Form 8-B filed with the Commission on June 24, 1996

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**** Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1996.

Incorporated by reference to the Registrant's Amendment No. 1 to Quarterly Report on Form 10-Q for the quarter ended March 31, 1996.

Incorporated by reference to the same numbered exhibit filed with the Registrant's Current Report on Form 8-K/A filed with the Commission on June 21, 1996.

Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996.

+ Confidential treatment granted.

++ Confidential treatment requested.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized:

VIVUS, INC.,
a Delaware Corporation

By: /s/ David C. Yntema
_____
DAVID C. YNTEMA
Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)

Date: March 28, 1997

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EXHIBIT 24.1

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Leland F. Wilson and David C. Yntema as his attorney-in-fact for him, in any and all capacities, to sign each amendment to this Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

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

SIGNATURE	TITLE	DATE
/s/ Leland F. Wilson Leland F. Wilson	President, Chief Executive Officer (Principal Executive Officer) and Director	March 28, 1997
/s/ Virgil A. Place Virgil A. Place	Chairman of the Board and Chief Scientific Officer and Director	March 28, 1997
/s/ David C. Yntema David C. Yntema	Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	March 28, 1997
/s/ Richard L. Casey Richard L. Casey	Director	March 28, 1997
/s/ Samuel D. Colella Samuel D. Colella	Director	March 28, 1997
/s/ Brian H. Dovey Brian H. Dovey	Director	March 28, 1997
/s/ Linda Jenckes Linda Jenckes	Director	March 28, 1997
/s/ Peter Barton Hutt Peter Barton Hutt	Director	March 28, 1997
/s/ Elizabeth A. Fetter Elizabeth A. Fetter	Director	March 28, 1997

VIVUS, INC.

Report on form 10-K for
the year ended December 31, 1996

INDEX TO EXHIBITS*

EXHIBIT NUMBER	EXHIBIT NAME	SEQUENTIALLY NUMBERED PAGE
3.2	Form of Amended and Restated Certificate of Incorporation of the Company, to be filed immediately following the Company's Annual Meeting of Stockholders if the stockholders approve Proposal 2 in the Company's Proxy	
++10.27	Distribution Agreement made as of January 22, 1997 between the Registrant and Janssen Pharmaceutica International, a division of Cilag AG International	
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23.1	Consent of Independent Public Accountants	
24.1	Power of Attorney (see "Power of Attorney")	
27.1	Financial Data Schedule	

* Only exhibits actually filed are listed. Exhibits incorporated by reference are set forth in the exhibit listing included in Item 14 of the Report on Form 10-K.

++ Confidential treatment requested.

AMENDED AND RESTATED CERTIFICATE

OF INCORPORATION OF

VIVUS, INC.

VIVUS, INC., a corporation organized and existing under the laws of the State of Delaware, hereby certifies that the following Amended and Restated Certificate of Incorporation (i) has been duly adopted in accordance with the provisions of Section 245 of the General Corporation Law, (ii) restates the provisions of the Certificate of Incorporation of VIVUS, Inc. filed with the Secretary of State of the State of Delaware on May 20, 1996 and (iii) supersedes the original Certificate of Incorporation in its entirety.

ARTICLE I

The name of the corporation is VIVUS, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of shares of stock to be designated, respectively, Common Stock, $0.001 par value, and Preferred Stock, $0.001 par value. The total number of shares that the Corporation is authorized to issue is 205,000,000 shares. The number of shares of Common Stock authorized is 200,000,000. The number of shares of Preferred Stock authorized is 5,000,000.

Upon the filing of this Certificate of Amendment of Certificate of Incorporation, each one outstanding share of Common Stock shall be subdivided and converted into two shares of Common Stock.

The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the board of directors (authority to do

The foregoing amendment has been duly approved by the stockholders in accordance with the provisions of section 242 of the General Corporation Law.

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by Leland F. Wilson, its President and Chief Executive Officer, and attested by Robert D. Brownell, its Assistant Secretary, this ____ day of _____, 1997.

VIVUS, INC.

By:

Leland F. Wilson
President and Chief Executive Officer

ATTEST:

_____
Robert D. Brownell
Assistant Secretary

so being hereby expressly vested in the board). The board of directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The board of directors, within the limits and restrictions stated in any resolution or resolutions of the board of directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

The authority of the board of directors with respect to each such class or series shall include, without limitation of the foregoing, the right to determine and fix:

(a) the distinctive designation of such class or series and the number of shares to constitute such class or series;

(b) the rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative or accruing, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms;

(c) the right or obligation, if any, of the corporation to redeem shares of the particular class or series of Preferred Stock and, if redeemable, the price, terms and manner of such redemption;

(d) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series of Preferred Stock shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(e) the terms and conditions, if any, upon which shares of such class or series shall be convertible into, or exchangeable for, shares of capital stock of any other class or series, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) the obligation, if any, of the corporation to retire, redeem or purchase shares of such class or series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(g) voting rights, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock;

(h) limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock; and

(i) such other preferences, powers, qualifications, special or relative rights and privileges thereof as the board of directors of the corporation, acting in accordance with this Restated

Certificate of Incorporation, may deem advisable and are not inconsistent with law and the provisions of this Restated Certificate of Incorporation.

ARTICLE V

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this right.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

1. Limitation of Liability. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

2. Indemnification. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person or his or her testator or intestate is or was a director, officer or employee of the Corporation, or any predecessor of the Corporation, or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3. Amendments. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

ARTICLE VIII

In the event any shares of Preferred Stock shall be redeemed or converted pursuant to the terms hereof, the shares so converted or redeemed shall not revert to the status of authorized but unissued shares, but instead shall be canceled and shall not be re-issuable by the Corporation.

ARTICLE IX

Holders of stock of any class or series of this corporation shall not be entitled to cumulate their votes for the election of directors or any other matter submitted to a vote of the stockholders, unless such cumulative voting is required pursuant to Sections 2115 and/or 301.5 of the California Corporations Code, in which event each such holder shall be entitled to as many votes as shall equal the number of votes which (except for this provision as to cumulative voting) such holder would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and the holder may cast all of such votes for a single director or may distribute them among the number of directors to be voted for, or for any two or more of them as such holder may see fit, so long as the name of the candidate for director shall have been placed in nomination prior to the voting and the stockholder, or any other holder of the same class or series of stock, has given notice at the meeting prior to the voting of the intention to cumulate votes.

ARTICLE X

1. Number of Directors. The number of directors which constitutes the whole Board of Directors of the corporation shall be designated in the Bylaws of the corporation.

2. Election of Directors. Elections of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

ARTICLE XI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation.

ARTICLE XII

No action shall be taken by the stockholders of the corporation except at an annual or special meeting of the stockholders called in accordance with the Bylaws of the corporation, and no action shall be taken by the stockholders by written consent.

ARTICLE XIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

EXHIBIT 10.27

DISTRIBUTION AGREEMENT

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DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (hereinafter "Agreement"), made as of the 22nd day of January, 1997 ("Effective Date"), between VIVUS International Limited, a company organized under the laws of Bermuda and having a place of business at Clarendon House, Church Street, Hamilton, Bermuda ("VIVUS"), a wholly-owned subsidiary of VIVUS, Inc., a Delaware corporation ("VIVUS, Inc."), and Janssen Pharmaceutica International, a division of Cilag AG International, and having its registered office at Kollerstrasse 38, CH-6300, Zug., Switzerland ("Janssen").

RECITALS

A. VIVUS has developed a Product for the transurethral delivery of alprostadil for the treatment of erectile dysfunction (as defined below, the "Product").

B. Janssen desires to obtain from VIVUS certain distribution rights, [*], for such Product in the Territory (as defined below) and VIVUS is willing to grant to Janssen such rights on the terms and conditions set forth below.

AGREEMENT

1. DEFINITIONS

1.1 "Affiliates" shall mean (i) any corporation, firm, partnership or other entity, whether de jure or de facto, which directly or indirectly owns, is owned by or is under common ownership with a party hereto to the extent of at least fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity or, irrespective of such equity ownership, having the power to direct or control the management of such entity, and (ii) any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party.

1.2 [*] delivery transurethrally to treat male erectile dysfunction. It is understood that, as used herein, the [*].

1.3 [*] It is understood that [*] shall not include standard, commercially available [*].

1.4 "First Commercial Sale" shall mean, with respect to each Product in each country, the first bona fide, arm's length sale of such Product in such country by or under authority of Janssen or its Subdistributors.

1.5 "Foil Pouch Package Form" shall mean Product in finished dosage form, including its cap, packaged into an individual foil pouch. [*]

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1.6 "MAA" shall mean a marketing authorization application filed by or under authority from Janssen with the requisite health regulatory authority of any country of the Territory requesting approval for commercialization of a Product for a particular indication in such country. It is understood that MAA does not include applications for pricing or reimbursement approval.

1.7 "MAA Approval" shall mean, with respect to each country of the Territory for a particular Product, approval of the MAA filed in such country

by the health regulatory authority in such country that is the counterpart of the U.S. FDA. It is understood that MAA Approval does not include pricing or reimbursement approval. In any event, MAA Approval shall be deemed to have occurred in a country with respect to a Product no later than the date of the First Commercial Sale of such Product in such country by or under authority of Janssen or its Subdistributors.

1.8 "Major Country" shall mean The People's Republic of China or Canada.

1.9 "Net Sales" shall mean the [*]

The amounts described in (a) and (b) above shall be deducted only to the extent they are stated separately on the invoice and paid by the buyer, or to the extent reflected on Janssen's books in accordance with GAAP. [*]

1.10 "Patents" shall mean all patents and patent applications (including continuations, continuations-in-part, divisions, patents of addition, reissues, renewals, and extensions) which are or become owned by VIVUS or VIVUS Inc., or to which VIVUS or VIVUS Inc. has, now or in the future, the right to grant licenses and distribution rights, which generically or specifically claim Product, a process for manufacturing Product, an intermediate used in such process or a use of Product. With respect to any such patents or applications which VIVUS or VIVUS Inc. acquires or has acquired from a Third Party, the same shall be included within the "Patents" hereunder to the extent that VIVUS or VIVUS Inc. has the right to license the same hereunder.

1.11 [*] meeting the applicable [*].

1.12 "Product(s)" shall mean the VIVUS "MUSE" Product for which an NDA has been approved in the U.S. as of the Effective Date for any indications (hereinafter "First Product"), and any other product useful to treat male erectile dysfunction in humans for any indications which is both delivered locally to the penis and contains alprostadil, and that is owned or controlled by VIVUS or VIVUS Inc or their Affiliates controlled by VIVUS or VIVUS, Inc.

1.13 "Specifications" shall have the meaning set forth in Section 5.7 below.

1.14 "Subdistributor" shall mean any Affiliate or Third Party to whom Janssen has granted the right, directly or indirectly, to distribute Product and such Affiliate or Third Party is responsible for marketing and/or promotion of such Product within its distribution territory, but does not include wholesalers and resellers of Product who do not engage in any marketing or promotion of the Product.

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1.15 "Territory" shall mean Canada, Mexico (including those Caribbean Islands listed in Exhibit A hereto) South Africa, The Peoples Republic of China, South Korea, Taiwan, Malaysia, Indonesia, Philippines, Hong Kong (including Macau) and Singapore (including Brunei), Thailand, Vietnam, Myanmar, Cambodia and Laos. The initial Janssen Subdistributors responsible for each country within the Territory are listed in Exhibit A.

1.16 "Third Party(ies)" shall mean any party other than Janssen, VIVUS and their Affiliates.

1.17 "VIVUS Alternative Trademark" shall mean a Trademark other than the VIVUS Trademark which VIVUS has designated and the parties agree to use with the Product in those countries in the Territory where the VIVUS Trademark is not used.

1.18 "VIVUS Cost of Goods" shall mean [*].

1.19 "VIVUS Know-How" shall mean all methods, procedures, data and information in tangible form owned or controlled by VIVUS [*].

1.20 "VIVUS Trademark" shall mean the "MUSE" Trademark which VIVUS has used in connection with the Product. The VIVUS Trademark will be used in connection with the Product in the Territory unless the Parties agree otherwise or unless otherwise provided herein. Each Party agrees that it will consider, in good faith, a request by the other Party to use a VIVUS Alternative Trademark.

2. GRANT OF DISTRIBUTION RIGHTS

2.1 Appointment. VIVUS hereby grants to Janssen the exclusive (even as to VIVUS) right to package, label, distribute and market Product for sale in and sell Product in the Territory for all indications, with the right to grant subdistribution rights to subdistributors (Affiliates or otherwise) who distribute other Janssen ethical pharmaceutical products, subject to all the other terms and conditions of this Agreement. Janssen may subdistribute Products through other subdistributors with VIVUS' prior written approval. Notwithstanding anything herein to the contrary, Janssen and each subdistributor shall market, promote, sell and otherwise distribute Product in accordance with all applicable laws and regulations. VIVUS reserves all rights not expressly granted herein.

2.2 Janssen No Conflict. During the term of this Agreement, Janssen agrees that neither Janssen nor its Affiliates will develop, market or distribute any products in the Territory for the treatment or prevention of erectile dysfunction other than Products; provided that with VIVUS' prior approval, Janssen may develop, market or distribute within the Territory products for the treatment of erectile dysfunction that are complementary with Products and that do not involve the transurethral delivery, local injection, local topical application or other local delivery of a drug substance.

2.3 Sales Outside Territory. Subject to applicable laws and regulations, Janssen agrees to take reasonable efforts to prevent Janssen or its subdistributors from, directly or indirectly, offering for sale, selling, or otherwise transferring Product for use outside the Territory. Likewise, subject to

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applicable laws and regulations, VIVUS agrees to take reasonable efforts to prevent VIVUS (except for through Janssen), its Affiliates or Third Parties from, directly or indirectly, offering for sale, selling, or otherwise transferring Product for use within the Territory.

2.4 Licenses. Subject to the terms and conditions of this Agreement, VIVUS hereby grants to Janssen an exclusive, royalty-free, license, without the right to grant or authorize sublicenses, under Patents and VIVUS Know-How to package, label, distribute, market and sell Product in the Territory during the term of this Agreement.

2.5 VIVUS No Conflict. VIVUS agrees that it will grant no rights in the Territory to Third Parties which would conflict with the rights granted to Janssen herein, except as permitted by Janssen.

3. DEVELOPMENT AND MARKETING

3.1 Joint Board. Promptly after the Effective Date the parties shall establish a Joint Development and Marketing Board ("JDMB") to oversee the regulatory activities relating to the Product in the Territory, review and discuss overall plans for the commercialization and marketing of the Product, coordinate the exchange of information between the parties regarding the marketing and sale of Product in the Territory and to undertake and/or approve such other matters as are provided for the JDMB under this Agreement. The JDMB will consist of up to three (3) representatives from each party. The JDMB shall meet at least quarterly during the first two (2) years after the Effective Date at mutually agreeable locations outside the United States or, if mutually agreeable, by teleconference and thereafter as necessary. Decisions

of the JDMB shall be by unanimous approval; provided, however, if the JDMB cannot reach agreement on a matter, either party may refer the dispute to the Chief Executive Officer of VIVUS and the President of Janssen-Ortho, Canada, who shall meet promptly and negotiate in good faith to resolve any such dispute within 30 days of any such referral. If despite such good faith efforts, the parties are unable to resolve such dispute, [*].

3.2 Development. The JDMB will discuss the design and implementation of clinical trials for Product in the Territory. For at least the First Product in each country of the Territory and further Products that Janssen intends to distribute hereunder at its discretion Janssen or its Subdistributor shall, at their sole expense, carry out the remaining preclinical and clinical development of the Products for the Territory to achieve MAA Approval and shall keep the JDMB reasonably informed of its activities. [*] Janssen shall not conduct, or authorize, encourage, assist or contract with any Third Party to conduct any clinical testing of a Product without VIVUS' prior approval, not unreasonably withheld, but subject to VIVUS' right under Section 3.1 above to control the design and protocols of any such clinical testing.

3.3 Regulatory Approvals/MAAs. For at least the First Product in each country of the Territory and further Products that Janssen intends to distribute hereunder at its discretion, Janssen shall be responsible, at its sole expense, for filing MAAs for each Product in the Territory up to and including MAA Approval and thereafter maintain such MAA Approvals. All such activity shall be done in full consultation with the JDMB. Janssen shall use reasonable efforts to obtain such MAA

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Approvals for the First Product as soon as practicable in each country within the Territory, consistent generally with the efforts it makes for its other important products. In connection with Janssen's filing of MAAs, VIVUS shall provide Janssen with a copy in English or translations already completed by VIVUS, of all available information and data required to prepare appropriate regulatory submissions affecting approval to market or of product pricing. Without limiting the foregoing, in the event that filing for the necessary MAAs with the appropriate regulatory agency in any country within the Territory requires access to VIVUS' new drug application for the Product filed with the U.S. FDA ("NDA"), VIVUS shall at its option (i) to the extent legally possible in such country, file the MAA on behalf of Janssen, in which case Janssen shall reimburse VIVUS' reasonable out-of-pocket expenses related to such filing, or (ii) provide the NDA to Janssen solely for the purpose of making such MAA filing. VIVUS agrees to reasonably assist Janssen in responding to any questions raised by the regulatory authorities. This support may include, but not be limited to, attending meetings with Janssen and local regulators in North America to address specific aspects of the Product as part of the review process. [*] All MAA filings will be in the name of VIVUS and Janssen except where otherwise required by local law. Janssen shall ensure that of all registration and regulatory approvals are assigned back and sole ownership transferred to VIVUS promptly upon termination of Janssen's distribution rights with respect to the Product in such country to the extent permitted by applicable laws.

3.4 Marketing Plans.

3.4.1 General. Janssen shall prepare reasonably detailed marketing plans for the Territory, generally including country- by-country plans, such plans to include plans related to the prelaunch, launch, promotion and sale of Product, and which plans shall be shared with the JDMB (the "Marketing Plans"). The Marketing Plans shall be designed to fulfill Janssen's undertakings pursuant to Section 4.1 below. Notwithstanding anything herein to the contrary, subject to Section 3.1 above, the Marketing Plan for Canada except for pricing shall be subject to approval by the JDMB. Subject to the provisions of this Agreement, and subject to compliance with the Marketing Plans, Janssen shall have full control and authority of commercialization of Product in the Territory and implementation of the Marketing Plans, at

Janssen's expense. Janssen shall implement the Marketing Plans, and the JDMB will review the progress of Janssen's marketing efforts under the Marketing Plans. Janssen agrees to keep the JDMB informed of the activities of Janssen and its Subdistributors with respect to Products in the Territory. VIVUS agrees to keep the JDMB informed of key marketing strategies or plans that it has developed or experiences that it has gained in marketing the Product outside the Territory to the extent VIVUS has the right to do so.

3.4.2 VIVUS Approval. Any claim, message or other material part of promotional materials, Samples, advertising and materials for training sales representatives with respect to Product, relating to uses, properties, efficacy or positioning of Product, which has not previously been approved or used by VIVUS or VIVUS Inc. in its own promotional or training activities, shall be provided by Janssen to VIVUS along with an English translation thereof, as applicable, and subject to review and approval by VIVUS prior to the use by Janssen and its Subdistributors. VIVUS shall use reasonable efforts to complete any such review and respond to Janssen within fourteen (14) days from notification by Janssen to VIVUS of the relevant matter.

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3.5 Exchange of Information. Each party shall keep appropriate records relating to the activities contemplated by this Article 3, and shall report to the other party on the status of such activities on a regular basis. The parties shall exchange data and information relating to Product development to the extent reasonably necessary or appropriate, and each party shall have the right to use such information received from the other in connection with exercising its rights and performing its obligations under this Agreement. In fulfilling its obligations to report or exchange information under this Article 3, delivery by a party in writing to a member of the JDMB of the other party will be considered sufficient.

3.6 Adverse Experiences. With respect to adverse drug experiences relating to the Product, the parties shall report to the appropriate regulatory authorities in the countries in which the Product is being developed or commercialized, in accordance with the appropriate laws and regulations of the relevant countries and authorities and Janssen shall ensure that its Subdistributors comply with such reporting obligations. Such reporting activities within the Territory shall be coordinated by the JDMB where time and law permit. A party shall simultaneously with reporting any adverse drug experience relating to the Product to the appropriate regulatory authorities of any country or learning that a Third Party has reported an adverse drug experience relating to the Product to an appropriate regulatory authority of any country, report such adverse drug experience to the other party. As soon as is reasonable after the Effective Date, VIVUS will report to Janssen any adverse drug experience relating to the Product of which it is aware that has been reported to the appropriate regulatory authorities of any country.

4. COMMERCIALIZATION AND PROMOTION

4.1 Janssen Commercialization.

4.1.1 Diligence. Janssen shall [*] (a) to launch the First Product in each country in the Territory as soon as possible after obtaining MAA Approval for such Product; and (b) after the First Commercial Sale of a Product in a country, to achieve high volume sales of Product in such country. Without limiting the foregoing, Janssen agrees to spend within the Territory on promotion of the First Product, [*] after the First Commercial Sale of the First Product in the first Major Country.

4.1.2 Failure to Sell. If Janssen fails to launch the First Product in any country in the Territory [*] from the date of MAA Approval for such Product in such country, then such country shall cease to be part of the Territory for all purposes of this Agreement, and all rights to package, label, market, sell and distribute Product in such country shall revert to VIVUS. In countries where price approval of the First Product is required, then the requirement for launch [*] after MAA Approval in the case where the

failure to launch is due to lack of price approval at a level no greater than the price charged in other countries of the Territory and Janssen is exerting reasonable efforts to obtain such price approval. [*]

4.1.3 Subsequent Products. With respect to each Product after the First Product (a "Subsequent Product"), Janssen shall, in its sole discretion, within six (6) months of the approval of

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an NDA in the United States or its equivalent in a country of European Union for such Subsequent Product (i) file the appropriate MAAs necessary to market and distribute such Subsequent Product in at least each of the Major Countries and one (1) of Mexico, South Korea or Taiwan and use reasonable efforts to obtain MAA Approvals for such Subsequent Product as soon as practicable in each such country; or (ii) pay to VIVUS all amounts due for such Subsequent Product under the appropriate clause of Section 6.1 that would otherwise be due upon MAA Approval in both of the Major Countries and in Mexico; provided, however, in the event that Janssen elects not to perform either (i) or (ii) above, then such Subsequent Product shall be excluded from the definition of Product for all purposes under this Agreement, including without limitation Sections 2.1 and 2.4 above, and VIVUS (itself or through an Affiliate or Third Party) shall have the right to package, label, distribute, market and sell such Subsequent Product in the Territory.

4.2 Training. VIVUS will provide a one-time training in English for Janssen's English speaking sales and marketing management personnel with respect to the Product at a first location of Janssen's choosing in the far east and a second location of Janssen's choosing in Canada and will provide to Janssen training materials for the Product prepared by VIVUS for use in training VIVUS Inc.'s U.S. sales representatives. Janssen may copy any training materials provided by VIVUS for future training programs conducted by Janssen in connection with the marketing and sales of the Product hereunder. Janssen will at all times ensure that its sales force is fully trained with respect to the Product.

5. PRODUCT SUPPLY AND DISTRIBUTION

5.1 Product Supply. Subject to the terms and conditions of this Article 5 (including Section 5.10 below) VIVUS shall supply Janssen with Product for the Territory, in Foil Pouch Package Form or such other form as mutually agreed, and Janssen shall exclusively purchase its requirements from VIVUS, during the term of the Agreement, [*]. Janssen shall prepare all such Product in final packaged form including without limitation all product labeling and other package inserts and materials required by the applicable regulatory agencies. [*].

5.2 Samples. VIVUS shall supply Janssen with quantities of Product sales samples ("Promotional Samples"), and with quantities of Product reasonably necessary for Janssen to conduct clinical trials ("Clinical Trial Samples") and quality assurance testing to verify that lots of Product supplied by VIVUS meet the applicable Specifications ("QA Samples") (collectively, "Samples"), all in such amounts as are mutually agreed. Such Product shall be supplied in Foil Pouch Package Form or such other form as mutually agreed. Janssen shall prepare all such Product in final packaged form, except QA Samples utilized by Janssen.

5.3 [*]. The parties acknowledge and agree that for legal and/or business reasons it may become desirable to conduct certain [*] as set forth in this Section 5.3.

5.3.1 Timing. Although the parties may mutually agree to undertake such activities earlier, [*] beginning five (5) years after the First Commercial Sale of a Product [*]. It is understood, however, that [*] with respect to a Product prior to the eighth anniversary of the First Commercial

Sale of such Product in the Territory, [*] under this Section 5.3 with respect to such Product. To the extent that the [*] does not otherwise undertake or arrange for such additional [*] shall have the right to undertake such additional [*] under the terms of this Section 5.3.

5.3.2 [*]. Promptly following mutual agreement [*] in accordance with Section 5.3.1 above, [*] reasonable specifications). In addition, [*]. In connection with the [*] the cost of the travel and lodging [*] cost to purchase the [*]. [*] under this Section 5.3.2, [*].

5.3.3 [*]. At such time as the [*], in accordance with this Article 5. As used in this Section 5.3, [*].

5.3.4 [*] agrees to use diligent efforts to protect against and prevent the unauthorized use and disclosure of the [*]. Without limiting the foregoing, [*]. Upon the expiration or any termination [*] that such request has been satisfied. In addition, in such event, upon request by [*] for any purpose not expressly authorized under this Section 5.3, without [*] prior written approval.

5.3.5 [*] a worldwide, irrevocable, royalty-free, non-exclusive license, with the right to grant and authorize sublicenses, under any and all [*] to make, use, sell, import, export and otherwise distribute products and otherwise exploit such [*], and have the foregoing performed on its behalf by one or more third parties. For purposes of this Section 5.3.5 the term [*] shall promptly notify [*] and, as reasonably requested by [*] with information and documentation necessary for [*].

5.3.6 [*]. Upon mutual agreement [*] in accordance with Section 5.3.1 above, [*] in accordance with the terms of this Section 5.3 during the term of this Agreement for so long as [*] will be used solely for this purpose.

5.4 Forecasts. During the term of this Agreement, at least [*] prior to the start of [*], Janssen shall provide VIVUS with [*]. Each forecast shall indicate [*]. Each forecast will also [*].

5.5 Orders.

5.5.1 Orders. Together with each forecast provided under Section 5.4 above (the [*]), Janssen shall place its [*] order with VIVUS for delivery in [*] of that quantity of Product, [*], reflected for [*] in the [*]. For ordering purposes, the forecast for [*]. Also, the forecasts for [*], respectively, as each rolls to [*]. VIVUS shall accept such orders from Janssen, subject to the remaining terms and condition of this Agreement, provided that VIVUS shall not be obligated to accept orders to the extent the quantity ordered exceeds the quantities forecasted for [*], but shall use good faith efforts to fill orders for such excess quantities from available supplies. All orders placed hereunder shall be for [*] or as otherwise mutually agreed.

5.5.2 Form of Order. Janssen's orders shall be made pursuant to a written purchase order which is in a form mutually acceptable to the parties, and shall provide for shipment in accordance with reasonable delivery schedules as may be agreed upon from time to time by VIVUS

and Janssen. VIVUS shall use all reasonable efforts to notify Janssen within five (5) days from receipt of an order of its ability to fill any amounts of such order in excess of the quantities that VIVUS is obligated to supply. No terms contained in any purchase order, order acknowledgment or similar standardized form shall be construed to amend or modify the terms of this Agreement and in the event of any conflict, this Agreement shall control unless expressly agreed in writing.

5.6 Delivery. Subject to Section 5.10 below, with respect to exact shipping dates, VIVUS shall use its best efforts to ship quantities of Product ordered in accordance with Section 5.5 above on the dates specified in Janssen's purchase orders ("Shipping Date") submitted and accepted in accordance with Section 5.5 above. Product will be delivered F.C.A. (Incoterms 1990) shipping point designated by VIVUS. The shipping packaging shall be in accordance with good commercial practice with respect to protection of the Product during transportation. As of the Shipping Date, [*] Product to be shipped to Janssen hereunder, unless otherwise mutually agreed.

5.7 Product Rejection. If the Product, [*] supplied by VIVUS under this Agreement fail to conform at the time of delivery to the applicable specifications, a current copy of which is attached hereto as Exhibit B (as reasonably modified from time to time by VIVUS according to Section 5.11 below, "Specifications") or if as to such Product, [*], VIVUS fails to meet the GMP Standards/Regulatory practices as warranted in Section 12.2.2, Janssen shall promptly notify VIVUS after its discovery of non-conformity and Janssen shall present reasonable evidence to VIVUS of such nonconformity. VIVUS shall replace, at no additional expense to Janssen, such non-conforming Product with new Product which does conform with the Specifications. VIVUS may analyze any unit of Product rejected by Janssen for nonconformity and if it is objectively established that the Product was conforming, then Janssen shall be responsible for payment for any such units of Product. VIVUS shall give Janssen written instructions as to how Janssen should, at VIVUS' expense, dispose of any non-conforming material, and such instructions shall comply with all appropriate governmental requirements. With respect to any Products, [*] that do not conform to the applicable Specifications, Janssen shall not have the right to return the same if such non-conformity could have been detected upon reasonable inspection when first delivered and Janssen fails to identify and notify VIVUS of the non-conformity within forty-five (45) days after receipt by Janssen of the goods. In such event Janssen shall be responsible to purchase such goods, and the price thereof shall be the same as accidentally destroyed units under Section 6.2.2 below.

5.8 Suppliers. Without limiting VIVUS' responsibility under this Agreement, VIVUS shall have the right at any time, to satisfy its supply obligations to Janssen hereunder, either in whole or in part through arrangements with Third Parties engaged to perform services or supply facilities or goods in connection with the manufacture, testing, and/or packaging of Product, [*]. VIVUS shall ensure that all such facilities comply with applicable regulations and will give Janssen written notice sufficiently in advance of any such arrangement to determine whether such arrangement would require changes to an MAA Approval application filed in the Territory. VIVUS shall bear the costs related to changing the MAA Approval application required as a result of any such change in manufacturing arrangements. As a matter of routine supply, VIVUS shall supply Product to Janssen for the Territory from a single manufacturing facility.

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5.9 VIVUS Cost of Goods. VIVUS shall keep complete and accurate records of VIVUS Cost of Goods, such records to be in a form required under U.S. Generally Accepted Accounting Principles (GAAP), consistently applied. Janssen shall have the right, to the extent payments were made to VIVUS on the basis of VIVUS Cost of Goods, at Janssen's expense, through a certified public accountant or other representative acceptable to VIVUS, to examine such records during regular business hours during the life of this Agreement and for one (1)

year after its termination; provided, however, that such examination shall not take place more often than once a year and shall not cover such records for more than the preceding three (3) years and provided further that such accountant shall report to Janssen only as to the accuracy of the records. If such examination reveals that VIVUS has over reported the VIVUS Cost of Goods by more than [*] for the period of the examination then VIVUS shall promptly reimburse Janssen for its out-of-pocket costs related to such examination plus interest at [*] on any amounts over paid to VIVUS hereunder due to such over reporting. In any case if either party discovers a miscalculation of VIVUS Cost of Goods the parties shall correctly calculate such amount and make all necessary and appropriate adjustments to amounts paid and/or payable hereunder.

5.10 Shortage of Supply.

5.10.1 Allocation. In the event that VIVUS is unable to supply both worldwide requirements of Product and quantities ordered by Janssen under Section 5.5 above due to force majeure or otherwise, VIVUS shall allocate the quantities of Product that VIVUS has in inventory, and that VIVUS is able to produce, so that Janssen receives at least its proportional share of available supplies as determined based on reasonable forecasts of Janssen, VIVUS, VIVUS Inc. and VIVUS' other distributors. SUCH ALLOCATION SHALL BE JANSSEN'S SOLE REMEDY FOR VIVUS' FAILURE TO SUPPLY TO JANSSEN QUANTITIES OF PRODUCT VIVUS IS OTHERWISE OBLIGATED TO SUPPLY UNDER THIS ARTICLE 5. During such periods as supply of Product is subject to allocation pursuant to this Section 5.10, VIVUS agrees to use its best efforts to resolve the situation within a reasonable amount of time.

5.10.2 Joint Manufacturing Team. Without limiting the provisions of Section 5.10.1 above, if at any time VIVUS becomes unable to supply, or becomes aware that it will be unable to supply, quantities of Product ordered by Janssen in accordance with Section 5.5 above VIVUS shall promptly notify Janssen in writing. In such event, at Janssen's request, the parties shall establish a committee (the "Joint Manufacturing Team") consisting of two (2) representatives from each party and the Joint Manufacturing Team shall immediately convene to address such shortage, including locating alternative suppliers and facilities to increase production and identifying other actions necessary to resolve the shortage. VIVUS agrees to disclose to the Joint Manufacturing Team current production capacity for the Product and the total sales orders and forecasts for worldwide requirements for Product for [*] (as defined in Section 5.4 above) for Janssen, VIVUS, VIVUS Inc. and Third Party distributors without disclosing the identity of Third Parties. Subject to Section 6.9.1(b) of that certain Distribution Agreement between VIVUS and Astra AB dated May 29, 1996, VIVUS agrees to implement all measures established by the Joint Manufacturing Team to remedy the shortage; and if the Joint Manufacturing Team is unable to agree upon the appropriate measures, and the Chief Executive Officer of VIVUS and the President of Janssen-Ortho Canada are

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unable to agree on how to resolve the problem after negotiating in good faith, VIVUS agrees to implement any reasonable suggestions made by Janssen's senior executive for resolving the shortage. In any event, both parties agree to respond with the level of speed and diligence commensurate with the severity of the shortage.

5.11 Modification of Specifications. VIVUS may, from time to time, with the approval of Janssen, not unreasonably withheld, reasonably modify the Specifications attached as Exhibit B. Notice of such modifications to the Specifications must be sufficiently in advance to determine whether such modifications would require changes to an MAA application filed in the Territory. Where such modifications requires changes to the MAA application for any Product [*], then VIVUS will be responsible for the costs associated with such modifications.

6. PAYMENTS

6.1 Initial Payments. In consideration of the costs incurred by

VIVUS in connection with the research and development of the Product and in exchange for the exclusive rights granted herein, Janssen shall pay VIVUS the following non-refundable fees:

(a) Five Million Dollars ($5,000,000) upon the Effective Date;

(b) [*]

(c) [*]

(d) [*]

(e) [*]

(f) For purposes of determining if a Product is a different Product for which payments may be due under this Section 6.1, each Product shall be deemed a different Product if such Product contains an active ingredient different from (i.e., in addition to) that contained in previous Products for which payments for MAA Approval have already been made to VIVUS hereunder. VIVUS is under no obligation to develop or market any follow on products to the First Product.

Notwithstanding clauses (c), (d) and (e) above, in the event that [*]

6.2 Transfer Price.

6.2.1 Sale Units.

(a) For units of Product supplied by VIVUS under Section 5.1 above, Janssen shall pay to VIVUS a price per unit equal to [*]

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(b) For purposes of calculating the foregoing, [*] equal the following based upon the particular region:

[*]

(c) Notwithstanding the foregoing:

(i) [*]

(ii) [*]1 [*]2

(d) As used herein:

(i) [*]

(ii) [*]

In any event, notwithstanding the application of the foregoing formula, the VIVUS Percentage [*]

(iii) [*]

6.2.2 Samples and Obsolete Inventory. With respect to units of Products supplied by VIVUS to Janssen for use as Samples in accordance with Section 5.2 above, Janssen shall pay to VIVUS for such units an amount equal to [*] except that a reasonable number of Samples supplied to Janssen to be used in clinical trials to obtain MAA approval [*]. For purposes of determining the transfer price to be paid to VIVUS, units of Products [*], and the transfer price to be paid by Janssen to VIVUS for such units shall [*]; provided the total numbers of such units are within normal and customary levels [*].

6.2.3 [*] the price paid to VIVUS shall equal VIVUS' cost

calculated in accordance with GAAP and in accordance with VIVUS' then prevailing standard procedures for calculating Cost of Goods as reflected in VIVUS' audited financial statements, together with royalties payable to third parties.

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(1) For purposes of example see Exhibit C.

(2) For purposes of example see Exhibit D.

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6.3 Discounting. In the event that Janssen or its Subdistributor sells Products to a Third Party who also purchases other products or services from Janssen or its Affiliates, Janssen agrees not to, and to require its Subdistributors not to, discount the purchase price of the Products to a greater degree than Janssen or its Subdistributors, respectively, generally discounts the price of its other products to such customer. For purposes of this provision "discounting" includes establishing the list price at lower than Janssen's normal pricing level. Without limiting the foregoing, Janssen agrees not to, and to require its Subdistributors not to, treat Products in such a manner that would disadvantage the Product in comparison with other products offered for sale by Janssen or its Subdistributors.

6.4 Sales Records. Janssen shall keep and require its Subdistributors to keep complete and accurate records of all Net Sales of Product on a country-by-country basis. VIVUS shall have the right, at VIVUS' expense, through a certified public accountant or other representative, to examine such records during regular business hours provided, however, that such examination shall not take place more often than once a year and shall not cover such records for more than the preceding three (3) years. If such examination reveals an underpayment to VIVUS in excess of [*] for any period then Janssen shall promptly reimburse VIVUS for the costs of such examination and pay the underpayment amount plus interest at [*].

6.5 Provisional Payments.

6.5.1 Product Units. Payments due to VIVUS under Sections 6.2.1 and 6.2.2 and 6.2.3 shall be provisionally made, on a per unit of Product, [*] basis, as the case may be, within [*] of delivery to Janssen of each unit of Product, [*]. The provisional payment shall be based on [*] estimates by the parties of those variables necessary to calculate a provisional transfer price in accordance with the provisions of the relevant sections. Such estimates will be made in good faith and shall be consistent with internal estimates on which the party relies to plan capacity, gauge performance or plan inventory. [*] prior to the start of any relevant Janssen accounting year, Janssen and VIVUS will make the estimates and supply to each other the following data to establish a provisional transfer price for that entire year.

(a) For Product supplied under 6.2.1, the provisional payment will be based on the formula:

[*]

where:

[*]

or, the provisional payment will be based on a [*].

(b) For Product supplied under 6.2.2, the provisional payment will

be based on a [*].

(c) [*], the provisional payment will be based on a [*].

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For avoidance of doubt, to the extent the transfer price of a unit of Product is to be determined based on the [*] for purposes of calculating the provisional transfer price above.

[*]

6.6 Reconciliation.

6.6.1 Product Units. The provisional transfer price under which Product, and other materials supplied under Section 5.3 above, was received will be reconciled to the actual transfer price as the required data is available within sixty (60) days following the end of each Janssen accounting quarter, provided that VIVUS provides Janssen with the actual cost of good sold within thirty (30) days of the end of such quarter. In the event that the provisional payments by Janssen under Section 6.5 above were greater than the amounts actually due under Section 6.2, Janssen shall be entitled to credit such excess against future purchases of Product hereunder.

6.6.2 Timing. No reconciliation shall be made under this Section 6.6 with respect to units for which provisional payments were made until the end of the quarter in which such units are sold or in the case of Samples in the quarter they are distributed.

6.7 [*] Janssen agrees to pay to VIVUS a running royalty of [*], sold by Janssen or its Subdistributors. Notwithstanding the foregoing, in the event that a non-royalty payment method would, because of changed circumstances, be more advantageous for either party with respect to Product [*], the parties agree to discuss in good faith the implementation such other method; it being understood, however, that neither party would incur any disadvantage as a result of such other method.

6.8 Payment. Within [*] after the end of each calendar quarter, Janssen shall provide VIVUS with a true accounting of all payment obligations, if any, owed in accordance with this Article 6, together with a statement setting out all details necessary to calculate the amounts actually due hereunder with respect to Net Sales made in that calendar quarter, including units of Product sold on a country-by-country basis, gross sales of Product in that calendar quarter including units of Product sold on a country-by-country basis, Net Sales in that calendar quarter on a country-by-country basis, all relevant deductions, and all relevant exchange rate conversions. Any payments due shall accompany such statement.

6.9 Taxes. The parties hereto acknowledge and understand that as of the Effective Date, no withholding taxes or similar governmental charges are required to be withheld on amounts to be paid to VIVUS hereunder. In the event that after the Effective Date withholding taxes or similar charges are required by law to be withheld on behalf of VIVUS from amounts due to VIVUS hereunder, Janssen shall deduct said taxes or charges from amounts due to VIVUS hereunder and promptly pay the same to the applicable taxing authority; provided, however that to the extent such withholding taxes or other charges become due as a result of Janssen's assignment or other transfer of this Agreement to an Affiliate or otherwise pursuant to Section 13.8 below or other change in the structure of or the way Janssen does business, Janssen shall gross up all amounts due to VIVUS

have been filed separately with the Commission.

hereunder so that the amounts paid to VIVUS are not reduced by said taxes or other charges. Notwithstanding the foregoing, all amounts to be paid to VIVUS pursuant to Section 6.7 shall not be reduced by any withholding taxes or similar governmental charges (not including U.S. or Bermuda income tax on VIVUS' income). In regard to taxes or charges paid on behalf of VIVUS, Janssen shall furnish VIVUS with proper evidence of the taxes paid.

6.10 U.S. Dollars. All sums due under this Agreement shall be payable in U.S. dollars. Monetary conversion from the currency of a foreign country in which Product is sold into United States currency shall be calculated at the actual average of the buying and selling rates of exchange for the quarter in which such sales were made as such rates are reported, as of the last business day of such quarter, by the Wall Street Journal (U.S., Eastern Edition).

7. CONFIDENTIALITY

7.1 Nondisclosure. "Confidential Information" means any information, data, or know-how which the disclosing party treats confidentially, is in writing and is identified as confidential, or if disclosed orally is indicated to be confidential at the time of disclosure and is confirmed in writing as confidential by the disclosing party within forty-five (45) days after initial disclosure. VIVUS and Janssen shall not (and shall ensure that its Subdistributors do not) use or reveal or disclose to Third Parties any Confidential Information received from the other party without first obtaining the written consent of the disclosing party, except as may be otherwise provided herein, or as may be required for purposes of marketing Product or for securing essential or desirable authorizations, privileges or rights from governmental agencies. This confidentiality obligation shall not apply to such information which (i) is or becomes a matter of public knowledge through no fault of the receiving party or its Affiliates or Subdistributors, or (ii) is already in the possession of the receiving party, or (iii) is disclosed to the receiving party by a Third Party having the legal right to do so, or (iv) is subsequently and independently developed by employees of the receiving party or Affiliates thereof who had no knowledge of the Confidential Information disclosed, or (v) is required by law to be disclosed. The parties shall take reasonable measures to assure that no unauthorized use or disclosure is made by others to whom access to Confidential Information of the other party is granted.

7.2 Disclosure to Subdistributors. Janssen may, to the extent necessary, disclose information received from VIVUS to a Subdistributor of Janssen, provided that each such Subdistributor has agreed in writing to maintain the confidentiality of such information and not use such information except as necessary to fulfill the purposes hereunder. Janssen shall be fully responsible for any breach by its Subdistributors of this Article 7. Janssen shall immediately notify VIVUS of any unauthorized use or disclosure of VIVUS' information that it becomes aware of. Without limiting the foregoing, Janssen shall at its expense, upon request of VIVUS take all other steps necessary to cease all unauthorized use or disclosure of VIVUS Confidential Information obtained from Janssen or Subdistributor, or in the event VIVUS takes such steps, Janssen shall reimburse all reasonable costs related thereto.

7.3 Terms of Agreement. No public announcement or other public disclosure concerning the existence of or terms of this Agreement shall be made, either directly or indirectly, by any party to

this Agreement, except as may be legally required or as may be required for recording purposes, without first obtaining the written approval of the other party and Agreement upon the nature and text of such announcement or disclosure. The party desiring to make any such public announcement or other disclosure shall provide the other party with a copy of the proposed announcement or disclosure for review and comment in reasonably sufficient time prior to public release. Each party agrees that it shall cooperate fully with

the other with respect to all disclosures regarding this Agreement to the Securities Exchange Commission and any other governmental or regulatory agencies, including requests for confidential treatment of proprietary information of either party included in any such disclosure. In addition, each party agrees not to disclose this Agreement or its terms to Third Parties, except to professional advisors and potential financing sources and under conditions that reasonably protect the confidentiality thereof. The parties will mutually agree upon the contents of a press release (and accompanying Q&A) which may be issued upon the Effective Date, and thereafter the parties may publicly disclose information contained in such press release or Q&A without further approvals.

7.4 Clinical Data. All clinical and preclinical data disclosed by VIVUS shall be deemed Confidential Information of VIVUS.

7.5 Product Data. Janssen shall not submit for written or oral publication any scientific or medical manuscript, abstract or the like which includes data or other information relating to the Product without first obtaining the prior written consent of VIVUS. The contribution of each party shall be noted in all publications or presentations by acknowledgment or coauthorship, whichever is appropriate.

8. PATENT PROSECUTION AND LITIGATION

8.1 Ownership of Inventions. Janssen shall have and retain sole and exclusive title to all inventions, discoveries and know how ("Inventions") which are made during the term of this Agreement by Janssen, its employees, agents, or other Third Parties acting under authority from Janssen working on matters relating to and made using or comprising a Product and Janssen hereby grants to VIVUS a non- exclusive, worldwide license, with the right to sublicense, to such Inventions to make, have made, use and sell products for any indication.

8.2 Maintenance of Patents.

8.2.1 Filings. As between Janssen and VIVUS, VIVUS shall, at its expense, have responsibility for filing, prosecution and maintenance of all Patents in the Territory. Janssen shall have the right to review pending Patent applications and make recommendations to VIVUS concerning them. VIVUS will consider in good faith all reasonable suggestions of Janssen with respect to such pending applications. VIVUS agrees to keep Janssen informed of the course of Patent prosecution or other proceedings with respect to the Patents within the Territory. Janssen shall provide such Patent consultation to VIVUS at no cost to VIVUS. All information disclosed to Janssen under this Section 8.2 shall be deemed Confidential Information of VIVUS. In the event that

VIVUS does not file or discontinues the prosecution or maintenance of any Patents in the Territory, then Janssen may, at its expense, choose to continue the same with the cooperation of VIVUS.

8.2.2 Extensions. Janssen shall have the right but not the obligation to seek extensions of the terms of Patents in the Territory. At Janssen's request, VIVUS shall either authorize Janssen to act as VIVUS' agent for the purpose of making any application for any extensions of the term of Patents and provide reasonable assistance therefor to Janssen or shall diligently seek to obtain such extensions, in either event, at Janssen's expense.

8.3 Infringement by Product. In the event of the institution of any suit by a Third Party against Janssen for patent infringement involving the manufacture, use, sale, distribution or marketing of Product anywhere in the Territory during the term of this Agreement, Janssen shall promptly notify VIVUS in writing. Janssen shall have the right but not the obligation to defend such suit against it. Except in the case of a breach under Section 12.5, Janssen will have the right to offset [*] of the out-of-pocket costs of defending such suit against any sums due VIVUS hereunder; provided that VIVUS shall have the right to reasonably approve the plan of defense under which such

costs are incurred. VIVUS and Janssen shall assist one another and cooperate in any such litigation at the other's reasonable request without expense to the requesting party, and in any event VIVUS may participate in any such suit with counsel of its choice at its own expense. Without limiting the foregoing, Janssen may offset from amounts due to VIVUS hereunder [*] of amounts finally awarded against and paid by Janssen to a Third Party to the extent the same arise out of the Product's infringement of Third Party patent rights within the Territory during the term of this Agreement.

8.4 Third Party Infringement. In the event that VIVUS or Janssen becomes aware of actual or threatened infringement of a Patent anywhere in the Territory by the manufacture or sale or use of a Product for the transurethral delivery of a formulation containing alprostadil to treat or prevent erectile dysfunction in humans (the "Field"), that party shall promptly notify the other party in writing. VIVUS shall have the first right but not the obligation to bring, at its own expense, an infringement action against any Third Party. If VIVUS does not commence a particular infringement suit within the Field within [*] of receipt of a request by Janssen to do so, then Janssen, after notifying VIVUS in writing shall be entitled to bring such infringement action at its own expense and to include VIVUS as a nominal party plaintiff. VIVUS shall keep Janssen reasonably informed of its activities during the [*] period. The party conducting such action shall have full control over its conduct, including settlement thereof subject to Section 8.6 below. In any event, VIVUS and Janssen shall assist one another and cooperate in any such litigation at the other's reasonable request without expense to the requesting party.

8.5 Recovery. VIVUS and Janssen shall recover their respective actual out-of-pocket expenses, or equitable proportions thereof, associated with any litigation against infringers undertaken pursuant to Section 8.4 above or settlement thereof from any resulting recovery made by any party. Any excess amount of such a recovery shall be shared between Janssen and VIVUS with Janssen receiving [*] and VIVUS receiving [*] to the extent such recovery relates to sales in the Territory during the term of this Agreement.

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8.6 Status of Activities. The parties shall keep one another informed of the status of their respective activities regarding any litigation or settlement thereof concerning Product within the Territory, provided however that no settlement or consent judgment or other voluntary final disposition of any suit defended or action brought by a party pursuant to this Article 8 may be entered into without the consent of the other party if such settlement would require the other party to be subject to an injunction or to make a monetary payment or would otherwise adversely affect the other party's rights under this Agreement.

9. TRADEMARKS

9.1 Display. All packaging materials, labels and promotional materials for the Product shall display the VIVUS Trademark (or the VIVUS Alternative Trademark at Janssen's discretion) as appropriate. The Janssen trade dress, style of packaging and the like with respect to each Product may be determined by Janssen so as to be consistent with Janssen's standard trade dress and style provided that the packaging and related materials shall display the "VIVUS" tradename in [*] logo type.

9.2 License. VIVUS hereby grants to Janssen an exclusive, royalty-free license, to use the VIVUS Trademark, or the VIVUS Alternative Trademark in each country of the Territory for the term of this Agreement in connection with the marketing and promotion of Product as contemplated in this Agreement. The ownership and all good will from the use of the VIVUS Trademark and the VIVUS Alternative Trademark shall vest in and inure to the benefit of VIVUS.

9.3 Registration. VIVUS agrees to file, register and maintain a registration for the VIVUS Trademark in the countries of the Territory listed on Exhibit E, as VIVUS is reasonably able under the circumstances, for the term

of this Agreement, at VIVUS' expense, for use with the Product. In the event that the VIVUS Trademark or VIVUS Alternative Trademark is unavailable for use with the Product in one or more countries listed on Exhibit E, VIVUS agrees to choose in consultation with Janssen a VIVUS Alternative Trademark. Where VIVUS agrees to the use of a VIVUS Alternative Trademark in a country, VIVUS agrees to file, register and maintain a registration for the VIVUS Alternative Trademark in such country, for the term of this Agreement, at VIVUS' expense, for use with the Product in such country.

9.4 Recordation. In those countries where a trademark license must be recorded, VIVUS will provide and record a separate trademark license for the VIVUS Trademark and/or VIVUS Alternative Trademark. Janssen shall cooperate in the preparation and execution of such documents.

9.5 Approval of Promotional Materials/Quality Control. Janssen shall submit representative promotional materials, packaging, [*] using the VIVUS Trademark and/or VIVUS Alternative Trademark to VIVUS for VIVUS' reasonable approval prior to the first use of such items and prior to any subsequent change or addition to such items, provided that if VIVUS has not responded within four (4) weeks after such submissions, VIVUS' approval will be deemed to have been received. For purposes of quality control, Janssen agrees that for the [*] shall meet sufficient

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standards of quality. In the event that, after review, VIVUS determines that [*] to meet acceptable standards of quality within a reasonable time.

9.6 Termination of Rights. Janssen's right to use the VIVUS Trademark and the VIVUS Alternative Trademark shall terminate in each country of the Territory in which Janssen's rights to distribute the Product expire or are terminated in accordance with this Agreement. Janssen shall ensure the cancellation of any Trademark licenses recorded or entered into in such countries in favor of or by or under authority of, Janssen or its Subdistributors to the extent legally possible.

9.7 Trademark Indemnity. VIVUS agrees to defend and/or settle any claim brought against Janssen or its Subdistributor by a Third Party arising out of or resulting from Janssen or its Subdistributor use of the VIVUS Trademark or the VIVUS Alternative Trademark or the tradename VIVUS in the Territory in accordance with the terms and conditions of this Agreement during the term of this Agreement. VIVUS shall pay all resulting damages or settlement amounts finally awarded against Janssen or its Subdistributor (including reasonable attorneys' fees and court costs) which are attributable to such claim during the term of this Agreement. Notwithstanding the foregoing, if the VIVUS Trademark or VIVUS Alternative Trademark or the tradename VIVUS becomes, or in VIVUS' reasonable judgment may become, the subject of any claim as a result of Janssen or its Subdistributors use thereof in any country within the Territory, VIVUS may, upon notice to Janssen, request that Janssen and/or its Subdistributor cease using the VIVUS Trademark or VIVUS Alternative Trademark or the tradename VIVUS, as applicable, in such country. Ninety (90) days after such a request by VIVUS, VIVUS' obligation to defend and settle claims under this Section 9.7 will terminate to the extent any claims, damages or expenses arise out of or result from use after such ninety (90)-day period of said VIVUS Trademark or VIVUS Alternative Trademark or the tradename VIVUS in such country. The termination of VIVUS' obligation to defend and settle claims is contingent upon VIVUS making available to Janssen, where VIVUS is obligated to supply, adequate supplies of alternately labeled Product in a timely manner sufficient to satisfy Janssen's demand therefor after the end of such ninety (90) day period. After VIVUS' request to cease using a trademark, upon Janssen's request, VIVUS agrees to register a new trademark for use in the said country in accordance with Section 9.3 above.

9.8 Trademark Enforcement. In the event that either party becomes aware that a Third Party is misappropriating or otherwise misusing the VIVUS Trademark or VIVUS Alternative Trademark, as the case may be, within the Territory such party shall promptly notify the other party. In which case,

the parties agree to discuss such misappropriation or misuse and cooperate to develop a reasonable enforcement plan to deal with the same. VIVUS shall bear [*] and Janssen shall bear [*] of the costs and expenses incurred to bring an action to enforce the VIVUS Trademark or VIVUS Alternative Trademark, as appropriate, in accordance with the mutually agreed upon enforcement plan. Likewise, any recovery from such an action shall be shared between the parties, with VIVUS receiving [*] and Janssen receiving [*] to the extent such recovery relates to misappropriation or misuse in the Territory during the term of this Agreement.

10. TERM AND TERMINATION

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10.1 Expiration. Unless otherwise terminated, this Agreement shall expire on the date [*] after the date of First Commercial Sale of a Product in the Territory. This Agreement may be extended for successive two (2) year terms by mutual written consent of VIVUS and Janssen at least six (6) months prior to expiration of the term hereof; provided however that VIVUS nor Janssen shall not be obligated to approve any such extension and shall have no liability whatsoever by reason of any failure to agree on any such extension.

10.2 Events of Termination. If any of the following events (an "Event of Termination") occurs, the party not responsible for such event may terminate this agreement by notice to the other party:

10.2.1 Payment Obligation. If a party fails to pay any amount properly due under this Agreement within thirty (30) days following receipt of written notice of such default by the other party.

10.2.2 Material Non-Performance. If a party defaults in any other material respect in the performance or observance of any other material term, covenant or provision of this Agreement, or if any representation by a party contained in this Agreement proves to have been incorrect in any material respect when made, resulting in material adverse consequences for the other party (any such material default or material incorrect representation a "Material Non-Performance"), and such Material Non-Performance is not cured within sixty (60) days notice from the non-defaulting party.

10.2.3 Bankruptcy Proceedings. Because each party acknowledges that the services to be rendered by the other are personal in nature, inasmuch as the respective capabilities of the parties hereto are uniquely valuable and that the determination to enter into this Agreement was based upon the unique ability of the other party to fulfil its respective obligations hereunder, if (i) such party shall make an assignment of substantially all of its assets for the benefit of creditors, file a petition in bankruptcy, petitions or applies to any tribunal for the appointment of a custodian, receiver or any trustee for such party or substantially all of such party's assets, or shall commence any proceeding under any dissolution or liquidation law or statute of any jurisdiction (provided that no entity succeeds to the business of such party following such dissolution or liquidation) whether now or hereafter in effect which is not dismissed within sixty (60) days; or (ii) there shall have been filed any such petition or application against such party, or any such proceeding shall have been commenced against such party, in which an order for relief is entered or which remains undismissed for a period of ninety (90) days or more; or (iii) such party by an act or knowing failure to act shall indicate such party's consent to, approval of or acquiescence in, any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for such party, or any substantial part of any of such party's properties, or shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of ninety (90) days or more.

10.2.4 Termination by VIVUS. VIVUS may terminate this Agreement on a country-by-country basis on thirty (30) days notice if MAA Approval has not been received in such county within four (4) years from the Effective Date; provided such notice is given prior to obtaining such MAA

Approvals. In the event that this Agreement is terminated with respect to any country such

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country shall cease to be within the Territory for all purposes of this Agreement and the threshold Net Sales levels [*].

10.2.5 Termination by Janssen. Janssen may terminate this Agreement on [*] notice to VIVUS.

11. RIGHTS AND DUTIES UPON TERMINATION

11.1 Payment. Upon expiration or termination, of this Agreement, Janssen and VIVUS shall each pay all sums accrued or credits owed hereunder which are then due.

11.2 Sale of Remaining Inventory. Upon early termination of this Agreement under Section 10.2 above, Janssen shall notify VIVUS of the amount of Product Janssen and its Subdistributors then have on hand. Janssen, its Affiliates and its Subdistributors shall thereupon be permitted to sell that amount of Product, within the ninety (90) day period following such termination, subject to the reconciliation under Section 6.6 above and shall destroy any remaining inventory. Units that are so destroyed shall be treated as accidentally destroyed units for purposes of Section 6.2.2 above.

11.3 Survival. Upon expiration or termination of this Agreement, all rights and obligations of the parties under this Agreement shall terminate except those described in the following:

Article 1, Definitions
Last Sentence of Section 3.3, Regulatory Approvals/MAAs
Section 3.6, Adverse Experiences
Section 5.3.4, [*]
Section 5.3.5, [*]
Section 5.9, VIVUS Cost of Goods
Section 6.4, Sales Records
Section 6.9, Taxes
Article 7, Confidentiality for a period of 10 years
Section 8.1, Ownership of Inventions
Section 8.3, Infringement by Product
Section 8.5, Recovery
Section 9.6, Termination of Rights
Section 9.7, Trademark Indemnity
Article 10, Term and Termination
Article 11, Rights and Duties Upon Termination
Section 12.3, Indemnification by Janssen
Section 12.4, Indemnification by VIVUS
Article 13, General Provisions

It is understood that termination or expiration of this Agreement shall not relieve a party from any liability which, at the time of such termination or expiration, has already accrued to the other party or

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which is attributable to a period prior to such termination. Except as otherwise expressly provided herein, termination of the Agreement in accordance with the provisions hereof shall not limit remedies which may be otherwise

available in law or equity with respect to a breach hereof that occurred prior to such termination.

12. WARRANTIES, REPRESENTATIONS, AND INDEMNIFICATIONS

12.1 General Representations. Each party hereby represents and warrants for itself as follows:

12.1.1 Duly Organized. It is a corporation duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification and failure to have such would prevent it from performing its obligations under this Agreement and has all requisite corporate power and authority to conduct its business as now being conducted, to own, lease and operate its properties and to execute, deliver and perform this Agreement.

12.1.2 No Third Party Approval. No authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental authority or regulatory body (other than health regulatory authorities) is required for the due execution, delivery or performance by it of this Agreement, except as provided herein.

12.2 Representations and Warranties of VIVUS. VIVUS represents and warrants to Janssen that:

12.2.1 VIVUS Rights. VIVUS has the right to grant the rights granted in this Agreement and no provision in any third party agreement to which VIVUS is a party will prevent VIVUS from performing its obligations under this Agreement.

12.2.2 Good Manufacturing GMP Standards/Regulatory Standards. All manufacturing and quality control operations utilized by VIVUS in the manufacture of Product supplied under Sections 5.1 and 5.2 above shall be carried out according to the procedures and requirements set forth in the then-current version of the VIVUS Plant Master File with respect to such Product, and (as to each Product) in accordance with all applicable U.S. rules governing medical products and or devices in the GMP for medical products and/or devices and regulations issued by the health regulatory authorities in the countries of the Territory for which such Product is to be sold as in effect at the time, provided that the applicable rules and regulations imposed by the various countries of the Territory are no more burdensome than those imposed by the U.S. [*] shall be carried out according to the procedures and requirements set forth in the then-current version of the VIVUS Plant Master File, and regulations issued by the health regulatory authorities in the countries of the Territory in which such [*] material is to be used as in effect at the time, provided that the applicable rules and regulations imposed by the various countries of the Territory are no more burdensome than those imposed by the U.S.

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12.3 Indemnification by Janssen. Janssen shall defend, indemnify and hold harmless VIVUS, its officers, directors, shareholders, employees, successors and assigns from any loss, damage, or liability, including reasonable attorney's fees, resulting from any claim, complaint, suit, proceeding or cause of action against any of them alleging physical injury or death or otherwise arising out of the administration, utilization and/or ingestion of Product manufactured, sold or otherwise provided to the injured party by or under authority of Janssen (or its permitted subdistributor or contractor); or otherwise with respect to Product supplied to, or sold or distributed by, Janssen (or its permitted subdistributor or contractor), provided:

(a) Janssen shall not be obligated under this Section 12.3 if it is shown by evidence acceptable in a court of law having

jurisdiction over the subject matter and meeting the appropriate degree of proof for such action, that the injury was the result of (i) the gross negligence or willful misconduct of any employee or agent of VIVUS or (ii) the supply by VIVUS of Product that fails to meet applicable Specifications;

(b) Janssen shall have no obligation under this Section 12.3 unless VIVUS (i) gives Janssen prompt written notice of any claim or lawsuit or other action for which it seeks to be indemnified under this Agreement, (ii) Janssen is granted full authority and control over the defense, including settlement, against such claim or lawsuit or other action, and (iii) VIVUS cooperates fully with Janssen and its agents in defense of the claims or lawsuit or other action; and

(c) VIVUS shall have the right to participate in the defense of any such claim, complaint, suit, proceeding or cause of action referred to in this Section 12.3 utilizing attorneys of its choice, at its own expense, provided, however, that Janssen shall have full authority and control to handle any such claim, complaint, suit, proceeding or cause of action, including any settlement or other disposition thereof, to the extent VIVUS seeks indemnification under this Section 12.3.

12.4 Indemnification by VIVUS. VIVUS shall defend, indemnify and hold harmless Janssen, its officers, directors, shareholders, employees, successors and assigns from any loss, damage, or liability, including reasonable attorney's fees, resulting from any claim, complaint, suit, proceeding or cause of action by a Third Party against any of them alleging physical injury or death or otherwise arising out of (a) the administration, utilization and/or ingestion of Product, sold or otherwise provided to the injured party by VIVUS (or its permitted subdistributor or contractor other than by or under authority of Janssen or (b) the supply by VIVUS of Product that fails to meet applicable Specifications, provided:

(a) VIVUS shall not be obligated under this Section 12.4 if it is shown by evidence acceptable in a court of law having jurisdiction over the subject matter and meeting the appropriate degree of proof for such action, that the injury was the result of the gross negligence or willful misconduct of any employee or agent of Janssen;

(b) VIVUS shall have no obligation under this Section 12.4 unless Janssen (i) gives VIVUS prompt written notice of any claim or lawsuit or other action for which it seeks to be indemnified under this Agreement, (ii) VIVUS is granted full authority and control over the defense,

including settlement, against such claim or lawsuit or other action, and (iii) Janssen cooperates fully with VIVUS and its agents in defense of the claims or lawsuit or other action; and

(c) Janssen shall have the right to participate in the defense of any such claim, complaint, suit, proceeding or cause of action referred to in this Section 12.4 utilizing attorneys of its choice, at its own expense, provided, however, that VIVUS shall have full authority and control to handle any such claim, complaint, suit, proceeding or cause of action, including any settlement or other disposition thereof, to the extent Janssen seeks indemnification under this Section 12.4.

12.5 Patent Warranties. To the best of its knowledge as of the Effective Date, VIVUS represents and warrants that (i) Patents and VIVUS Know-How are owned or controlled by VIVUS or VIVUS Inc., and are not currently being infringed by a Third Party in the Territory, and (ii) that the practice of such rights do not infringe any property right of any Third Party.

13. GENERAL PROVISIONS

13.1 Force Majeure. If either party fails to perform any part of this Agreement due to any cause beyond the reasonable control of such party, the party so affected shall, upon giving written notice to the other party, be excused from such performance, provided that such party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall

continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of this Agreement may be required in order to arrive at an equitable solution.

13.2 Governing Law and Arbitration. This Agreement shall be governed by the laws of the State of California without reference to conflict of law principles. In the event of any dispute under this Agreement, both parties shall endeavor to settle such dispute amicably between themselves. In the event that the parties fail to agree, such dispute shall be settled by arbitration as follows: Either party may by notice in writing to the other require any issue in dispute to be submitted to arbitration in accordance with this Section 13.2. From the date of the notice in writing and until such time as any matter has been finally settled by arbitration hereunder, the running of the time periods in which a party must cure a breach of this agreement shall be suspended as to the subject matter of the dispute. Such notice shall contain a statement of the arbitrable issue forming the basis of the dispute and the position of the moving party as to the proper resolution of that issue. Within thirty (30) days after receipt of such notice, the responding party shall submit to the moving party a statement of its conception of the arbitrable issue in question and of its position as to the proper resolution of that issue. Within thirty (30)-days of the responding party's response, each party shall appoint an independent arbitrator and give the other party written notice thereof. In the event a party shall fail to appoint an arbitrator and provide written notice thereof to the other party within such thirty (30) day period, an arbitrator shall be appointed for such party by the American Arbitration Association, as promptly as practicable after request by the other party. Thereafter, the two (2) appointed arbitrators shall select a third arbitrator within thirty (30) days after receipt of a list of proposed arbitrators having expertise in the pharmaceutical industry proposed by the American Arbitration Association. If the two (2) arbitrators designated by the parties are unable to agreed on the third arbitrator within

thirty (30) days, then either party with notice to the other party, may call for such appointment by the American Arbitration Association of the third arbitrator. Regardless of the manner of his or her selection, the third arbitrator shall be one who is qualified by knowledge and experience in the pharmaceutical field. Each arbitrator shall agree prior to his or her appointment to hear the dispute promptly and render a decision as soon as practicable thereafter. The arbitration shall be conducted in English in Chicago, Illinois, in accordance with the commercial arbitration rules or successor rules then obtaining of the American Arbitration Association to the extent not inconsistent with this Section 13.2. The Agreement of two (2) of the three (3) arbitrators shall be sufficient to render a decision. The decision of the panel shall be final and binding upon the parties and enforcement thereof may be obtained in any court of competent jurisdiction. The arbitrators may award costs and expenses, including reasonable attorneys' fees, to the successful party, as the arbitrators deem appropriate. WITH RESPECT TO DISPUTES REGARDING AMOUNTS DUE HEREUNDER THE PARTIES AND ARBITRATORS SHALL USE ALL REASONABLE EFFORTS TO CONCLUDE THE ARBITRATION WITHIN ONE HUNDRED TWENTY (120) DAYS FROM THE INITIAL NOTICE.

13.3 Janssen Right of Inspection. During the term of this Agreement, VIVUS shall, upon written request of Janssen, permit Janssen's authorized representative to inspect (and if reasonably necessary to copy) the following: (i) all manufacturing and quality control records for all manufacture of the Product supplied by VIVUS hereunder and (ii) quality control records of all starting materials used in the manufacture of a Product supplied by VIVUS hereunder. In addition, during the term of this Agreement, upon the written request of Janssen, VIVUS shall permit Janssen's authorized representative to inspect, at mutually agreeable times and during normal business hours, the facilities where Product is manufactured for delivery to Janssen hereunder for the purpose of verifying compliance with GMP and other applicable regulatory standards. VIVUS shall remedy any deficiencies discovered as a result of such inspections as soon as reasonably possible upon receipt notice of the same from Janssen.

13.4 Waiver of Breach. The failure of either party at any time to

require performance of any provision hereof shall not affect its rights at a later time to enforce the same. No waiver by either party of any condition or term in any one or more instances shall be construed as a further or continuing waiver of such condition or term or of another condition or term.

13.5 Separability. If any portion of this Agreement is held to be illegal, void or ineffective, the remaining portions shall remain in full force and effect and the parties will renegotiate the terms and conditions of this Agreement to resolve any inequities.

13.6 Entire Agreement. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof and supersedes all previous writings and understandings. No terms or provisions of this Agreement shall be varied or modified by any prior or subsequent statement, conduct or act of either of the parties, except that the parties may amend this Agreement by written instruments specifically referring to and executed in the same manner as this Agreement.

13.7 Approvals. Unless expressly required not to be withheld unreasonably, it is understood that when approval of either party is required, such approval may be withheld in such party's sole discretion, without regard to the reason or basis for withholding such consent.

13.8 Notices. Any notice required or permitted under this Agreement shall be sent by air mail, postage pre-paid, to the following addresses of the parties:

VIVUS
VIVUS International Limited
Clarendon House
Church Street
Hamilton, Bermuda
Attention: President

copies to:

Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Attention: Kenneth A. Clark
Telephone: (415) 493-9300
Telecopy: (415) 493-6811

Any notice required or permitted to be given concerning this Agreement shall be effective upon receipt by the party to whom it is addressed or within seven (7) days of mailing by certified U.S. Mail or by reputable overnight courier service, receipt confirmed, whichever is earlier.

13.9 Assignment. Neither this Agreement nor any interest hereunder shall be assignable by either party without the written consent of the other, except that either party may assign this Agreement and its rights and obligations hereunder to an Affiliate or to any corporation with which it may merge or consolidate, or to which it may transfer all or substantially all of its assets to which this Agreement relates, without obtaining the consent of the other party; provided that the entity to whom this Agreement is assigned agrees in writing to be bound by its terms. This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest of the respective parties.

13.10 No Partnership or Joint Venture. This Agreement shall not be deemed to establish a joint venture or partnership between Janssen and VIVUS.

13.11 Third Party Rights. The obligations of VIVUS and the rights of Janssen under this Agreement shall be subject to and limited by any agreements pursuant to which VIVUS acquired rights to Patents from a Third Party.

13.12 Limited Liability. Except in the case of a Third Party claim against a party hereunder, the parties shall not be liable to each other under any contract, negligence, strict liability or other legal

or equitable theory for any incidental or consequential damages for failure to perform under this Agreement .

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

JANSSEN PHARMACEUTICA INTERNATIONAL,
A DIVISION OF CILAG AG INTERNATIONAL

BY: /s/ HEINZ SCHMID
Heinz Schmid

TITLE: General Manager

BY: /s/ ERIK ROMBOUT
Erik Rombout

TITLE: Operations Director

VIVUS INTERNATIONAL LIMITED

BY: /s/ TERRY NIDA
Terry Nida

TITLE: Vice President

EXHIBIT A

JANSSEN AFFILIATES AND
COUNTRIES OF RESPONSIBILITY

Canada	Janssen-Ortho Inc. 19 Green Belt Drive North York, Ontario, Canada M3C IL9
China	Xian-Janssen Pharmaceutical Co. Ltd. 5th Floor, Ocean Building No. 44, Liang Jiu Road Chao Yang Dist. 100016 Beijing, China
Hong Kong	Janssen Pharmaceutical Division c/o Johnson & Johnson (HK) Ltd. 12th Floor, Tower 3 China Hong Kong City China Ferry Terminal 33 Canton Road, Tsim Sha Tsui Kowloon, Hongkong (Responsible for Macau)
Indonesia	Janssen Pharmaceutica Division

	c/o P.T. Johnson & Johnson Indonesia Wisma Mampang, 3rd Floor Jl. Mapang Prapatan Raya No. 1 Jakarta Selatan, Indonesia
Korea	Janssen Korea Ltd 12th Floor, Sungwon Building 141, Samsung-dong, Kangam-ku Seoul 135-090, Korea
Malaysia	Janssen Pharmaceutica (A div. of Johnson & Johnson Sdn. Bhd.) Third Floor, Wisma Digital Jalan Bersatu 13/4 46200 Petaling Jaya Selangor, Malaysia (responsible for Malaysia, Singapore, Brunei)

Mexico	Janssen Farmaceutica, S.A. de C.V. Canoa No. 79 Col. Tizapan - San Angel Delegacion Alvara Obregon 01090 Mexico, D.F. Mexico (responsible for: Caribbean Area: Dominican Republic Bermuda Bahamas Jamaica Cayman Islands Trinidad Haiti Barbados Curacao Aruba Grenada Santa Lucia Antigua Tortola Saint Martin Saint Vincent Turks and Caicos Islands)
Philippines	Janssen Pharmaceutica A Div. of Johnson & Johnson (Phil.), Inc. 7th Floor Centerpoint Condominium Julia Vargas Cor. Garnet St. Ortigas Center, Pasig Metro Manila, Philippines
South Africa	Janssen-Cilag Janssen House - 2nd Floor c/o Norwich Close and 5th St. Santon 2146, Gauteng South Africa
Taiwan	Janssen-Cilag Taiwan 8th Floor, 319, Section 2 Tunhwa South Road Taipei 106 Taiwan R.O.C.

Thailand	Janssen Pharmaceutica Ltd. 1550 Grand Amarin Tower, 11 Fl. New Petchburi Road Makasan, Rachtevee Bangkok 10310 Thailand

(responsible for Thailand, Vietnam, Cambodia, Myanmar and Laos)

EXHIBIT B

SPECIFICATIONS

PRODUCT SPECIFICATIONS

The following release specifications are subject to regulatory review and approval in the Territory. They will be modified as required by regulatory authorities, and all Product delivered to Janssen must comply with such modified specifications. Release Specifications

TEST	[*]
Appearance	
Identity	
Identity	
Assay, alprostadil	
Uniformity of Dosage Units	
Package Integrity	
Sterility	
Dissolution	
Degradation Products	

[*]

*Confidential treatment requested pursuant to a request for confidential treatment filed with the Securities and Exchange Commission. Omitted portions have been filed separately with the Commission.

EXHIBIT C

EXAMPLE MINIMUM TRANSFER PRICE CALCULATIONS

			NET SELLING PRICE		
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
VIVUS	[*]	[*]	[*]	[*]	[*]
COST	[*]	[*]	[*]	[*]	[*]
OF	[*]	[*]	[*]	[*]	[*]
GOODS	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]

[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]

*Confidential treatment requested pursuant to a request for confidential treatment filed with the Securities and Exchange Commission. Omitted portions have been filed separately with the Commission.

EXHIBIT D

EXAMPLE TRANSFER PRICE CALCULATION IN THE CASE WHERE [*] FORMULA IS IN EFFECT

	NET SELLING PRICE				
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
VIVUS	[*]	[*]	[*]	[*]	[*]
COST	[*]	[*]	[*]	[*]	[*]
OF	[*]	[*]	[*]	[*]	[*]
GOODS	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]
	[*]	[*]	[*]	[*]	[*]

*Confidential treatment requested pursuant to a request for confidential treatment filed with the Securities and Exchange Commission. Omitted portions have been filed separately with the Commission.

EXHIBIT E

TRADEMARK COUNTRIES

Country	Mark	Status	Filing No.	Filing Date	Class
Cambodia	MUSE	Mailed			5
Canada	MUSE	Allowed	735,175	08/19/93	
Canada	MUSE	Filed	802,814	01/29/96	
China	MUSE	Pending/IR		11/07/96	
Hong Kong	MUSE	Filed	1466/96	02/03/96	5
Indonesia	MUSE	Filed		02/12/96	5

Korea, South	MUSE	Filed	1996-3661	01/31/96	5(10)
Laos	MUSE	Mailed			5
Malaysia	MUSE	Filed	MA/3176/96	03/28/96	5
Mexico	MUSE	Filed	175835	08/19/93	5
Myanmar	MUSE	Ordered			5
Philippines	MUSE	Filed	107779	04/29/96	5
Singapore	MUSE	Filed	1037/96	01/29/96	5
South Africa	MUSE	Filed	96/00968	01/26/96	5
Taiwan	MUSE	Filed	85006304	02/06/96	5
Thailand	MUSE	Filed	320906	10/30/96	5
Vietnam	MUSE	Pending/IR		11/07/96	5

*Confidential treatment requested pursuant to a request for confidential treatment filed with the Securities and Exchange Commission. Omitted portions have been filed separately with the Commission.

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EXHIBIT 10.28

LEASE BETWEEN

AIRPORT ASSOCIATES,

LANDLORD,

AND

VIVUS, INC.,

TENANT.

FOR PREMISES

AT

735 AIRPORT ROAD

LAKEWOOD, NEW JERSEY

Prepared by:

DAVID C. FREINBERG, ESQ.
ST. JOHN & WAYNE, L.L.C.
TWO PENN PLAZA EAST
NEWARK, NEW JERSEY 07105-2249

Dated As Of January 1, 1997

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This Lease is entered into as of January 1, 1997, between AIRPORT ASSOCIATES, a New Jersey general partnership, having an address at 999 Airport Road, Lakewood, New Jersey 08701 (the "Landlord"), and VIVUS, INC., a Delaware corporation, having an address at 545 Middlefield Road, Suite 200, Menlo Park, California 94025 (the "Tenant").

W I T N E S S E T H:

1. DEMISE AND TERM OF DEMISE

1.1 Landlord demises and leases unto Tenant, and Tenant hires and takes from Landlord, in consideration of the rents to be paid and the covenants, agreements and conditions to be performed, observed and fulfilled by Tenant, the Premises (hereinafter defined), including the building (consisting of approximately 40,000 square feet) (the "Building") and land located at 735 Airport Road, Lakewood, New Jersey. The Building and the land on which the Building is located and all other improvements thereon are sometimes hereinafter collectively referred to as the "Premises".

1.2 The term of this Lease (the "Term") shall be five (5) years, commencing as of January 1, 1997 (the "Commencement Date") and expiring December 31, 2001. Tenant shall, at Landlord's request, execute a certificate as to the Commencement Date of this Lease.

2. RENT, TAXES, ASSESSMENTS AND OTHER CHARGES

2.1 Tenant shall pay to Landlord, at the address set forth above or at such other place of which Landlord shall have given Tenant written notice, a basic annual rental of $202,000.00, in monthly installments of $16,833.33 each.

2.2 Such rent shall be paid by Tenant to Landlord in advance, on the first day of each calendar month during the Term (except the pro-rated rent for the unexpired portion of the month in which the Commencement Date occurs, which shall be due on the Commencement Date), without notice, demand, abatement, deduction, counterclaim or set off of any kind. Tenant shall pay the rent in lawful money of the United States which shall be legal tender for all debts, public and private, at the time of payment. Any obligation of Tenant for payment of rent which shall have accrued with respect to any period during the Term shall survive the expiration or termination of this Lease.

2.3 Whenever under the terms of this Lease any sum of money is required to be paid by Tenant in addition to the rental reserved, and said additional amount so to be paid is not designated as "additional rent," then said amount shall nevertheless, if not paid when due, be deemed "additional rent" and collectible as such with any installment of rental thereafter falling due hereunder, or, if no such installment thereunder shall fall due, on demand.

2.4 Tenant shall pay, to Landlord, monthly, or as Landlord may otherwise demand, as additional rent, all real estate taxes, all special assessments, all general assessments, all water and sewer charges, rates and rents, water meter charges, and all such other taxes, levies and charges of any kind, general and special, extraordinary as well as ordinary, and each and every installment thereof which shall

or may during the Term be charged, levied, laid, assessed, imposed, become due and payable, or liens upon or for or with respect to the Premises or by reason of the use or occupancy of or any transaction or activity carried on or conducted in the Premises, together with all interest and penalties thereon (but not for any interest or penalty if Tenant timely pays any such imposition). If any assessment is payable in installments, Landlord shall elect to pay such assessments over the longest permissible period allowed without penalty and Tenant shall be responsible for installments which are due and payable or accrue during the Term (equitably pro-rated for installments which accrue during the Term but are payable prior to the Commencement Date or after the expiration of the Term). All taxes, assessments, levies and charges described in this Section 2.4 (including interest and penalties thereon) are sometimes herein referred to as "impositions."

2.5 Nothing contained in this Lease shall require Tenant to pay any federal, state, municipal or other income, gross receipts or excess profits taxes assessed against Landlord, or any franchise, corporation, capital levy, estate, succession, inheritance, devolution, payroll, stamp, gift or transfer taxes of Landlord, or any similar tax, or any tax imposed solely because of the nature of the entity of Landlord, or any tax imposed on rent received by Landlord under this Lease; provided, however, that if at any time during the Term the methods of taxation prevailing at the commencement of the Term shall be altered so that in lieu of or as a substitute, in whole or in part, for the taxes, assessments, levies, impositions or charges now or hereafter levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed any tax or other charge on or in respect of the Premises or the rents, income or gross receipts of Landlord therefrom (including any municipal, state, or federal levy), then such tax or charge shall be deemed an imposition, but only to the extent that such imposition would be payable if the Premises or the rent, income or gross receipts received therefrom, were the only property of Landlord subject to such imposition, and Tenant shall pay and discharge the same as herein provided in respect of the payment of impositions.

2.6 Tenant shall pay monthly, or as Landlord may otherwise demand, all HVAC maintenance contract charges (if any), stand-by fire protection, sprinkler system and central station alarm charges charged with respect to the Premises. Tenant shall also pay, when due, all charges for heat, electricity, gas and other public and private utilities and services furnished to the Premises during the Term.

2.7 If Tenant shall fail to pay, within ten (10) days of the date when the same is due and payable, any rent or other charge pursuant to this Lease, Tenant shall upon demand pay Landlord a late charge of five (5%) percent of the amount past due, or, if such late charge shall exceed the maximum late charge permitted by law, the Tenant shall pay the maximum late charge permitted by law.

2.8 Except as otherwise expressly provided in this Lease, (a) this Lease shall be deemed and construed to be a "net-net-net" Lease; (b) Landlord shall receive all rent from Tenant free from any and all charges, assessments, expenses or deductions of any and every kind or nature whatsoever, to the end that this Lease shall yield net to Landlord the rent and additional rent payable hereunder during each year of the Term; and (c) all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises during the Term shall be paid or cause to be paid by Tenant.

3. USE OF PREMISES, COMPLIANCE WITH LAWS

3.1 Subject to Section 3.2, the Premises may be used only for the manufacturing, packaging and distribution of pharmaceutical products and related offices.

3.2 Tenant shall not use or occupy or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, make void or voidable any insurance then in force with respect thereto, or which may make it more costly (unless Tenant pays the increased cost therefor) or impossible to obtain fire or other insurance thereon, cause or be apt to cause structural

injury to the Building or any part thereof, constitute a public or private nuisance, or which may violate any present or future, ordinary or extraordinary, foreseen or unforeseen Legal Requirements or Insurance Requirements, as hereinafter defined. In addition, Tenant shall not allow any animals to be kept on the Premises or use or allow the Premises to be used for residential or dwelling purposes.

3.3 Tenant shall, at its expense, promptly comply or cause compliance with, and not jeopardize or make more costly Landlord's compliance with (but it being agreed that except as may otherwise be expressly set forth to the contrary in this Lease, compliance with the following shall be the obligation of Tenant at Tenant's expense):

3.3.1 the requirements of every statute, law, ordinance, regulation, rule, requirement, order or directive, including but not limited to the Americans with Disabilities Act of 1990, now or hereafter made by any federal, state, city or county government or any department, political subdivision, bureau, agency, office or officer thereof, or of any other governmental authority having jurisdiction with respect to and applicable to (i) the Premises, (ii) the condition, equipment, maintenance, use or occupation of the Premises, including, without limitation, such of the foregoing applicable to the making of any alteration or addition in or to any structure appurtenant thereto and to pollution and environmental control; and (iii) the tenants or subtenants thereof (all of the foregoing being herein referred to as "Legal Requirements"); and

3.3.2 the rules, regulations, orders and other requirements of the National and any local Board of Fire Underwriters, or other body having the same or similar functions and having jurisdiction of, and which are applicable to, the Premises and of any liability, fire or other insurance policy which Tenant or Landlord is required hereunder to maintain (herein referred to as "Insurance Requirements"), whether or not such compliance involves changes in the use of the Premises or any part thereof, or be required on account of any particular use to which the Premises, or any part thereof may be put, and whether or not any such Legal Requirements or Insurance Requirements be of a kind not now within the contemplation of the parties hereto.

3.4 Notwithstanding anything to the contrary contained in this Section 3, Landlord shall be responsible for any alterations that should have been made to the Building upon its completion in 1988 (the "Completion Date") in order that the Building would have been in substantial compliance with Legal Requirements on the Completion Date, however Landlord shall be obligated under this Section 3.4 only if and to the extent that such alterations would, as of the date hereof, be mandated by

the appropriate governmental authority(ies) with jurisdiction thereover but only to the extent of compliance with Legal Requirements in effect as of the Completion Date.

4. LIMITED REPRESENTATIONS BY LANDLORD

4.1 Tenant covenants and agrees that it will accept the Premises in their existing "as is" state or condition as of the date of delivery of possession and without any further representation or warranty, express or implied, in fact or by law, by Landlord or its agents and without recourse to Landlord or its agents, as to the nature, condition, or useability thereof, the title thereto, or the use or occupancy which may be made thereof, except as specifically provided in this Lease.

4.2 Landlord hereby makes the following representations and warranties to Tenant:

4.2.1 Landlord has insurable title to the Property and there is no outstanding tenancy, lease or right to possession of the Premises.

4.2.2 For a period of one (1) year from and after the Commencement Date, Landlord shall maintain the structure of the Building, the roof of the Building, and the plumbing, electrical and sewer systems in good working order, unless the repair is occasioned by (a) the act or omission of Tenant, its agents, employees, guests, licensees, invitees, subtenants,

assignees, successors or independent contractors or (b) any alteration made to the Building by or on behalf of Tenant, in which events Tenant shall be responsible for such repairs.

4.2.3 The use of the Premises for the limited purposes set forth in Section 3.1 of this Lease are, as of the date hereof, permitted uses under the Lakewood Township Code.

5. INSURANCE

5.1 Landlord shall maintain the following types of insurance in the amounts specified, and Tenant shall pay to Landlord, monthly, or as Landlord may otherwise demand, all premiums therefor:

5.1.1 Fire and extended coverage insurance covering the Building against loss or damage by fire and other risks now or hereafter embraced by "all risk" coverage with vandalism and malicious mischief endorsements in an amount not less than 100% of the full replacement value of the Building, without deduction for depreciation (including coverage for increased costs of construction, demolition and building ordinance casualties).

5.1.2 Rent or rental value insurance against loss of rent or rental value due to fire, including extended coverage endorsement, with vandalism and malicious mischief endorsements, in an amount equal to two years' rent for the Building.

5.1.3 Such other insurance, and in such amounts, as may from time to time be reasonably placed by the Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated, including without limitation, flood hazard

insurance if the Building is located in a designated flood hazard area and commercial general liability insurance.

5.2 During the Term, Tenant, at Tenant's sole cost and expense, shall carry and maintain:

5.2.1 Commercial general liability insurance, including property damage liability coverage, protecting and indemnifying Tenant, Landlord (and naming Landlord as additional insured thereon) and any designee of Landlord against damages to person or property, or for loss of life or of property occurring in or about the Premises or arising out of the ownership, maintenance, use or occupancy thereof. The coverage limits of the policy shall be at least $3,000,000 combined single limit.

5.2.2 Fire and extended coverage insurance covering Tenant's personal property, improvements and alterations, against loss or damage by fire and other risks now or hereafter embraced by "all risk" coverage, with vandalism and malicious mischief endorsements, to the extent of at least ninety (90%) percent of their full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of Tenant's improvements or alterations, unless this Lease is terminated in which case such proceeds shall be paid to Tenant.

5.3 Upon the commencement of the Term and thereafter not less than 30 days prior to the expiration dates of the expiring policies theretofore furnished by Tenant pursuant to Section 5.2, Tenant shall deliver to Landlord certificates of the insurers showing the requisite coverage to be in full and in force for the pertinent period. All such insurance shall be in form, providing coverage and be maintained with carriers, reasonably satisfactory to the Landlord (Landlord hereby deeming Chubb Insurance Company to be acceptable to it as of the date hereof).

5.4 Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be furnished pursuant to Section 5.1 unless such additional insurance is written on an excess or contingency basis and does not reduce the amounts payable in the event of loss covered by the insurance maintained pursuant to Section 5.1. If Tenant takes out any such separate insurance, it shall immediately notify Landlord thereof and shall deliver copies of the policies to Landlord.

5.5 All policies of insurance provided for in Section 5.1.1 shall name Landlord and any fee mortgagee as the insureds as their respective interests may appear, as to any such mortgagee, by standard mortgagee clause without contribution, but with proceeds payable to Landlord or as such fee mortgagee may require. Any loss under such policy shall be adjusted with the insurance company solely by Landlord. All policies of insurance provided for in Section 5.1.2 shall name Landlord as the insured with proceeds payable to, and to be adjusted by, Landlord.

5.6 Notwithstanding any provision to the contrary contained in this Lease, Landlord and Tenant hereby release each other and each other's officers, directors, employees and agents, from liability or responsibility for any loss or damage to property covered by valid and collectible fire insurance with standard extended coverage endorsement or which would have been covered under insurance

required to be maintained pursuant to this Lease. This release shall apply not only to liability and responsibility of the parties to each other, but shall also extend to liability and responsibility for anyone claiming through or under the parties by way of subrogation or otherwise. This release shall apply even if the fire or other casualty shall have been caused by the fault or negligence of a party or anyone for whom a party may be responsible. However, this release shall apply only with respect to loss or damage actually recovered from an insurance company or which would have been recovered had the insurance required by this Lease been maintained. This release shall not apply to loss or damage of property of a party unless the loss or damage occurs during the times the fire or extended coverage insurance policies of a party contain a clause or endorsement to the effect that any release shall not adversely affect or impair the policies or prejudice the right of the party to recover thereunder; provided that if any policy required to be covered under this Lease does not contain such clause or endorsement, the party maintaining such insurance had so notified the other party at least thirty (30) days prior to the casualty in question. Landlord and Tenant each agree that any fire and extended coverage insurance policies covering the Premises or contents shall include this clause or endorsement as long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays the extra cost. If extra cost shall be chargeable, the party whose policy is subject to the extra cost shall advise the other thereof, and of the amount of the extra cost.

5.7 Each policy or certificate therefor furnished by Tenant pursuant to Section 5.3 shall contain an agreement by the insurer that should such policy be canceled prior to its expiration date the insurer will endeavor to give Landlord at least 30 days' prior written notice of cancellation.

5.8 No policy furnished by Tenant pursuant to Section 5.2 shall have a deductible or a self-insured amount in excess of $2,500.00 (provided Landlord shall not unreasonably withhold its consent to any increase in such amount up to $50,000.00).

6. DAMAGE OR DESTRUCTION

6.1 In every case of fire, explosion, damage by the elements or other casualty, Tenant shall immediately give notice to Landlord.

6.2 In the event the Building, or any portion thereof, is damaged by fire or other perils covered by insurance maintained by Landlord pursuant to Section 5.1, to an extent not exceeding fifty percent (50%) of the full insurable value of the Building and if the damage thereto is such that the repair or restoration thereof may, in Landlord's reasonable opinion, be completed within one hundred twenty (120) days from the date of such casualty and Landlord will receive insurance proceeds sufficient to cover the entire cost of such repair and restoration, less the applicable deductible, Landlord shall commence and proceed diligently with the work of repair and restoration and this Lease shall continue in full force and effect. If such work of repair and restoration requires a period longer than one hundred twenty (120) day to complete, in Landlord's reasonable opinion (as evidenced by a written estimate from a contractor selected by Landlord and reasonably acceptable to Tenant), or exceeds fifty (50%) of the full insurable value of the Building, or if said insurance proceeds will not be sufficient to cover the entire cost of such repairs, or is not an insured peril, Landlord may either elect to so repair and

restore the Building and this Lease shall continue in full force and effect, or Landlord may elect not to so repair and restore the

Building and this Lease shall in such event terminate. Under any of the conditions contained in this Section 6.2, Landlord shall give written notice (the "Restoration Notice") to Tenant of its intention with forty-five (45) days from the date of such event of damage or destruction. In the event Landlord elects not to restore the Building, this Lease shall be deemed to have been terminated as of the date of such damage or destruction (except to the extent that Tenant remains in possession of any part of the Building beyond the date of such damage or destruction, in which case as to such occupied part of the Building the Lease shall be deemed terminated as of the date Tenant surrenders same to Landlord, and the basic annual rental hereunder shall be reduced on an equitable basis from and after the date of damage or destruction). The Restoration Notice shall provide an estimate of the time required, in Landlord's reasonable business judgment, to repair or restore the damage and, if such estimate is longer than one hundred twenty (120) days, the damage has materially impaired Tenant's use of the Premises and the damage is not the result of the willful misconduct of Tenant or Tenant's agents, employees, licensees, invitees, contractors or subtenants, Tenant shall have the right to terminate this Lease by written notice of such election to Landlord within fifteen (15) days after receipt of the Restoration Notice. Tenant shall also have the right to terminate this Lease effective as of the date of the damage or destruction (except to the extent that Tenant remains in possession of any part of the Building beyond the date of such damage or destruction, in which case as to such occupied part of the Building the Lease shall be deemed terminated as of the date Tenant surrenders same to Landlord, and the basic annual rental hereunder shall be reduced on an equitable basis from and after the date of damage or destruction) in the event that (i) Landlord shall not deliver the Restoration Notice within the specified forty-five (45) day period, or (ii) Landlord, after having elected to restore, shall not have substantially completed the restoration with the specified one hundred twenty day (120) period (or such longer period specified in the Restoration Notice); and Tenant's option to terminate specified in this sentence shall be exercised by written notice to Landlord within sixty (60) days after the casualty event as to clause (i) and within one hundred thirty-five (135) days after the casualty event as to clause (ii).

6.3 Upon any termination of this Lease under any of the provisions of Section 6.2, the parties shall be released without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have theretofore accrued and are then unpaid.

6.4 In the event of repair or restoration by Landlord as herein provided, the rent payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such repair or restoration. In no event shall Tenant be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by such damage, repair or restoration.

6.5 Tenant shall not be released from any of its obligations under this Lease in an event of casualty except to the extent and upon the conditions expressly stated in this Section 6.

6.6 If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to make repair or restoration only to those portions of the Premises which were originally provided at Landlord's expense, and the repair and restoration of items within the Premises not provided at Landlord's expense shall be the obligation of Tenant. Tenant agrees to coordinate the restoration and repair of those items it is required to restore or repair with Landlord's

repair and restoration work and in coordination with a work schedule prepared by Landlord, or Landlord's contractor. Further, Tenant's work shall be performed in accordance with the terms, standards and conditions contained in Article 9 hereof.

6.7 Notwithstanding anything to the contrary contained in this Section 6, Landlord shall not have any obligation whatsoever to repair or restore the Building when the damage thereto is the result of any casualty which occurs during the last twelve (12) months of the term of this Lease or any extension hereof. However, Landlord shall be required to give the Restoration Notice to Tenant of its intention within thirty (30) days from the date of such event of damage or destruction. In the event Landlord elects not to restore the Building, Tenant shall have the right to terminate the Lease by delivering notice thereof to Landlord within fifteen (15) days after receipt of such notice, in which case this Lease shall be deemed to have been terminated as of the date of such damage or destruction (except to the extent that Tenant remains in possession of any part of the Building beyond the date of such damage or destruction, in which case as to such occupied part of the Building the Lease shall be deemed terminated as of the date Tenant surrenders same to Landlord, and the basic annual rental hereunder shall be reduced on an equitable basis from and after the date of damage or destruction). In addition, and notwithstanding anything to the contrary contained in Section 6, in the event the Building or any portion thereof is damaged by fire of other perils during the last twelve (12) months of the term of this Lease or any extension hereof such that the repair or restoration thereof may not, in Landlord's reasonable opinion, be completed within sixty (60) days from the date of such casualty, Landlord and Tenant shall have the right, upon written notice to the other, to terminate this Lease. Notwithstanding the foregoing, this provision shall not be applicable during the last twelve (12) months of the (a) original Term if Tenant has properly exercised the option to extend the Term for the first Renewal Term as provided in Section 32, and (b) first Renewal Term of Tenant has properly exercised the option to further extend the Term for the second Renewal Term as provided in Section 32.

6.8 Notwithstanding anything to the contrary contained in this Lease, if (i) the damage or destruction results from the fault of Tenant or any of its agents, employees, licensees, invitees, subtenants, guests, assigned or contractors, and (ii) the insurance proceeds received by Landlord (or the proceeds that would have been received by Landlord had it maintained the insurance required under Section 5.1.1) are not sufficient (without regard to any deductible) to cover the entire cost of repairs, the Tenant shall be responsible for the cost to replace, repair or rebuild the damaged or destroyed improvements to substantially their condition prior to the casualty event to the extent of the insurance proceeds deficiency.

6.9 Tenant agrees that the foregoing provisions are in lieu of any other rights or remedies that Tenant may have pursuant to N.J.S.A. 46:8-6 or 46:8-7, and Tenant waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

7. CONDEMNATION

7.1 If the whole of the Premises shall be taken under the power of eminent domain by any public or private authority or in the event of sale to such authority in lieu of formal proceedings of eminent domain, then this Lease shall cease and terminate as of the date of such taking or sale, which date

is defined, for all purposes of this Section 7, as the date the public or private authority has the right to possession of the property being taken or sold.

7.2 In the event of any taking or sale of all or any part of the Premises, the entire proceeds of the award or sale shall be paid to Landlord, and Tenant shall have no right to any part thereof, provided, however, that nothing contained herein shall be construed to prevent Tenant from recovering any allowance for its personal property, moving expenses and other awards which the law permits to be made to tenants, so long as such allowance does not diminish the award paid to Landlord.

7.3 If any public or private authority shall, under the power of eminent domain, make a taking, or should a sale in lieu thereof occur, of less than the whole of the Premises then Landlord may, at its election if Landlord in its sole and reasonable discretion determines that it is not commercially feasible for it to continue operating the Premises, terminate this Lease by giving Tenant written notice of the exercise of its election within 20

days after the nature and extent of the taking or sale have been finally determined. In the event of termination by Landlord under the provisions of this Section 7.3, this Lease shall cease and terminate as of the date of such taking or sale. If Landlord does not so terminate this Lease, subject to Section 7.5, this Lease shall continue in full force and effect.

7.4 In the event of a partial taking or sale not resulting in a termination of this Lease pursuant to Section 7.3, Landlord shall, if Landlord's mortgagee consents thereto, effectuate all such repairs and restoration as are necessary to restore the Premises for the operation of Tenant's business, to the extent net proceeds of the award or sale are available, but nothing contained herein shall be construed so as to require Landlord to pay any cost of repair in excess of the net proceeds of the award or sale price received from the condemning authority. In such case, as of the date of the taking, the basic and additional rent reserved hereunder shall be reduced, but only until such time as Landlord completes its repair or restoration in accordance herewith, by an amount that is in the same ratio to the rental then in effect as the value of the portion of the Premises taken or sold bears to the total value of the Premises immediately before the date of taking or sale (provided that an equitably determined abatement shall continue to compensate Tenant for any loss of use or enjoyment of the Premises which continues after such repair or restoration). If the net proceeds of the award or sale are not sufficient to repair or restore the Premises, Tenant may, at its own expense, complete such repairs or restoration, in accordance with the terms of this Lease.

7.5 Tenant shall have the option, to be exercised by written notice to Landlord within fifteen (15) days after such taking or sale, to terminate this Lease in the event (i) more than 10% of the floor area of the Building is taken in condemnation; (ii) (A)(1) more than 15% of the parking area on the Premises is taken in condemnation, or (2) less than 15% of the parking area is taken in condemnation and the Township of Lakewood revokes the certificate of occupancy for the Building, and (B) Landlord (or an affiliate thereof) shall not provide reasonable alternative parking to Tenant; or (iii) the Lease continues notwithstanding a partial condemnation and within 120 days after the condemnation, Landlord does not restore the balance of the Premises substantially to their condition prior to the condemnation.

7.6 The taking of the Premises or any part thereof by military or other public authority shall constitute a taking of the Premises under the power of eminent domain only when the use and

occupancy by the taking authority has continued for longer than 90 consecutive days. During the 90-day period all the provisions of this Lease shall remain in full force and effect, except that rental reserved (including the additional rent) shall be abated during such period of taking based on the extent to which the taking interferes with Tenant's use of the Premises. Landlord shall be entitled to whatever award may be paid for the use and occupation of the Premises for the period involved.

8. SUBORDINATION, ATTORNMENT, ESTOPPEL CERTIFICATE

8.1 Provided Landlord obtains a Non-Disturbance Agreement (hereinafter defined), this Lease is and shall be subject to all mortgages which may now or hereafter affect the Premises, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, consolidations, replacements, and extensions of such mortgages irrespective of the date of recording thereof. In confirmation of such subordination, Tenant agrees, without payment to Tenant of any consideration therefor, to promptly (but in any event, with ten (10) days of request) execute and deliver any Non-Disturbance Agreement that Landlord or the holder of any such mortgage or any of their respective successors in interest may request to evidence such subordination. The mortgages to which this Lease is, at the time referred to, subject and subordinate shall sometimes be collectively called "superior mortgages." Landlord shall, upon the request of Tenant, use its good faith efforts to obtain from the holder of any superior mortgage an agreement (a "Non-Disturbance Agreement") in a commercially reasonable form, to the effect that provided Tenant is not in default under this Lease Tenant's possession of the Premises shall not be disturbed in the event that the holder of a superior mortgage forecloses its superior mortgage; provided, however, Landlord (i) shall not be required to incur any costs or liabilities in connection therewith and

(ii) shall not have any liability to Tenant if Landlord shall fail to procure such Non-Disturbance Agreement.

8.2 In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right: (i) until it has given written notice of such act or omission to the holder of each superior mortgage whose name and address shall previously have been furnished to Tenant in writing and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such mortgage holder within thirty (30) days, until a thirty (30) day period for remedying such act or omission shall have elapsed following the giving of such notice), provided such holder shall with due diligence give Tenant written notice of intention to, and commence and continue to, remedy such act or omission.

8.3 If the holder of a superior mortgage shall succeed to the rights of Landlord, then at the request of such party so succeeding to Landlord's rights (herein sometimes called successor-landlord) and upon such successor-landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such successor-landlord as Tenant's landlord under this Lease and shall promptly, without payment to Tenant of any consideration therefor, execute and deliver any commercially reasonable instrument that such successor-landlord may request to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between the successor-landlord and Tenant upon all of the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment, except that the

successor-landlord shall not: (i) be obligated to repair, restore, replace, or rebuild the Property, in case of total or substantially total damage or destruction, beyond such repair, restoration or rebuilding as can reasonably be accomplished with the net proceeds of insurance actually received by, or made available to, the successor-landlord; (ii) be liable for any previous act or omission of Landlord; (iii) be subject to any prior defenses or offsets; (iv) be bound by any modification of this Lease not expressly provided for in this Lease or by any previous prepayment of more than one month's rent (except to the extent received by such successor-landlord), unless such modification or prepayment shall have been expressly approved in writing by the holder of the superior mortgage through or by reason of which the successor-landlord shall have succeeded to the rights of Landlord; or (v) be liable for the performance of Landlord's covenants and agreements contained in this Lease to any extent other than to the successor-landlord's ownership in the Premises, and no other property of such successor-landlord shall be subject to levy, attachment, execution or other enforcement procedure for the satisfaction of Tenant's remedies,

8.4 In the event that a bona fide institutional lender shall request reasonable modifications to this Lease, then Tenant shall not unreasonably withhold or delay its written consent to such modifications provided that the same do not (and Tenant shall not demand the payment to Tenant of any consideration for consent thereto), increase in any material manner the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's use and enjoyment of the Premises.

8.5 Tenant agrees, at any time, and from time to time (and without payment to Tenant of any consideration therefor), upon not less than ten (10) days' prior notice by Landlord, to execute, acknowledge and deliver to Landlord, a statement in writing addressed to Landlord (and/or Landlord's designee) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent has been paid, stating such other information concerning this Lease and Tenant's tenancy as Landlord reasonably shall request, and stating whether or not there exists any default in the performance by Landlord of any term, covenant or condition contained in this Lease and, if so, specifying each such default, it being intended that any such statement delivered pursuant to this Section 8.5 may be relied upon by Landlord and by any mortgagee or prospective mortgagee of any mortgage affecting the Property or any purchaser or prospective purchaser of the Property. When so requested by Landlord, such statement shall be submitted in writing under oath by a person or persons having knowledge of the statements

made therein.

9. REPAIRS, MAINTENANCE, ALTERATIONS, ETC.

9.1 Except as provided in Sections 3.5, 4.2.2, 6, 7 and the next sentence in this Section 9.1, Tenant at its cost shall maintain, in good condition, and shall repair if damaged and replace as required, all portions of the Premises, including, without limitation, the HVAC system, all of Tenant's personal property, the roof, exterior walls, steel structures and plumbing, electrical and sprinkler systems of the Building, and the grounds, driveways and parking areas on the Premises (including removal of ice and snow from the sidewalks and curbs on the Premises) and the Landlord shall not be required to furnish any services or facilities or to make any repairs, replacements or alterations in or to the Premises. Notwithstanding the foregoing, Landlord shall be responsible for normal and ordinary landscaping

maintenance, snow removal from parking areas, and well and irrigation system maintenance, unless any such maintenance is necessary as a result of the negligence or misconduct of Tenant or any of Tenant's agents, employees, licenses, invitees, subtenants or contractors, in which case Tenant shall be responsible for such maintenance.

9.2 Landlord shall not be liable for any failure of water supply, gas or electric current or of any utility or for any damage to property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewers, gas mains or any sub-surface area or from any part of the Building, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, or for interference with light or other incorporeal hereditaments by anyone, or caused by operations by or of any public or quasi-public work.

9.3 Tenant shall have the right to make, at its sole cost and expense, additions, alterations and changes (collectively, "Alterations") in or to the Building, provided Tenant shall not then be in default in the performance of any of the covenants in this Lease beyond any applicable notice or grace period, subject, however, in all cases to the following conditions:

9.3.1 No Alterations shall be commenced except after fifteen (15) days' prior written notice, which shall include reasonably detailed final plans and specifications and working drawings of the proposed Alterations and the name of the contractor, to Landlord.

9.3.2 No single, integrated Alteration costing in excess of $25,000.00 and no structural, Building system or exterior Alterations, regardless of cost, shall be made without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing Landlord hereby consents to the performance by Tenant of the Alterations specified on Exhibit B.

9.3.3 No Alterations shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all governmental authorities having jurisdiction.

9.3.4 All Alterations shall be made promptly (unavoidable delays excepted), in a good and workmanlike manner and in compliance with all applicable permits, authorizations and all Legal Requirements and all Insurance Requirements.

9.3.5 Before commencing the Alterations and at all times during construction, Tenant's contractor shall maintain builder's risk insurance coverage satisfactory to Landlord.

9.3.6 If the estimated cost of the Alterations exceeds $100,000.00, before the commencement of the Alterations Tenant at its cost shall furnish to Landlord a performance and completion bond issued by an insurance company qualified to do business in New Jersey in a sum equal to the cost of the Alterations (as determined by the construction contract between Tenant and its

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contractor) guaranteeing the completion of the Alterations free and clear of all liens and other charges, and in accordance with the plans and specifications.

9.4 Prior to the expiration of the Term or sooner termination of this Lease, Tenant, at Tenant's cost, shall remove any Alterations that Tenant has made to the Premises and repair any damage caused by the removal of such Alterations. Notwithstanding the foregoing, Tenant, at its election, shall not be required to so remove those Alterations described on Exhibit C annexed hereto, provided, however, if Tenant shall elect to so remove any of such Alterations, it shall do so prior ro the expiration of the Term or sooner termination of this Lease, and repair any damage caused by the removal of such Alterations. This Section shall survive the expiration or termination of this Lease.

10. SECURITY DEPOSIT

10.1 Tenant has this day deposited (by check subject to collection) with Landlord the sum of $33,666,67 to secure the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed, which sum shall be returned to Tenant without interest promptly after the expiration of the Term, less any amount, applied by Landlord pursuant to this Section 10 and not previously restored by Tenant. In no event shall Tenant be entitled to credit against any rent due hereunder by virtue of the deposit of such security. In the event of a sale of the Premises, Landlord shall have the right to transfer the security to the vendee for the benefit of Tenant, and Landlord shall be considered released by Tenant from all liability for the return of such security; Tenant shall look to the new landlord solely for the return of the security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new landlord. The security deposited under this Lease shall not be mortgaged, assigned or encumbered by Tenant. Tenant shall from time-to-time deposit additional amounts hereunder so that the total amount deposited hereunder shall at all times be equal to $33,666.67.

11. ASSIGNMENTS, SUBLETTING AND MORTGAGING

11.1 Neither Tenant, nor Tenant's successors or assigns, shall (unless expressly permitted to do so) assign, mortgage, pledge or encumber this Lease, in whole or in part, or sublet the Premises, in whole or in part, or permit the same or any portion thereof to be used or occupied by others, or enter into a management contract or other arrangement whereby the Premises shall be managed and operated by anyone other than the then owner of Tenant's leasehold estate, nor shall this Lease be assigned or transferred by operation of law, without the prior consent in writing of Landlord in each instance. If this Lease be so assigned or transferred, or if all or any part of the Premises be sublet or occupied by anybody other than Tenant, Landlord may, after such default by Tenant, collect rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of the terms, covenants and conditions of this Lease, and Tenant shall continue to be liable under this Lease. The consent by Landlord to an assignment, mortgage, pledge, encumbrance, transfer, management contract or subletting shall not be construed to relieve Tenant from obtaining the express

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consent in writing of Landlord to any further assignment, mortgage, pledge, encumbrance, transfer, management contract or subletting. Landlord shall have the right to unreasonably withhold its consent to an assignment (except as provided in Section 11.6), mortgage, pledge or other encumbrance, however Landlord shall not unreasonably withhold its consent to a proposed subletting (subject, however, to the provision of Section 11.3). Notwithstanding anything to the contrary herein contained, an assignment of this Lease shall include, without limitation, the following: (a) if Tenant shall be a corporation and a controlling amount of its voting stock or all or substantially all its assets shall be sold, mortgaged, assigned, pledged, encumbered or otherwise transferred

(whether in one (1) single transaction or in more than one (1) successive transaction); or (b) if Tenant shall be a partnership, limited liability company, joint venture, syndicate or other group and all or any portion of the interest of any partner, member or other equity holder shall be sold or otherwise transferred (however this provision shall not, as to a corporation or other entity whose stock or other equity interests are publicly traded on a recognized stock exchange, be applicable to sales of stock or other equity interests on such stock exchange).

11.2 If Tenant shall desire to assign this Lease or sublet all or a portion of the Premises, Tenant shall submit to Landlord a written request for Landlord's consent to such assignment or subletting, which request shall contain or be accompanied by the following information: (a) the name and address of the proposed assignee or subtenant, (b) in the case of a proposed subletting, a description identifying the space to be sublet and the term of such subletting, (c) the nature and character of the business of the proposed assignee or subtenant, (d) in the case of a proposed assignment, a current financial statement of the proposed assignee, and (e) the proposed form of the instrument of assignment or sublease.

11.3 Notwithstanding anything to the contrary contained in Section 11.1, Landlord shall not unreasonably withhold its consent to a proposed sublease provided that (a) the proposed subtenant shall not have a character or reputation or be engaged in a business, in the reasonable opinion of Landlord, making it unsuitable for occupancy in the Lakewood Industrial Park, and (b) the proposed subtenant shall not be either (i) an occupant of any space in the Building or any other space in Ocean County owned by Landlord or an affiliate thereof, or (ii) a person to whom, in response to a written request submitted by such person, Landlord (or an affiliate thereof), during the one hundred eighty (180) day period prior to the submission of Tenant's request for consent, has submitted a lease proposal, or whom, during the one hundred eighty (180) day period prior to the submission of Tenant's request for consent, has submitted to Landlord a lease proposal. Landlord shall, within fifteen (15) days after its receipt of the materials required by this Section 11.3, either (1) grant its consent or (2) withhold consent; provided, however, Landlord shall not be required to consent if a default under this Lease by Tenant shall have occurred and remain uncured.

11.4 Tenant, within twenty (20) days of its receipt of Landlord's request therefor, shall reimburse Landlord for all reasonable out-of-pocket costs incurred by Landlord in considering whether or not to consent, including reasonable attorney's fees and disbursements and the reasonable costs of making investigations regarding the proposed subtenant or assignee. After Landlord shall have granted its consent, but before the subtenant or assignee shall take possession, Tenant shall deliver to Landlord a fully-executed counterpart of the sublease or instrument of assignment.

11.5 If Tenant shall sublease any portion of the Premises or assign this Lease, Tenant shall pay to Landlord fifty percent (50%) of any consideration received by Tenant (net of reasonable costs incurred by Tenant to effect any such assignment or sublet, such as advertising, brokerage, legal and construction expenses) from the subtenant or assignee, as the case may be, to the extent such consideration exceeds the basic annual rental and additional rent payable hereunder.

11.6 Notwithstanding the provisions of Section 11.1, Tenant may, without the consent of Landlord, assign this Lease, or sublease all or any part of the Premises, to any Successor (hereinafter defined). As used above, the term "Successor" shall mean an entity (a) succeeding to Tenant by merger, consolidation or sale or other transfer of all or substantially all the assets of Tenant, and (b) whose net worth as of the effective date of the assignment or sublease shall be equal to or greater than the net worth of Tenant at such time. All financial criteria set forth in this Section 11.6 shall be determined in accordance with generally accepted accounting principles consistently applied and based upon financial statements of Tenant and such assignee audited by an independent public accounting firm.

11.7 Any subletting, whether made with or without Landlord's consent, shall be subject and subordinate to this Lease. Furthermore, notwithstanding any assignment of this Lease or subletting of all or any part of

the Premises, whether made with or without Landlord's consent, the Tenant originally named herein, and each Successor Tenant, shall be and remain jointly and severally liable for all obligations of Tenant hereunder.

12. INDEMNITY

12.1 Notwithstanding that joint or concurrent liability may be imposed upon Landlord by statute, ordinance, rule, regulation, order, or court decision, Tenant shall, notwithstanding any insurance furnished pursuant hereto or otherwise, indemnify, protect, defend and hold harmless Landlord (which for purposes of this Section 12.1 shall include its agents, employees, partners and principals) from and against any and all liability, fines, suits, claims, obligations, damages, losses, penalties, demands, actions and judgments, costs and reasonable expenses of any kind or nature (including reasonable attorneys' fees) (collectively,"Costs"), by anyone whomsoever, due to or arising out of:

12.1.1 any work or thing done in, on or about the Premises or any part thereof by Tenant or anyone claiming through or under Tenant or the respective employees, agents, licensees, contractors, servants or subtenants of Tenant or any such person;

12.1.2 any use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including, without limitation, any air, land, water or other pollution caused by Tenant;

12.1.3 any negligence or wrongful act or omission on the part of Tenant or any person claiming through or under Tenant or the respective employees, agents, licensees, invitees, contractors, servants or subtenants of Tenant or any such person;

12.1.4 any accident or injury to any person (including death) or damage to property (including loss of property) occurring in or on the Premises or any part thereof,

12.1.5 any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with; and

12.1.6 any failure on the part of Tenant to perform or comply with Legal Requirements or Insurance Requirements.

In case any action or proceeding is brought against Landlord by reason of any of the foregoing, Tenant, upon written notice from Landlord shall, at Tenant's expense, resist or defend or cause to be resisted or defended such action or proceeding. Tenant or its counsel shall keep Landlord apprised at all times of the status of the action or proceeding. At the request of Tenant, Landlord will cooperate with Tenant in any such action or proceeding, and will execute any documents and pleadings reasonably required for such purpose, Tenant hereby agreeing to save Landlord harmless from all cost, expense (excluding attorneys' fees), loss and damage on account of, growing out of, or resulting from, such cooperation. The establishment of limits of coverage for the insurance required by Section 5 shall not serve in any way to limit Tenant's obligations pursuant to this Section 12. The provisions of this Section shall survive the expiration or termination of this Lease.

Notwithstanding the foregoing provisions of this Section 12.1, Tenant shall not be obligated to indemnify Landlord to the extent any Costs result from the (a) negligence or misconduct of Landlord or Landlord's agents, employees or contractors, or (b) breach of this Lease by Landlord,

12.2 To the extent not covered by insurance, Landlord agrees to indemnify, defend (with counsel reasonably approved by Tenant) and hold Tenant harmless from and against all Costs resulting from any accident or injury to any person occurring in or on the Premises resulting from the negligence of Landlord or Landlord's agents, employees or contractors; provided, however, the foregoing indemnity shall not include any Costs for which Tenant is otherwise responsible under Section 12.1.

13. DEFAULT PROVISIONS, LANDLORD'S REMEDIES

13.1 Any of the following events ("Events of Default") shall constitute a default under this Lease:

13.1.1 Tenant's default in the payment of any installment of rent, or in the payment of any additional rent, on any day upon which the same shall be due and payable and such default shall continue for five (5) days after the date on which Tenant is given notice that such payment is past due(the "Rent Grace Period"), provided, however, Tenant shall have the benefit of the Rent Grace Period not more frequently than two (2) times in any six (6) month period; or

13.1.2 Tenant's doing or permitting anything to be done, whether by action or inaction, contrary to any of Tenant's obligations pursuant to this Lease (except as to the payment of rent

and additional rent and the matters set forth in Sections 13.1.3 and 14) and such situation shall continue and shall not be remedied by Tenant within thirty (30) days after Landlord shall have given to Tenant notice specifying the same; or, in the case of a happening or default which cannot with due diligence be cured within a period of thirty (30) days and the continuance of which for the period required for cure will not subject Landlord (or any of its directors, officers, shareholders, partners, agents or employees) to the risk of criminal or civil liability or foreclosure of any superior mortgage or any other lien on the Premises, if Tenant shall not duly institute within such 30 day period and promptly and diligently prosecute to completion all steps necessary to remedy the same; or

13.1.3 The occurrence of any event or the arising of any contingency whereby this Lease, any interest in it, the estate thereby granted or, any portion thereof, or the unexpired balance of the Term would by operation of law or otherwise devolve upon or pass to any person, firm or corporation other than Tenant, except as expressly permitted by Section 11.

13.2 Upon the occurrence of any Event of Default, the Landlord may exercise any one or more of the following remedies, in addition to all other remedies provided in this Lease and by law or in equity:

13.2.1 The Landlord may, by written notice to Tenant, accelerate all rental and other sums due or to become due hereunder, which shall thereupon be immediately due and payable in full.

13.2.2 The Landlord may give the Tenant a notice (the "Termination Notice") of its intention to terminate this Lease and, upon the day specified in the Termination Notice, this Lease and the term and estate hereby granted shall expire and terminate and all rights of the Tenant under this Lease shall expire and terminate, but the Tenant shall remain liable for damages as hereinafter set forth. Notwithstanding the foregoing, the Landlord may institute dispossess proceedings for non-payment of rent, distraint or other proceedings to enforce the payment of rent without giving the Termination Notice.

13.3 Upon any such termination or expiration of this Lease, or other termination of Tenant's possession under this Lease, the Tenant shall peaceably quit and surrender the Premises to the Landlord, and the Landlord or Landlord's agents and employees may without further notice immediately or at any time thereafter enter upon or re-enter the Premises, or any part thereof, and possess or repossess itself or themselves thereof either by summary dispossess proceedings, ejectment, any suitable action or proceeding at law, agreement, force or otherwise, and may dispossess and remove Tenant and all other persons and property from the Premises without being liable to indictment, prosecution, or damages therefor, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises again. The words "enter" or "reenter", "possess" or "repossess" as used in this Lease are not restricted to their technical legal meaning.

13.4 In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or provided in this Lease.

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13.5 Each right and remedy of the Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Landlord of any one or more of the rights of remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

13.6 Suit or suits for the recovery of damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained in this Lease shall be deemed to require Landlord to postpone suit until the date when the term of this Lease would have expired if it had not been so terminated under the provisions of this Section 13 or under any provision of law, or had Landlord not re-entered the Premises. Nothing contained in this Lease shall be construed to limit or preclude recovery by Landlord against Tenant of any sums or damages to which Landlord may lawfully be entitled by reason of any default under this Lease or otherwise on the part of Tenant. Nothing contained in this Lease shall be construed to limit or prejudice the right of Landlord to prove and obtain as liquidated damages by reason of the termination of this Lease or reentry on the Premises for the default of Tenant an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeding in which, such damages are to be proved.

13.7 Upon the occurrence of an Event of Default, the Tenant hereby authorizes and empowers the Landlord, at the Landlord's option (without imposing any duty upon the Landlord to do so), to re-enter the Premises as agent for the Tenant or any successor-occupant of the Premises under the Tenant, or for its own account or otherwise, and to relet the same for any term expiring either prior to the original expiration date hereof, or simultaneously therewith, or beyond such date, and to receive rent and apply same to pay all reasonable fees and expenses incurred by the Landlord as a result of such Event of Default, including without limitation any legal fees and expenses arising therefrom, the cost of re-entry and re-letting and to the payment of the rent and other charges due hereunder. No entry, re-entry or reletting by the Landlord, whether by summary proceedings, termination or otherwise, shall discharge the Tenant from its liability to the Landlord as set forth herein; provided, however, Tenant shall not be responsible for any physical damage to or deterioration of the Premises to the extent (a) caused by Landlord or any party to whom the Premises are relet, or (b) occurring after vacation of the entire Premises by Tenant.

13.8 The Tenant shall be liable for all costs, charges and expenses, including reasonable attorney's fees and disbursements, incurred by the Landlord by reason of the occurrence of any Event of Default or the exercise of the Landlord's remedies with respect thereto.

13.9 Landlord shall have a lien upon and a security interest in all of Tenant's property located on the Premises for the rent, any and all additional rent, for all other payments to be made by Tenant to Landlord or any other person hereunder, for Tenant's performance of all of Tenant's obligations pursuant to this Lease and for all of Tenant's breaches thereof, provided, however, if no default by Tenant hereunder shall have occurred and be continuing, Landlord shall subordinate such lien to the lien on Tenant's property held by a bona fide lender.

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13.10 The Tenant, for the Tenant, and on behalf of any and all persons claiming through or under the Tenant, including creditors of all kinds, does hereby waive and surrender all rights and privileges which they or any of them might have under or by reason of any present or future law, to redeem the Premises or to have a continuance of this Lease for the Term after being dispossessed or ejected therefrom by the valid order of a court of competent jurisdiction.

13.11 The provisions of this Section 13 shall survive the expiration or termination of this Lease.

14. BANKRUPTCY AND INSOLVENCY

14.1 Neither Tenant's interest in this Lease, nor any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the United States Bankruptcy Code.

14.2 In the event the interest or estate created in Tenant hereby shall be taken in execution or by other process of law, or if Tenant is adjudicated insolvent by a court of competent jurisdiction other than the United States Bankruptcy Court, or if a receiver or trustee of the property of Tenant shall be appointed by reason of the insolvency or inability of Tenant to pay its debts, or if Tenant shall file a voluntary petition or proceeding under any federal or state law dealing with bankruptcy, insolvency, reorganization or any other adjustment of its debts, or if any assignment shall be made of the property of Tenant for the benefit of creditors, then this Lease and all rights of Tenant hereunder shall automatically cease and terminate with the same force and effect as though the date of such event were the date originally set forth herein and fixed for the expiration of the Term, and Tenant shall vacate and surrender the Premises but shall remain liable as herein provided.

14.3 Tenant shall not cause or give cause for the appointment of a trustee or receiver of the assets of Tenant and shall not make any assignment for the benefit of creditors or become or be adjudicated insolvent, or file any voluntary petition or commence any voluntary proceeding in respect thereto. The allowance of any petition under any insolvency law except under the Bankruptcy Code or the appointment of a trustee or receiver of Tenant or of its assets, shall be conclusive evidence that Tenant caused, or gave cause therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is vacated within sixty (60) days after such allowance or appointment. Any act described in this Section 14.3 shall be deemed a material breach of Tenant's obligations hereunder, and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or by law or in equity.

14.4 Upon the filing of a petition by or against Tenant under the United States Bankruptcy Code:

14.4.1 Tenant, as debtor and as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Tenant under this Lease, until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; and

(b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy on the Premises an amount equal to all rent, additional rent and other charges otherwise due pursuant to this Lease; and (c) to reject or assume this Lease within 60 days of the filing of such petition under the Bankruptcy Code; and (d) to give Landlord at least 45 days' prior written notice of any proceeding relating to any assumption of this Lease; and (e) to give Landlord at least 30 days' prior written notice of any abandonment of the Premises; any such abandonment to be deemed a rejection of this Lease; and (f) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; and (g) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above, and (h) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

14.4.2 No Event of Default or default of this Lease by Tenant, either prior to or subsequent to the filing of such a petition, shall be deemed to have been waived unless expressly done so in writing by Landlord.

14.4.3 Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment are the following: (a) the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; and (b) the use of the Premises as set forth in Section 3 of this Lease; and (c) the prior written consent of any mortgagee to

which this Lease has been assigned as collateral security; and (d) the Premises, at all times, remains a single leasehold structure and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

14.5 Notwithstanding anything to the contrary contained in this Lease, if any of the bankruptcy events described in this Article 14 occurs and any and all such events are discharged or withdrawn in full within sixty (60) days following the occurrence thereof, the occurrence of such events(s) shall not constitute an Event of Default.

15. ENTRY BY LANDLORD, ETC.

15.1 Tenant shall permit Landlord and its authorized representatives to enter the Premises, or any part thereof, at all reasonable times for the purpose of curing defaults of Tenant in accordance with, and after such notice (if any) as may be required by, the provisions of Section 13. In addition, Tenant, after reasonable prior notice, shall permit Landlord and fee mortgagees and their respective authorized representatives, to enter the Premises, or any part thereof, at all reasonable times during usual business hours on reasonable prior notice for the purpose of inspecting the same, provided such persons shall comply with Tenant's reasonable confidentiality procedures.

15.2 Landlord shall also have the right, after reasonable prior notice, to enter the Premises, or any part thereof, at all reasonable times during usual business hours for the purpose of showing the same to appraisers, prospective lenders and prospective purchasers or fee mortgagees thereof and, at any time within six months prior to the expiration of this Lease, for the purpose of showing the same to prospective tenants.

15.3 If, at any time during which Landlord or any fee mortgagee shall have the right to enter the Premises, admission to the Premises for the purposes aforesaid cannot be obtained, they, or their respective agents, servants, employees, contractors and representatives, may (on such notice, if any, as may be reasonable under the circumstances, which notice need not be in writing if an emergency exists in respect of the protection of the Premises) enter the Premises and accomplish such purpose. Any entry on the Premises by Landlord or a fee mortgagee shall be at such times and by such methods (other than in the event of such an emergency) as will cause as little inconvenience, annoyance, disturbance, loss of business or other damage to Tenant as may be reasonably practicable in the circumstances.

16. COVENANT OF QUIET ENJOYMENT

16.1 Landlord covenants that Tenant, on paying the rents and performing and observing all the covenants and conditions contained in this Lease, shall and may peaceably and quietly have, hold and enjoy the Premises during the Term, subject, however, to the terms of this Lease and to the matters to which this Lease is subject.

17. EFFECT OF CONVEYANCE; LIMITS OF LIABILITY OF LANDLORD, DEFINITION OF "LANDLORD"

17.1 The term "Landlord" as used in this Lease shall mean and include only the owner or owners (and any mortgagee in possession) at the time in question of the fee estate in the Premises, so that in the event of any transfer or transfers (by operation of law or otherwise) of the title to such fee estate, Landlord herein named (and in case of any subsequent transfers or conveyances, the then transferor) shall be and hereby is automatically freed and relieved, from and after the date of such transfer or conveyance, of all liability in respect of the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that (a) any funds in which Tenant has an interest, in the hands of such Landlord or the then transferor at the time of such transfer, shall then be turned over to the transferee, (b) any amount then due and payable to Tenant by Landlord or the then transferor under any provision of this Lease shall then be paid to Tenant, and (c) the transferee shall be deemed to have assumed and agreed to perform, subject to the limitations of this Section 17 (and without further agreement between or among the parties or their successors in interest, and/or the transferee) and only during and in respect of the transferee's period

of ownership, all of the terms, covenants and conditions in this Lease contained on the part of Landlord thereafter to be performed, which terms, covenants and conditions shall be deemed to "run with the land," it being intended hereby that the terms, covenants and conditions contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

17.2 It is specifically understood and agreed that in the event of a breach by Landlord of any of the terms, covenants or conditions of this Lease to be performed by Landlord, the monetary liability of Landlord in relation to any such breach shall be limited to the equity of Landlord in the Premises, including Landlord's interest in this Lease, moneys held by any trustee for the benefit of Landlord and any sums at the time due or to become due under this Lease and insurance proceeds (and the term "equity" as used in this Section 17.2 shall be deemed to include all of the foregoing). Tenant

shall look only to Landlord's equity in the Premises for the performance and observance of the terms, covenants and conditions of this Lease to be performed or observed by Landlord and for the satisfaction of Tenant's remedies for the collection of any award, judgment or other judicial process requiring the payment of money by Landlord in the event of a default in the full and prompt payment and performance of any of Landlord's obligations hereunder. No property or assets of Landlord, other than Landlord's equity in the Premises, shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies in any matter whatsoever arising out of or in any way connected with this Lease or any of its provisions, any negotiations in connection therewith, the relationship of Landlord and Tenant hereunder or the use and occupancy of the Premises; and in confirmation of the foregoing, if any such lien, levy, execution or other enforcement procedure so arising shall be on or in respect of any property or assets of Landlord, other than Landlord's equity in the Premises, Tenant shall promptly release any property or assets of Landlord, other than Landlord's equity in the Premises, from such lien, levy, execution or other enforcement procedure by executing and delivering, at Tenant's expense and without charge to Landlord, any instrument or instruments, in recordable form, to that effect prepared by Landlord (but any such instrument of release shall not release any such lien, levy, execution or other endorsement procedure on or in respect of Landlord's equity in the Premises).

18. SURRENDER, HOLDING OVER BY TENANT

18.1 On the expiration or termination of this Lease, Tenant shall peaceably and quietly leave, surrender and deliver to Landlord the Premises, and Tenant shall remove all Alterations which may have been made upon the Premises and tangible personal property of any kind or nature which Tenant may have installed or affixed on, in or to the Premises, except as provided in Section 9.4, and Tenant shall remove all of the foregoing to be surrendered in good, substantial and sufficient repair, order and condition, reasonable use, wear and tear casualty and condemnation damage and hazardous substances (hereinafter defined) for which Tenant is not responsible excepted and free of occupants. If as a result of or in the course of the removal of Alterations and Tenant's property any damage occurs to the Premises, Tenant shall pay to Landlord the reasonable cost of repairing such damage. If Tenant fails to so quit and surrender the Premises upon the expiration or termination of this Lease, it shall be liable to Landlord for the damages caused to Landlord by reason of such holdover and it is agreed that such damages shall be liquidated in an amount equal to double the rental rate provided for in this Lease, prorated based upon the period of holdover. The acceptance by Landlord of such damages or rental after termination of this Lease shall not be construed as consent to continued occupancy, nor shall such holding over constitute a renewal or extension of this Lease. Landlord may, at its option, construe such holding over as a tenancy from month to month, subject to all the terms, covenants and conditions of this Lease, except as to duration thereof, and in that event the Tenant shall pay rent and additional rent in advance at the rate provided in this Lease as effective during the last month thereof Tenant's obligation to observe or perform this covenant shall survive the expiration or termination of this Lease.

19. CURING DEFAULTS, FEES AND EXPENSES

19.1 If Tenant shall fail to pay any imposition or to make any

other payment required hereunder or shall otherwise default in the full and prompt performance of any covenant contained herein and to be performed on Tenant's part, Landlord, without being under any obligation to do so and without

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thereby waiving such default, may, after 30 days' notice to Tenant, or such notice (which may be oral) as may be reasonable in the circumstances if any emergency exists in respect of the protection of the Premises, make such payment or perform such covenant for the account and at the expense of Tenant and may enter upon the Premises for any such purpose and take all action thereon as may be necessary therefor.

19.2 All sums so paid by Landlord in connection with the payment or performance by it of any of the obligations of Tenant hereunder and all actual and reasonable costs, expenses and disbursements paid in connection therewith or enforcing or endeavoring to enforce any right under or in connection with this Lease, or pursuant to law, together with interest thereon at the rate of 12% per annum (or, if lower, the maximum rate permitted by law) from the respective dates of the making of each such payment shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within 15 days after demand by Landlord. Landlord shall not be limited, in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as required by Section 5 hereof, to the amount of the insurance premium or premiums not paid or incurred by Tenant.

19.3 If Landlord shall fail to perform its covenants as to insurance under Section 5.1 or as to repairs and maintenance under Section 9.1, and Landlord shall not institute measures to remedy the same within 30 days after Tenant shall have given to Landlord written if notice specifying the failure and thereafter promptly and diligently complete the remedy, Tenant, without being under any obligation so to do and without thereby waiving such default, may, perform such covenant for the account and at the expense of Landlord and may deduct the actual and reasonable cost thereof from the next rental payment(s) coming due under this Lease.

19.4 The provisions of this Section 19 shall survive the expiration or termination of this Lease.

20. MECHANICS' AND OTHER LIENS

20.1 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any part thereof with respect to any work done, or labor or materials furnished, or caused to be furnished, by Tenant or anyone claiming through or under Tenant, or any judgment, attachment or levy is filed or recorded against the Premises or any part thereof by anyone claiming through or under Tenant, Tenant, within 30 days after the date on which Tenant receives notice of such filing, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien, judgment, attachment or levy to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same by bonding proceedings, if permitted by law (and if not so permitted, by deposit in court). Any amount so paid by Landlord, including all reasonable costs and expenses paid by Landlord in connection therewith, together with interest thereon at the rate of 12% per annum (or, if lower, the maximum rate permitted by law) from the respective dates of Landlord's so paying any such amount, cost or expense, shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

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20.2 Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises, or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens against

Landlord's interest in the Premises. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or estate or interest of Landlord in and to the Premises.

21. SIGNS, ADDRESS

21.1 Tenant, subject to all Legal Requirements, may place on the exterior of the Premises a sign or signs of such size, design and color, and in such location, as shall be approved in advance in writing by Landlord.

21.2 Landlord shall have the right to (a) install, maintain, move, remove and reinstall advertising signs on and off the Premises (other than on the Building) or signs identifying the Premises for sale or for rent, and (b) change the address of the Premises.

22. WAIVERS AND SURRENDERS TO BE IN WRITING; RIGHT TO TERMINATE

22.1 The receipt, acceptance and/or deposit (including the endorsement of any check) of full or partial rent by Landlord with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the provisions or covenants of this Lease shall not be deemed to be a waiver of any such provision, covenant or breach of this Lease. No waiver or modification by either party, unless in writing and signed by the waiving party, shall discharge or invalidate any provision or covenant or affect the right of the waiving party to enforce the same in the event of any subsequent breach or default. The failure on the part of Landlord to insist in any one or more instances upon the strict performance of any of the provisions or covenants of this Lease, or to enforce any covenant or provision herein contained consequent upon a breach of any provision of this Lease shall not affect or alter this Lease or be construed as a waiver or relinquishment for the future of such one or more provisions or covenants or of the right to insist upon strict performance or to exercise such right, remedy or election, but the same shall continue and remain in full force and effect with respect to any then existing or subsequent breach, act or omission whether of a similar nature or otherwise. The receipt, acceptance and/or deposit (including the endorsement of any check) by Landlord of any rent or any other sum of money or any other consideration hereunder paid by Tenant after the termination, in any manner, of the Term, or after the giving by Landlord of a termination notice, shall not reinstate, continue or extend the Term, or destroy, or in any manner impair the efficacy of any such termination notice as may have been given hereunder by Landlord to Tenant prior to the receipt, acceptance and/or deposit (including the endorsement of any check) of any such rent, or other sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or any agent or employee shall be deemed to be an acceptance of a surrender

of the Premises, or any part thereof, excepting only an agreement in writing signed by Landlord. No payment by Tenant or receipt, acceptance and/or deposit (including the endorsement of any check) by Landlord of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check be deemed to effect or evidence an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease provided.

23. COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

23.1 All of the terms, covenants and conditions of this Lease shall apply to and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties, except as expressly otherwise herein provided. If there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein contained. No rights, however, shall inure to the benefit of any assignee or subtenant of Tenant unless the assignment or subletting, as the case may be, has been made in accordance with the provisions set forth in Section 11.

24. RESOLUTION OF DISPUTES

24.1 The parties hereto waive a trial by jury (to the extent permitted by law) on any and all issues arising in any action or proceeding between them or their successors under or in any way connected with this Lease or any of its provisions, any negotiations in connection therewith, the relationship of Landlord and Tenant, or Tenant's use or occupation of the Premises, including any claim of injury or any emergency or other statutory remedy with respect thereto. The provisions of this Section shall survive the expiration or termination of this Lease.

25. NOTICES

25.1 Any statement, demand, election, request, notice, approval, consent or other communication, (collectively, "notice") authorized or required by this Lease must be in writing and shall be deemed given when delivered by telecopier, by special courier, by hand, against receipt, or sent postage prepaid by United States certified mail, return receipt requested, in a prepaid wrapper, addressed to the intended recipient at the address provided at the head of this Lease (except that after the commencement of the Term any notice to Tenant shall be addressed to Tenant at the Premises) or such other address as either party may designate by notice given from time to time in accordance with this Section. Any notices by a party signed by counsel to such party shall be deemed a notice signed by such party. Notice shall be deemed given on the date of delivery or the date delivery is refused.

26. DEFINITIONS; HEADINGS; CONSTRUCTION OF LEASE

26.1 For the purposes of this Lease, unless the context otherwise requires:

26.1.1 The term "Landlord's agents" shall be deemed to include agents, servants, employees and contractors of landlord.

26.1.2 The term "person" shall be deemed to include individuals, corporations, partnerships, firms, associations and any other legal or business entities.

26.1.3 The term "unavoidable delays" shall mean any and all delays beyond the reasonable control of the party otherwise responsible, including delays caused by the other party, governmental restrictions, governmental preemption, strikes, labor disputes, lockouts, shortage of labor or materials, acts of God, enemy action, civil commotion, riot or insurrection, fire, holdover tenancies or other unavoidable casualty or any other cause beyond the responsible party's control, but shall not include delays occasioned by lack of money.

26.1.4 The terms "include," "including" and "such as" shall be construed as if followed by the phrase "without being limited to". The words "herein," "hereof," "hereby," "hereunder" and words of similar import shall be construed to refer to this Lease as a whole and not to any particular Section hereof unless expressly so stated.

26.2 The various terms which are defined in other Sections of this Lease shall have the meanings specified in such other Sections for all purposes of this Lease unless the context otherwise requires.

26.3 The Section headings in this Lease and the Table of Contents prefixed to this Lease are inserted only as a matter of convenience and reference and are not to be given any effect whatsoever in construing this Lease.

26.4 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons or entity or entities in question may require.

26.5 Anything in this Lease to the contrary notwithstanding, in the event that (a) any act or omission of Tenant shall require the consent or approval of Landlord pursuant to this Lease, and (b) this Lease provides that Landlord shall not unreasonably withhold such consent or approval, and (c) Tenant shall claim that Landlord has unreasonably withheld such consent or approval, then the sole recourse of Tenant upon the inability of the parties to agree shall be to bring an appropriate action in a court of competent

jurisdiction against Landlord solely to issue a determination of whether the withholding of such consent or approval by Landlord is "reasonable" or "unreasonable", and Tenant shall not be entitled to any damages or other remedy other than specific performance for the issuance by Landlord of such consent or approval if a court of competent jurisdiction shall determine that such withholding of consent was unreasonable.

27. FORCE MAJEURE

27.1 Whenever the performance of any obligation of either party hereunder shall be delayed, hindered or prevented due to unavoidable delays, the time for performance of such obligation, unless other provision is expressly made therefor in this Lease, shall be extended, subject to and limited by the following conditions:

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27.1.1 The extension shall be for no longer a period than the delay actually so occasioned;

27.1.2 The party delayed shall promptly notify the other party of the cessation of such unavoidable delay and of the extent of the delay which the party delayed claims was occasioned thereby;

27.1.3 No statement of fact contained in any such notice shall be binding on the party receiving such notice; and

27.1.4 In no event shall lack of funds be deemed a matter beyond either party's control.

28. BROKERAGE

28.1 Landlord and Tenant each warrant and represent to the other that either: (i) if any broker is listed here: NONE, such broker is the only broker who was instrumental in bringing about this Lease; or (ii) if the word "NONE" appears in the line in clause (i), no broker was instrumental in bringing about this Lease. Each party (the "breaching party") hereto agrees to indemnify, defend and hold the other party (the "non-breaching party") harmless with respect to any judgments, damages, legal fees, court costs and any and all liabilities of any nature whatsoever incurred by the non-breaching party arising from a breach of the applicable warranty and representation by the breaching party. The provisions of the foregoing representation and indemnity shall survive the expiration or termination of this Lease.

29. MISCELLANEOUS PROVISIONS

29.1 This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises. There are no oral agreements or understandings between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matters hereof, and none thereof shall be used to interpret or construe this Lease. Except as otherwise herein expressly provided, no subsequent alteration, amendment, change, waiver or addition to or of any provision of this Lease, nor any surrender of the Term, shall be binding upon Landlord or Tenant unless reduced to writing and signed by the party against whom the same is charged or such party's successors in interest.

29.2 Neither this Lease nor a memorandum thereof shall be recorded by either party without the written consent of the other.

29.3 This Lease shall be governed in all respects by the laws of the State of New Jersey.

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

29.5 All obligations of Tenant which shall not have been performed prior to the end of the Term or which by their nature involve performance, in any particular, after the end of the Term, or which cannot be ascertained to have been fully performed until after the end of the Term, shall survive the expiration or termination of the Term.

29.6 If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

30. COMPLIANCE WITH ENVIRONMENTAL LAWS

30.1 Tenant shall, at Tenant's sole cost and expense, comply with the requirements of any Federal, state, county, municipal or other governmental law, ordinance, rule, regulation, requirement and/or directive pertaining to the environment (an "Environmental Law" or "Environmental Laws"), including, but not limited to, the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the Worker and Community Right To Know Act (N.J.S.A. 34:5A-1 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.); and the Industrial Site Recovery Act (N.J.S.A. 13:1 K-6 et seq.) ("ISRA") arising out of or relating to Tenant's operations at, use or occupancy of the Premises. In this regard, Tenant shall, at Tenant's sole cost and expense, make all submissions to, provide all information to and comply with all requirements of any governmental authority. Should said governmental authority determine that action is necessary to cleanup, remove and/or eliminate any spills or discharges of Hazardous Substances (hereinafter defined), subject to the provisions of Section 30.7 of this Lease, Tenant agrees to take all actions as required by any government agency to remove and clean-up said Hazardous Substances. As used herein, "Hazardous Substances" means any substance that is toxic ignitable, reactive, or corrosive and that is regulated by any local government, the State of New Jersey or the United States government, any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to state, federal, or local government law, and any asbestos, polychlorobiphinyls (PCBs), and petroleum. Tenant's obligations pursuant to this Section shall arise whenever required by any appropriate governmental agency, including, but not limited to, any closing, terminating or transferring of operations at the Premises.

30.1.1 Tenant shall obtain, at its sole cost and expense, at least one hundred twenty (120) days prior to the expiration of the Term of this Lease or any extension renewal thereof, a written statement by the New Jersey Department of Environmental Protection ("NJDEP") that the termination of Tenant's operation at the Premises would not cause ISRA to become applicable and Tenant shall provide Landlord with a copy of such written statement promptly upon receipt thereof by Tenant. Tenant shall apply to the NJDEP not later than six (6) months prior to the expiration of the Term or extensions thereof In the event the NJDEP determines that Tenant's use of the Premises and its

subsequent termination of its operation would trigger the requirements of ISRA, or in the event Tenant is unable or fails to obtain such written statement at least one hundred twenty (120) days prior to the expiration of this Lease or any renewal hereof, then Tenant shall promptly comply with ISRA, and shall be responsible for all expenses and costs in complying with ISRA. Subject to Section 30.7 herein, Tenant shall be responsible for obtaining a negative declaration or effecting a clean-up plan prior to the expiration of this Lease or any renewal thereof in accordance with ISRA. If Landlord is required by the NJDEP to perform any act in order to obtain said negative declaration or effect a clean-up plan, Landlord shall comply with same but Tenant shall (subject to Section 30.7) reimburse Landlord for any and all costs incurred by Landlord, including, without limitation, attorneys' and engineers' fees, if any.

30.1.2 Subject to Section 30.2.3(b), Landlord shall, at Landlord's cost and expense, comply with ISRA during the Term of this Lease

to the extent that same is necessary as a result of any action or inaction by Landlord, including but not limited to, any sale or other transfer or change in ownership of the Premises by Landlord, or sale of the controlling share of Landlord's assets. Landlord shall indemnify and defend Tenant from and against any and all liability, loss and expenses, including Tenant's reasonable attorneys' fees, which Tenant may incur by reason of Landlord's breach of the provisions of this Section 30.

30.1.3(a) At no expense to Landlord, Tenant shall promptly provide all information reasonably requested by Landlord for preparation of an application for an ISRA letter of non-applicability, an ISRA letter of negative declaration or similar applications to evidence compliance with the provisions of ISRA and/or completion of a Hazardous Substance cleanup from the state or federal environmental agency having jurisdiction over the Premises, and affidavits, and shall promptly sign any documents, including affidavits, in connection with such applications, when reasonably requested by Landlord.

30.1.3(b) Notwithstanding anything to the contrary contained herein in this Section 30, the party responsible for the obligation to comply with ISRA or any Environmental Law shall not be required to bear the cost of any cleanup to the extent the need for such cleanup arises from the acts or omissions of the other party or its employees, agents and contractors, in which event such other party shall bear the cost of the cleanup to such extent.

30.1.3(c) Landlord and Tenant agree to cooperate with each other and provide such documents, affidavits and information as may be reasonably necessary for each of the parties to comply with ISRA.

30.1.4 For purposes of this Section, the term "Environmental Documents" shall mean all environmental documentation concerning the Premises or its environs, in the possession or under the control of Tenant, including without limitation all sampling plans, cleanup plans, preliminary assessment plans and reports, site investigation plans and reports, remedial investigation plans and reports, remedial action plans and reports or the equivalent, sampling results, sampling result reports, data, diagrams, charts, maps, analyses, conclusions, quality assurance/quality control documentation, correspondence to or from the Element or any other municipal, county, state or federal governmental authority, submissions to the Element or any other municipal, county, state or federal governmental

authority and directives, orders, approvals and disapprovals issued by the Element or any other municipal, county, state or federal governmental authority. During the Term and subsequently promptly upon receipt by Tenant or Tenant's representatives, Tenant shall deliver to Landlord all Environmental Documents concerning or generated by or on behalf of Tenant, whether currently or hereafter existing.

30.1.5 Tenant shall notify Landlord in advance of all meetings scheduled between Tenant or Tenant's representatives and NJDEP or any other environmental authority, and Landlord and Landlord's representatives shall have the right, without the obligation, to attend and participate in all such meetings.

30.1.6 Subject to the provisions of Section 30.7 of this Lease, should the element or any other division of the NJDEP or other governmental authority determine that a Remedial Action Workplan be prepared and that remediation be undertaken because Hazardous Substances have been spilled, discharged or placed in, on, under or about the Premises during the Term or any Revised Term, Tenant shall at Tenant's own expense promptly prepare and submit a Remedial Action Workplan and, if required, establish a remediation funding source required by the NJDEP and shall promptly implement the approved Remedial Action Workplan. In no event shall Tenant's Remedial Action involve engineering or institutional controls, including without limitation capping, Deed Notice, Declaration of Restriction or other institutional controls pursuant to PL 1993 (c) 139, and notwithstanding NJDEP's requirements, Tenant's remedial action shall meet the NJDEP residential remediation standards for soil, surface water and groundwater. Promptly upon completion of all required investigatory and remedial activities, Tenant shall restore the affected areas of the Property from any damage or condition caused by the work, including without limitation closing, pursuant to law, any wells installed at the Property.

30.1.7 At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord or NJDEP for preparation of a non-applicability affidavit, de minimis quantity exemption application, limited conveyance application or other submission and shall promptly sign such affidavits and submissions when requested by Landlord or NJDEP.

30.1.8 Should Tenant obtain a letter of Non-Applicability or a de minimis quantity exemption from the Element, Landlord may, at its option, hire a consultant to undertake sampling at the Premises sufficient to determine whether any Hazardous Substances have been spilled, discharged or placed in, on or under or about the Premises. Should it be determined that a Remedial Action Workplan be prepared and that remediation be undertaken because hazardous substances have been spilled, discharged or placed in, on, under or about the property during the Term as the result of Tenant's use, occupancy and operations, Tenant shall at Tenant's own expense promptly prepare and submit a Remedial Action Workplan and, if required, establish a remediation funding source required by the NJDEP and shall promptly implement the approved Remedial Action Workplan. In no event shall Tenant's Remedial Action involve engineering or institutional controls, including without limitation capping, Deed Notice, Declaration of Restriction or other institutional controls pursuant to PL 1993 (c) 139, and notwithstanding NJDEP's requirements, Tenant's remedial action shall meet the NJDEP residential remediation standards for soil, surface water and groundwater.

30.1.9 If Tenant (a) fails to obtain either (i) a Letter of Non-Applicability, (ii) a de minimis quantity exemption, (iii) an unconditional approval of Tenant's negative declaration, or (iv) a no further action letter with respect to Tenant's Remedial Action Workplan (collectively referred to as "ISRA Clearance") from the Element, or fails to remediate the Premises pursuant to Section 30.1.8 above, prior to the expiration or earlier termination of the Term, and (b) as a result of Tenant's failure to satisfy the provision of the foregoing clause (a) Landlord shall not be able to relet or sell the Premises upon the expiration or earlier termination the Term or any renewal or extension thereof, then upon the expiration or earlier termination of the Term or any renewal or extension thereof Landlord shall have the option either to consider the Lease as having ended or to treat Tenant as a holdover tenant in possession of the Premises pursuant to Section 18 of this Lease. If Landlord considers the Lease as having ended, then Tenant shall nevertheless be obligated to promptly obtain ISRA Clearance or fulfill the obligations set forth in Section 30.1.8 above, as the case may be. If Landlord treats Tenant as a holdover tenant in possession of the Premises, then Tenant shall monthly pay to Landlord basic and additional rental at the rate set forth in Section 18 of this Lease until such time as Tenant obtains ISRA Clearance, Landlord is able to relet the Premises or sells the Premises, or Tenant fulfills its obligations under Section 30.1.8 above, as the case may be, and during the holdover period all of the terms of this Lease shall remain in full force and effect. In the event the holdover tenancy ends as a result of Landlord reletting or selling the Premises, Tenant's obligation to obtain ISRA Clearance or fulfill its obligations set forth in Section 30.1.8 shall continue until satisfied.

30.2 Tenant represents and warrants to Landlord that Tenant intends to use the Premises for only the use specified in Section 3.1 of this Lease, which operations have the following Standard Industrial Classification ("S.I.C.") numbers as defined by the most recent edition of the Standard Industrial Classification Manual published by the Federal Executive Office of the President, Office of Management and Budget: 2834. Tenant's use of the Premises shall be restricted to the classifications set forth above. Annexed hereto as Exhibit A is an affidavit of an officer of Tenant ("Officer's Affidavit") setting forth Tenant's S.I.C. numbers and a detailed description of the operations and processes Tenant shall undertake at the Premises, organized in the form of a narrative report, including a description and quantification of Hazardous Substances to be generated, manufactured, refined, transported, treated, stored, handled or disposed of at the Premises. Following commencement of the Term, Tenant shall notify Landlord by way of a supplemental Officer's Affidavit as to any changes in Tenant's operation, S.I.C. numbers or use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Substances. Tenant shall also supplement and update the Officer's Affidavit upon each anniversary of the commencement of the Term and upon the expiration or earlier termination of the Term. Tenant shall not

commence or alter any operations at the Premises prior to: (i) obtaining all required operating and discharge permits or approvals, including but not limited to air pollution control permits and water pollution discharge elimination system permits from NJDEP, from all governmental or public authorities having jurisdiction over Tenant's operations or the Premises, and (ii) providing copy of the permits or approvals to Landlord.

30.3 Promptly upon the written request of Landlord, from time to time, Tenant shall provide Landlord, at Landlord's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Landlord to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in

connection with abatement, cleanup, or removal of any Hazardous Substances found on, under, at, within or about the Premises. Upon reasonable notice, which may be oral, Tenant shall permit Landlord and Landlord's agents, servants and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the Premises for the purposes of environmental inspection and sampling during regular business hours, or during other hours either by agreement of the parties or in the event of any environmental emergency. At all times, a representative of Tenant shall accompany Landlord and his agents, servants and employees during the inspection. Tenant shall not restrict access to any part of the Premises, and Tenant shall not impose any conditions to access. In the event that Landlord's environmental inspection shall include sampling and testing of the Premises, Landlord shall use reasonable efforts to avoid unreasonably interfering with Tenant's use of the Premises.

30.4 Tenant shall at all times indemnify, defend (with counsel selected by Landlord) and hold harmless Landlord against and from any and all claims, suits, liabilities, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses caused by Tenant's operation of the Premises, Tenant's negligence, Tenant's willful misconduct, Tenant's breach of this Lease or other acts or omissions of Tenant with respect to:

30.4.1 Any actual discharge of Hazardous Substances, or the actual presence of any Hazardous Substances on, in, upon, under, or affecting the Property, whether or not the same originates or emanates from the Premises, or any other real estate, including any loss of value of the Premises as a result of any of the foregoing;

30.4.2 Any costs of removal or remedial action incurred by any governmental authority, any response costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss, incurred pursuant to any Environmental Laws;

30.4.3 Liability for personal injury or property damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Premises; and/or

30.4.4 any other environmental matter affecting the Premises within the jurisdiction any other federal agency, or any state or local environmental agency or political subdivision or any court, administrative panel or tribunal.

Tenant's obligations pursuant to this Section 30.5 of this Lease shall arise upon the discovery of any Hazardous Substance, whether or not any other federal agency or any state or local environmental agency or political subdivision or any court, administrative panel, or tribunal has taken or threatened any action in connection with the presence of any Hazardous Substances.

30.5 In the event of any discharge of Hazardous Substances or the presence of any Hazardous Substance affecting the Property, whether or not the same originates or emanates from the Premises or any other real estate, and/or if Tenant shall fail to comply with any of the requirements of the

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Environmental Laws, Landlord may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as Landlord shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure Tenant's noncompliance.

30.6 Notwithstanding anything to the contrary herein contained, Tenant shall not be responsible for the cleanup, removal or elimination of any (a) spill or discharge of Hazardous Substances that were present in, on, under or about the Premises prior to the Commencement Date, or (b) subsurface soil or groundwater migration of any Hazardous Substances onto the Premises from an off-site source, provided any of the events or conditions described in clauses (a) or (b) was not caused or exacerbated by Tenant or any of its agents, employees, licensees, invitees, contractors or subtenants.

30.7 This Section 30 shall survive the expiration or earlier termination of this Lease. Either party shall have the right of injunctive relief to enforce any and all of the other parties' obligations under Section 30 of this Lease.

30.8 Landlord represents and warrants to Tenant that to Landlord's knowledge, without investigation, no discharge or spill of Hazardous Substances in violation of Environmental Laws has occurred on the Premises on or before the date hereof

30.9 Landlord shall notify Tenant in advance of all meetings scheduled between Landlord or Landlord's representatives and NJDEP or any other environmental authority pertaining to environmental contamination on the Premises and Tenant and Tenant's representatives shall have the right, without the obligation, to attend and participate in all such meetings.

31. ENVIRONMENTAL REPORTS

31.1 Tenant shall promptly provide Landlord with all documentation and correspondence provided to NJDEP pursuant to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. and the regulations promulgated thereunder.

31.2 Tenant shall promptly supply to Landlord all reports and notices made by Tenant pursuant to the Hazardous Substance Discharge--Reports and Notices Act, N.J.S.A. 13:1K-15 et seq. and the regulations promulgated thereunder.

31.3 Tenant shall promptly supply Landlord with any notices, correspondence and submissions made by Tenant to NJDEP, the United State Environmental Protection Agency, the United States Occupational Safety and Health Administration, or any other local, state or federal authority which requires submission of any information concerning Environmental Laws, environmental matters or hazardous wastes or substances. Tenant shall also promptly supply Landlord with all documentation, notices and correspondence delivered to Tenant by any such authority with respect to Environmental Laws, environmental matters or hazardous wastes or substances.

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32. OPTION TO RENEW

Provided the following "Conditions to Renewal" are currently satisfied, Tenant shall have two (2) five (5)-year renewal options (for two (2) "Renewal Terms"), each to be exercised by the Tenant's giving to the Landlord written notice to renew at least one (1) year prior to the expiration of the original Term or incumbent Renewal Term, as the case may be. Upon the Tenant's giving of any such notice to renew, this Lease shall be automatically renewed for a Renewal Term of five (5) years, without the necessity of the execution of any further instrument or instruments, upon the same terms and conditions as are contained in this Lease, except that (A) the basic rent per annum shall be as hereinafter specified, and (B) there shall not be included therein any option to renew this Lease for any additional period beyond the second (2nd) Renewal Term

above referred to.

The Conditions to Renewal are that Tenant is in possession and occupancy of the Premises, that this Lease is not previously canceled or terminated by either party, as in this Lease provided, by operation of law or otherwise, and that at both (i) the time of exercising the renewal option and (ii) the commencement of the Renewal Term, the Tenant is not in default of any monetary obligation under this Lease or in material default under any non-monetary obligation under this Lease (without regard to any notice or remedy period).

The basic rent per annum during each Renewal Term shall be an amount equal to the basic rent payable during the original Term, payable in the manner as hereinbefore set forth, multiplied by the sum of (1) 100% and (2) the difference expressed as a percent between the Consumer Price Index (as hereinafter defined) for the first day of the first full month of the original Term and the Consumer Price Index for the first day of the month in which the particular Renewal Term commences. In no event shall the basic rent per annum during any Renewal Term be less than the greater of the basic rent per annum during the original Term or the basic rent per annum during any previous Renewal Term.

The Consumer Price Index shall be defined to be the Consumer Price Index for Urban Wage Earners and Clerical Workers for New York and Northeastern New Jersey (base years 1982-1984 = 100), published by the Bureau of Labor Statistics, United States Department of Labor, or successor or substitute index appropriately adjusted. In the event the Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used for the computation herein set forth.

If Tenant fails to give to the Landlord written notice of its exercise of any its options to renew as hereinabove specified, then that option and all subsequent options shall be null and void.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, or caused these presents to be signed by their proper corporate officers and their proper corporate seals to be hereto affixed, the day and year first above written.

LANDLORD

WITNESS:	AIRPORT ASSOCIATES
/S/ June Langbern	By:/S/ Edmund Bennett, Jr.
- ----------	----------
Name: June Langbern	Edmund Bennett, Jr.
/S/ June Langbern	By:/S/ Ronald Bennett
- ----------	----------
Name: June Langbern	Ronald Bennett
ATTEST	TENANT
	VIVUS, INC.
/S/ Leland Wilson	By:/S/ David C. Yntema
- ----------	----------
Name: Leland Wilson	Name: David C. Yntema
Title: Chief Executive Officer	Title: Chief Financial Officer

EXHIBIT A

OFFICER'S AFFIDAVIT

STATE OF California:
:ss.
COUNTY OF San Mateo:

David C. Yntema, of full age, being duly sworn according to law upon his/her oath, deposes and says:

1. I am Chief Financial Officer of the Tenant.

2. The S.I.C. number(s) for the operations of the Tenant to be conducted in the Premises is (are) 2835.

3. The following is a detailed description of the operations and processes Tenant shall undertake in the Premises, including a description and quantification of the Hazardous Substances to be generated, manufactured, refined, transported, treated, stored, handled or disposed of in the Premises:

4. This affidavit is made to induce the Landlord to enter into the Lease, knowing the Landlord will rely on the truth of these statements.

/S/ David C. Yntema

Sworn to and subscribed before
me this 27th day of January, 1997.

/S/ Valerie Hanson

EXHIBIT B

INITIAL ALTERATIONS

[This exhibit will set forth those Alterations that the Landlord will permit Tenant to perform.]

EXHIBIT C

[This exhibit will set forth those Alterations that Tenant may elect to remove prior to the expiration of the Term or sooner termination of this Lease.]

EXHIBIT 10.29

LEASE AMENDMENT NO. 1

THIS LEASE AMENDMENT NO. 1 (this "Amendment") is made as of the 15th day of February, 1997, by and between AIRPORT ASSOCIATES, a New Jersey general partnership ("Landlord"), and VIVUS, INC., a Delaware corporation ("Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant are parties to a certain Lease dated as of January 1, 1997 (the "Lease"), pursuant to which Landlord demised and leased to Tenant, and Tenant hired and took from Landlord, certain premises located at 735 Airport Road, Lakewood, New Jersey, as further described in the Lease (the "735 Premises"); and

WHEREAS, the initially capitalized terms used, but not defined, in this Amendment shall have the same meanings as the terms defined in the Lease, directly or by cross-reference, unless the context requires otherwise; and

WHEREAS, Tenant desires to hire and take from Landlord, and Landlord desires to demise and lease unto Tenant, the building (consisting of approximately 50,000 square feet) and land located at 745 Airport Road, Lakewood, New Jersey (the "745 Premises"), upon the terms and conditions set forth in this Amendment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, Landlord and Tenant agree as follows:

1. Landlord demises and leases unto Tenant, and Tenant hires and takes from Landlord, the 745 Premises. This demise by Landlord to Tenant of the 745 Premises shall be upon all the terms, covenants and conditions set forth in the Lease applicable to the 735 Premises, except as amended by this Amendment. The term of the Lease with respect to the 745 Premises shall commence on February 15, 1997 (the "745 Term Commencement Date"). From and after the 745 Term Commencement Date, all references in the Lease, as amended by this Amendment, to (a) the "Premises" shall mean, collectively, the 735 Premises and the 745 Premises, and (b) the "Building" shall mean, collectively, the building (consisting of approximately 40,000 square feet) located on the 735 Premises and the building (consisting of approximately 50,000 square feet) located on the 745 Premises. Tenant covenants and agrees that it will accept the 745 Premises in their existing "as is" state or condition as of the 745 Term Commencement Date and without any representation or warranty, expressed or implied, in fact or by law, by Landlord or its agents and without recourse to Landlord or its agents, as to the nature, condition or useability thereof, the title thereto, or the use or occupancy which may be made thereof, except as specifically provided in the Lease, as amended by this Amendment.

2. The expiration date of the original Term of the Lease (set forth in Section 1.2 of the Lease to expire on December 31, 2001) is extended until midnight on the day preceding the fifth (5th) anniversary of the 745 Term Commencement Date.

3. Commencing as of the 745 Term Commencement Date, Section 2.1 of the Lease is hereby amended to read as follows:

> Tenant shall pay to the Landlord, at the address set forth above or at such other place of which Landlord shall have given Tenant written notice, a basic annual rental of $454,500.00, in monthly installments of $37,875.00 each.

The basic annual rental and the additional rent payable by Tenant hereunder shall be, with respect to the 745 Premises, prorated for the unexpired portion of the month in which the 745 Term Commencement Date occurs.

4. Tenant shall be entitled to construct an enclosed passageway connecting the 735 Premises and the 745 Premises, provided that (a) the same shall be constructed by Tenant at its sole cost and expense, and (b) such passageway shall constitute an "Alteration" to be performed in accordance with all applicable terms and conditions of the Lease, including Section 9.3 (including, without limitation, the requirement that all plans and specifications for such passageway shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed) and Section 9.4 (including, without limitation, the requirement that Tenant shall remove such passageway, and repair any damage caused by the removal of such passageway, prior to the expiration of the Term or sooner termination of this Lease).

5. Tenant shall this day deposit with Landlord the sum of $42,083.33 as an additional security deposit to be held by Landlord in accordance with the terms of Section 10 of the Lease, so that upon collection of such amount the total security deposit shall be $75,750.00 (and the reference to "$33,666.67" in the last sentence of Section 10 shall be deleted and "$75,750.00" shall be inserted in lieu thereof.

6. Notwithstanding anything to the contrary contained in the Lease, as amended by this Amendment (including, without limitation, the definition of the "Building" set forth in Paragraph 1(b) of this Amendment), for purposes of Section 6 of the Lease all references in this section to the "Building" shall be deemed to refer individually to the Building on the 735 Premises and the Building on the 745 Premises; it being understood that in the event of any damage to a Building which would allow either Landlord or Tenant to terminate the Lease, such right of termination shall apply only to the Building which was damaged and the Lease shall remain in full force and effect as to the other Building which was not so damaged.

7. Landlord warrants and represents to Tenant that the 745 Premises are encumbered by that certain mortgage (the "Manufacturers Mortgage") described in the Subordination, Non-Disturbance and Attornment Agreement dated January 24, 1997 (the "Manufacturers Non-Disturbance Agreement") by and among Landlord, Tenant and The Manufacturers Life Insurance Company ("Manufacturers") (and no other mortgage), which Manufacturers Mortgage also encumbers the 735 Premises. Landlord shall use its diligent, good faith efforts to obtain, as soon as reasonably practicable, from Manufacturers an amendment to the Manufacturers Non-Disturbance Agreement, in form and substance reasonably satisfactory to Tenant, to the effect that the terms (a) "Property" and "Demised Premises" set forth in the Manufacturers Non-Disturbance Agreement shall mean, collectively, the 735 Premises and the 745 Premises, and (b) "Lease" set forth in the Manufacturers Non-Disturbance Agreement shall mean the Lease, as amended by this Amendment.

8. Landlord and Tenant warrant and represent to each other that they have no dealings with any real estate broker or like agent in connection with the negotiation and execution of this Amendment, and that each knows of no other real estate broker or like agent who is or might be entitled to a commission in connection with this Amendment. Each party shall indemnify, defend and hold the other party harmless from any breach of the foregoing representation and warranty and/or a claim for a brokerage commission or similar fee by any party claiming to have represented or dealt with the indemnifying party in connection with the negotiation and execution of this Amendment.

9. Except as provided herein, the Lease is hereby ratified and shall remain in full force and effect. Tenant certifies that there exists no default by Landlord of any term, covenant or condition contained in the Lease, as amended hereby.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the day and year first above written.

LANDLORD

WITNESS:

AIRPORT ASSOCIATES

/S/ June Langbern
_____
Name: June Langbern

By: Edmund Bennett, Jr.
_____
Edmund Bennett, Jr., Partner

/S/ June Langbern
_____
Name: June Langbern

By: /S/ Ronald Bennett, Jr.
_____
Ronald Bennett, Jr., Partner

TENANT

ATTEST:

VIVUS, INC.

/S/ A. Greg Sturmer
_____
Name: A. Greg Sturmer
Title: Controller

By: /S/ David C. Yntema
_____
Name: David C. Yntema
Title: Chief Financial Officer

EXHIBIT 10.30

March 7, 1997

LEASE AGREEMENT

by and between

605 EAST FAIRCHILD ASSOCIATES, L.P.,
a California limited partnership

("LANDLORD")

and

VIVUS, INC.,
a Delaware corporation

("TENANT")

Dated as of March 7, 1997

BASIC LEASE INFORMATION

Lease Date: March 7, 1997

LANDLORD: 605 East Fairchild Associates, L.P.
a California limited partnership

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

TENANT: VIVUS, Inc.,
a Delaware corporation

Tenant's Address: FOR NOTICE & BILLING:
(prior to physical occupancy of Premises)
545 Middlefield Road
Suite 200
Menlo Park, CA 94025

(after initial physical occupancy of Premises)
605 East Fairchild Drive
Mountain View, CA 94043

Premises: A two-story building to be constructed on the Land in accordance with this Lease (the "Building").

Building Address: 605 East Fairchild Drive, Mountain View, California

Land: The real property described on Exhibit "A-1" attached hereto.

Project: The Building, Land and other improvements located in the area shown on Exhibit "A" attached hereto.

Rentable Area of the Premises:
Approximately 53,361 Rentable Square Feet, subject to final measurement pursuant to Paragraph 1(a) [Premises] ("Rentable Area").

Tenant's Use of the Premises: Tenant may use the Premises for general office, administration, research and development (excluding uses which involve the use of Hazardous Substances as defined in Paragraph 40 [Hazardous Substance Liability] beyond levels typical for office tenants except to the extent specifically hereinafter permitted), and for no other purposes; provided, however, any proposed use which

involves the use of Hazardous Substances beyond levels typical for office tenants shall be permitted subject to Landlord's prior written approval, which shall not be unreasonably withheld so long as (i) the proposed use does not involve any of the chemical substances which have been associated with the investigation and remediation of those Hazardous Substances currently existing in the soil and/or groundwater within the general area of the Premises, (ii) Landlord is provided an indemnity from Tenant or an entity (which may include Tenant, a subtenant of Tenant, or an affiliate of either of the foregoing) acceptable to Landlord and any mortgagees, and in all other respects satisfactory to Landlord and any mortgagees, indemnifying and defending Landlord, its mortgagees, and all of their successors and assigns, agents, representatives, and affiliates from and against any and all loss, cost, claim, liability, or suit arising directly or indirectly in connection with the use of such Hazardous Substances, and (iii) any such Hazardous Substances shall only be used in laboratory areas. Notwithstanding the above, Tenant agrees that any lab use within the building shall not exceed 10,000 square feet, and that Landlord shall be allowed to disapprove lab uses of future sublessees or assignees in its sole discretion. Notwithstanding the above, Vivus, Inc. shall be allowed to use the Hazardous Substances identified in Exhibit N without any further indemnity agreement, except as provided in this Lease, being provided by Vivus, Inc. to Landlord.

Lease Term:	Commencing on the Occupancy Date and ending on the Expiration Date, with the right to extend for an additional term of seven (7) years in accordance with Paragraph 43 [Option to Renew].
Scheduled Rent Commencement Date:	Forty five (45)Days after the Occupancy Date.
Expiration Date:	Fifteen (15) years after the Rent Commencement Date.
Rent:	Base Rent plus Additional Charges.
Monthly Base Rent:	$1.70 per Rentable Square Foot of the Rentable Area of the Premises.
Base Rent Adjustment:	On each anniversary of the Rent Commencement Date, the Monthly Base Rent shall increase by three percent(3%).
Security Deposit:	Tenant shall provide and maintain a letter of credit or cash collateral in the initial amount of One Million, Seven Hundred and Fifty Thousand Dollars ($1,750,000), which amount may be reduced during the Term in accordance with Paragraph 34 [Security Deposit].

Guarantor of Lease: None

Landlord's Broker: None

Tenant's Broker: Cornish & Carey Commercial

Broker's Fee or Commission Paid By:
Landlord, per a separate agreement with broker.

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 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 any other portion of the Lease, the latter shall control.

LANDLORD:

605 EAST FAIRCHILD ASSOCIATES, L.P.,
a California limited partnership

By: Mozart-Wilson-Dostart Ventures, Inc.,
a California corporation,
Its General Partner

/S/ Steve Dostart
By: _____
Steve Dostart
Its Vice President

TENANT:

VIVUS, INC.,
a Delaware corporation

/S/ David Yntema
By: _____
David Yntema
Its Chief Financial Officer

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of March 7, 1997, by and between 605 East Fairchild Associates, L.P., a California limited partnership (herein called "Landlord"), and Vivus, Inc., a Delaware corporation (herein called "Tenant").

1. LEASED PREMISES.

(a) PREMISES. Upon and subject to the terms, covenants and conditions hereinafter set forth, Landlord agrees to lease to Tenant and Tenant agrees to hire from Landlord those premises (the "Premises") comprising the entire two-story building to be constructed as shown on Exhibit "A" attached hereto (the "Building"). The Building will be located on the parcel or parcels of real property shown on Exhibit "A-1" (the "Land"). The Building, together with the Land and associated improvements located on the Land, are collectively referred to as the "Project". Because the final construction drawings for the Building are not yet available, the parties acknowledge that

as of the date of this Lease the exact Rentable Area of the Premises cannot be determined. Within ten (10) business days following the date Landlord's Plans have been completed and finally approved by Landlord and Tenant in accordance with the work letter attached hereto as Exhibit "D" (the "Work Letter"), Landlord shall have its architect, Devcon Construction, Inc., measure the Premises and shall deliver its calculation (together with the supporting CADD data) to Tenant. The measurement standard applied shall be based on the standard for measuring floor area outlined in Paragraph 3 of the "Zoning Calculations; Methods, Definitions and Clarifications" pamphlet issued by the City of Mountain View and attached hereto as Exhibit "C", as reasonably interpreted by Devcon Construction, Inc. and shall be taken using a CADD system. Tenant shall have ten (10) business days following its receipt of such information from Landlord to notify Landlord, in writing, if it disputes the technical accuracy of said measurements; however, the exact interpretation of the points to which the measurements shall be made pursuant to the standard referenced above shall be based on the letter dated March 4, 1997 from Sylvester Ramirez of Devcon Construction to Steve Dostart of the Mozart Development Company with attached plans dated 2-19-97 showing the building sample measurements. If Tenant does not notify Landlord, in writing, of any dispute within ten (10) business days of its receipt of Landlord's information, Tenant shall be deemed to have agreed with Landlord's architects calculation of the Rentable Area of the Premises and such calculation shall be inserted into this Lease as the Rentable Area for all purposes. If Tenant disputes the

calculation of Landlord's architect, Landlord and Tenant shall endeavor for a period of five (5) business days following Tenant's dispute notice to resolve the disagreement. If, however, the parties are unable to resolve the dispute within such five (5) business day period, the dispute shall be submitted for binding arbitration pursuant to the provisions of Paragraph 41 [Arbitration] of this Lease. Until the matter is finally resolved, for all purposes herein, unless and until the Rentable Area is finally determined, the Rentable Area shall be the amount determined by Landlord's architect, and upon final determination the parties shall make such financial adjustments as are necessary to reflect the amount of Rentable Area as finally determined as though it had been determined as of the date of execution of this Lease.

(b) CONSTRUCTION OF THE PROPERTY. Tenant acknowledges that (i) Landlord named in this Lease has not constructed the Building. Landlord shall use commercially reasonable efforts to construct the Building in accordance with the terms and conditions of this Lease and the Work Letter, provided that Tenant's rights and remedies for any breach of such obligation shall be limited as provided in Paragraph 3(f) [Exclusive Remedies].

2. OCCUPANCY AND USE. Tenant may use and occupy the Premises for the permitted uses specified in the Basic Lease Information and for no other use or purpose without the prior written consent of Landlord. Landlord may grant or withhold consent to a proposed change of use (which change of use is not within the uses that are permitted which are specified in the Basic Lease Information) in its sole discretion.

3. TERM AND POSSESSION.

(a) TERM; OCCUPANCY DATE; EXPIRATION DATE. The term of this Lease (the "Term") shall commence on the Occupancy Date and, unless sooner terminated pursuant to PARAGRAPHS 3(E), 3(F), 11(C), 20, 21(B), 22 OR 23, shall expire on the Expiration Date, provided that Tenant shall have an option to extend the Term in accordance with the terms and conditions of Paragraph 43 [Option to Renew]. "Occupancy Date" shall mean the date on which Landlord has (i) completed the construction components of the Base Building Improvements (excluding site work) required to be completed by Landlord, and (ii) tendered possession of the Premises to Tenant subject to Landlord's continuing right to access the Premises and take all steps required to complete the site work. All of the rights and obligations of the parties

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under this Lease (other than Tenant's obligation to pay Base Rent and Additional Charges) shall commence on the Occupancy Date. The dates upon which the Term shall actually commence and terminate with respect to the entire Premises pursuant to this Paragraph 3(a) are herein called the "Occupancy Date" and the "Expiration Date," respectively.

(b) INITIAL CONSTRUCTION. Completion of the Base Building Improvements (as defined in the Work Letter) by Landlord and the Tenant Improvements by Tenant shall be governed by the terms and conditions of Work Letter. Tenant's obligation to construct the Tenant Improvements pursuant to the Work Letter is independent of, and in addition to, Tenant's obligation to pay Rent under this Lease. Tenant acknowledges that Landlord has not made any representation or warranty with respect to the construction of the Base Building Improvements or the condition of the Premises or the Common Area or with respect to the suitability or fitness of either for the conduct of Tenant's permitted use or for any other purpose, except as may be expressly and specifically provided in this Lease.

(c) OCCUPANCY BY TENANT. Tenant shall be deemed to occupy the Premises from and after the Occupancy Date. This Paragraph 3(c) shall not be construed as an obligation of Tenant to continuously occupy the Premises. Within five (5) days after the Occupancy Date, Landlord shall deliver to Tenant a certificate confirming the Occupancy Date, in the form of Exhibit "E" hereto. If Tenant does not agree with Landlord's determination of the Occupancy Date, Tenant may submit such matter to arbitration in accordance with Paragraph 41 [Arbitration of Disputes], provided that prior to the resolution of such matter by arbitration, the parties shall proceed under this Lease as if the Occupancy Date is the date designated by Landlord, with any required adjustments to the Rent Commencement Date made after the matter is ultimately determined by arbitration.

(d) RENT COMMENCEMENT DATE; CERTIFICATE OF OCCUPANCY. Tenant's obligation to pay Base Rent and Additional Charges hereunder shall commence on the earlier to occur of (i) the Scheduled Rent Commencement Date set forth in the Basic Lease Information, or (ii) the date on which Tenant has substantially completed the Tenant Improvements for the Building (excluding any laboratory space) in accordance with the Work Letter (the "Rent Commencement Date") or (iii) Tenant has commenced business in the Premises; provided however, the period set forth in (i) and (ii) shall be extended by any delay, other than Tenant delay, in the substantial completion in the Base Building Improvements. As

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used in the preceding sentence, "substantial completion of the Base Building Improvements shall be defined as (A) receiving a signed off shell completion permit, (B) assuring Tenant access to the building (e.g. all concrete/asphalt paving and hard scape work is complete), and (C) Landlord is diligently prosecuting the completion of landscaping. After substantial completion of the Tenant Improvements (as defined in the Work Letter), Tenant shall immediately apply for, and use best efforts to obtain within fifteen (15) business days, a certificate of occupancy (or equivalent documentation) for the Building. Tenant shall promptly deliver to Landlord copies of the certificate of occupancy, and all other permits, consents and approvals from the appropriate governmental agencies which are necessary for occupancy and operation of the Premises as contemplated by this Lease which are reasonably requested by any Mortgagee.

(e) MILESTONES. The estimated construction schedule for the Project is included in Exhibit "F", "Estimated Construction Schedule." Such schedule is intended only as an estimate of what the Landlord currently believes to be the construction schedule; Landlord and Tenant shall use reasonable efforts to perform their respective obligations in order to achieve the goals described in the construction schedule, but, Landlord shall in no manner warrant such schedule. Notwithstanding this, the parties have set forth certain events which must occur prior to or during the construction of the

Building (each, a "Milestone"), which must be accomplished by Landlord on or before certain prescribed dates or Tenant shall have the right to terminate this Lease and pursue certain remedies as described in Paragraph 1(f) below. The Milestones to which Landlord and Tenant have agreed are as follows:

(1) Construction of the Building's foundation shall have commenced no later than July 1, 1997.

(2) The Base Building Improvements shall have been substantially completed (as defined in the Work Letter) in accordance with Landlord's Plans, except for site work, on or before January 31, 1998.

Notwithstanding anything to the contrary set forth hereinabove, the Milestone dates set forth in clauses (1) and (2) above shall be extended as follows: (A) one day for each day of delay caused by Tenant Delays (as defined in the Work Letter), (B) one day for each day of delay caused by casualty, natural disaster, acts of God, acts of the Government or labor strikes ("Force Majeure Events"), however, the maximum number of days that any such Milestone can be extended for such Force Majeure Delays shall be

limited to a total of ninety (90), and (C) by the amount of time required to complete any arbitration process resulting from disputes between Landlord and Tenant under the Work Letter, to the extent that the arbitration process (and the issue being arbitrated) actually causes a delay in achieving the Milestone(s), plus an additional thirty (30) days.

(f) EXCLUSIVE REMEDIES. If any Milestone set forth in Paragraph 3(e) is not achieved by Landlord, Tenant shall have the right to terminate this Lease by written notice to Landlord at any time within ten (10) business days after Landlord's failure to achieve the particular Milestone. If Tenant exercises this termination right, Tenant shall be entitled to the remedies hereinbelow described, which shall be Tenant's sole and exclusive remedies with respect to Landlord's failure to achieve any Milestone. If Tenant exercises a termination right pursuant to this Paragraph 3(f) and Landlord believes that the Milestone was achieved by the appropriate date (as extended for acts of Tenant, Force Majeure Events or arbitration proceedings as provided in Paragraph 3(e)), the parties agree to submit the dispute concerning Landlord's failure to achieve that particular Milestone, and Tenant's resulting right to terminate the Lease, to binding arbitration pursuant to the provisions of Paragraph 41 [Arbitration of Disputes]. Notwithstanding any other provision of this Lease or the Work Letter, if Landlord fails to achieve any Milestone Tenant's sole and exclusive remedies shall be to terminate this Lease and receive damages from Landlord (which shall be paid within thirty (30) days of the date of Tenant's notice of termination, or, if the parties resort to arbitration pursuant to the provision set forth above, then within thirty (30) days of Tenant's prevailing on said termination in arbitration) in the following amounts (all clauses referenced are in Paragraph 3(e)): $25,000, as liquidated damages for failure of Landlord to achieve the Milestone described in clause (1); and $75,000, as liquidated damages for failure of Landlord to achieve the Milestone described in clause (2). Landlord and Tenant acknowledge and agree that if Landlord fails to achieve the Milestone described in clause (1) or (2)and Tenant elects to terminate its Lease pursuant to this paragraph as a result thereof, the damages which Tenant will suffer are difficult, if not impossible to calculate, and that the above-described liquidated damages are a fair and reasonable estimate of the damages that Tenant would suffer with respect to a failure to achieve the Milestone described in clause (1) or (2). Notwithstanding the above, in the event that all of the following are true: (i) Landlord intentionally breaches it obligation to diligently prosecute the construction of Landlord's Work to completion, (ii) such breach by Landlord is within Landlord's

control, and (iii) Tenant is not in a continuing default under the Lease, then the limitation of liquidated damages as noted above shall be waived.

(g) TERMINATION AFTER COMMENCEMENT OF TENANT IMPROVEMENTS.If this Lease is terminated by Tenant pursuant to this Paragraph 3 after construction of the Tenant Improvements has commenced, at Landlord's option and upon Landlord's request Tenant shall assign to Landlord all of Tenant's rights under Tenant's general contract, architect and/or engineer agreements and any other agreements with contractors or suppliers in connection with the Tenant Improvements, and Landlord shall assume Tenant's obligations under any such assigned agreements to the extent such obligations arise from work or materials provided to the Premises after termination of the Lease. In such event Tenant shall indemnify and hold the Landlord Parties harmless from, and defend the Landlord Parties against, all liens filed and claims made by any contractors, architects, subcontractors, or suppliers who provided work or materials to the Premises prior to the termination of the Lease in connection with the Tenant Improvements, except that the indemnity contained in this section shall not limit Tenant's right of recovery if, and only if, the limitation of liquidated damages in waived in accordance with the last sentence of subparagraph 3(f).

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

(a) MONTHLY BASE RENT.

(i) Commencing on the Rent Commencement Date, Tenant shall pay to Landlord throughout the Term Base Rent in an amount equal to the Monthly Base Rent rate specified in the Basic Lease Information multiplied by the Rentable Area of the Premises, as specified in the Basic Lease Information ("Base Rent").

(ii) Base Rent shall be payable by Tenant in equal monthly installments on or, at Tenant's election, before the first day of each month, in advance, in lawful money of the United States (without any prior demand therefor and without deduction or offset whatsoever, except for abatement as may be expressly and specifically provided for in Paragraphs 22 [Damage and Destruction] and 23 [Eminent Domain]), to Landlord at the address specified in the Basic Lease Information or to such other firm or to such other place as Landlord may from time to time designate in writing. Tenant shall pay all charges and other

amounts whatsoever as provided in this Lease ("Additional Charges") to Landlord at the place where the 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 Base Rent. If the Rent 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 Base Rent and Additional Charges for such fractional month shall be prorated on a daily basis. As used herein, the term "Rent" shall include all Base Rent and Additional Charges (including, without limitation, Additional Charges pursuant to Paragraph 25 [Right of Landlord to Perform]).

(b) ADJUSTMENTS IN BASE RENT. The Monthly Base Rent under Paragraph 4(a) [Monthly Base Rent] shall be adjusted as provided in the Basic Lease Information.

(c) ADDITIONAL CHARGES FOR EXPENSES AND TAXES.

(1) DEFINITIONS OF CERTAIN ADDITIONAL CHARGES: For purposes of this Paragraph 4(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 Rent Commencement Date of this Lease occurs.

(B) "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 (including, without limitation, shuttle fees and roadways), housing, police, fire, utilities, sewers, emergency response 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 at the end of the Term), 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 Project, or on the use or occupancy of the Project or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Project, 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, which is customarily charged to Tenants by Landlords in comparable triple-net leasing scenarios from and after the enactment of the tax, fee or charge. 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, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, unless it has become customary to charge such tax, fee or charge to Tenants by Landlords in comparable triple-net leasing scenarios from and after the enactment of the tax, fee or charge. Additionally, Real Estate Taxes shall not include any assessments or like charges to pay for any remediation of contamination from any Hazardous Substances. 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. 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 Lease Term had Landlord elected to pay the assessment in installment payments, even if Landlord pays the assessment in full.

(C) "EXPENSES" shall mean the total costs and reasonable 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 fire, extended coverage, boiler, sprinkler, commercial general liability, property, rent, earthquake, flood, and all other insurance described in Paragraph 12(e) [Landlord's Insurance Obligations] or otherwise obtained by Landlord in connection with the Project, including, without limitation, insurance premiums and any deductible amounts paid by Landlord; (ii) the cost of air conditioning, electricity, steam, heating, mechanical, ventilating, water, gas, elevator systems and all other utilities, the cost of supplies and equipment and maintenance and service contracts in connection therewith, and the cost of refuse service, parking lot sweeping and similar maintenance services; (iii) the cost of repairs and general maintenance and cleaning; (iv) fees, charges and other costs, including consulting fees, legal fees and accounting fees, fees for any project engineer for

the Project, and fees of all independent contractors, engaged by Landlord and related solely to the operation of the Project (or, if any such costs, fees or

charges are attributable to other property managed by Landlord, the portion of such costs, fees and charges allocable to the Project, as reasonably determined by Landlord); (v) the cost of any capital improvements made to the Building or the Project as required or permitted by this Lease, provided that the cost of such capital improvements in excess of $12,806 during any Expense Year 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 rate paid by Landlord on funds borrowed for the purpose of constructing such capital improvements, or, if Landlord does not elect to borrow funds, at the "prime rate" of interest announced by the Wall Street Journal for Union Bank (or, if Union Bank ceases to exist, by another bank mutually acceptable to Landlord and Tenant) (the "Interest Rate"), as reflected over the period the funds are advanced, plus two percent (2%) and Tenant shall pay such amortization allocable to the period in question as part of "Expenses" until the first to occur of expiration of the term of this Lease or until full payment of all amortization (with interest); (vi) a management fee for Landlord's management and administrative services in connection with the Project in the amount of two percent (2.0%) of Base Rent and Additional Charges (excluding the management fee); and (vii) any other expenses of any other kind whatsoever incurred in managing, operating, maintaining and repairing the Premises and/or Project. Notwithstanding the above, the cost of deductibles to be paid by Tenant pursuant to insurance policies shall be paid as follows: (x) any amount up to an amount equaling one month's Base Rent shall be paid in the current year, (y) the amount in excess of one month's Base Rent shall be amortized pursuant to GAAP, but in no event shall the amortization period be longer than fifteen (15) years and Tenant shall pay such amortization calculated in the same manner, and for the same period as part of "Expenses" calculated and paid in the same manner as amortization determined pursuant to clause (v) of such subparagraph 4(c)(1)(C) except as otherwise specifically noted in this sentence.

EXCLUSIONS. 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 4(c) or Paragraph 8(b) [Repair and Maintenance; Tenant's Obligations], (aa) the initial cost of the Base Building Improvements which is to be paid by Landlord pursuant to the Work Letter with respect to the Building or the Project; (bb) debt service (including, but without limitation, interest and

principal) required to be made on debt incurred by Landlord and relating to the Project other than debt service and financing charges imposed pursuant to Paragraph 4(c)(1)(C)(v) above; (cc) the portion of the total of all management fees in excess of two percent (2.0%) of the sum of Base Rent and Additional Charges (excluding the management fee); (dd) depreciation; (ee) costs for which Landlord has a right to receive reimbursement from others; (ff) costs occasioned by Landlord' fraud or willful misconduct under applicable Laws; (gg) costs to correct any construction defects in the original construction of the Base Building Improvements for the Building or the Project; (hh) costs arising from a disproportionate use of any utility or service supplied by Landlord to any other occupant of the Project to the extent that Landlord has the ability to charge such other tenant for said costs under the terms of a lease comparable to terms governing said costs in this Lease; (ii) environmental pollution related costs (other than costs for which Tenant has indemnified Landlord pursuant to Paragraph 40 [Hazardous Substance Liability]); (jj) any maintenance, repair or replacement costs for which Landlord is responsible pursuant to Paragraph 9(a) [Repair and Maintenance; Landlord's Obligations]; (kk) advertising or promotional costs; (ll) leasing commissions; (mm) reserves for expenses; (nn) insurance deductibles in excess of fifteen (15%) of the replacement cost of the Building; (oo) Real Estate Taxes; (pp) earthquake insurance to the extent it exceeds commercially reasonable rates. All costs and expenses shall be determined in accordance with generally accepted accounting principles which shall be consistently applied (with accruals appropriate to Landlord's business).

(D) "EXPENSE YEAR" shall mean each twelve (12) consecutive month period commencing January 1 of the calendar year during which the Rent Commencement Date of the Lease occurs. 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, Expenses shall be equitably adjusted for the Expense Years involved in any such change.

(2) PAYMENT OF REAL ESTATE TAXES

(A) PAYMENT AS DUE: 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 clause (B) below, Tenant shall pay to Landlord actual Real Estate Taxes in installments, twice each Tax Year, no later

than fifteen (15) business days prior to the due date of each Real Estate Tax installment.

(B) IMPOUNDS: Notwithstanding clause (A) above, if required by any Mortgagee or, at Landlord's election, after any default by Tenant in the timely payment of Real Estate Taxes, Tenant shall pay to Landlord as Additional Charges one-twelfth (1/12th) of 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. 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.

(3) PAYMENT OF EXPENSES: Tenant shall pay to Landlord as Additional Charges one-twelfth (1/12th) of the Expenses 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; provided, however, that all insurance premiums which are included in Expenses shall be payable annually, in advance, by Tenant within twenty (20) days after Tenant's receipt from Landlord of a copy of the invoice with respect to such premiums. 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. If Tenant has overpaid Expenses 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 later of the Expiration Date or the end of the last Expense Year. To the extent any item of Expenses is payable by Landlord in advance of the

period to which it is applicable (e.g. insurance and tax escrows required by any Mortgagee), or to the extent that prepayment is customary for the service or matter, Landlord may (aa) include such items in Landlord's estimate for periods prior to the date such item is to be paid by Landlord, and (bb) 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.

(4) AUDIT RIGHTS: Within ninety (90) days after receipt of any Landlord's Expense Statement or Landlord's Tax Statement, Tenant shall have the right to audit, at Landlord's office located in the San Francisco Bay Area, at Tenant's expense, Landlord's accounts and records relating to Expenses and Real Estate Taxes. Such audit shall be conducted by a certified public accountant approved by Landlord, which approval shall not be unreasonably withheld. If such audit reveals that Landlord has overcharged Tenant, Tenant shall notify Landlord within one hundred twenty (120) days after the date the applicable Landlord's Expense Statement or Landlord's Tax Statement was received by Tenant. Landlord may dispute such audit by arbitration pursuant to Paragraph 41 [Arbitration of Disputes]. If Landlord does not dispute such amount, or if Tenant prevails in any such arbitration, the amount overcharged shall be paid to Tenant within thirty (30) days thereafter, together with interest thereon at the Interest Rate, from the date Landlord's Expense Statement or Landlord's Tax Statement, as applicable, was delivered to Tenant until payment of the overcharge is made to Tenant. In addition, if Landlord's Expense Statement or Landlord's Tax Statement, as applicable, exceeds the actual Expenses and Real Estate Taxes which should have been charged to Tenant by more than five percent (5%), the cost of the audit, up to a maximum cost of Ten Thousand Dollars ($10,000), shall be paid by Landlord. If Tenant fails to object to any Landlord's Expense Statement or Landlord's Tax Statement within one hundred twenty (120) days after receipt thereof, such statement shall be final and shall not be subject to any audit, challenge or adjustment.

(5) OTHER: If either the Rent Commencement Date or the Expiration Date shall occur on a date other than the first day of a Tax Year and/or Expense Year, Real Estate Taxes and Expenses for the Tax Year and/or Expense Year in which the Rent Commencement Date or the Expiration Date occurs shall be prorated.

(d) LATE CHARGES; DEFAULT RATE. Tenant recognizes that late payment of any 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 Base Rent or Additional Charges remain unpaid three (3)days after Landlord has provide written notice to Tenant that such amount is overdue, the amount of such unpaid Base Rent or Additional Charges shall be increased by a late charge to be paid to Landlord by Tenant, as an Additional Charge, in an amount equal to five percent (5%) (or such greater amount not to exceed six percent (6%) as may be charged by any Mortgagee for a late payment of a monthly mortgage payment) of the amount of the delinquent Base Rent or Additional Charges. In addition, any outstanding Base Rent, Additional Charges, late charges and other outstanding amounts shall accrue interest at an annualized rate of the greater of 10% or The Ninth Circuit Federal Reserve Discount Rate plus 5% (the "Default Rate"), until paid to Landlord. 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 4(d) shall not relieve Tenant of the obligation to pay Base Rent or Additional Charges on or before the date they are due, or affect Landlord's remedies pursuant to Paragraph 21(b) [Landlord's Remedies] if any Base Rent or Additional Charges are unpaid after they are due.

5. INTENTIONALLY DELETED.

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

the Premises or Project.

7. COMPLIANCE WITH LAWS.

(a) TENANT'S COMPLIANCE OBLIGATIONS. Tenant shall promptly, at its sole expense, maintain the Project and the

Premises, any Alterations (as defined in Paragraph 8(b) [Landlord's Consent to Tenant's Alterations]) permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all 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"). Such 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 and the Project) and 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 [Hazardous Substances Liability], 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 or permitted by the Tenant Parties (as defined in Paragraph 12(b) [Tenant Indemnity]). Notwithstanding the foregoing, Tenant shall not be required to make any structural alterations to the Base Building Improvements in order to comply with Laws unless the requirement that such alterations be made is triggered by any of the following (or, if such requirement results from the cumulative effect of any of the following when added to other acts, omissions, negligence or events, to the extent such alterations are required by any of the following): (i) the installation, use or operation of the Tenant Improvements, any Alterations, or any of Tenant's trade fixtures or personal property; (ii) the acts, omissions or negligence of Tenant, or any of its servants, employees, contractors, agents or licensees; or (iii) the particular use or particular occupancy or manner of use or occupancy of the Premises by Tenant, or any of its servants, employees, contractors, agents or licensees. 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 shall include, without limitation, the responsibility of Tenant to make substantial or

structural repairs and alterations to the Premises (including the Base Building Improvements, Tenant Improvements, and any Alterations) 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. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any occurrence or situation arising during the Term. Notwithstanding the foregoing, Tenant shall not be responsible for the cost of making any alteration to the Base Building which is required by law to the extent that the correction is

required because the Base Building was not built in accordance with laws applicable at the time the permits were obtained for the construction of the Base Building.

(b) INSURANCE REQUIREMENTS. Tenant shall not do or permit anything to be done in or about the Project or bring or keep anything therein which will 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 board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises or 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 7 shall in no way limit Tenant's maintenance, repair and replacement obligations under Paragraph 9 [Repair and Maintenance], or Tenant's obligation to pay Expenses under Paragraph 4(c) [Additional Charges for Expenses and Taxes]. 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.

8. ADDITIONAL ALTERATIONS.

(a) LANDLORD'S ALTERATIONS. After completion of the Base Building Improvements, Landlord shall not make or suffer to be made any additional alterations, additions or improvements in, on or to the Building or any part thereof without the prior written consent of Tenant, except as may be required by Law or as expressly required or permitted by this Lease.

(b) LANDLORD'S CONSENT TO TENANT'S ALTERATIONS. 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. Alterations do not include initial construction of the Tenant Improvements. Failure of Landlord to give its disapproval to any Alterations within ten (10) business days after receipt of Tenant's written request for approval shall constitute approval by Landlord of such Alterations so long as Tenant's request includes the following statement in capitalized and boldfaced letters: BY FAILING TO RESPOND TO THIS REQUEST, YOU WILL BE DEEMED TO HAVE APPROVED THE TENANT'S INSTALLATION OF THE ALTERATIONS DESCRIBED IN THIS REQUEST. Any Alterations in, on or to the Premises, except for Tenant's movable furniture and equipment, trade fixtures and Alterations which may be removed without damage to the Premises, shall become the property of Landlord upon their completion without compensation to Tenant. Landlord shall not unreasonably withhold its consent to Alterations that (i) do not materially affect the structure of the Building, the Building Systems (as defined in Paragraph 9(b) below) or the Building's security or other systems, (ii) are not visible from the exterior of the Building, (iii) are consistent with Tenant's permitted use hereunder, (iv) comply with any Mortgage, and (v) do not materially adversely affect the value or marketability of Landlord's reversionary interest upon termination or expiration of this Lease (taking into account any commitment given by Tenant to remove Alterations to the extent necessary to eliminate such material and adverse effect). Notwithstanding the above, Landlord shall not unreasonably withhold its consent to Alterations which comply with the Approved Tenant Plan Guidelines in Exhibit "D-2".

(c) PERMITTED ALTERATIONS. Notwithstanding Paragraph 8(b), Tenant may make Alterations to the Premises without Landlord's prior consent so long as (x) such Alterations comply with items (i) through (v) in Paragraph 8(b) [Landlord's Consent to Tenant's Alterations], and (y) the cost of each such Alteration (or group of Alterations, if occurring substantially at the same time and as part of a single project) does not exceed Fifty Thousand Dollars ($50,000) (with no more than thirty percent (30%) of such cost being for demolition), and the cost of

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all such Alterations in any twelve (12) month period during the Term in the aggregate does not exceed Fifty Thousand Dollars ($50,000) (any such Alterations being defined herein as "Permitted Alterations").

(d) REQUIREMENTS FOR TENANT ALTERATIONS. Tenant shall make any Alterations consented to or permitted under this Paragraph 8 at Tenant's sole cost and expense, in compliance with the following requirements: (i) Alterations (other than Permitted Alterations) shall be made in accordance with plans and specifications reasonably approved by Landlord, and all Alterations shall be made in accordance with the requirements of Paragraph 10 [Liens], (ii) any contractor or person selected by Tenant to make Alterations (other than Permitted Alterations) must first be approved in writing by Landlord, in its reasonable discretion, (iii) Alterations shall be made in compliance with all applicable Laws; and (iv) Alterations shall not alter or interfere with the ceiling of any Building (all partitions being below the ceiling grid, except in areas designated by Landlord on plans and specifications), unless approved by Landlord in its sole discretion; provided, however, that Tenant may make Alterations that do not comply with the standards set forth in item (iv) above (subject to any other applicable Landlord consent requirement) if Tenant agrees to reconfigure the affected floor to such standard upon expiration or earlier termination of this Lease. By making Alterations which do not comply with the standards set forth in item (iv) above, Tenant shall be deemed to have agreed to reconfigure the Premises upon expiration or termination of the Lease as provided above unless Landlord specifically agrees otherwise in writing. Upon completion of any Alterations, Tenant shall furnish Landlord with a complete set of final as-built plans and specifications, at Tenant's cost and expense. With respect to items (i) and (ii) above, failure of Landlord to give its disapproval to any plans and specifications or general contractor within ten (10) business days after receipt of Tenant's written request for approval shall constitute approval by Landlord of such matters so long as Tenant's request includes the following statement in capitalized and boldfaced letters: BY FAILING TO RESPOND TO THIS REQUEST, YOU WILL BE DEEMED TO HAVE APPROVED THE PLANS AND SPECIFICATIONS AND/OR GENERAL CONTRACTOR FOR TENANT'S ALTERATIONS DESCRIBED IN THIS REQUEST.

(e) REMOVAL OF ALTERATIONS AND RESTORATION. Upon the expiration or sooner termination of the Term, Tenant shall upon demand by Landlord, at Landlord's election and at Tenant's sole cost and expense, forthwith and with all due diligence remove any Alterations made by or for the account of Tenant that are

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designated by Landlord to be removed and restore the Premises as required by Paragraph 26(b) [Delivery and Restoration of the Premises]. Upon the written request of Tenant prior to installation of any Alterations, Landlord shall notify Tenant of its election to require that such Alterations be removed upon the expiration or sooner termination of this Lease, so long as such written request clearly requests Landlord's election regarding the removal of such Alterations. Landlord's failure to specifically notify Tenant of Landlord' election shall be deemed Landlord's election to require removal of the Alterations upon expiration of the Term, notwithstanding any deemed approval by Landlord of the Alterations pursuant to this paragraph. Notwithstanding the above, any office improvements (excluding work relating to lab space or other non- generic improvements which are not of a typical office space nature) which are consented to by Landlord and fall within the "Approved Tenant Plan Guidelines" noted in Exhibit "D-2" shall not be subject to this requirement to remove provision.

(f) REIMBURSEMENT OF LANDLORD'S REVIEW COSTS. Tenant shall reimburse Landlord upon demand for any reasonable out-of- pocket expenses incurred by Landlord in connection with the review of any Alterations made by

Tenant, including reasonable fees charged by Landlord's contractors or consultants to review plans and specifications prepared by Tenant.

9. REPAIR AND MAINTENANCE.

(a) LANDLORD'S OBLIGATIONS. Landlord shall maintain, repair and replace, at its sole cost and expense, the following, except as provided in Paragraph 9(c) [Tenant's Obligations for Structural Maintenance]: (i) the exterior concrete walls, structural portions of the roof and structural portions of the Building (including load bearing walls and foundations); (ii) plumbing and electricity (located on the Project and owned by Landlord) to the point of entry into the Building; and (iii), during the initial twenty-four (24) months of the Term, the correction of any defects in the design, construction, installation or materials of the Building which materially affect Tenant's use or enjoyment of the Premises. Landlord's obligations under Paragraph 9(a)(i), (ii) and (iii) 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 included in the Project which are not Landlord's obligations under Section 9(a) [Landlord's Obligations], including, without limitation, (i) the building systems for electrical, mechanical, HVAC and plumbing and all controls appurtenant thereto (collectively, "Building Systems"); (ii) the interior portion of the Building, the Tenant Improvements, the Alterations, and any additional tenant improvements, alterations or additions installed by or on behalf of Tenant within the Premises; and, (iii) parking areas, courtyards, sidewalks, entry ways, lawns, landscaping and other similar facilities of the Project. At Tenant's election, Tenant may, by written notice to Landlord delivered at any time after the tenth (10th) anniversary of the Rent Commencement Date, cause Landlord to assume Tenant's maintenance obligations with respect to the Building Systems under clause (i) above, which assumption by Landlord shall be effective thirty (30) days after Landlord's receipt of such notice. If Landlord assumes such obligations, all costs incurred by Landlord in connection therewith shall be deemed Additional Charges payable by Tenant in accordance with Paragraph 4(c) [Additional Charges for Expenses and Taxes]. The Building shall at all times be maintained by Tenant in the condition of a first-class office building. Tenant's obligations under this Paragraph 9 include, without limitation, the replacement, at Tenant's sole cost and expense, of any portions of the Building which are not Landlord's express responsibility under Paragraph 9(a) [Landlord's Obligations], if it would be commercially prudent to replace, rather than repair, such portions of the Building, regardless of whether such replacement would be considered a capital expenditure; provided, however, that if Landlord has assumed Tenant's maintenance obligations for Building Systems pursuant to this Paragraph 9(b), any replacement of any portion of the Building Systems which would be considered a capital expenditure and which is made at least one (1) year after Landlord assumes such obligations shall be amortized over the useful life of the capital item in question in accordance with Paragraph 4(c)(1)(C) [Expenses]. 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.

(c) TENANT'S OBLIGATIONS FOR STRUCTURAL MAINTENANCE. Notwithstanding the provisions of Paragraph 9(a) [Landlord's Obligations] and without limiting Tenant's other obligations hereunder, Tenant shall bear the full cost of structural repairs

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or maintenance to preserve the Building in good working order and condition, to the extent such structural repair and/or maintenance is required due to the following (except to the extent any claims arising from any of the following are reimbursed by insurance carried by Landlord, are covered by the waiver of subrogation in Paragraph 13 [Waiver of Subrogation] or are otherwise provided for in Paragraph 22 [Damage and Destruction]): (i) the installation, use or operation of any Alterations or other modification to the Premises or Project made by Tenant; (ii) the installation, use or operation of Tenant's property or fixtures; (iii) the moving of Tenant's property or fixtures in or out of the Building or in and about the Project; or (iv) the acts, omissions or negligence of Tenant, or any of its servants, employees, contractors, agents or licensees ("Tenant Parties"), or the particular use or particular occupancy or manner of use or occupancy of the Premises or Project by Tenant or any such person. In addition, if at any time during the Term Hazardous Substances are released, discharged, or disposed of on any portion of the Premises, or on any portion of the Project by any of the Tenant Parties, in violation of Tenant's obligations hereunder, repairs of the plumbing to the point of entry into the Building shall be excluded from Landlord's obligations under Section 9(a). Tenant shall not cause or permit any disposal or release of Hazardous Substances into the plumbing systems at the Project. Any Alterations required for Tenant to comply with this Paragraph 9(c) shall be made in accordance with the provisions of Paragraph 8(d) [Requirements for Tenant Alterations].

(d) MAINTENANCE SERVICE CONTRACTS. In connection with Tenant's maintenance and repair obligations contained in this Paragraph 9, 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 hot and cold water, heating, air conditioning and electrical systems, elevators and equipment within the Building, and shall provide copies of such contracts 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 upon Tenant's default under this Section 9 or upon Landlord's assumption of Tenant's maintenance obligations with respect to Building Systems pursuant to Paragraph 9(e) [Cure Rights], at Landlord's election.

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(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 9; 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 so long as Tenant commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion. If Tenant fails to cure such failure as provided above, or in the event of an emergency which materially adversely affects the Project, Landlord may, at Landlord's election, cure such failure, at Tenant's cost and expense, and the expenses thereof incurred by Landlord shall be reimbursed as Additional Charges within thirty (30) days after submission of a bill or statement therefor. 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 Paragraph 9(b)(i) [Tenant's Obligations] if Tenant does not cure any breach of such obligations. If Landlord assumes such obligations, all costs incurred by Landlord in connection therewith shall be deemed Additional Charges payable by Tenant in accordance with Paragraph 4(c) [Additional Charges for Expenses and Taxes]. 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 LIABILITY OF LANDLORD. There shall be no abatement of Rent with respect to, and 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 by any party,

except as expressly and specifically provided in Paragraph 22; provided, however, that (i) Base Rent and Additional Charges may be abated during the period of any interference to Tenant's business which exceeds five (5)days, in proportion to the portion of the Premises Tenant is unable to use, only if such interruption results from an insured casualty such that proceeds are payable to Landlord under the rental interruption insurance carried by Landlord pursuant to Paragraph 12(e) [Landlord's Insurance Obligations] and only to the extent of such proceeds actually received by Landlord, and (ii) subject to the limitations on Tenant's recourse against Landlord contained in Paragraph 21(d) [Tenant's Remedies], Landlord shall be liable for any actual damage to Tenant to the extent caused by Landlord's gross negligence or willful misconduct in connection with any such repairs, maintenance, alteration or improvement.

10. LIENS. Tenant shall keep the Premises and Project free from any liens arising out of any work performed, material furnished or obligations incurred by Tenant. If Tenant does not, within thirty (30) days following the imposition of any such lien, cause it to be released of record by payment or posting of a proper bond (or such shorter period of time as may be required to avoid a default under any Mortgage), Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause it to be released by such means as Landlord deems proper, including payment of the claim giving rise to such lien. All sums paid and expenses incurred by Landlord in connection therewith shall be considered Additional Charges and shall be payable to Landlord by Tenant on demand, with interest at the Default Rate. Landlord shall have the right at all times to post and keep posted on the Premises and Project any notices permitted or required by law or by any Mortgagee, for the protection of Landlord, any Mortgagee, the Premises, the Building, the Land, the Project, the Project, and any other party having an interest therein, from mechanics' and materialmen's liens. Tenant shall give Landlord at least five (5) business days' prior notice of commencement of any construction on the Premises. This Paragraph 10 shall survive any termination of this Lease.

11. ASSIGNMENT AND SUBLETTING.

(a) RESTRICTION ON ASSIGNMENT AND SUBLEASING. 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, the Tenant Improvements, 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 or delayed by Landlord; provided, however, that Landlord may withhold its consent, in its sole discretion, to any assignment of less than the entire Lease. 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 any Mortgagee (taking into account Tenant's continuing liability for performance of the obligations of the Tenant under the Lease in connection with sublease for a cumulative total of less than fifty percent (50%)

of the Building), or (ii) the proposed Sublessee's or Assignee's use of the Premises is not in compliance with the allowed Tenant's Use of the Premises as described in the Basic Lease Information or, in Landlord's judgment, would require or result in presence of Hazardous Substances on the Premises and/or Project in excess of those described in Paragraph 40(d) [Hazardous Substance

Liability; Tenant's Covenants], 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 11.

(b) REQUIRED NOTICE. If Tenant desires at any time to enter into an Assignment of this Lease or a Sublease of the Premises or any portion thereof, it shall first give written notice to Landlord containing (i) the name of the proposed assignee, subtenant or occupant; (ii) a description of the proposed assignee's, subtenant's, 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.

(c) LANDLORD'S RESPONSE TO PROPOSED ASSIGNMENT. Within ten (10) business days after Landlord's receipt of the notice specified in Paragraph 11(b) [Required Notice] with respect to an Assignment of Tenant's interest under this Lease, Landlord may by written notice to Tenant elect to (i) consent to the Assignment, or (ii) disapprove the Assignment.

(d) LANDLORD'S RESPONSE TO PROPOSED SUBLEASE. Within ten (10) business days after Landlord's receipt of the notice specified in Paragraph 11(b) [Required Notice] with respect to a Sublease, Landlord may by written notice to Tenant elect to (i) consent to the Sublease; or (ii) disapprove the Sublease. Notwithstanding anything in this Paragraph 11(d) to the contrary, Landlord shall not have the rights set forth in (ii) of Paragraph 11(e) in connection with any Sublease to a "Strategic Partner" (as defined below) in compliance with Paragraph 11(h) [Strategic Partners], or any "Permitted Transfer" described in Paragraph 11(g).

(e) BONUS RENT. If Landlord consents to any Assignment or Sublease pursuant to Paragraph 11(c) [Landlord's Response To Proposed Assignment] or Paragraph 11(d) [Landlord's Response To Proposed Sublease], Tenant may 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 11(b) [Required Notice]. With respect to any Assignment or Sublease (excluding any Subleases to Strategic Partners and Permitted Transfers) which cause or contribute to more than fifty percent (50%) of the area of the Building to be subleased or assigned by Tenant to third parties (excluding areas occupied by Strategic Partners or which are the subject of Permitted Transfers), Landlord shall be entitled to receive fifty percent (50%) of any rent or other consideration realized by Tenant (after the execution of the Assignment or Sublease which caused more than fifty percent (50%) of the area to be so subleased or assigned) under any, and all, such Assignment or Sublease(s) in excess of the (i) Base Rent and Additional Charges payable hereunder (or the amount thereof fairly allocable to the portion of the Premises subject to such Sublease or Assignment) (ii) the unamortized value of the Tenant Improvements located on the portion of the Premises subject to such Sublease or Assignment as of the effective date of such Assignment or Sublease which are attributable to and allocated in equal installments over the term of the Sublease or Assignment, determined by assuming a useful life equal to fifteen (15) years and amortization on a straight line basis (with interest thereon at the rate of ten percent (10%) per annum), (iii) any customary brokers' commissions that Tenant has incurred in connection with such Assignment or Sublease amortized on a straight line basis (with interest thereon at the rate of ten percent (10%) per annum) over the term of the Sublease or Assignment, and (iv) the cost of any market based Alterations installed by Tenant as a condition to obtaining such Assignment or Sublease (amortized in the same fashion as brokerage commissions). Tenant shall, not later than ninety (90) days after the Rent Commencement Date, deliver evidence of the cost of the Tenant Improvements, which shall be acceptable to Landlord in its reasonable discretion, for Landlord's use as the basis for calculating the value of the Tenant Improvements for purposes of this Paragraph 11(e) (such resulting calculation being referred to herein as the "Value of Tenant Improvements"). The Value of Tenant Improvements shall be allocated

proportionally over the Premises. Failure by Landlord to either consent or refuse such consent to a proposed Assignment or Sublease within the ten (10) business day period specified in Paragraph 11(c) shall be deemed to be Landlord's consent thereto.

(f) EFFECT OF TRANSFER. Landlord's consent

to any Assignment or Sublease shall not relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. Landlord's consent 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 11 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of 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.

(g) PERMITTED TRANSFER. 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 of stock to one person or entity which sale or transfer results in such person or entity acquiring 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 11, 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 which results from a merger, consolidation or other reorganization involving Tenant, so long as immediately following such transaction the surviving corporation has a net worth, and cash, cash equivalents or third party marketable securities with liquidity of 90 to 360 days (collectively, "Liquid Assets"), equal to or greater than the net worth and Liquid Assets of Tenant as of both the execution of this Lease and the Occupancy Date; and (2) Tenant may assign this Lease to a corporation which purchases or otherwise acquires all or substantially all of the assets of Tenant, so long as immediately following such transaction such acquiring corporation has a net worth and Liquid Assets that are equal to or greater than the net worth and Liquid Assets of Tenant as of both the date of execution of this Lease and the Occupancy Date.

(h) STRATEGIC PARTNERS. Tenant may Sublease portions of the Premises to Tenant's Strategic Partners (as defined below) without Landlord's prior consent, subject to the following conditions: (1) after any such Sublease, Tenant shall continue to directly occupy at least eighty percent (80%) of the Rentable Area in the Premises; and (2) Tenant shall provide Landlord with written notice at least thirty (30) days' prior to any such Sublease including the name of the Strategic Partner, the location of the subleased space, the name and address of the Strategic Partner's agent for service of process and delivery of

notices under this Lease, and a certification by an officer of Tenant that the subtenant is a "Strategic Partner" as defined in this Paragraph 11(h). Any Strategic Partner subleasing a portion of the Premises shall maintain an agent for service of process and notice, and notify Landlord of any changes in such agent, at all times during the term of such sublease. The term "Strategic Partner" shall refer to any entity (i) in which Tenant holds an ownership interest of at least ten percent (10%), (ii) that is engaged in a business which Tenant believes to be of strategic importance to its own business, and (iii) that Tenant determines, in its reasonable business judgment, would benefit Tenant's business by conducting its own business within Tenant's

Premises.

(i) ASSUMPTION BY TRANSFEREE. Each assignee, other than Landlord, shall assume all obligations of Tenant arising after the date of the transfer under this Lease, as provided in this Paragraph 11(i), and shall be and remain liable jointly and severally with Tenant for the payment of 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. Any Sublease or Assignment shall expressly provide that if this Lease terminates, the subtenant or assignee will attorn to and become the tenant of the Landlord at the option of Landlord if Landlord elects to recognize such assignment or sublease upon such termination. Any Sublease shall be subject and subordinate to this Lease. Each Assignment and Sublease shall provide that the assignee or subtenant shall not take any action which would cause Tenant to be in default of its obligations under this Lease. If this Lease is assigned, Landlord may collect rent directly from the assignee. If all or part of the Premises is subleased and Tenant defaults, Landlord may collect Rent directly from each sublessee, and if it does so, Landlord shall then apply the amount collected from each sublessee to Tenant's monetary obligations under this Lease. No Assignment shall be binding on Landlord unless the assignee or Tenant delivers to Landlord a counterpart of the Assignment and an instrument that contains a covenant of assumption by the assignee satisfactory in substance and form to Landlord, consistent with the requirements of this Paragraph 11(i), 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.

(j) EFFECT ON EXTENSION OPTION. Notwithstanding any other provision of this Lease, Tenant may not enter into any Sublease (including, without limitation, a Sublease to a Strategic Partner or an affiliate) with a term which exceeds the

Expiration Date unless (i) the conditions to Tenant's right to extend the Term contained in Paragraph 43 [Option to Renew] have been met at the commencement of such Sublease, and (ii) Tenant delivers its Exercise Notice pursuant to Paragraph 43 [Option to Renew] at or prior to the commencement of the Sublease.

(k) ASSIGNMENT TO AFFILIATES. Tenant shall have the right, without Landlord's consent but with written notice to Landlord at least thirty (30) days prior thereto, to enter into an 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, and any such Assignment or Sublease shall be a "Permitted Transfer", provided that (i) the Affiliate delivers to the 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, and (ii) the entity remains an Affiliate throughout the term of this Lease. 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 (bb) stock or partnership interests which provide the right to control the operations, transactions and activities of the applicable entity.

12. INSURANCE AND INDEMNIFICATION.

(a) RELEASE OF LANDLORD. 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 or Project by or from any cause whatsoever (other than the gross negligence or willful misconduct of Landlord or its agents, servants, contractors or employees (collectively, including Landlord, "Landlord Parties")), and without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, or other portion of the Building, or caused by

gas, fire, oil, electricity, or any cause whatsoever, in, on, or about the Project or any part thereof (other than that caused by the gross negligence or willful misconduct of Landlord Parties). Tenant acknowledges that any casualty insurance carried by Landlord will not cover, and Landlord shall not be responsible for, loss of

income to Tenant or damage to the Alterations in the Premises installed by Tenant or Tenant's personal property located within the Premises, including, without limitation, during construction of Base Building Improvements and Tenant Improvements. Tenant shall be required to maintain the insurance described in Paragraph 12(c) [Tenant's Insurance Requirements] below during the Term. In the event of a discrepancy between the terms of this paragraph and the terms of Paragraph 40 [Hazardous Substance Liability], the latter shall control. Nothing in this Paragraph is intended to nor shall it be deemed to override the provisions of Paragraph 13 [Waiver of Subrogation].

(b) TENANT INDEMNITY. Except to the extent (i) caused by the gross negligence or willful misconduct of the Landlord Parties or (ii) as otherwise provided for in Paragraph 40, Hazardous Substance Liability, Tenant shall indemnify and hold the Landlord Parties harmless from and defend the Landlord Parties against any and all claims or liability for any injury or damage to any person or property whatsoever occurring in or on the Premises. Tenant further agrees to indemnify and hold the Landlord Parties harmless from, and defend the Landlord Parties against, any and all claims, losses, or liabilities (including damage to Landlord's property) arising from (x) any breach of this Lease by Tenant and/or (y) the conduct of any work or business of Tenant, its agents, servants, employees, or invitees (collectively, including Tenant, "Tenant Parties"), in or about the Project.

(c) TENANT'S INSURANCE REQUIREMENTS. Tenant shall procure at its cost and expense and keep in effect during the Term (including, without limitation, during the course of construction of Tenant Improvements) the following insurance:

(i) A policy of Commercial General Liability insurance written on an occurrence form insuring Landlord, any Mortgagee and Tenant against any liability arising out of the ownership, use, occupancy, maintenance, repair or improvement of the Premises or the Project and as appurtenant thereto. Such insurance shall provide $5,000,000 combined single limit for bodily injury and property damage. The limits of said insurance shall not, however, limit the liability of the Tenant hereunder, and Tenant is responsible for ensuring that the amount of liability insurance carried by Tenant is sufficient for Tenant's purposes. Tenant may carry said insurance under a blanket policy so long as "per location" liability aggregate limit is maintained, satisfactory to Landlord. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain same, but at the expense of Tenant.

Tenant shall deliver to Landlord prior to occupancy of the Premises copies of policies of liability insurance required herein and certificates evidencing the existence and amounts of such insurance which name Landlord and any Mortgagee as additional insured with evidence satisfactory to Landlord of payment of premiums. No policy shall be cancelable or subject to reduction of coverage except after thirty (30) days' prior written notice to Landlord. Tenant acknowledges and agrees that insurance coverage carried by Landlord will not cover Tenant's property within the Premises and that Tenant shall be responsible, at Tenant's sole cost and expense, for providing insurance coverage for Tenant's movable equipment, furnishing, trade fixtures and other personal property in or upon the Premises and for any alterations, additions or improvements (other than the initial construction of the Tenant Improvements) to or of the Premises or any part thereof made by Tenant, in the event of

damage or loss thereto from any cause whatsoever.

(ii) Business interruption and extra expense insurance, insuring Tenant for a period of eighteen (18) months against losses arising from the interruption of Tenant's business, and for lost profits, and charges and expenses which continue but would have been earned if the business had gone on without interruption, insuring against such perils, in such form as is reasonably satisfactory to Landlord. Such insurance should be without deductible and on an agreed amount basis with no coinsurance payable.

(iii) Tenant shall maintain a policy or policies of fire and property damage insurance in "special" (also known as "all risk") form with a sprinkler leakage endorsement insuring the personal property, inventory, trade fixtures, and if applicable boiler and machinery, within the Premises for the full replacement value thereof. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured.

(iv) Tenant shall also maintain a policy or policies of workers' compensation insurance and any other employee benefit insurance sufficient to comply with all Laws.

(v) TENANT IMPROVEMENTS/ALTERATIONS. Tenant shall purchase and keep in force a policy or policies of liability, fire and property damage insurance including provision for the payment of deductibles (up to a maximum of $10,000 per occurrence for all-risk coverage and up to fifteen percent (15%) of replacement cost for earthquake) and pre-payment for coverage, up to one year, covering loss or damage to the Tenant

Improvements and Alterations, for which Landlord shall be listed as a co-loss payee) in the amount of the full replacement value thereof, insuring direct physical loss or damage included within the "special form" classification of coverage and flood and earthquake insurance, if available. In addition, during the course of construction of the Tenant Improvements, Tenant shall purchase and keep in force Comprehensive Builder's Risk/Course of Construction insurance, with the same requirements as policies described above but with appropriate adjustments to reflect that the Tenant Improvements are under construction. Tenant shall pay directly the cost of such policy or policies of insurance.

Insurance required under this Paragraph 12(c) shall be in companies rated "A" X or better in "Best's Insurance Guide." Tenant shall deliver policies of such insurance or certificates thereof to Landlord on or before the Occupancy 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, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Charges within fifteen (15) days after delivery to Tenant of bills therefor.

(d) SURVIVAL. The provisions of this Paragraph 12 shall survive the expiration or termination of this Lease with respect to any claims or liability arising out of events occurring prior to such expiration or termination.

(e) LANDLORD'S INSURANCE OBLIGATIONS. Landlord shall purchase and keep in force a policy or policies of liability, fire and property damage insurance including provision for the payment of deductibles and pre-payment for coverage, up to one year, covering loss or damage to the Premises and Project in the amount of the full replacement value thereof, insuring direct physical loss or damage included within the "special form" classification of coverage and flood and earthquake insurance, if available, plus a policy of rental income insurance in the amount of twelve (12) months Base Rent and Additional Charges (or such longer time as any Mortgagee may require). At Tenant's request, Landlord shall include any specific Alterations made in accordance with this Lease in such policies, provided that Tenant provides Landlord with all information reasonably required by Landlord or its insurer in connection with such Alterations. In addition, during the course of construction of the Base Building Improvements and Tenant Improvements,

Landlord shall purchase and keep in force Comprehensive Builder's Risk/Course of Construction insurance, with the same requirements as policies described above

but with appropriate adjustments to reflect that the Project is under construction. Tenant shall pay to Landlord the cost of such policy or policies of insurance pursuant to Paragraph 4(c) [Additional Charges for Expenses and Taxes]. If such insurance cost is increased due to Tenant's use of the Premises, Tenant agrees to pay to Landlord the full cost of such increase. Tenant shall have no interest in nor any right to the proceeds of any insurance procured by Landlord for the Premises or 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; provided, however, that such coverages shall not be voluntarily reduced by Landlord without Tenant's prior consent.

13. WAIVER OF SUBROGATION. Notwithstanding anything to the contrary in this Lease, to the extent that this waiver does not invalidate or impair their respective insurance policies, the parties hereto release each other and their respective agents, employees, successors, contractors, subcontractors, 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 or the Work Letter, or (iii) which would normally be covered by the standard ISO "special" form of casualty insurance, without regard to the negligence or willful misconduct of the entity so released. Landlord and Tenant shall each obtain a similar waiver of subrogation in their respective construction contracts for the Base Building Improvements and Tenant Improvements, respectively, and shall require that their respective contractors obtain a similar waiver from all subcontractors of all tiers. Landlord and Tenant shall each obtain, and shall cause their respective contractors and subcontractors to 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 (including during the course of construction of the Base Building Improvements and the Tenant Improvements) insuring or covering 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.

14. SERVICES AND UTILITIES.

(a) LANDLORD'S RESPONSIBILITY. Landlord shall provide the maintenance and repairs described in Paragraph 9(a) [Maintenance and Repairs; Landlord's Obligations], except for damage caused by the acts or omissions of the Tenant Parties, which damage shall be repaired by Landlord at Tenant's expense, subject to the waiver of subrogation provisions in Paragraph 13.

(b) TENANT'S RESPONSIBILITY. 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, landscape maintenance (except in the Project), transportation management programs (including any commuter shuttle program required by the City of Mountain View), water, electricity, gas, telephone, cable and digital communications equipment, and any and all

other utilities and services, and Tenant shall provide the maintenance, repair and replacement of Building Systems in connection with such utilities and services as described in Section 9(b) [Repair and Maintenance; Tenant's Obligations]. 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 9(e) [Cure Rights], 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) NO EXCESSIVE LOAD. Tenant will not without the prior 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 any Building or its structure or systems.

(d) NO LIABILITY OF LANDLORD. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall Rent be abated by reason of, (i) the installation (but not including installation which is Landlord's obligation pursuant to the Work Letter), 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 Force Majeure Events, or by the making of repairs or improvements to the Project or any portion thereof which are the responsibility of Landlord under

this Lease; 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 Project; provided, however, that (aa) Base Rent and Additional Charges may be abated during the period of any total interruption of utilities or services to the Premises which exceeds thirty (30) days only if such interruption results from an insured casualty such that proceeds are payable to Landlord under the rental interruption insurance carried by Landlord pursuant to Paragraph 12(e) [Landlord's Insurance Obligations] and only to the extent of such proceeds actually received by Landlord, and (bb) subject to the limitations on Tenant's recourse against Landlord contained in Paragraph 21(d) [Tenant's Remedies], Landlord shall be liable for any actual damage to Tenant's property to the extent caused by Landlord's gross negligence or willful misconduct in connection with the failure to furnish or delay in furnishing any services to be provided by Landlord.

15. TENANT'S CERTIFICATES. Tenant, at any time and from time to time, within ten (10) days after written request from Landlord, will execute, acknowledge and deliver to Landlord and, at Landlord's request, to any prospective purchaser, ground or underlying lessor or Mortgagee of any part of the Project or any other party acquiring an interest in Landlord, a certificate of Tenant substantially in the form attached as Exhibit "H". The certificate may also contain any other information reasonably required by any such persons. It is intended that any certificate of Tenant delivered pursuant to this Paragraph 15 may be relied upon by Landlord and any prospective purchaser, ground or underlying lessor or Mortgagee of any part of the Project or such other party. If requested by Tenant, Landlord shall provide Tenant with a similar certificate.

16. 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 or termination of this Lease without the 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 Landlord) or one hundred twenty fifty percent (125%) of the Monthly Base Rent payable in the last full month prior to the termination hereof (and shall be increased in accordance with Paragraph 4(b) [Adjustments in Base Rent]). 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 such termination 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.

17. SUBORDINATION. Without the necessity of any additional document, this Lease shall be subject and subordinate at all times to: (i) all ground leases or underlying leases that may now exist or hereafter be executed affecting any portion of the Premises or Project; and (ii) the lien of any mortgage or deed of trust that may now exist or hereafter be executed in any amount for which any portion of the Premises or Project or any ground leases or underlying leases, or Landlord's interest or estate in any of said items, is specified as security (any such lien being herein defined as a "Mortgage" and the holder of any Mortgage being 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 Mortgage to this Lease. If any ground lease or underlying lease terminates, 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 lien, Mortgage, or other security interest affecting the Premises, and Tenant shall not attorn to the ground lessor, Mortgagee or other holder of the interest to which this Lease would be subordinated unless such ground lessor, Mortgagee or holder executes a reasonable recognition and non-disturbance agreement which provides for the following (i) 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, (ii) such ground lessor, Mortgagee or holder will not have a more strict standard than is allowed per the Lease concerning the withholding of consent to Alterations, (iii) any draw upon the security deposit shall be credited to reduce the obligations of Tenant under the Lease, whether or not the lender actually receives the proceeds from such draw, and (iii) insurance proceeds must be made available for restoration or payment to Tenant in accordance with

the terms of this Lease. Tenant shall execute and deliver upon demand by Landlord, and in the form requested by Landlord or any Mortgagee and reasonably acceptable to Tenant, any 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 authorize recordation of any such documents within twenty (20) days after Landlord's written request.

18. RULES AND REGULATIONS. Tenant shall faithfully observe and comply with the rules and regulations attached to this Lease as Exhibit "J" and all reasonable nondiscriminatory modifications thereof and additions thereto from time to time put into effect by Landlord and approved by Tenant, provided such rules and regulations do not unreasonably interfere with Tenant's use of

the Premises as contemplated by this Lease. At such time as Landlord desires to modify the Rules and Regulations, it should deliver a copy of such modifications to Tenant for its approval, which shall not be unreasonably withheld. In the event that Tenant does not signify its disapproval within ten (10) days and explain the reasons for such approval, the modifications shall be deemed to have been approved by Tenant. 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.

19. RE-ENTRY BY LANDLORD. Landlord reserves and shall at all reasonable times have the right to re-enter the Premises 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, to inspect the same; to supply any 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 other than prospective tenants of any recaptured space, only during the last eighteen (18) months of the initial Term or the last twenty-four (24) months of any Extension Term); and to post notices of nonresponsibility; to alter, improve or repair the Premises and any portion thereof as required or allowed by this Lease or by law (and Landlord may for that purpose erect, use, and maintain scaffolding, pipes, conduits, and other necessary 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 or any third party's entry and acts pursuant to this Paragraph 19 unless caused by Landlord's gross negligence or willful misconduct. Tenant shall not be entitled to an abatement or reduction of 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 have the right to use any and all means which Landlord reasonably determines are necessary or proper to open doors on the Premises in an emergency in order to obtain entry to any portion of the Premises. 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 best efforts during re-entry to not unreasonably interfere with Tenant's use of the Premises or its business conducted therein.

20. INSOLVENCY OR BANKRUPTCY. The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization or other debtor relief proceedings (each of the foregoing, an "Insolvency Proceeding"), whether now existing or hereafter amended or enacted, shall, at Landlord's option, constitute a breach of this Lease by Tenant, unless a petition in bankruptcy, receiver attachment, or other remedy pursued by a third party is discharged within sixty (60) days. Upon the happening of any such event (including the expiration of such 60 day period, if applicable) 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 (except as provided in Paragraph 11 [Assignment and Subletting]) or by voluntary or involuntary bankruptcy proceedings or otherwise. 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.

21. DEFAULT.

(a) TENANT'S DEFAULT. 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 three (3) 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 default in the payment of Base Rent or Additional Charges. Tenant shall have a

period of thirty (30) 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 other curable default under this Lease; provided, however, that with respect to any curable default other than the payment of Base Rent or Additional Charges that cannot reasonably be cured within thirty (30) days, the default shall not be deemed to be uncured if Tenant commences to cure within thirty (30) days from Landlord's notice and continues to prosecute diligently the curing thereof. Notwithstanding the foregoing, (i) if a shorter cure period is specified elsewhere in this Lease or the Work Letter with respect to any specific obligation of Tenant, such shorter cure period shall apply with respect to a default of such obligation; (ii) the foregoing cure rights shall not extend the specified time for compliance with any required delivery, approval or performance obligation of Tenant under the Work Letter; and (iii) the foregoing cure rights shall not apply to any Draw Event (as defined in the Work Letter).

(b) LANDLORD'S REMEDIES. Upon an uncured 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:

(1) 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 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;

(2) 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 Base Rent and Additional Charges as they become due, for so long as Landlord does not terminate Tenant's right to possession. 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;

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

(4) 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.

(c) LANDLORD'S DEFAULT. Landlord shall have a period of thirty (30) days from the date of written notice from Tenant of Landlord's default (any such notice, a "Landlord Default Notice") to cure any default by 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 receipt of a Landlord Default Notice and continues to prosecute diligently the curing thereof. Tenant agrees to give any Mortgagee, by registered or certified mail, a copy of any Landlord Default Notice served upon the Landlord, provided that prior to such notice Tenant has been notified in writing of the address of such Mortgagee. If Landlord fails to cure such default within the time provided for in this Lease, then the Mortgagee shall have an additional thirty (30) days after the expiration of such cure period within which to cure such default (provided that Tenant notifies Mortgagee concurrently with Tenant's delivery of the Landlord Default Notice to Landlord after the expiration of such cure period within which to cure such default; otherwise Mortgagee shall have thirty (30) days from the later of the date on which it receives notice of the default from Tenant and the expiration of Landlord's cure period). If such default cannot be cured by Mortgagee within the cure period, Tenant may not exercise any of its remedies so long as 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).

(d) TENANT'S REMEDIES. Subject to Paragraph 3(f) [Exclusive Remedies], if any default hereunder by Landlord is not cured within the applicable cure period provided in Paragraph 21(c) [Landlord's Default], Tenant's exclusive remedies shall be an action for specific performance or action for actual damages. Tenant hereby waives the benefit of any laws granting it (A) the right to perform Landlord's obligation, or (B) the right to terminate this Lease or (C) withhold Rent on account of any Landlord default. Tenant shall look solely to Landlord's interest in the Project (such interest to include proceeds of insurance or condemnation where the claim of the Tenant arises in connection with the event giving rise to such proceeds), 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, 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 Santa Clara County after the date of the judgement giving rise to such lien. Notwithstanding the provisions of Paragraph 21(d)(B), Tenant shall have the right to terminate this Lease in the event (i) Landlord is in default of an express obligation under this Lease, (ii) such default, if not cured, would constitute constructive eviction of Tenant, (iii) Tenant has given written notice to Landlord and any Mortgagee, (iv) sixty (60) days has expired from the date of Tenant's written notice in accordance with clause (iii) and the default has not been cured and neither Landlord nor any Mortgagee are diligently attempting to cure such default. If all of the foregoing conditions exist, except that the default of Landlord is the failure to maintain or repair an item which is not structural in nature, then Tenant may, upon ten (10) additional days notice elect to provide the necessary repair or maintenance and to recover the cost of such cure with interest at the Default Rate (except to the extent otherwise payable by Tenant hereunder), all in the same manner and in accordance with the procedures described in Paragraph 25.

22. DAMAGE AND DESTRUCTION

(a) RESTORATION. Subject to the termination rights set forth in Paragraphs 22(c) [Casualty at End of Term] and Paragraph 22(d) [Mutual Termination Option] and Paragraph 22(e) [Destruction Where Insufficient Proceeds Are Available], if the Premises or any portion thereof are damaged or destroyed by fire or other casualty, Tenant will promptly give written notice thereof to Landlord, and:

(1) Tenant, at Tenant's sole cost and expense, and pursuant to the provisions of Paragraph 8 [Alterations] and/or the Work Letter, as applicable, will promptly repair, restore and rebuild the Tenant

Improvements and any Alterations as nearly as possible to the condition they were in immediately prior to such damage or destruction or with such changes or alterations as may be made pursuant to Paragraph 8 [Alterations]; and

(2) to the extent that any such damage or destruction affects the Base Building Improvements, Landlord shall repair the same at Landlord's cost to the extent of Landlord's obligations under the Work Letter.

(b) INSURANCE PROCEEDS. Subject to the provisions of Paragraph 22(f) [Proceeds Upon Termination], all insurance proceeds recovered by the Landlord and/or Tenant on account of

such damage or destruction, less the cost, if any, to the Landlord and/or Tenant of such recovery, shall be held by the Mortgagee or in escrow and paid out from time to time to or at the direction of Landlord in respect of the Base Building Improvements and Tenant in respect of the Tenant to the extent required to repair, restore and rebuild the Base Building Improvements and Tenant Improvements and any Alterations, pursuant to disbursement procedures established by Landlord and/or any Mortgagee. The amount of available insurance proceeds shall not limit Tenant's or Landlord's obligation to repair, restore and rebuild the Tenant Improvements and Alterations and the Base Building Improvements, respectively, in accordance with this Paragraph 22.

(c) 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 (without taking into account Tenant's termination option contained in Paragraph 45 [Termination Option] unless prior to the casualty Tenant notified Landlord in writing of Tenant's intent to exercise such option), the entire Building or a substantial portion thereof is 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 the Landlord shall make a proportionate refund to the Tenant of such Rent as may have been paid in advance. For the purposes of this paragraph, a "substantial portion" of the Building shall mean twenty percent (20%) or more of the Rentable Area thereof. If neither party elects to terminate this Lease, Landlord and/or Tenant shall repair, restore and rebuild the Premises in accordance with Paragraph 22(a) [Restoration].

(d) MUTUAL TERMINATION OPTION; INSURED CASUALTY. Notwithstanding anything to the contrary contained herein (but subject to Paragraph 22(e) below), if at any time during the Term the Base Building Improvements shall be damaged or destroyed to the extent that they cannot be reconstructed within twelve (12) months following the date such reconstruction can commence, either Landlord or Tenant shall have the right to terminate this Lease as of the date of such damage or destruction by written notice to the other party. Within forty-five (45) days after any damage or destruction described in this Paragraph 22(d), Landlord shall notify Tenant whether or not in Landlord's reasonable opinion (supported by reasonable written confirmation from a third party architect or general contractor) such reconstruction can be made within twelve (12) months after the date such reconstruction can commence, and if reconstruction cannot be made within twelve (12) months, whether or not Landlord elects to terminate the Lease. If Tenant is so notified, but Landlord does

not elect to terminate, Tenant may terminate this Lease as of the date of such damage or destruction by written notice to Landlord given within forty-five (45) days after receipt of Landlord's notice. If Tenant disputes Landlord's determination that such reconstruction can be completed within twelve (12) months, Tenant shall so notify Landlord within forty-five (45) days after

receipt of Landlord's notice (supported by reasonable written confirmation from a third party architect or general contractor backing Tenant's assertions), and if the parties are unable to reach agreement within the ten (10) day period after Landlord's receipt of Tenant's notice, either party may submit such dispute to arbitration pursuant to Paragraph 41 [Arbitration of Disputes], provided that Landlords may, at its sole election (but shall not be obligated to), commence reconstruction of the Base Building Improvements while such arbitration proceedings are pending. If neither party elects to terminate this Lease, Landlord and/or Tenant shall repair, restore and rebuild the Premises in accordance with Paragraph 22(a) [Restoration].

(e) DESTRUCTION WHERE INSUFFICIENT PROCEEDS ARE AVAILABLE. If the Base Building Improvements are damaged by any peril and the insurance proceeds (not including any "deductible" complying with provisions of this Lease) available to repair the Base Building Improvements are less than ninety-five percent (95%) of the replacement cost of the Base Building Improvements, then this Lease shall terminate unless the damage can be reconstructed within twelve (12) months following the commencement of reconstruction (determined as provided above) and either (x) Landlord elects to reconstruct the Base Building Improvements at its cost, or (y) if Landlord elects not to so reconstruct the Base Building Improvements, within ten (10) days after Landlord notifies Tenant of its election, Tenant agrees to pay the amount by which the restoration cost not covered by insurance proceeds exceeds five percent (5%) of the replacement cost of the Base Building Improvements. If Landlord elects to restore the Base Building Improvements, the cost incurred by Landlord, which is not covered by insurance proceeds, shall be amortized over the useful life of the Base Building Improvements and such amortization shall be reimbursed by Tenant to Landlord on a monthly basis during the remainder of the term of the Lease as an Additional Charge (which amortization shall be calculated with interest in the same manner as amortization determined pursuant to clause (v) and the last sentence of subparagraph 4(c)(1)(C); provided, however, that Tenant shall not be obligated to pay any portion of the useful life of the Base Building Improvements which extends beyond the Expiration Date. If Landlord does not elect to restore the Base Building Improvements, but becomes obligated to do so because Tenant elects to make the contribution toward the first sentence of this subparagraph, the Landlord shall restore the Base Building Improvements and

utilize such insurance proceeds as are available, and Tenant shall make the contribution which it has agreed to make toward such cost as when Landlord needs such funds for restoration. If Landlord elects or becomes obligated to reconstruct the Base Building Improvements, Tenant shall be obligated to reconstruct the Tenant Improvements at Tenant's cost. However, notwithstanding anything contained herein, if Landlord makes the election under clause (x) of the first sentence of this subparagraph, the maximum cost to be borne by Tenant relating to the Base Building Improvements under any such event shall be amortization of an amount equal to fifteen percent (15%) of the replacement cost of the Base Building Improvements. In addition, and notwithstanding anything to the contrary contained in this subparagraph, if the total cost that Tenant becomes obligated to pay pursuant to this subparagraph on account of damage to the Base Building Improvements and the Tenant Improvements (either in cash or through amortization) exceeds fifteen percent (15%) of the full replacement cost of both the Base Building Improvements and the Tenant Improvements, then Tenant shall have the option to terminate this Lease; provided, however, that if Tenant exercises said option, this Lease shall not terminate if Landlord agrees to pay such excess.

(f) PROCEEDS AND PAYMENTS UPON TERMINATION. If this Lease is terminated under Paragraph 22(e) or by Tenant under Paragraph 22(c) [Casualty at End of Term] or Paragraph 22(d) [Mutual Termination Option; Insured Casualty], Landlord shall be entitled to retain any and all insurance proceeds arising out of the damage or destruction (including, without limitation, proceeds attributable to the Tenant Improvements), except for any portion of the award specifically compensating Tenant for the loss of its personal property, equipment and trade fixtures. Upon any termination by Tenant, Tenant shall assign all of its rights to any insurance proceeds to which it is entitled (except any portion specifically compensating Tenant for the loss of its personal property, equipment and trade fixtures) to Landlord.

(g) RENT ABATEMENT. In the event of an insured casualty, the Base Rent and Additional Charges during the period from the date of the damage or destruction until completion of the restoration, repair, replacement or rebuilding shall be abated by an amount that is in the same ratio to the Base Rent and Additional Charges as the area of the Premises rendered unusable for the permitted use hereunder bears to the area of the Premises prior to the damage or destruction, but only to the extent of the amount of proceeds payable to Landlord (taking into account any applicable waiting period or deductibles) under the

rental interruption insurance required to be carried by Landlord pursuant to Paragraph 12(e) [Landlord's Insurance Obligations].

(h) WAIVER OF STATUTORY PROVISIONS. Tenant hereby waives the provisions of Section 1932.2, and Section 1933.4, of the Civil Code of California, or any similar laws now or hereafter in effect, that would relieve the Tenant from any obligation to pay Rent under this Lease due to any damage or destruction.

23. EMINENT DOMAIN.

(a) ENTIRE BUILDING. If the entire Building is taken or appropriated under the power of eminent domain or conveyed in lieu thereof (any such event, a "Taking"), (i) this Lease and all right, title and interest of the Tenant hereunder shall cease and come to an end on the date of vesting of title pursuant to such Taking, and (ii) the Base Rent and Additional Charges payable shall be apportioned as of the date of such vesting.

(b) PARTIAL BUILDING; TERMINATION. If there is a Taking of less than the entire Building, this Lease shall terminate as to the portion of the Building so taken upon vesting of title pursuant to such Taking, and if, but only if, such Taking is so extensive that it renders the remaining portion of the Building unsuitable for the use being made of the Building on the date immediately preceding such Taking, either the Tenant or the Landlord may terminate this Lease by written notice to the other party not later than thirty (30) days after the date of such vesting, specifying as the date for termination a date not later than thirty (30) days after such notice. On the date specified in such notice, (i) the term of this Lease and all right, title and interest of Tenant hereunder shall cease, and (ii) the Base Rent and Additional Charges shall be apportioned as of the date of such termination.

(c) PARTIAL BUILDING; RESTORATION. If there is a Taking of less than the entire Building and this Lease is not terminated with respect to the Building as provided in (b) above, this Lease shall terminate as to the portion of the Building so taken upon vesting of title pursuant to such Taking. In any such case, Landlord shall restore the Base Building Improvements (to the extent of Landlord's obligations under the Work Letter) for the portion of the Building 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 Tenant Improvements or Alterations installed on the Premises by or at the expense of Tenant. Tenant shall, at Tenant's sole cost and expense, promptly and pursuant to the provisions of Paragraph 8 [Alterations], restore those portions

of the Tenant Improvements and Alterations not so taken. Thereafter, the 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 the portion of the Building not so taken bears to the total area of the Building prior to such Taking.

(d) END OF TERM TAKING. If, during the twelve (12) months prior to the expiration of the Term, there is a Taking of a portion of the Building, both Landlord and Tenant shall have the option, exercisable by written notice to the other party given within thirty (30) days after such vesting of title, of terminating this Lease as of the date of vesting of title pursuant to the Taking, in which event Landlord shall make a proportionate refund to Tenant of any Base Rent and Additional Rent that has been paid in advance.

(e) TAKING OF PROJECT. If there is a Taking of any portion of the Project which causes the Premises to violate parking requirements, building setbacks or access requirements under any applicable Laws, Landlord shall cure such non-compliance by any reasonable means. If Landlord determines that such violation is not curable by reasonable means, or if Landlord fails to commence such cure within sixty (60) days after such Taking, both Landlord and Tenant shall have the option, exercisable by written notice to the other party, of terminating this Lease as of the date of vesting of title pursuant to the Taking, in which event Landlord shall make a proportionate refund to Tenant of any Base Rent and Additional Rent that has been paid in advance.

(f) AWARD. 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 any Taking, whether partial or total, and whether or not either Landlord or Tenant exercises any right it may have to terminate this Lease excepting that portion of the award which is specifically allocable to the unamortized cost of any Tenant Improvements (whether or not the Tenant was required to remove such Tenant Improvements at the Expiration of the Lease). Tenant shall have no claim against Landlord for any other part of such sum paid by virtue of the Taking, 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 Tenant Improvements or Alterations paid for by Tenant which Tenant is required to remove upon termination of the Lease; (ii) the value of Tenant's trade fixtures; (iii) Tenant's relocation costs; and

(iv) Tenant's goodwill, loss of business and business interruption.

(g) TAKING. Notwithstanding anything to the contrary contained in this Paragraph 23, if there is a Taking of the temporary use or occupancy of any part of the Premises during the Term, this Lease shall be and remain unaffected by such Taking and Tenant shall continue to pay in full all Base Rent and Additional Charges payable hereunder by Tenant during the Term. In such event, Tenant shall be entitled to receive that portion of any award which represents compensation for the use 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. Notwithstanding the foregoing, if Landlord determines in its reasonable judgment that any Taking of the temporary use or occupancy of any part of the Premises will continue until the end of the Term, either party may elect to terminate this Lease by written notice to the other party at any time after Landlord has made such determination and delivered written notice thereof to Tenant, and Landlord shall be entitled to receive the entire award for the Taking, except for that portion which represents compensation for the use or occupancy of the Premises during the period of time prior to such termination.

(h) WAIVER OF STATUTORY PROVISIONS. Landlord and Tenant understand and agree that the provisions of this Paragraph 23 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.

24. SALE BY LANDLORD. Landlord shall not sell or otherwise convey its interest in any portion of the Premises, other than by foreclosure or a

conveyance in lieu of foreclosure, prior to substantial completion of the Base Building Improvements. If Landlord sells or otherwise conveys its interest in all or any portion of the Premises, Landlord shall be relieved of its obligations under the Lease with respect to the conveyed portion from and after the date of sale or conveyance only when Landlord transfers the proportionate amount of any security deposit of Tenant to its successor and 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.

25. 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 Base Rent or Additional Charges. If Tenant defaults in the payment of any sum of money, other than Base Rent or Additional Charges, required to be paid by it hereunder or fails to perform any other act on its part to be performed hereunder, and such failure continues for ten (10) days after notice thereof by Landlord (or such longer period as noted in Paragraph 9(e)[Cure Rights] or Paragraph 21(a) [Tenant's Default], except in the event of emergency), Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease without waiving or releasing Tenant from any obligations of Tenant. All sums so paid by Landlord and all reasonable and necessary incidental costs incurred by Landlord in connection therewith, together with interest thereon at the Default Rate from the date of such payment by Landlord, shall be payable to Landlord on demand as Additional Charges.

26. OWNERSHIP OF IMPROVEMENTS; SURRENDER OF PREMISES.

(a) OWNERSHIP OF TENANT IMPROVEMENTS & ALTERATIONS. The Tenant Improvements and any Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and conditions of this Lease and the Work Letter, except for Tenant's movable furniture and equipment, trade fixtures and Alterations which can be removed without damage to the Premises, shall become Tenant's property upon their completion, shall remain Tenant's property throughout the Term of this Lease and shall become Landlord's property upon the expiration or earlier termination of this Lease.

(b) DELIVERY AND RESTORATION OF PREMISES. 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 thereon (including, without limitation, the Tenant Improvements and Alterations which Landlord does not require Tenant to remove pursuant to Paragraph 8 [Alterations] or Paragraph 6 [Election to Remove Tenant Improvements] of the Work Letter), in the same condition as received or first installed subject to normal wear and tear but in the condition described on Exhibit "K" attached hereto, subject to the terms of Paragraph 23 [Eminent Domain] and the rights and obligations of Landlord and Tenant concerning casualty damage pursuant to Paragraph 22 [Damage and Destruction]. Tenant may, upon the termination of this Lease, remove all movable furniture, trade fixtures and equipment belonging to Tenant which is not an integral part of any Building System, at Tenant's sole cost, provided that Tenant repairs any

damage caused by such removal. Property not so removed shall be deemed abandoned by Tenant, and title to the same shall thereupon pass to Landlord. In addition, Tenant shall remove and/or reconfigure, at Tenant's sole cost and with all due diligence, any or all Tenant Improvements and Alterations to the Premises installed by or at the expense of Tenant which Tenant is required to remove and/or reconfigure under Paragraphs 8(d) or (e) [Alterations] of this Lease or Paragraph 6 [Election to Remove Tenant Improvements] of the Work Letter.

(c) NO MERGER. 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.

27. 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 Base Rent or Additional Charges by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such 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.

28. NOTICES. Except as otherwise expressly provided in this Lease, and except for routine bills or invoices for Base Rent or Additional Charges delivered by Landlord pursuant to Paragraph 4, which Landlord may elect to deliver by first class U.S. Mail, 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 at Tenant's address set forth in the Basic Lease Information; 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 28. Any 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, or 3 days after mailed by first class mail.

29. 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.

30. ABANDONMENT. Tenant shall not abandon the Premises and cease performing its financial and maintenance obligations under this Lease at any time during the Term. If Tenant abandons and ceases performing its financial and maintenance obligations under this Lease, or surrenders the Premises or is 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 may not vacate the Premises if such would result in a termination of Landlord's insurance. Upon Tenant's request, Landlord will ask its insurer if such vacation of the Premises would result in termination of its current insurance policy. Solely for purposes of this Paragraph 30, Tenant shall not be deemed to have abandoned the Premises solely because Tenant is not occupying the Premises.

31. SUCCESSORS AND ASSIGNS. Subject to the provisions of Paragraphs 11 [Assignment and Subletting] and 24 [Sale by Landlord], 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.

32. 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 Base Rent or Additional Charges or possession of the Premises, the losing party shall pay to the prevailing party a reasonable sum for attorney's fees, 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.

33. LIGHT AND AIR. Tenant covenants and agrees that no diminution of light, air or view by any structure which may hereafter be 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.

34. SECURITY DEPOSIT.

(a) LETTER OF CREDIT. On or before March 19, 1997, Tenant shall deliver to Landlord an unconditional, irrevocable, transferable letter of credit, in the amount of One Million Seven Hundred and Fifty Thousand Dollars ($1,750,000), issued by a financial institution acceptable to Landlord in the form attached hereto as Exhibit "M", with an original term of no less than one year and automatic extensions through the end of the Term of this Lease and sixty (60) days thereafter (the "Letter of Credit"). Tenant shall keep the Letter of Credit, at its expense, in full force and effect until the sixtieth (60th) day after the Expiration Date or other termination of this Lease, to insure the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease, including, without limitation, Tenant's obligations to repair, replace or maintain the Premises and Tenant's obligations under the Work Letter. The Letter of Credit shall provide thirty (30) days' prior written notice to Landlord of cancellation or material change thereof, and shall further provide that, in the event of any nonextension of the Letter of Credit at least thirty (30) days prior to its expiration, the entire face amount shall automatically be paid to Landlord, and Landlord shall hold the funds so obtained as the security deposit required under this Lease. If for any reason such automatic payment does not occur in the event of a nonextension at least thirty (30) days prior to expiration, Landlord shall be entitled to present its written demand for payment of the entire face amount of the Letter of Credit, and the funds so obtained shall be held as provided above. Any unused portion of the funds so obtained by Landlord shall be returned to Tenant upon replacement of the Letter of Credit or deposit of cash security in the full amount required hereunder. If Landlord uses any portion of the cash security deposit to cure any default by Tenant hereunder, Tenant shall replenish the security deposit to the original amount within ten (10) days of notice from Landlord. Tenant's failure to do so shall become be a material breach of this Lease. Landlord shall keep any cash security funds separate from its general funds, and shall invest such cash security at Tenant's reasonable direction, and any interest actually earned by Landlord on such cash security shall be paid to Tenant quarterly. If an event of default occurs under this Lease or the Work Letter (including, without limitation, any default by Tenant with respect to its

payment and performance obligations under the Work Letter), or if Tenant is the subject of an Insolvency Proceeding, Landlord may present its written demand for payment of the entire face amount of the Letter of Credit and the funds so obtained shall become due and payable to Landlord. Landlord may retain such funds to the extent required to compensate Landlord for damages incurred, or to reimburse Landlord as provided herein, in connection with any such event of default, and any remaining funds shall be held as a cash security deposit. Without limiting the foregoing, in the event of a default in Tenant's obligations to complete the Tenant Improvements in accordance with the Work

Letter, Landlord may use the security deposit to complete the Tenant Improvements as contemplated by the Work Letter. The security deposit described in this Paragraph 34, and Tenant's obligations and Landlord's rights with respect thereto, shall be in addition to any Letter of Credit or other security provided by Tenant under the Work Letter.

(b) RETURN OF LETTER OF CREDIT. The Letter of Credit shall be returned to Tenant, and Tenant's obligation to provide a security deposit to Landlord under this Paragraph 34 shall terminate, at any time after the fifth (5th) anniversary of the Rent Commencement Date when Tenant can establish to Landlord's reasonable satisfaction that as of the end of any fiscal year of Tenant following the fifth anniversary of the Rent Commencement Date, Tenant has (i) annual net income in excess of Twenty-Five Million Dollars ($25,000,000) for the previous two consecutive years, (ii) shareholder equity in excess of One Hundred Million Dollars ($100,000,000), and (iii) cash and cash equivalents in excess of Fifty Million Dollars ($50,000,000), all as determined in accordance with GAAP and as reflected on certified, audited financial statements.

(c) SUBSTITUTION OF CASH COLLATERAL. In lieu of, or in replacement of, the Letter of Credit, Tenant may deliver to Landlord at any time during the Term a cash deposit in the face amount required of the Letter of Credit, provided that Landlord shall have no additional liability or reduced benefits from that which Landlord would have if Tenant provided a Letter of Credit. All terms, conditions and requirements with respect to the Letter of Credit contained in this Paragraph 34, including, without limitation, application of proceeds, reduction of amount, return of deposit, and investment requirements for cash collateral, shall apply to any such cash collateral.

(d) CONVERSION OF DEPOSIT TO LOAN. Landlord and Tenant acknowledge and agree that, if Tenant defaults under this Lease and fails to fully cure such default within the applicable cure period and Landlord elects to pursue its remedies under

California Civil Code Section 1951.2 or under this Lease to terminate this Lease (any such event, a "Landlord Action"), (i) Landlord will incur certain damages, costs and expenses, including, without limitation, marketing costs, commissions, relocation costs, tenant improvement costs, and carrying costs in connection with releasing the Premises, in addition to the other damages, costs and expenses Landlord may incur as a result of such default and/or other defaults under this Lease (all of the foregoing collectively, "Default Damages"); (ii) Landlord has no assurance of a source of funds to cover such Default Damages other than the proceeds of the Letter of Credit (or cash collateral); and (iii) the proceeds of the Letter of Credit (or cash collateral) should be available to Landlord to apply to Default Damages, even if the amount thereof exceeds that amount to which Landlord is ultimately determined to be entitled under this Lease and pursuant to applicable law. Accordingly, at Landlord's sole election, Landlord shall be entitled to draw the full amount of the Letter of Credit (or the full amount of cash collateral shall be released to Landlord) which is then existing (after any previous application of funds by Landlord and/or replenishment by Tenant pursuant to Paragraph 34(a) above), simultaneously with commencement of a Landlord Action or at any time thereafter. All proceeds thereof in excess of amounts applied (pursuant to Paragraph 34(a)) to Default Damages incurred by Landlord prior to commencement of the Landlord Action shall be deemed a loan from Tenant to Landlord (the "Default Loan"). The Default Loan shall be unsecured and shall not bear interest, and repayment thereof shall be limited to the terms and conditions set forth in this paragraph. Any sums to which Landlord from time to time becomes entitled hereunder and pursuant to law as a result of Tenant's default and any previous defaults of the Lease, to which the Letter of Credit (or cash collateral) has not previously been applied pursuant to Paragraph 34(a), shall be offset against the principal balance of the Loan. The amount of the Default Loan remaining, if any, after such offset shall be referred to herein as the "Excess Amount". The Excess Amount shall be payable by Landlord to Tenant from, and only from, first any proceeds from the Letter of Credit (or cash collateral) which have not been applied to Default Damages incurred by Landlord after the same are finally determined (the "Remaining Proceeds"), and

then Excess Rent. The Remaining Proceeds shall be paid by Landlord to Tenant promptly upon final determination after the entire Premises are leased to a third party or parties. If Tenant disputes the amount of Remaining Proceeds paid by Landlord, Tenant may submit such dispute to arbitration in accordance with Paragraph 41 [Arbitration of Disputes] of this Lease. "Excess Rent" shall mean the amount by which (x) rent received by Landlord (from the tenant or tenants leasing all or any portion of the Premises after Tenant's default) in any month exceeds (y) the amount of rent that would have been payable under

this Lease for such month if this Lease had not been terminated. Landlord shall pay Tenant one-half of the Excess Rent until the earlier of (A) the date the Excess Amount is fully repaid or (B) the date that would have been the Expiration Date (excluding any Renewal Term) of this Lease. Any remaining balance of the Default Loan on such date shall be deemed forgiven. If the Default Loan is insufficient to cover all Default Damages, Tenant shall pay Landlord any such shortfall immediately upon demand by Landlord, and Landlord shall have all rights and remedies available at law or elsewhere in the Lease with respect to such shortfall.

35. FINANCIAL INFORMATION. Tenant will furnish to the Landlord within ninety (90) days after the end of each calendar year, copies of audited, consolidated financial statements, which shall include, without limitation, balance sheets, statements of income and expenses and sources and uses of funds of the Tenant and its subsidiaries for such calendar year, all in reasonable detail and stating in comparative form the figures as of the end of and for the previous calendar year and including appropriate footnotes, prepared in accordance with generally accepted accounting principles, and certified and audited by independent public accountants of recognized standing reasonably satisfactory to the Landlord; provided, however, that so long as Tenant is a publicly traded corporation, in lieu of the foregoing Tenant shall provide Landlord with copies of Tenant's annual report and 10K Filing when such documents are released to the public. Tenant hereby 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.

36. PARKING. Subject to the Rules and Regulations, Tenant shall have the exclusive right to use the parking situated on the Land; provided, however, that other than marking parking spaces situated on the Land as designated for Tenant's use (at Tenant's request), Landlord shall not be obligated to enforce such exclusive right.

37. MISCELLANEOUS.

(a) DEFINED TERMS. 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" shall include Tenant and its successors and assigns.

(b) OTHER TERMS. 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 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) QUIET ENJOYMENT. Upon Tenant paying the Base Rent and Additional Charges and performing all of Tenant's obligations under this Lease, Tenant may peacefully and quietly enjoy the Premises during the Term as against all persons or entities lawfully claiming by or through Landlord; subject, however, to the provisions of this Lease.

(d) SURVIVAL OF INDEMNITIES; IMMEDIATE OBLIGATION TO DEFEND. All indemnities contained herein shall survive the expiration or earlier termination of this Lease. With respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitee from any claim which actually or potentially falls within the indemnity provision, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

38. REPRESENTATIONS AND WARRANTIES.

(a) LANDLORD'S REPRESENTATIONS AND WARRANTIES. Landlord represents and warrants to Tenant that, to Landlord's best knowledge, (i) the Premises are not now in violation of any applicable Laws other than Laws with respect to Hazardous Substances; (ii) the zoning requirements currently applicable to the Premises permit the permitted use under this Lease; and (iii) upon substantial completion of the Base Building Improvements, the Premises will not be in violation of any applicable Laws other than Laws with respect to Hazardous Substances (subject to completion of the Tenant Improvements, to the extent such completion is required for compliance with any Law). For purposes of this Section 38, the term "to Landlord's best knowledge" shall mean the current actual conscious knowledge of Steve Dostart after reasonably appropriate and diligent inquiry in connection with the acquisition of the Land and construction of the Base Building Improvements. Landlord hereby represents that Steve Dostart is the representative of Landlord with supervisory responsibilities concerning the Premises, the acquisition of the Land and the construction of the Base Building

Improvements who would, in the ordinary course of his responsibilities, receive notice from persons or entities of any of the matters described in the representations and warranties in this Lease.

(b) TENANT'S REPRESENTATIONS AND WARRANTIES. Tenant represents and warrants to Landlord that, to Tenant's best knowledge, upon substantial completion of the Tenant Improvements, the Premises will not be in violation of any applicable Laws other than Laws with respect to Hazardous Substances. For purposes of this Section 38, the term "to Tenant's best knowledge" shall mean the current actual conscious knowledge of David Yntema after reasonably appropriate and diligent inquiry in connection with construction of the Tenant Improvements. Tenant hereby represents that David Yntema is the representative of Tenant with supervisory responsibilities concerning the Premises, this Lease and the construction of the Tenant Improvements who would, in the ordinary course of his responsibilities, receive notice from persons or entities of any of the matters described in the representations and warranties in this Lease.

39. REAL ESTATE BROKERS.

NO OTHER 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 Landlord's Broker and Tenant's Broker named in the Basic Lease Information, whose fees or commission, if earned, shall be paid as provided in a separate agreements between the parties. 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.

40. HAZARDOUS SUBSTANCE LIABILITY. Tenant has received from Landlord a copy of the following report: (the "Environmental Reports"): (i) Phase I and Phase II Environmental Assessment, Former RMC Lonestar Facility, 605 Fairchild Drive, Mountain View, California, dated December 26, 1996 by McLaren Hart Environmental Engineering Corporation.

(a) DEFINITION OF HAZARDOUS SUBSTANCES. For the purposes 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, ordinances or regulations.

(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 Land or Premises during the initial Term and any extensions of this Lease by Tenant or its employees, agents or contractors. 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 Land (including, without limitation, any groundwater contamination) including costs of legal proceedings, investigation, clean up, monitoring, and restoration, including reasonable attorney fees and Landlord also releases Tenant from any liability for, waives all claims against Tenant and shall indemnify, defend and hold harmless Tenant, its officers, employees and agents from and against any and all actions for damages to property instituted by any third parties, if, and to the extent, in either case, arising from the presence of Hazardous Substances on, in or under the Land or Premises, except to the extent caused by the release, disposal, use or storage of Hazardous Substances in, on or about the Premises by Tenant, its employees, agents, sublessees, assignees, or contractors. The provisions of this Landlord Indemnity regarding Hazardous Substances shall survive the termination of the Lease.

(d) TENANT COVENANTS. Tenant has informed Landlord that, except for very immaterial amounts of toxic materials incidental to office use (e.g. copier toner, typical janitorial cleaning materials, petroleum products in cars) and those materials listed on Exhibit "N", Tenant will not use any Hazardous Substances within the Project and shall comply with any applicable Laws to the extent that it does. Tenant shall immediately notify Landlord if and when Tenant learns or has reason to believe there has been any release of Hazardous Substances in, on or about the Project during the Term.

41. ARBITRATION OF DISPUTES.

ANY CONTROVERSY OR CLAIM ARISING OUT OF PARAGRAPHS 1(a) [PREMISES] WITH RESPECT TO REMEASUREMENT; 3(c) [OCCUPANCY DATE], 3(e) [MILESTONES], 3(f) [EXCLUSIVE REMEDIES], 4(c)(2)(4) [AUDIT], 7 [COMPLIANCE WITH LAWS], 8 [ALTERATIONS], 9 [REPAIRS AND MAINTENANCE], 14 [SERVICES AND UTILITIES], 22(f) [MUTUAL TERMINATION RIGHT; INSURED CASUALTY] WITH RESPECT TO LENGTH OF TIME TO RESTORE, 26 [DELIVERY AND RESTORATION OF PREMISES], AND 43(e) [CONVERSION OF DEPOSIT TO LOAN] WITH RESPECT TO THE AMOUNT OF REMAINING PROCEEDS, OF THIS LEASE, OR PARAGRAPH 18 [DISPUTE RESOLUTION] OF THE WORK LETTER, OR A BREACH OF SUCH PARAGRAPHS SOLELY BETWEEN LANDLORD AND TENANT, BUT NOT INCLUDING A DEFAULT WITH

RESPECT TO THE TIMELY PAYMENT OF BASE RENT AND ADDITIONAL CHARGES, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THE PREVAILING PARTY IN SUCH ARBITRATION SHALL BE ENTITLED TO ATTORNEYS' FEES AND COSTS.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

CONSENT TO NEUTRAL ARBITRATION BY:
/s/ Steve Dostart (LANDLORD): /s/ David Yntema (TENANT).

42. SIGNAGE. Subject to (a) compliance with all applicable governmental requirements and subject to (b) Landlord's approval of the exact size, location and materials thereof (which approval shall not be unreasonably withheld, conditioned or delayed), Tenant shall have the right to install exterior monument signage adjacent to entrances to the Building and the Project and on the exterior of the Building, but in not more than two (2) locations on the exterior of the Building. Tenant shall be responsible for the costs related to such signage.

43. OPTION TO RENEW. Tenant shall have the right to extend the Term for one (1) period of seven (7) years ("Extension

Term") following the initial Expiration Date, by giving written notice ("Exercise Notice") to Landlord at least eighteen (18) months prior to the Expiration Date, subject to the following conditions: (i) no event of default is continuing under this Lease at the time of the Exercise Notice or at the commencement of the Extension Term; (ii) Vivus, Inc. continues to physically occupy the Premises; and (iii) the creditworthiness of Vivus, Inc. has not reduced below that which existed as of the execution date of the Lease, and, in the event that the Security Deposit required under Paragraph 34 has been returned to Tenant, and then the credit of Tenant as of the date of the Exercise Notice has fallen below the credit standards outlined in Paragraph 34(b) "Return of Letter of Credit", that Vivus, Inc. shall redeliver such Security Deposit to Landlord and such Security Deposit shall be governed by the provisions of Paragraph 34.

44. RENT DURING EXTENSION TERM. The Monthly Base Rent during the seven-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 the later of thirty (30) days after receipt of Tenant's Exercise Notice or eleven (11) months prior to the Expiration Date, 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. Within fifteen (15) days after receipt of such notice from Landlord, Tenant shall notify Landlord in writing that it (i) agrees with such Fair Market Rental Value or (ii) disagrees with such Fair Market Rental Value. No response shall constitute disagreement. If 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) business 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, Tenant may make written demand upon Landlord for arbitration in accordance with the following paragraph. The judgment or the award rendered in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted and determined in the City of Palo Alto in accordance with the then prevailing rules of the American Arbitration Association or its successor for arbitration or commercial disputes, except to the extent the procedures mandated by said rules shall be modified as follows:

(1) Tenant shall, by the applicable date specified therefor in this Lease, make written demand upon Landlord pursuant to this Lease for arbitration, specifying therein the name and address of the person to act as the

arbitrator on Tenant's behalf. The arbitrator shall be qualified as a real estate appraiser, with at least five (5) years experience in appraising major commercial property in Santa Clara County and a member of a recognized society of real estate appraisers, who would qualify as an expert witness over objection to give opinion testimony addressed to the issue in a court of competent jurisdiction. Failure on the part of Tenant to make a timely and proper demand for such arbitration (specifying the arbitrator to act on Tenant's behalf, as aforesaid) shall constitute a waiver of the right thereto. Within ten (10) business days after receipt of Tenant's demand for arbitration, Landlord shall give written notice to Tenant pursuant to this Lease, specifying the name and address of the person designated by Landlord to act as arbitrator on its behalf who shall be similarly qualified. If Landlord fails to notify Tenant of the appointment of its arbitrator, within or by the time above specified, then the arbitrator appointed by Tenant shall be the arbitrator to determine the issue. Notwithstanding the foregoing, upon receipt of Tenant's demand for arbitration Landlord may, in its sole discretion, deliver a revised estimate of the Fair Market Value of the Premises, and within fifteen (15) days after receipt of such notice from Landlord, Tenant shall notify Landlord in writing that it (i) agrees with such revised Fair Market Rental Value, or (ii) disagrees with such revised Fair Market Rental Value, with no response constituting agreement. If Tenant disagrees with Landlord's Fair Market Value, then within ten (10) business days after receipt of Tenant's notice of such disagreement Landlord shall give Tenant written notice specifying Landlord's designated arbitrator as provided in this paragraph above.

(2)If two (2) arbitrators are chosen pursuant to paragraph (1) above, the arbitrators so chosen shall meet within ten (10) business days after Landlord notifies Tenant of the appointment of Landlord's arbitrator as aforesaid. If the two appraisers reach agreement on the Fair Market Rental Value, that value shall be binding and conclusive upon the parties. If within ten (10) business days after such first meeting the two arbitrators shall be unable to agree upon a determination of Fair Market Rental Value, they, themselves, shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to Paragraph (1). If the first two arbitrators are unable to agree upon such appointment within five (5) business days after expiration of said ten (10) days period, the third arbitrator shall be selected by Landlord and Tenant, if they can agree thereon, within a further period of ten (10) business days. If Landlord and Tenant do not so agree, then either party, on behalf of both, may request appointment of such a qualified person by the then Chief Judge of the United States District Court having jurisdiction over the City and county of San Francisco, and the other party shall not raise any question

as to such Judge's full power and jurisdiction to entertain the application for and make the appointment. The three (3) arbitrators shall decide the dispute

if it has not previously been resolved by following the procedure set forth in the following paragraph.

(3) If an issue cannot be resolved by agreement between the two arbitrators selected by Landlord and Tenant or settlement between Landlord and Tenant during the course of arbitration, the issue shall be resolved by the three arbitrators in accordance with the following procedures. Within ten (10) business days after appointment of the third arbitrator, each of the two arbitrators selected by Landlord and Tenant shall state in writing his determination of the Fair Market Rental Value supported by the reasons therefor with counterpart copies to each party. The arbitrators shall arrange for a simultaneous exchange of such proposed resolutions. The role of the third arbitrator shall be to select, within ten (10) business days after submission to the third arbitrator of the two proposed resolutions, which of the two proposed resolutions most closely approximates the third arbitrator's determination of Fair Market Rental Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution he chooses as most closely approximating his determination shall constitute the decision of the arbitrators and be final and binding upon the parties.

(4) If any arbitrator fails, refuses or is unable to act, his successor shall be appointed by the party who originally appointed him, but in the case of the third arbitrator, his successor shall be appointed in the same manner as provided for appointment of the third arbitrator. Landlord and Tenant shall each pay the fees and expenses of its respective arbitrator, if any, and shall each pay half of the fees and expenses of the third arbitrator, if any. The attorneys' fees and expenses of counsel for the respective parties and of witnesses shall be paid by the respective party engaging such counsel or calling such witnesses.

(5) The arbitrators shall have the right to consult experts and competent authorities with factual information or evidence pertaining to a determination of Fair Market Rental Value, but any such consultation shall be made in the presence of both Landlord and Tenant with full right on their part to cross-examine. The arbitrators shall render their decision and award in writing with counterpart copies to Landlord and Tenant. The arbitrators shall have no power to modify the provisions of this Lease.

(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 (including periodic increases during the Extension Term, if any) in the South Bay Area for comparable commercial 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, existing leasehold improvements (regardless of who paid for them and with the assumption, for purposes of determining 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; provided, however, that in determining "Fair Market Rental Value," there shall be excluded any rental premium allocable to laboratory improvements in the Premises over the rent which would have been received had the lab areas been improved for office use.

(c) If binding arbitration 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 greater of the Base Rent paid during the last month of the immediately preceding Term or the Fair Market Rental Value estimated by Landlord, with an adjustment to be made once Fair Market Rental Value is ultimately determined by binding arbitration. Such adjustment shall not 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.

(d) 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 Tenant shall have no further rights to extend the Term. No brokers' commissions or allowance for new tenant improvements will be payable by Landlord in connection with the Extension Term.

45. SATELLITE ANTENNAS. During the Term, Tenant shall have the right, subject to relevant regulatory approvals and Landlord's consent, such consent not to be unreasonably withheld or delayed, to install one or more satellite antennas (each, an "Antenna") 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 Antenna, if Landlord withholds its consent due to concerns regarding the appearance of the Antenna or the impact on structural aspects of the Building, such withholding of consent shall be presumptively reasonable. Tenant shall not be charged any rent for roof space. Prior to submitting any plans to the City of Mountain View or proceeding with any installation of an Antenna, Tenant shall submit to Landlord elevations and

specifications for the Antenna. Tenant shall install any approved Antennas at its sole expense and shall be responsible for any damage caused by the installation of the Antennas or related to the Antennas. At the end of the Term, Tenant shall remove the Antennas from their locations and repair any damage caused by such removal.

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

LANDLORD:

605 EAST FAIRCHILD ASSOCIATES, L.P.,
a California limited partnership

By: Mozart-Wilson-Dostart Ventures, Inc.,
a California corporation,
Its General Partner

By: /s/ Steve Dostart 3/13/97

Steve Dostart
Its Vice President

TENANT

VIVUS, INC.,
a Delaware corporation

By: /s/ David C. Yntema 3/10/97

David Yntema
Its Chief Financial Officer

LIST OF EXHIBITS

INDEX OF DEFINED TERMS

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EXHIBIT "A"

MAP OF PROJECT (INCLUDING BUILDING)

[SITE PLAN WITH BUILDING OUTLINED AND CROSSHATCHED]

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EXHIBIT "A-1"

DESCRIPTION OF LAND

[PARCEL MAP AND LEGAL DESCRIPTION HERE]

Exhibits -2

EXHIBIT "B"

[INTENTIONALLY DELETED]

Exhibits -3

Exhibit "C"

Standard for Measuring Floor Area

City of Mountain View Planning Department
Zoning Calculations:
Methods, Definitions,
and Clarifications

Exhibits - 4

Zoning Calculations:
Methods, Definitions
and Clarifications

1. Percentage of Landscaping

This requirement generally applies in commercial and industrial zoning districts.

The percentage of landscaping is defined as the total area of the lot, minus the area covered by buildings, accessory structures, outdoor enclosures, driveways, and parking.

Paved sidewalk and patio areas are counted as landscaping. Any areas which are necessary for automobile access or parking are not counted as landscaping, even though it may be planted with landscaping.

2. Open Green Area, Paving, and Building Coverage

These requirements generally apply in residential zoning districts.

The following three categories open green area, auto-dedicated paving area, and building coverage when added together will account for 100 percent of the site area. However, in cases where upper level decks or patios are allowed to be counted as open green area (e.g., multi-family residential apartments), the total could exceed 100 percent of the site area.

a. Open Green Area

Total lot area; minus the area covered by buildings, accessory structures, other structures, driveways, and off- street parking. Also, decks, roof gardens and patios on upper floors, and similar open spaces shall constitute open green area, except in townhouse projects where upper level decks may not count toward the open green area requirement.

b. Auto-Dedicated Area (Paving)

Any area necessary for the ingress, egress, or parking of motor vehicles. This includes areas necessary for automobile circulation which also serve pedestrians.

It also includes fire turnaround areas, except those which are covered by turfstone/Grasscrete. Paved areas underneath carports are not included in parking coverage; they count as building coverage.

c. Building Coverage

The total lot area covered by structures (defined below). Porches, entryways, and covered patios are included in this calculation. All accessory structures, including garages, trash dumpster enclosures, storage sheds, etc., are included in this calculation. Architectural appurtenances are included in lot coverage also (i.e., stairs, chimneys, porches, decks above the first floor, etc.).

3. Floor Area

Floor areas shall include the following: all floor area enclosed within the walls of the principal structure (measured from the outside perimeter of the walls); the total floor area of all accessory structures, including garages, carports, and storage sheds; enclosed patios; and any other fully enclosed habitable space.

The total area of each floor, as defined by the area enclosed by the exterior permanent walls, will be calculated separately. Openings for stairways or shafts are not deducted.

In residential districts, any double height room will be counted as two floors if the average floor-to-floor or floor-to- roof height of the room exceeds 15'.

In residences where proposed or existing habitable space is under a sloping roof, any area where the wall height is 5' or greater is counted as floor area. (See Figure 2).

Any architectural projection which adds to the usable area of the building is included in floor area calculations (i.e., fireplaces and chimneys, full floor bay windows, etc.).

Figure 2: Floor Area Under Sloping Roof

Figure 3: Building Height

Any basement level where more than one-half of the height is above building grade constitutes a story and counts as floor area (Section 36.23.3).

Minor architectural projections which are cantilevered for short distances and are not a full story in height are not counted as floor area (e.g., kitchen greenhouse windows). Open, unenclosed structures such as decks, open porches, open patios and trellises are not counted as floor area.

4. Height of Building

The vertical distance from the elevation of the top of the existing or planned curb along the front property line to the highest point of the coping of a flat roof; or to the top of the slope of a mansard roof; or the mean height level between eaves and ridge for a gable, hip, or gambrel roof (Section 36.3.32.2). (See Figure 3.).

Figure 4: Height of Wall

5. Structure

That which is built or constructed as an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in the same definite manner (Section 36.3.70). This includes all buildings; all accessory structures such as garages, trash enclosures, storage sheds, etc.; all fences; porches; or any other built structure.

6. Height of Wall

The vertical distance from the grade along a given wall to the highest point of the coping of a flat roof; or to the top of the slope of a mansard roof; or to the mean height level between eaves and ridge for a gable, hip, or gambrel roof (Section 36.3.32.3). (See Figure 4.).

7. Accessory Structure

A use or structure subordinate to the principal use of a building on the same lot and serving a purpose . . . . . .

EXHIBIT "D"

WORK LETTER

1. Obligations of Landlord and Tenant. Landlord shall furnish and install the Base Building Improvements provided for in Paragraph 2 below at Landlord's expense, and Tenant shall furnish and install, at Tenant's expense, the additional interior improvements and building systems work (as described in Paragraph 3 hereof as exclusions from Base Building Improvements) necessary to complete the Premises, including, without limitation, cable TV connections, if any, telephone equipment and wiring, and office equipment wiring required by the plans and specifications approved by Landlord and Tenant pursuant to this Work Letter ("Tenant Improvements"); provided, however, that the Tenant Improvements shall not include lab benches, lab hoods, equipment, furnishings, and trade fixtures of Tenant that are not within the types of improvements described in Paragraph 3 hereof. Tenant shall bear the cost of Tenant Improvements, including, without limitation, the cost of space planning, preparing the working drawings and related permits and fees for Tenant Improvements, and changes to the Base Building Improvements due to Change Orders (as defined in Paragraph 10 below). The quantities, character and manner of installation of all of the foregoing work shall be subject to the limitations imposed by any applicable regulations, laws, ordinances, codes and rules.

2. Base Building Improvements. Landlord shall furnish an industrial shell building which exterior and site shall substantially comply with the plans submitted for SPAR Review at the City of Mountain View (Exhibit D-1), and shall have the additional finishes and improvements as follows ("Base Building Improvements"):

(a) Floor - hard trowel, smooth concrete, level (at a specification not to exceed a slope of 1/4" in 10 feet) and ready for installation of floor covering (excluding standard floor preparation and waterproofing); underslab waterproofing shall include 2" sand layer over gravel with visqueen vapor barrier;

(b) ceiling/roof - (a) structural members, (b) completed roof assembly, (c) building sprinkler system to include main floor shut off valves, primary loop;

(c) exterior walls - (a) exposed unfinished concrete walls, (b) completed window assembly with painted metal window frames;

(d) electrical/utilities - small electrical transformer for site lighting, all other utilities (including telephone lines and sanitary sewer) stubbed into shell;

(e) elevator - one(1) elevator pit;

(f) stairs - one (1) building unfinished metal staircase which is in compliance with the applicable requirements of ADA concerning width

of stairs, rise and landings;

(g) live load - slab and upper floor decks shall be designed to support a live load of eighty (80) pounds per square foot and a partition load of twenty (20) pounds per square foot for a total of one hundred (100) pounds per square foot; and

(h) site work - parking, parking lot lighting (in compliance with applicable code requirements) striping, curb cuts, ramps, sidewalks (if required by the City of Mountain View), underground storm drains, and main entries to the Building to be in compliance with the applicable ADA requirements.

Unless required by applicable Laws, Landlord shall not be obligated to fire-proof the Base Building Improvements. Landlord shall also provide landscaping as required by the City of Mountain View.

3. Exclusions from Base Building Improvements. Specific exclusions from Base Building Improvements include, but are not limited to, (a) sprinklers beyond those required for shell permit, (b) window coverings, (c) fire alarms or security systems, (d) interior walls, (e) HVAC systems, (f) electrical service in the Building, (g) restrooms, (h) elevator, (i) lobby, (j) electrical, telephone, janitorial and similar closets, (k) building cabling, (l) roof screens.

4. Landlord's Plans. Landlord shall provide Tenant with necessary base "design build" drawings, specifications, and CAD diskettes (to the extent available) for the Buildings no later than July 1, 1997 ("Landlord's Plans"). Landlord's Plans shall be substantially in accordance with the SPAR Review Plans described on Exhibit "D-1" (which have been approved by Tenant), together with and including the specifications described for the Base Building Improvements in Paragraph 2 of this Work Letter, but shall specifically exclude any improvements to the interior of the Building, or items noted in Paragraph 3 as specific exclusions from the Base Building Improvements. Landlord shall have the right to change Landlord's Plans after submission to Tenant as needed to satisfy any requirements of the City of

Mountain View.

5. Tenant's Plans. Tenant shall diligently pursue the preparation of all construction plans and specifications for Tenant Improvements, and shall deliver such plans and specifications to Landlord for Landlord's review within ninety (90) days after Landlord has delivered Landlord's Plans. Tenant's architect and/or engineers shall prepare complete architectural, mechanical, electrical, plumbing, and other plans for the Premises. The space plan and working drawings shall provide for corridors, lobbies, bathrooms, mechanical and electrical systems, and fire exits which are designed to accommodate multi-tenant configurations in the Building (including, without limitation separate metering for utilities), in a design reasonably acceptable to Landlord; provided that Tenant will not be required to build corridors for multi-tenant configurations so long as Tenant does not build hard wall office space in the areas shown as "potential future corridors" on Landlord's Plans. The plans and working drawings also shall comply with Landlord's Plans, including, without limitation, those elements included therein which are Tenant Improvements hereunder (e.g. roof screens, placement of bathroom cores, elevators, lobbies and mechanical outside air supply ducts). All such plans, drawings and specifications shall be performed by Tenant's architectural services, or another architect mutually acceptable to Landlord and Tenant, and shall be subject to approval by Landlord, in Landlord's sole discretion. Notwithstanding the foregoing sentence, Landlord shall not unreasonably withhold its approval of improvements which comply with the Approved Tenant Plan Guidelines noted in Exhibit "D-2". Promptly following their completion, Tenant shall supply copies of the space plans and any other required supporting drawings and specifications, together with a pallet of interior colors and finishes, to Landlord for Landlord's review and approval. Within ten (10) business days after such submission, Landlord shall either approve or disapprove such items. Tenant shall make any changes necessary in order to correct any item identified by Landlord as grounds for its

disapproval, and shall resubmit the corrected space plan, supporting drawings and specifications and pallet to Landlord within fifteen (15) business days after Landlord's disapproval. Within five (5) business days after Landlord receives the revised items, Landlord shall approve or disapprove them. This procedure shall be repeated until the space plan, supporting drawings and specifications and pallet of interior colors and finishes are finally approved by Landlord and written approval has been delivered to Tenant. The plans, drawings, specifications and pallet of interior colors and finishes for the Tenant Improvements which are approved by

Landlord pursuant to this Paragraph 5 are referred to herein collectively as "Tenant's Plans". Once approved by Landlord, no material changes shall be made to Tenant Plans without the prior written approval of Landlord, in Landlord's sole discretion. Tenant shall include provisions in its contracts with its design professionals which expressly allow Landlord to use any and all of the plans and specifications for the Tenant Improvements without any additional cost or payment in the event the Lease is terminated.

6. Election to Remove Tenant Improvements. In connection with its approval of Tenant's Plans, Landlord shall designate in writing which Tenant Improvements must be removed upon the expiration or sooner termination of this Lease and which may remain on the Premises. If Landlord does not make such designation in writing with respect to any portion of the Tenant Improvements, Landlord shall be deemed to have elected to allow such portion of the Tenant Improvements to remain on the Premises. Tenant Improvements which comply with the parameters set forth in Exhibit D-2 shall not be subject to such a removal requirement except to the extent specifically set forth in Exhibit D-2.

7. Tenant's Contractor. Tenant shall use Devcon Construction as its general contractor for the Tenant Improvements ("Tenant's Contractor"). Tenant shall direct and authorize Tenant's Contractor to keep Landlord fully informed of the construction process for the Tenant Improvements and to provide Landlord with access to all documentation and other information in Tenant's Contractor's possession or control regarding construction of the Tenant Improvements, provided that Landlord shall not be obligated to monitor or inspect construction of the Tenant Improvements or any information in connection therewith.

8. Construction of Tenant Improvements. After receipt of Landlord's approval of Tenant's Plans, Tenant shall administer and diligently prosecute the construction of Tenant Improvements in accordance with Tenant's Plans. All Tenant Improvements shall be constructed by Tenant's contractor. Installation of all Tenant Improvements shall be coordinated with Landlord's contractor's schedule for the Base Building Improvements, and shall be handled in such a manner as to maintain harmonious labor relations and not interfere with or delay the work of Landlord's contractors. In addition, at Landlord's request all Tenant Improvements shall be constructed using union labor. All Tenant Improvements furnished and installed by Tenant shall not cause Landlord's contractor to be dependent upon Tenant's work in order for

Landlord's contractor to complete his work. Tenant's contractors, subcontractors and labor shall be subject to approval by Landlord which approval shall not be unreasonably withheld or delayed and shall be subject to the reasonable administrative supervision of Tenant's general contractor and reasonable rules of the site. Contractors and subcontractors engaged by Tenant shall employ men and means to insure, so far as may be possible, the progress of the work without interruption on account of strikes, work stoppage or similar causes for delay. After the Occupancy Date, Tenant shall give Landlord full access and entry to the Premises in order to complete the Base Building Improvements. Tenant shall not be charged any fee for Landlord's review of the

plans, drawings and specifications or any oversight of the construction of the initial Tenant Improvements. Landlord and Tenant shall each have the full benefit of all contractor warranties.

9. Landlord's Right to Inspect and Stop Work. Upon reasonable prior notice (written or verbal), Landlord and its agents may inspect the Tenant Improvements in the course of construction and on completion of the Tenant Improvements. Landlord shall have the right to object to any material deviation from the Tenant Plans not approved by Landlord in accordance with this Work Letter. Tenant shall cause such deviation to be corrected. If Tenant contests any such objection, Tenant may avail itself of the arbitration provision set forth in the Lease. If the deviation is material in the Landlord's reasonable judgment and may have an adverse affect on the Base Building Improvements, Landlord shall have the authority, without liability to Tenant (except as stated in the last sentence of this paragraph 9), to stop that portion of the work relating to the deviation, without liability to Tenant unless the dispute resolution process is resolved in favor of Tenant and Tenant incurs additional costs for the Tenant Improvements as a direct result of such work stoppage. If the deviation is not corrected by Tenant and is not resolved in favor of Tenant through the arbitration process, Landlord may cause such deviation to be remedied, at Tenant's expense. In the event that Landlord breaches its obligations under this Work Letter and it is determined (pursuant to arbitration as contemplated by this Lease) to have caused actual delay of completion of the Tenant Improvements, the Rent Commencement Date shall be extended by the amount of such delay; provided, however, if the contractor being sued for the Base Building Improvements is the same as the contractor Tenant is using for the Tenant Improvements, no action or omission of such contractor shall be attributed to Landlord.

10. Change Orders. Any changes requested by Tenant (or

necessitated by applicable legal requirements due to Tenant's Plans) that necessitate revisions or changes in Landlord's Plans or the design or construction of the Base Building Improvements or delay the commencement or completion of Base Building Improvements, shall be subject to the prior written approval of Landlord, in its sole discretion; however, that Landlord shall not unreasonably withhold changes requested by Tenant which meet both of the following criteria: (i) that are required specifically to accommodate the Tenant Improvements; and, (ii) that do not affect the exterior appearance of the Building. Any such changes approved by Landlord shall be a "Change Order" hereunder. Tenant shall be responsible for all costs (which shall be evidenced by trade cost breakdowns by Landlord's Contractor) and delays resulting from such design revisions or construction changes (compensation for delays to include the lost rent to Landlord), including architectural and engineering charges, and any special permits or fees attributable to a Change Order. Before any such design and/or construction changes are made, Tenant shall pay to Landlord the full costs to be incurred by Landlord in connection with such Change Order pursuant to Paragraph 14 below. Landlord and Tenant shall hold weekly construction meetings during the development of the Project and shall cooperate in good faith during the weekly meetings to review and agree upon Change Orders. In those instances in which proposed revisions to Landlord's Plans result from a Change Order, Landlord shall cause the Landlord's contractor, if applicable, to determine the additional cost or savings from such Change Order, and Landlord shall promptly so notify Tenant. The additional costs or savings resulting from such Change Orders (and the time impact of said Change Order, if any) shall be supported by detailed trade cost breakdowns prepared by Landlord's Contractor. Tenant shall, within five (5) business days after such notification by Landlord, inform Landlord in writing whether or not Tenant desires to proceed with such Change Order. In the event that Tenant fails to inform Landlord within such five (5) day period that Tenant desires to proceed with such Change Order, Landlord shall not make any changes(s) to the Base Building Improvements included in such Change Order. If Tenant informs Landlord within such five (5) day period that Tenant does wish to proceed with the proposed Change Order, the proposed Change Order shall be incorporated in the Base Building Improvements if applicable thereto and Landlord's contractor shall proceed with the work covered by the Change Order and Tenant shall be responsible for all costs and expenses incurred in connection therewith as aforesaid. The Landlord shall pass through to Tenant

the Landlord's contractor's percentage mark-up (which shall not be greater than the mark-up charged to Landlord) for overhead and profit (which shall include all charges for

general conditions) for Change Orders to the Base Building Improvements without additional mark-up from Landlord. All Change Orders shall be in writing and shall be on such AIA form as required by Landlord and/or Landlord's contractor. Tenant shall evidence in writing it's approval of such Change Order prior to Landlord's approval of same. Upon completion of the Tenant Improvements, Landlord shall reimburse Tenant for any net cost savings to Landlord in connection with the Change Orders, as documented in accordance with this Paragraph 10, within thirty (30) days after receipt of Tenant's billing and documentation.

11. Substantial Completion. For purposes of this Work Letter and the Lease, (i) the Base Building Improvements shall be deemed "substantially complete" at such time as Landlord has completed work in accordance with Landlord's Plans and in compliance with all legal requirements applicable to the Base Building Improvements at the time the permits where obtained for the construction thereof subject to completion and correction of items on Landlord's architect's punch list, and certain other items which will not be completed until substantial completion of the Tenant Improvements (such as items necessary to modify the sprinklers in accordance with the Tenant Improvement package and certain landscaping), and (ii) the Tenant Improvements shall be deemed "substantially complete" at such time as Tenant has completed work in accordance with Tenant's plans and specifications sufficient to obtain the signature of the appropriate City of Mountain View building official that the Tenant Improvements have passed final inspection, subject only to the completion or correction of items on Tenant's architect's punch list (and exclusive of the installation of all telephone and other communications facilities and equipment and other finish work or decorating work to be performed by or for Tenant), and the Premises are in a reasonably appropriate condition for occupancy by Tenant. Upon Tenant's request, if a certificate of shell completion or similar certification is available from the City of Mountain View in connection with the Base Building Improvements, without incurring any additional cost or causing delays to the Base Building Improvements or Tenant Improvements, Landlord shall use commercially reasonable efforts to obtain such certification after completion of the Base Building Improvements and deliver a copy to Tenant.

12. Initial Tenant Work Date. Landlord shall provide Tenant's contractors with access to the Building for purposes of constructing the Tenant Improvements from and after the "Initial Tenant Work Date". To be deemed the "Initial Tenant Work Date" the following construction components need to be completed in

accordance with Landlord's Plans: (i) slab and footings in place; (ii) steel fully erected; (iii) upper floor decks and roof poured; (iv) roofing membrane installed; (v) access to the Building provided to Tenant's contractors along with location for the construction trailers for Tenant's contractors; (vi) utilities to be installed to slab; (vii) roof drain lines and underslab sanitary sewer lines with cleanouts will be installed; water will be provided in water main to building line; and (viii) storm drains.

13. Tenant Delays. If substantial completion of the Tenant Improvements or Base Building Improvements is delayed due to any of the following (collectively, "Tenant Delays"), then the Rent Commencement Date shall be adjusted to reflect what the substantial completion date would have been if there had been no delay: (i) Tenant's failure to timely submit any items required by this Work Letter, including, without limitation, the space

plan, supporting drawings and specifications and pallet of interior colors and finishes; (b) Tenant's requested changes to the Base Building Improvements (or necessitated by applicable legal requirements due to the Tenant's Plans) pursuant to any Change Order(s); (c) Tenant's failure to comply with Landlord's contractor's schedule; or (d) Tenant's requested changes to the Tenant Plans after the date specified for completion of such items herein.

14. Billing. Tenant shall pay to Landlord all amounts payable by Tenant within twenty (20) days after billing by Landlord. Bills may be rendered during the progress of the work so as to enable Landlord to pay its general contractor, architect or engineers without advancing Landlord's funds for changes to the Base Building Improvements, though such progress billings shall only be based on the extent to which the work is completed.

15. Insurance. During the course of construction, Landlord and Tenant shall require their respective contractors and architects to obtain and maintain in force Broad Form Comprehensive General Liability insurance (including, without limitation, insurance against completed operations liability for losses occurring within three (3) years after the completion of the Work) with coverage for explosion, collapse, and underground damage, against claims arising out of bodily injury, personal injury, or death and from damage to or destruction of property of others, including, without limitation, loss of use thereof, and including, without limitation, the liability of Landlord, Tenant or the applicable contractor or architect arising out of the activities of all subcontractors, and each of them, with a combined single limit of not less than One Million Dollars

($1,000,000) for any one accident and/or occurrence and/or series of accidents or occurrences arising out of any one event. Such insurance shall include Broad Form Property Damage and Independent Contractors Coverage. Such insurance shall be primary and not subject to any contribution from any insurance carried by Landlord or Tenant. In addition, Tenant's architect, and any contractors or subcontractors doing design/build for any portion of the Tenant Improvements, shall carry Professional Liability Insurance (errors & omissions) insurance, in an amount not less than $1,000,000, covering personal injury, bodily injury and property damages, said coverage to be maintained for a period of three (3) years after completion of Tenant Improvements.

16. Completion Assurance. The parties acknowledge and agree that (i) Landlord will be acquiring the Land and obtaining a construction loan for the Base Building Improvements in reliance on the Lease, including Tenant's obligation to complete and pay for the Tenant Improvements as provided in this Work Letter, (ii) Landlord would not enter into the Lease unless Tenant's obligation to complete the Tenant Improvements is assured in accordance with the terms of this Paragraph 16, and (iii) Tenant's failure to provide such assurance and complete such Tenant Improvements shall entitle Landlord to the liquidated damages as provided herein. Accordingly, Tenant has agreed to provide assurance for its obligations under this Work Letter in accordance with this Paragraph 16.

(a) Certificate of Deposit. On or before March 19, 1997, Tenant shall deliver to Landlord a certificate of deposit in the amount of Two Million Dollars ($2,000,000) (representing the estimated cost of Tenant Improvements), as security for Tenant's obligation to provide the "Completion Assurance" (as described below). Landlord shall return the certificate of deposit to Tenant at such time as Tenant provides Landlord with the Completion Assurance. If Tenant does not provide the Completion Assurance on or before May 1, 1997, as such date may be extended by Landlord, in its sole discretion, by written notice to Tenant (as it may be so extended, the "Replacement Date"), it shall be a material default of Tenant under the Lease (without any cure right), and Landlord may terminate the Lease by delivering written notice to Tenant. Upon such termination of the Lease, Landlord may present the certificate of deposit for payment, and funds so obtained shall be due and payable to Landlord as liquidated damages for Tenant's failure to provide the Completion Assurance and complete the Tenant Improvements as required in this Work Letter.

IF LANDLORD TERMINATES THE LEASE AS A CONSEQUENCE OF TENANT'S

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FAILURE TO PROVIDE THE COMPLETION ASSURANCE ON OR BEFORE THE REPLACEMENT DATE, LANDLORD SHALL RETAIN THE CERTIFICATE OF DEPOSIT AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT LANDLORD'S ACTUAL DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE IF TENANT DEFAULTS IN ITS OBLIGATION TO PROVIDE THE COMPLETION ASSURANCE BY THE REQUIRED DATE, AND THE AMOUNT OF THE CERTIFICATE OF DEPOSIT IS THE BEST ESTIMATE OF THE AMOUNT OF DAMAGES LANDLORD WOULD SUFFER. THE PARTIES FURTHER AGREE THAT THE PROVISIONS OF THIS PARAGRAPH 16(A) SHALL BE LANDLORD'S SOLE REMEDY (IN ADDITION TO TERMINATION OF THE LEASE) IN THE EVENT OF TENANT'S FAILURE TO PROVIDE THE COMPLETION ASSURANCE BY THE REPLACEMENT DATE, IN LIEU OF ALL OTHER REMEDIES LANDLORD MIGHT OTHERWISE HAVE HEREUNDER OR AT LAW OR IN EQUITY. THE PARTIES WITNESS THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION AND THIS LIMITATION OF REMEDIES PROVISION BY INITIALING BELOW:

LANDLORD: /s/SD TENANT: /s/ DCY

(b) Approved Forms of Completion Assurance: On or before the Replacement Date, Tenant shall deliver to Landlord one of the following (any one, the "Completion Assurance"):

(i) Completion Guaranty/Bond: One or more completion guarantees issued by Fireman's Fund Insurance Company, or such other guarantor as Landlord shall reasonably approve ("Guarantor"), guaranteeing the completion of the Tenant Improvements in form and substance acceptable to Landlord.

(A) The completion guarantee shall require the Guarantor to assure lien free completion of all the Tenant Improvements required to be constructed by Tenant pursuant to this Work Letter at no cost to Landlord and with no subrogation rights in respect to Landlord's interest in the Premises, the Lease or otherwise.

(B) Tenant agrees that, in connection the issuance of such a completion guarantee, Tenant shall deposit a certificate of deposit with the Guarantor in the amount of the cost of Tenant Improvements. The completion guarantee shall require the guarantor to complete the Tenant Improvements in accordance with the approved Tenant's Plans, or if and to the extent such plans and specifications are not complete, in accordance with Landlord's instructions, subject, however, to the limitation that the Guarantor shall not be required to complete tenant improvements with a value in excess of the greater of Two Million Dollars ($2,000,000) or the total cost of the Tenant Improvements (as reflected in Tenant's construction contract for

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the Tenant Improvements). Tenant agrees that in connection with the issuance of such completion guarantee Tenant shall execute such additional documents as shall be necessary to cause the Guarantor to issue the completion guarantee, including, without limitation, an agreement to indemnify the Guarantor against any and all costs (including, without limitation, the costs of litigation) in connection with the obligations of the Guarantor under the completion guarantee.

(C) The cost of the premium for the completion guarantee is estimated to be one half percent of the aggregate value of the Tenant Improvements.

(D) If Landlord determines that a completion guarantee substantially on the terms and conditions described in this clause (i) is unavailable, Landlord shall give written notice thereof Tenant at any time (but in any event at least five (5) business days prior to the Replacement Date), and Tenant shall be obligated to cause the Letter of

Credit (described in (ii) below) to be issued as the Completion Assurance.

(ii) Letter of Credit: One or more unconditional, irrevocable letter(s) of credit, in the initial aggregate amount of Two Million Dollars ($2,000,000), issued by a financial institution, and in form and substance, acceptable to Landlord.

(A) The letter(s) of credit shall have an original term of no less than one year and automatic extensions until sixty (60) days after the later of Tenant's satisfaction of all of its obligations under this Work Letter and the Rent Commencement Date. The letter(s) of credit shall provide for partial draws. At such time as Tenant enters into a construction contract for the Tenant Improvements, if the total cost of Tenant Improvements (as reflected in such contract) exceeds Two Million Dollars ($2,000,000), Tenant shall increase the letter of credit to reflect the total cost of Tenant Improvements. If the total cost of Tenant Improvements is less than Two Million Dollars ($2,000,000), there shall be no change in the amount of the letter of credit. Tenant shall keep the letter of credit, at its expense, in full force and effect during such time as security for Tenant's obligation to timely construct the Tenant Improvements pursuant to, and in accordance with the terms of, this Work Letter. The letter of credit shall provide thirty (30) days' prior written notice to Landlord of cancellation or material change thereof.

(B) If a "Draw Event" (as defined below) occurs, Landlord or its assignee, at its option, may present its

written demand for payment of the entire face amount of the letter of credit and the funds so obtained shall become due and payable to Landlord or its assignee, and Landlord or its assignee may use the funds so obtained to complete the Tenant Improvements contemplated by this Work Letter or, if Landlord terminates the Lease as a result of a default by Tenant, in lieu of any portion thereof, any other improvements or alterations to the Premises (so long as the aggregate cost of the Tenant Improvements and/or other improvements or alterations does not exceed the cost of the Tenant Improvements as determined pursuant to Paragraph 16(b)(ii)(A)). Alternatively, Landlord or its assignee may make partial draws on the letter(s) of credit as needed to pay for the Tenant Improvements (or, if Landlord terminates this Lease as a result of a default by Tenant, any other improvements or alterations so long as the aggregate cost thereof does not exceed the cost of the Tenant Improvements as determined pursuant to Paragraph 16(b)(ii)(A)). Upon Landlord's completion of the Tenant Improvements (or any other improvements or alterations), Landlord shall reimburse Tenant, at Tenant's request and subject to Landlord's receipt of reasonable documentation, for any costs incurred by Tenant prior to the Draw Request for construction of the Tenant Improvements, but only to the extent of any remaining proceeds from the letter(s) of credit. A "Draw Event" shall mean any of the following: (I) Tenant is the subject of an Insolvency Proceeding (as defined in the Lease); (II) Tenant defaults under its construction contract with Tenant's Contractor and does not cure such default within the longer of the applicable cure period under such contract or five (5) days after such default occurs; (III) the Lease is terminated by Landlord due to a Tenant default before completion of the Tenant Improvements; (IV) the letter of credit is not extended within thirty (30) days prior to its expiration; and (V) Tenant fails to complete the Tenant Improvements within one hundred (100) days after the Base Building Improvements are substantially complete (subject to delay, not to exceed ninety (90) additional days, caused by Force Majeure Events), provided that if Landlord reasonably determines that Tenant is diligently pursuing construction of the Tenant Improvements, Landlord shall allow Tenant an additional thirty (30) days to complete the Tenant Improvements.

(C) The letter of credit shall be returned to Tenant, and Tenant's obligations under this Paragraph 16 shall terminate, at such time as Tenant has spent $1,800,000 on the Tenant Improvements, a minimum of $1,600,000 of which is used to construct generic office improvements and all of the improvements described in Paragraph 3 hereof, except items (c) and (k), which are exclusions from the Base Building Improvements, and has provided Landlord with items (w), (x) and (y) required in

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Paragraph 17 below and evidence satisfactory to Landlord that all potential lien claimants have been fully paid and released their lien claims. Tenant Improvements costs, as used in the subparagraph (c), shall include reasonable design, permit, construction consultant fees, as well as all amounts paid for labor, materials and contractor's fees related to the construction of the Tenant Improvements. To the extent that Tenant does not make the minimum investment in Tenant Improvements described by this subparagraph prior to the time Tenant completes the Tenant Improvements it initially constructs in the Premises, then Tenant shall have the right (upon move-in and acceptance) to replace the letter of credit initially given with a new letter of credit in the amount of the difference between the minimum investment required by this subparagraph and the amount actually spent by Tenant, which letter of credit shall be governed by this Paragraph 16 and shall be maintained by Tenant until such time as Tenant has expended an amount equal to or exceeding the face amount of such new letter of credit on Alterations which Alterations, if they had been constructed along with the Tenant Improvements initially constructed by Tenant, would have enabled Tenant to meet the minimum investment requirement set forth in this subparagraph.

(D) At or prior to Tenant's delivery to Landlord of the letter(s) of credit, Tenant shall enter into, and shall cause Tenant's Contractor for the Tenant Improvements to enter into, an agreement with Landlord, in form and substance reasonably satisfactory to Landlord (the "Three Party Agreement"). The Three Party Agreement shall provide that, if a Draw Event occurs, and the Landlord has terminated this Lease, Landlord shall have the option to either (I) terminate the existing contract for construction of Tenant Improvements, after paying the general contractor for all completed work from the proceeds of the letter(s) of credit, to the extent they are available to Landlord; or (II) assume Tenant's obligations under the existing contract for construction of Tenant Improvements; or (III) terminate the existing contract as provided in (I) above and enter into a new contract with the general contractor for completion of the Tenant Improvements or any other alterations or improvements to the Premises.

(iii) Other Completion Assurance: In lieu of the letter(s) of credit or completion guaranty/bond described above, Tenant may deliver to Landlord other completion assurance in the face amount required by the letter(s) of credit, and in form and substance acceptable to Landlord in its sole discretion, provided that Landlord shall have no additional liability or reduced benefits from that which Landlord would have if Tenant provided

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letter(s) of credit. All terms, conditions and requirements with respect to the letter(s) of credit contained in this paragraph, including, without limitation, application of proceeds, reduction of amount, return of letter(s) of credit, draw events, and partial draw options, shall apply to any such completion security.

(c) Additional Obligations. The certificate of deposit and Completion Assurance described in this Paragraph 16, and Tenant's obligations and Landlord's rights with respect thereto, shall be in addition to any Letter of Credit or other security deposit provided by Tenant under the Lease pursuant to Paragraph 34 of the Lease.

17. Tenant's Occupancy. Prior to Tenant's commencement of business at the Premises, Tenant shall provide to Landlord the following: (w) "as-built" drawings signed by either Tenant's architect or contractor; (x) final punch list signed off by both Tenant and Landlord and /or their architects; (y) written certification from Tenant's architect and/or contractor that the work is complete and meets all applicable building codes, and a copy of the certificate of occupancy; and (z) final conditional lien releases (IE. the final amount due to Tenant's contractor and any other contractors,

subcontractors or suppliers).

18. Dispute Resolution. If Landlord and Tenant disagree concerning (i) any issues used to determine the Occupancy Date or the Rent Commencement Date, (ii) whether or not Tenant is in default under its contract with Devcon Construction for construction of the Tenant Improvements, (iii) whether or not there had been delay in completion of construction beyond the allocated time periods, and the parties are unable to resolve that dispute within thirty (30) days after Tenant occupies the Premises, the dispute shall be submitted for resolution pursuant to the Lease. Notwithstanding the foregoing, during the pendency period of any arbitration initiated pursuant to this Paragraph 16, Tenant shall pay Rent and Additional Charges from and after the Rent Commencement Date as determined by Landlord; provided, however, that such payment shall be without prejudice to the ultimate determination of that issue.

EXHIBIT D-1

SPAR REVIEW PLANS

FIRM	SHEET	DATE	DESCRIPTION
Devcon	A1.1	2/19/97	Site Plan
Devcon	A2.1	2/19/97	First Floor Plan
Devcon	A2.2	2/19/97	Second Floor Plan
Devcon	A3.1	2/19/97	Elevations

EXHIBIT D-2

APPROVED TENANT PLAN GUIDELINES

[To be forthcoming pursuant to the terms outlined below]

Landlord and Tenant shall endeavor to agree upon parameters concerning the contents of this Exhibit. However, the parties have no obligation to so agree. In the event that Tenant believes that the parties are unable to agree upon such parameters, Tenant shall have the option to terminate the Lease by providing Landlord written notice of its election to do so within two (2) weeks of the execution date of the Lease.

EXHIBIT E

ESTOPPEL CERTIFICATE

[Date]

Vivus, Inc.
545 Middlefield Road
Menlo Park, CA 94025
Attn: Chief Financial Officer

Re: Acknowledgment of Occupancy Date under the Lease Agreement by and between 605 East Fairchild Associates, L.P., and Vivus, Inc., dated as of February _____, 1997 (the "Lease")

Dear Sirs:

This letter will confirm that for all purposes of the Lease, the Occupancy Date (as defined in Paragraph 3(a) of the Lease) is _____, 199_.

Please acknowledge your acceptance of this letter by signing and returning a copy to the undersigned.

Very truly yours,

605 East Fairchild Associates, L.P.,
a California limited partnership

By: Mozart-Wilson-Dostart Ventures, Inc.,
a California corporation
Its General Partner

By: _____
Its: _____

Accepted and Agreed:

Vivus, Inc.,
a Delaware corporation

By: _____
Its: _____

Dated: _____

EXHIBIT "F"

ESTIMATED CONSTRUCTION SCHEDULE

ESTIMATED CONSTRUCTION SCHEDULE (CONT'D)

EXHIBIT "G"

[INTENTIONALLY DELETED]

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EXHIBIT "H"

ESTOPPEL CERTIFICATE
(CONSTRUCTION LENDER)

[TO FOLLOW FROM LENDER, SUBJECT TO TENANT'S REASONABLE REQUIREMENTS]

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EXHIBIT "H"

FORM OF TENANT ESTOPPEL CERTIFICATE
(ONGOING)

TO: _____, OR ASSIGNEE ("LENDER"), AND/OR WHOM ELSE IT MAY CONCERN:

THIS IS TO CERTIFY THAT:

1. The undersigned is the lessee ("Tenant") under that certain lease dated _____, 19_____, ("Lease"), by and between _____as lessor ("Landlord") and _____ _____ as Tenant, covering those certain premises commonly known and designated as _____ _____("Premises").

2. The Lease has not been modified, changed, altered, assigned, supplemented or amended in any respect (except as indicated below; if none, state "none"). The Lease is not in default and is valid and in full force and effect on the date hereof. The Lease is the only Lease or agreement between the Tenant and the Landlord affecting or relating to the Premises. The Lease represents the entire agreement between the Landlord and the Tenant with respect to the Premises. _____.

3. The Tenant is not entitled to, and has made no agreement(s) with the Landlord or its agents or employees concerning free rent, partial rent, rebate of rent payments, credit or offset or deduction in rent, or any other type of rental concession, including, without limitation, lease support payments or lease buy-outs (except as expressly provided in the Lease or as indicated below; if none, state "none"). _____ _____.

4. The Tenant has accepted the Premises, and opened for business in the Premises on _____, 19 ____. The Lease term began _____ _____, 19____. The termination date of the present term of the Lease, excluding unexercised renewals, is _____ , 19 ____.

5. The Tenant has paid rent for the Premises for the period up to and including _____, 19_____. The fixed minimum rent and any additional

rent (including the Tenant's share of tax increases and cost of living increases) payable by the Tenant presently is $ ___per month._No such rent has been paid more than one (1) month in advance of its due date, except as indicated below (if none, state "none"). The Tenant's security deposit is $ _____.
_____

6. To the best of Tenant's knowledge (which means the current, actual knowledge of the signatory for Tenant, who is the person responsible at Tenant for applicable matters): (i) no event has occurred and no condition exists which, with the giving notice or the lapse of time or both, will constitute a default under the Lease; and (ii) the Tenant has no existing defenses or offsets against the enforcement of this Lease by the Landlord.

7. The Tenant has received or will receive payment or credit for tenant improvement work in the total amount of $_____ _____(or if other than cash, describe below; if none, state "none"). Except as noted below, all conditions under this Lease to be performed by the Landlord have been satisfied.
_____
_____
_____.

8. Except as provided in the Lease, the Tenant has no outstanding options or rights of first refusal to purchase the Premises or any part thereof or all or any part of the real property of which the Premises are a part.

9. No actions, whether voluntary or otherwise, are pending against the Tenant or any general partner of the Tenant under the bankruptcy laws of the United States or any state thereof.

10. The Tenant has not sublet the Premises to any sublessee and has not assigned any of its rights under the Lease, except as indicated below (if none, state "none"). No one except the Tenant and its employees occupies the Premises. _____
_____.

11. The address for notices to be sent to the Tenant is as set forth in the Lease.

12. To the best of Tenant's knowledge, Tenant's and Tenant's

sublessee's and assignee's use, maintenance or operation of the Premises complies with, and will at all times comply with, all applicable federal, state, county or local statutes, laws, rules and regulations of any governmental authorities relating to environmental, health or safety matters (being hereinafter collectively referred to as the Environmental Laws).

13. The Premises have not been used and the Tenant does not plan to use the Premises for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any petroleum product or any toxic or hazardous chemical, material, substance, pollutant or waste except as permitted by the lease.

14. Tenant has not received any notices, written or oral, of violation of any Environmental Law or of any allegation which, if true, would contradict anything contained herein and there are no writs, injunctions, decrees, orders or judgements outstanding, no lawsuits, claims, proceedings or investigations pending or threatened, relating to Tenant's or Tenant's sublessee's or assignee's use, maintenance or operation of the Premises, nor is Tenant aware of a basis for any such proceeding.

15. (INCLUDE THIS PARAGRAPH FOR LOAN TRANSACTIONS.) The Tenant acknowledges that all the interest of the Landlord in and to the Lease is being duly assigned to Lender, and that pursuant to the terms thereof, all rent payments under the Lease shall continue to be paid to the Landlord in accordance with the terms of the Lease unless and until the Tenant is notified otherwise in writing by Lender or its successors or assigns. Tenant is hereby authorized and directed by Landlord to comply with any written direction of Lender concerning payment of Rent and no such compliance will give rise to any default by Tenant under the Lease.

It is particularly noted that:

(a) Under the provisions of this assignment, the Lease cannot be terminated (except as expressly provided in the Lease) or modified in any of its terms, or consent be given to the release of any party having liability thereon, without the prior written consent of Lender or it successors or assigns, and without such consent, no rent may be collected or accepted more than one (1) month in advance.

(b) The interest of the Landlord in the Lease has been

assigned to Lender for the purposes specified in the assignment. Lender, or its successors or assigns, assumes no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof.

(c) Any notices sent to Lender or its affiliates should be sent by registered mail and addressed as follows:
_____
_____
_____.

16. Tenant agrees to give any Mortgagee and/or Trust Deed Holders ("Mortgagee"), by registered mail, a copy of any notice of default served upon the Landlord, and Lender shall have the cure rights expressly provided in Paragraph 21 of the Lease.

17. This certification is made to induce Lender to make certain fundings, knowing that Lender relies upon the truth of this certification in disbursing said funds.

18. The undersigned is authorized to execute this Tenant Estoppel Certificate on behalf of the Tenant.

DATED THIS _____ DAY OF
_____, 19 _____.

_____
(TENANT)

BY:

ITS:

DATE:

THE UNDERSIGNED HEREBY CERTIFIES THAT THE CERTIFICATIONS SET FORTH ABOVE ARE TRUE AS OF THE DATE HEREOF.

_____
(OWNER/LANDLORD)

BY:

ITS:

DATE:

Exhibits -31

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EXHIBIT "I"

[INTENTIONALLY DELETED]

Exhibits -32

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EXHIBIT "J"

RULES AND REGULATIONS

1. Sidewalks, 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 pursuant to Paragraph 46 of the Lease.

2. All 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 exterior window, door or patio on the Premises, if any, shall be subject to Landlord's approval, which shall not be unreasonably withheld.

3. 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 to the extent Landlord would be entitled to such key under the Lease.

4. Upon the termination of the tenancy, Tenant shall deliver to Landlord all the keys or access devices for the Building, offices, rooms and toilet rooms which Tenant shall have had made.

5. 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.

6. Animals or birds shall not be brought or kept in or about the Premises or the Building, other than seeing-eye dogs or other such animals that assist handicapped individuals.

7. Tenant shall not install any radio or television antenna, loudspeaker or any other device on the exterior walls or the roof of the Building except as expressly permitted by the Lease.

8. 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

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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.

9. 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 may hang pictures on walls in the Premises. Any damage to the walls caused by molley bolts, double sided tape, or like hanging materials, will be repaired by Tenant.

10. Tenant shall store all trash and garbage within the interior of the Premises or in the appropriate trash collection areas outside 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.

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

12. 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, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants, or employees ("Landlord Parties").

13. 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.

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

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EXHIBIT K

REQUIRED CONDITION OF PREMISES UPON SURRENDER

Upon termination of the Lease, the Premises shall be returned to Landlord with all Building Systems and elevator, fire and gas systems in good working order and maintained with any necessary repairs completed in the reasonable opinion of Landlord's subcontractor, and all operating manuals and maintenance records with respect to such systems shall be delivered to Landlord. All space in the Premises shall be clean and well-maintained with walls freshly painted as necessary (or touched-up, if acceptable to Landlord in its reasonable discretion), and carpet shampooed and presentable for re-leasing. Any damaged or unpresentable carpet shall be replaced. All window coverings shall be cleaned and any damaged coverings repaired or replaced. Any damaged ceiling tiles shall be replaced and all light fixtures shall be fully operational and clean. All doors shall be presentable and damaged doors repaired or replaced. Bathrooms shall be freshly mopped and all tile surfaces cleaned. Any damaged bathroom partitions or fixtures shall be repaired or replaced. The exterior and interior of all windows shall be washed and all interior partition glass shall be cleaned. If Tenant is obligated to remove or restore any Tenant Improvements or Alterations upon termination or expiration of the Lease pursuant to Paragraph 8(d) or (e) of the Lease or Paragraph 6 of the Work Letter, the affected area will be returned to Landlord in the form of open office space in the condition described above.

EXHIBIT "L"

[INTENTIONALLY DELETED]

Exhibits - Exhibit "M"

BA Bank of America Form of Letter of Credit

Form of LC pursuant to Par. 16(b)(ii) of Work Letter

Date: December 3, 1996
Irrevocable Standby Letter of Credit Number: 3002638

BENEFICIARY	APPLICANT
Middlefield/Ellis Associates, L.P. 401 Ellis Street Mountain View, California 94043	[Name Blacked Out] Mountain View, California 94043

AMOUNT
USD [USD Blacked Out] Three Million and 00/100's US Dollars

EXPIRATION
November 15, 1997 at our counters

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER 3002638 WHICH IS AVAILABLE WITH BANK OF AMERICA NT & SA BY PAYMENT AGAINST PRESENTATION OF THE ORIGINAL OF THIS LETTER OF CREDIT AND YOUR DRAFTS AT SIGHT DRAWN ON BANK OF AMERICA NT & SA, ACCOMPANIED BY THE DOCUMENTS DETAILED BELOW:

A LETTER SIGNED BY A PURPORTED AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY CERTIFYING THAT BENEFICIARY IS ENTITLED TO DRAW ON THIS LETTER OF CREDIT PURSUANT TO THAT WORK LETTER AGREEMENT BETWEEN MIDDLEFIELD/ELLIS ASSOCIATES, L.P. AND NETSCAPE COMMUNICATIONS CORPORATION, FOR THE SPACE LOCATED AT 401 ELLIS STREET, IN MOUNTAIN VIEW, CA AS IT MAY BE AMENDED. THIS LETTER OF CREDIT IS IRREVOCABLE.

SPECIAL CONDITIONS:

THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW WITHOUT AMENDMENT TO AUGUST 15, 1998, UNLESS WE SHALL NOTIFY YOU IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR OVERNIGHT COURIER AT LEAST 60 DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE THAT THIS LETTER OF CREDIT WILL NOT BE RENEWED. FOLLOWING SUCH NOTIFICATION AND PRIOR TO THE EXPIRAT ION OF THIS LETTER OF CREDIT, YOU MAY DRAW UPON THIS LETTER OF CREDIT BY PRESENTATION OF THE SIGHT DRAFT(S) MENTIONED ABOVE, ACCOMPANIED BY A LETTER SIGNED BY A PURPORTED AUTHORIZED REPRESENTATIVE OF BENEFICIARY STATING THAT BENEFICIARY HAS NOT BEEN PRESENTED WITH A SUBSTITUTE LETTER OF CREDIT IN THE SAME PRINCIPAL AMOUNT, AND ON THE SAME TERMS AS THIS LETTER OF CREDIT FROM AN ISSUER REASONABLY SATISFACTORY TO YOU.

THIS LETTER OF CREDIT TRANSFERABLE. TRANSFER OF THIS LETTER OF CREDIT IS SUBJECT TO OUR CONSENT AND OUR RECEIPT OF BENEFICIARY'S INSTRUCTIONS IN THE FORM ATTACHED AS EXHIBIT A, ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT AND AMENDMENT(S) IF ANY, COST OR EXPENSES OF SUCH TRANSFER SHALL BE FOR THE ACCOUNT OF THE BENEFICIARY. PARTIAL DRAWS ARE ALL OWED UNDER THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR

DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500 AND ENGAGES US PURSUANT TO THE TERMS THEREIN.

BANK OF AMERICA NT & SA

- ---------- ----------

Form of Letter of Credit (con'd)

BA Bank of America Exhibit A

Request for Entire Transfer of Credit Without Substitution of Invoices

19

- ---------- ---------- ----

Last Name and No.

Letter of Credit No. ----------

Address

- ----------

Issued By ----------

- ----------

Your Advice No. ----------

To: Bank of America NT & SA

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to a second beneficiary, named below.

_____

Name of Second Beneficiary

_____

Address

By this transfer, all our rights as the original beneficiary, including all rights to make drawings under the Letter of Credit, go to the second beneficiary. The second beneficiary shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the second beneficiary without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the second beneficiary with your customary notice of transfer.

For your transfer fee:

[ ] Enclosed is our check for $_____

[ ] You may debt my/our account No._____

We also agree to pay you on demand any expenses which may be incurred by you in connection with this transfer.

The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form.

Name of Beneficiary

- ------------------------ ----------------------------------
Name of Authorized Signer and Title

x
- ------------------------ ----------------------------------
Authorized Signature and Title Authorized Signature

BA Bank of America Form of Letter of Credit (con'd)

Form of LC pursuant to Par. 34 of Lease

Date: December 5, 1996

Irrevocable Standby Letter of Credit Number: 3002639

BENEFICIARY
- ------------------------------

Middlefield/Ellis Associates, L.P.
401 Ellis Street
Mountain View, California 94043

APPLICANT

[Name Blacked Out]
Mountain View, California 94043

AMOUNT

USD [USD Blacked Out]
Two Million and 00/100's US Dollars

EXPIRATION

November 4, 1997 at our counters

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER 3002639 WHICH IS AVAILABLE WITH BANK OF AMERICA NT & SA BY PAYMENT AGAINST PRESENTATION OF THE ORIGINAL OF THIS LETTER OF CREDIT AND YOUR DRAFTS AT SIGHT DRAWN ON BANK OF AMERICA NT & SA, ACCOMPANIED BY THE DOCUMENTS DETAILED BELOW:

A LETTER SIGNED BY A PURPORTED AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY CERTIFYING THAT BENEFICIARY IS ENTITLED TO DRAW ON THIS LETTER OF CREDIT PURSUANT TO THAT LEASE AGREEMENT BETWEEN MIDDLEFIELD/ELLIS ASSOCIATES, L.P. AND NETSCAPE COMMUNICATIONS CORPORATION, FOR THE SPACE LOCATED AT 401 ELLIS STREET, IN MOUNTAIN VIEW, CA AS IT MAY BE AMENDED. THIS LETTER OF CREDIT IS IRREVOCABLE.

SPECIAL CONDITIONS:

THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW WITHOUT AMENDMENT FOR AN ADDITIONAL ONE YEAR PERIOD FROM THE CURRENT OR FOR ANY FUTURE EXPIRATION DATE, UNLESS WE SHALL NOTIFY YOU IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR OVERNIGHT COURIER AT LEAST 60 DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE THAT THIS LETTER OF CREDIT WILL NOT BE RENEWED. FOLLOWING SUCH NOTIFICATION AND PRIOR TO THE EXPIRATION OF THIS LETTER OF CREDIT, YOU MAY DRAW UPON THIS LETTER OF CREDIT BY PRESENTATION OF THE SIGHT DRAFT(S) MENTIONED ABOVE AND BENEFICIARY SIGNED STATEMENT CERTIFYING THAT NETSCAPE HAS FAILED TO PROVIDE SUBSTITUTE LETTER OF CREDIT IN THE SAME PRINCIPAL AMOUNT, OR SUCH REDUCED PRINC IPAL AMOUNT, AS MAY BE PERMITTED BY SECTION 34(B) OF THE LEASE, AND ON THE SAME TERMS AS THIS LETTER OF CREDIT FROM AN ISSUER REASONABLY SATISFACTORY TO YOU.

THIS LETTER OF CREDIT TRANSFERABLE. TRANSFER OF THIS LETTER OF CREDIT IS SUBJECT TO OUR CONSENT AND OUR RECEIPT OF BENEFICIARY'S INSTRUCTIONS IN THE FORM ATTACHED AS EXHIBIT A, ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT AND AMENDMENT(S) IF ANY, COST OR EXPENSES OF SUCH TRANSFER SHALL BE FOR THE ACCOUNT OF THE BENEFICIARY.

PARTIAL DRAWS ARE ALLOWED UNDER THIS LETTER OF CREDIT.

IN NO EVENT WILL THIS LETTER OF CREDIT BE EXTENDED BEYOND A FULL AND FINAL EXPIRATION DATE OF NOVEMBER 4, 2001.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500 AND ENGAGES US PURSUANT TO THE TERMS THEREIN.

BANK OF AMERICA NT & SA

- ---------- ----------
Authorized Signature Authorized Signature

THIS DOCUMENT CONSISTS OF 2 PAGE(S).

Exhibits - 40

Form of Letter of Credit (con'd)

BA Bank of America Exhibit A

Request for Entire Transfer of Credit Without Substitution of Invoices

19

- ---------- ---------- ----
Last Name and No. Letter of Credit No.
- ---------- ----------
Address Issued By
- ---------- ----------
Your Advice No.

To: Bank of America NT & SA

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to a second beneficiary, named below.

_____
Name of Second Beneficiary

_____
Address

By this transfer, all our rights as the original beneficiary, including all rights to make drawings under the Letter of Credit, go to the second beneficiary. The second beneficiary shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the second beneficiary without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the second beneficiary with your customary notice of transfer.

For your transfer fee:

[ ] Enclosed is our check for $_____

[ ] You may debt my/our account No._____

We also agree to pay you on demand any expenses which may be incurred by you in connection with this transfer.

The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature

authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form.

	Name of Beneficiary
-	Name of Authorized Signer and Title
	x
-	-
Authorized Signature and Title	Authorized Signature

FORM OF LETTER OF CREDIT (CONT'D)

[INTENTIONALLY BLANK]

Exhibit "N"

Tenant's Hazardous Substance Disclosures

[VIVUS Letterhead]

Steve Dostart
26 February 1997
Mozart Development Corporation
1068 East Meadow Circle
Palo Alto, CA 94303

Dear Sir:

As per your request, enclosed you will find a listing of the chemicals used by VIVUS, Inc. in our laboratories. The amounts included are amounts expected to be on hand at any point in time. You will note that these are small amounts. We are not, nor will be, engaged in commercial manufacture of any product in our laboratories. Our laboratories are used for initial formation and analytical analysis. Our product contains small quantities of a naturally occurring prostaglandin PGE1 (alprostadil), therefore we do not need large quantities of chemical materials.

Should you have any questions regarding this, please contact me.

Sincerely,

/s/ WILLIAM L. SMITH
- ----------
William L. Smith, Ph.D.
Vice President
Research and Development

Tenant's Hazardous Substance Disclosures (cont'd)

[VIVUS Letterhead]

CONFIDENTIAL

This information is the sole property of VIVUS, Inc. and is not to be used or

disclosed in any manner without prior express written permission.

VIVUS, Inc.
Chemical Inventory

Chemical	Quantity
Alprogradil alpha-cyclo dextrin	0.1 grams
dl-propranolol	25.0 grams
3-isobutyl-1-methylxanchine	1.0 gram
Sigmacote	100 milliliters
Alprostadil	350.0 milligrams
Phentolamine	5.2 grams
Prostaglandin Al	50.0 milligrams
Linoleic acid	25.0 grams
Oleic acid	25.0 grams
Linoleic acid ethyl aster	25.0 grams
Oleic acid ethyl ester	25.0 grams
Linolenic acid	1.0 gram
Acetonitrile	6.0 liters
Isopropranol	8.0 liters
Methylene Chloride	4.0 liters
Heptane	4.0 liters
Cyclobexane	4.0 liters
Methanol	8.0 liters
Ethyl alcohol (dematured)	4.0 liters
Acetone	4.5 liters
Ethyl acetate	1.0 liter
Propylene carbonate	4.0 liters
Magnesiun stearate	1.0 kilogram
Ethylanediamine tetrasostic acid	500 grams
Methyl cellulose	500 grams
Sulfadiazine	25 grams
Sodium nitroprusside	100 grams
Potassium ferocyanide	500 grams
Estradiol	10 grams
Papaverine	100 grams
Propyl gallato	100 grams
Caffeine	100 grams
Yohimbine	5.4 grams
Prazosin	80 grams
Ferric chloride	100 grams

[VIVUS Letterhead]

CONFIDENTIAL

This information is the sole property of VIVUS, Inc. and is not to be used or disclosed in any manner without prior express written permission.

Progesterone	25 grams
Chromic chloride	500 grams
Arginina	75 grams
Tetrabutylammonlures dihydrogen phosphate	5 grams
Isosorbide dinitrate	250 grams
Rhodium (III) chloride	1 gram Adenosina5 grams
Phenylaphrine	100 grams
Potassium chloride-3 molar	125 milliliters
Argon gas	336 cubic feet
Polyethylene glycol 1500	500 grams
Polyethylene glycol 3350	500 grams
Polyvinyl alcohol	1 kilogram
Dicthylamine	500 milliliters

Sodium hydroxide-25% solution	1 liter
Sodium acetate	500 grams
Sodium phosphate, dibasic	500 grams
Triethanoamine	100 milliliters
Triethylamine	100 milliliters
Atropine	50 grams
Mineral oil	2 liters
Triton X-100	1 liter
Polyxyethylene 100 sterate	250 grams
Citric acid	1.5 kilograms
Theophyline	100 grams
Ascorbic acid	300 grams
Nicotinic acid	100 grams
Acetic acid, glacial	500 milliliters
Hydralazine	100 grams
Hydrochloric acid (1N)	1 liter
Ethyl alcohol	8 liters
Ethyl ether	4 liters
Petroleum ether	500 milliliters
Hexane	500 milliliters
Helium gas	290 cubic feet
Nitrogen gas	300 cubic feet
Prostaglandin A2	10 milligrams
Prostaglandin B1	10 milligrams
Prostaglandin E3	500 micrograms
Prostaglandin F1 alpha	10 milligrams
Prostaglandin F2 alpha	10 milligrams

EXHIBIT 11.1

VIVUS, INC.
COMPUTATION OF NET LOSS PER SHARE

	Twelve Months Ended December 31,	
	1996	1995
Net Loss	$(16,527,000)	$ (22,811,000)
Weighted average common shares outstanding	14,916,554	12,901,728
Common shares, options, and warrants granted (using the treasury stock method assuming an initial public offering price of $14.00) since January 1, 1993 included pursuant to Securities and Exchange Commission Rules	-0-	555,449
Weighted average common and equivalent shares	14,916,554	13,457,177
Net loss per common and equivalent share	$ (1.11)	$ (1.70)

Exhibit 13.1

SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

	Quarters Ended,			
1996	March 31	June 30	September 30	December 31
Net income (loss)	$ (6,235)	$ (3,745)	$ 2,662	$ (9,209)
Net income (loss) per common and equivalent share	$ (0.45)	$ (0.26)	$ 0.15	$ (0.57)
Common stock prices				
High	$ 31-3/4	$ 34	$ 42	$ 40-3/4
Low	$ 23-1/2	$ 25-1/4	$ 28	$ 27-7/8
1995				
Net loss	$ (5,457)	$ (6,413)	$ (4,873)	$ (6,068)
Net loss per common and equivalent share	$ (0.44)	$ (0.47)	$ (0.35)	$ (0.43)
Common stock prices				
High	$ 19	$ 17-1/2	$ 24	$ 31-1/4
Low	$ 13	$ 11-1/4	$ 14	$ 16-3/4

The Company's common stock is traded over-the-counter on The Nasdaq Stock Market under the symbol "VVUS." As of December 31, 1996, there were approximately 368 stockholders of record. The Company has not paid any dividends since its inception and does not intend to pay any dividends in the foreseeable future.

SELECTED FINANCIAL DATA

	Years Ended December 31,				
	1996	1995	1994	1993	1992
Revenue	$ 20,000	$ --	$ --	$ --	$ --
Operating expenses:					
Research and development	28,279	21,313	13,916	6,814	3,102
General and administrative	11,733	4,389	2,587	1,499	626
Total operating expenses	40,012	25,702	16,503	8,313	3,728
Loss from operations	(20,012)	(25,702)	(16,503)	(8,313)	(3,728)
Interest income	3,485	2,891	1,639	538	63
Net loss	$(16,527)	$(22,811)	$(14,864)	$ (7,775)	$ (3,665)
Net loss per common and equivalent share	$ (1.11)	$ (1.70)	$ (1.27)	$ (0.79)	
Shares used in per share calculations	14,917	13,457	11,744	9,828	
Financial position at year end:					
Total assets	$ 96,532	$ 44,049	$ 43,021	$ 24,732	$ 5,626
Accumulated deficit	(66,154)	(49,627)	(26,816)	(11,952)	(4,177)
Stockholders' equity	89,780	41,181	40,307	23,435	5,096
Additional information:					
Working capital	$60,388	$ 19,878	$ 21,656	$ 16,010	$ 5,002
Capital expenditures	$ 3,682	$ 3,148	$ 787	$ 1,007	$ 81
Common shares outstanding	16,227	13,476	11,724	2,328	2,215
Number of employees	95	38	28	15	5

MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

Since its inception in April 1991, VIVUS, Inc. (the Company) has focused on the design and development of products for the treatment of erectile dysfunction. The Company has devoted substantially all its efforts to research and development conducted on its own and through collaboration with clinical institutions. The Company's primary product, MUSE(R) (alprostadil), has moved from preclinical development to regulatory marketing clearance over the last four years. In November 1996, the Company obtained regulatory marketing clearance by the U.S. Food and Drug Administration (FDA) to manufacture and market MUSE (alprostadil). The Company commenced product shipments to wholesalers in December 1996 and commercially introduced MUSE (alprostadil) in the United States through its direct sales force beginning in January 1997. In addition, the Company submitted applications for approval of MUSE (alprostadil) in the United Kingdom and Sweden in 1996, and in Norway in early 1997. These applications will be subject to rigorous approval processes, and there can be no assurance such approval will be granted in a timely manner, if at all.

To achieve profitability, the Company must successfully manufacture and market MUSE (alprostadil). The Company is subject to a number of risks including its ability to scale-up its manufacturing capabilities and secure adequate supplies of raw materials, its ability to successfully market, distribute and sell its product, its reliance on a single therapeutic approach to erectile dysfunction and intense competition. There can be no assurance that the Company will be able to achieve profitability on a sustained basis. Accordingly, there can be no assurance of the Company's future success.

Spending increased from 1994 through 1996 largely as a result of expanded operational activities related to the Company's Phase II and III clinical trials, preparing the MUSE (alprostadil) New Drug Application (NDA) for the FDA, expansion of its manufacturing capacity and development of its marketing and sales capabilities. Spending levels will continue to increase during 1997 as the Company further expands its commercial manufacturing, marketing and sales capabilities.

In May 1996, the Company completed a marketing agreement with Astra AB (Astra) where Astra will purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. As consideration for execution of the marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra upon filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company will be paid up to an additional $10 million in the event it achieves certain other milestones. In January 1997, the Company signed an international marketing agreement with Janssen Pharmaceutica International (Janssen), a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. The Company received a $5 million payment as a result of the execution of the agreement and additional payments will be made in the event that certain other milestones are achieved.

The Company began generating revenues from product sales in January 1997. The Company has limited experience in manufacturing and selling MUSE (alprostadil) in commercial quantities. Whether the Company can successfully manage the transition to a large scale commercial enterprise will depend upon successful further development of its manufacturing capability and its distribution network, attainment of foreign regulatory approvals for MUSE (alprostadil) and domestic and foreign approval of other potential products. Failure to make such a transition successfully would have a material adverse effect on the Company's business, financial condition and results of operations.

In April 1994, the Company successfully completed an initial public offering of 2,473,000 shares of common stock, with net proceeds to the Company of $31,578,000. The Company completed a secondary public offering of 1,800,000 shares of common stock in April 1995. Of the total number of shares sold,

1,670,000 shares were sold by the Company and 130,000 shares were sold by a current stockholder. Net proceeds to the Company were $22,483,000. The Company completed a third public offering of 2,000,000 shares of common stock in June 1996. In July 1996, the underwriters for this offering exercised their option to purchase an additional 300,000 shares to cover over-allotments. Net proceeds to the Company were $57,468,000.

This Overview section contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1993, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Actual results could differ materially from those projected in the forward-looking statements as a result of the factors set forth in the above mentioned paragraphs.

Results of Operations

Years Ended December 31, 1996 and 1995

In May 1996, the Company completed a marketing agreement with Astra AB (Astra) where Astra will purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. In consideration for execution of the marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra upon filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company recorded these receipts as revenue in the consolidated statement of operations during 1996. The Company began generating revenues from product sales in January 1997. No product revenues were recorded in 1996 or 1995.

Research and development expenses in 1996 were $28,279,000 compared with $21,313,000 in 1995, an increase of 33%. This increase resulted primarily from a $5.8 million charge related to the issuance of 200,000 shares of common stock in May 1996 to ALZA Corporation to maintain exclusive rights to certain patents and patent applications beyond 1998. In addition, higher pre-launch manufacturing costs were partially offset by lower clinical and regulatory expenses.

General and administrative expenses in 1996 were $11,733,000 compared with $4,389,000 in 1995, an increase of 167%. This increase resulted primarily from higher product marketing and market research expenses, hiring and training the U.S. sales force, and additional personnel and increased facilities costs to support the growth of the Company's operations.

Interest income in 1996 was $3,485,000 compared with $2,891,000 in 1995, an increase of 21%. The increase resulted from higher average invested cash balances associated with the $57,468,000 in net proceeds received from the stock offering in June 1996.

Years Ended December 31, 1995 and 1994

No revenues were recorded in 1995 or 1994. Research and development expenses in 1995 were $21,313,000 compared with $13,916,000 in 1994, an increase of 53%. This increase resulted primarily from the increased expenses supporting the Company's Phase III confirmatory clinical studies and ongoing clinical study programs for MUSE (alprostadil), costs associated with the preparation of the NDA for MUSE (alprostadil), expansion of the Company's

manufacturing capability and growth in personnel to support the Company's expanding operations. Clinical trial costs consisted largely of payments to clinical investigators. The Company pays its clinical investigators on a per patient basis. In clinical trials through December 31, 1995, the MUSE transurethral system had been used by more than 1,900 men at more than 80 sites in the United States and Europe.

General and administrative expenses in 1995 were $4,389,000 compared with $2,587,000 in 1994, an increase of 70%. This increase resulted primarily from hiring additional personnel to support the growth of the Company's operations, in addition to higher market research, legal and accounting expenses, and expenses associated with being a public company.

Interest income in 1995 was $2,891,000 compared with $1,639,000 in 1994, an increase of 76%. The increase resulted from higher average invested cash balances as well as higher returns on its cash investments in 1995 due to the favorable effects of higher average interest rates.

Liquidity and Capital Resources

Since inception, the Company has financed operations primarily from the sale of preferred and common stock. To date, the Company has raised $147,594,000. Cash, cash equivalents and securities totaled $84,325,000 at the end of 1996 compared with $39,524,000 at the end of 1995. The Company maintains its current excess cash balances in a variety of interest-bearing financial securities such as U.S. government securities, high-grade corporate debt and certificates of deposit. Principal preservation, liquidity and safety are the primary investment objectives. See Note 2 of Notes to Consolidated Financial Statements.

Cash used in operations in 1996 was $10,379,000 compared with $21,539,000 in 1995. The decreased use of cash was primarily due to a lower net loss of $16,527,000, which also included a non-cash charge of $5,821,000 to operations related to the issuance of 200,000 shares of stock to ALZA, in 1996 compared with a net loss of $22,811,000 in 1995.

Product inventories were recorded beginning in the fourth quarter of 1996, consistent with the FDA marketing clearance of MUSE (alprostadil).

Interest and other receivables and prepaid and other current assets at December 31, 1996 were $1,335,000 compared with $637,000 at December 31, 1995, an increase of $698,000. This increase resulted primarily from an increase in interest receivables related to the Company's investment portfolio.

Current liabilities were $6,752,000 at December 31, 1996 compared with $2,868,000 at December 31, 1995, an increase of $3,884,000. This increase was primarily due to an increase in expenditures in 1996.

Capital expenditures in 1996 were $3,682,000 compared with $3,148,000 in 1995, an increase of $534,000. In 1995, the Company constructed and equipped approximately 6,000 square feet of manufacturing and testing space within Paco Pharmaceutical Services, Inc., a contract manufacturing facility owned by The West Company located in Lakewood, New Jersey. Capital expenditures in 1996 consisted primarily of manufacturing, quality control, laboratory and computer equipment. Major capital expenditures over the next two years are expected to include Company-owned manufacturing facilities in the United States and Europe, a new corporate headquarters and research and development laboratory facility in the United States.

In 1995, the Company implemented an international product distribution strategy for its products. Implementation included the transfer of international product manufacturing and marketing rights to VIVUS International Limited, a wholly-owned subsidiary of the Company, in a taxable transaction. The transfer of rights and related allocation of research and development costs resulted in the utilization of $29,467,000 of the net operating loss carryforward.

The Company expects to incur substantial additional costs, including expenses related to building its marketing and sales organization, a second manufacturing plant in the United States and one in Europe, new product preclinical and clinical costs, ongoing research and development activities and general corporate purposes. The Company anticipates that its existing capital resources will be sufficient to support the Company's operations through the commercial introduction of MUSE (alprostadil) in Europe, but may not be sufficient for the introduction of any additional future products. Accordingly, the Company anticipates that it may be required to issue additional equity or debt securities and may use other financing sources including, but not limited to, corporate alliances and lease financings to fund the future development and possible commercial launch of its future products. The sale of additional equity securities would result in additional dilution to the Company's stockholders. The Company's working capital and additional funding requirements will depend upon numerous factors, including: (i) the level of resources that the Company devotes to sales and marketing capabilities; (ii) the level of resources that

the Company devotes to expanding manufacturing capacity; (iii) the activities of competitors; (iv) the progress of the Company's research and development programs; (v) the timing and results of preclinical testing and clinical trials; and (vi) technological advances.

This Liquidity and Capital Resources section contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Actual results could differ materially from those projected in the forward-looking statements as a result of the factors set forth above in this Liquidity and Capital Resources section and in the Overview section to this Management's Discussion and Analysis of Financial Condition and Results of Operations. The discussion of those factors is incorporated herein by this reference as if said discussion was fully set forth at this point.

CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data)

	December 31, 1996	December 31, 1995
Assets		
Current assets:		
Cash and cash equivalents	$ 555	$ 973
Available-for-sale securities	60,710	21,136
Interest and other receivables	748	449
Inventories	4,540	--
Prepaid expenses and other	587	188
Total current assets	67,140	22,746
Property, net	6,332	3,888
Available-for-sale securities, non-current	23,060	17,415
Total	$ 96,532	$ 44,049
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 3,324	$ 353
Accrued and other liabilities	3,428	2,515
Total current liabilities	6,752	2,868
Commitments (Notes 7 and 8)		
Stockholders' equity:		
Preferred stock; no par value; shares authorized--5,000,000; shares outstanding--none	--	--
Common stock; $.001 par value; shares authorized--30,000,000; shares outstanding--December 31, 1996, 16,227,170; December 31, 1995, 13,475,570	16	13
Paid in capital	156,189	91,472
Unrealized gain on securities	77	114
Deferred compensation	(348)	(791)
Accumulated deficit	(66,154)	(49,627)
Total stockholders' equity	89,780	41,181
Total	$ 96,532	$ 44,049

See notes to consolidated financial statements.

CONSOLIDATED STAEMENTS OF OPERATIONS
(In thousands, except per share data)

	Years Ended December 31,		
	1996	1995	1994
Revenue	$ 20,000	$ --	$ --
Operating expenses:			
Research and development	28,279	21,313	13,916
General and administrative	11,733	4,389	2,587
Total operating expenses	40,012	25,702	16,503
Loss from operations	(20,012)	(25,702)	(16,503)
Interest income	3,485	2,891	1,639
Net loss	$ (16,527)	$ (22,811)	$ (14,864)
Net loss per common and equivalent share	$ (1.11)	$ (1.70)	$ (1.27)
Shares used in per share calculation	14,917	13,457	11,744

See notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except per share data)

	Convertible Preferred Stock		Common Stock and Paid-in Capital		Unrealized Gain (Loss) on		
	Shares	Amount	Shares	Amount	Securities	Deferred Compensation	Accumulated Deficit
Balances, December 31, 1993	20,641	$ 34,402	2,328	$ 1,968	$ 2	$ (984)	$(11,952)
Sale of common stock at $14.00 per share for cash (net of issuance costs of $3,037,000)			2,473	31,578			
Conversion of preferred stock into common	(20,641)	(34,402)	6,880	34,402			
Sale of common stock through employee stock purchase plan			5	50			
Exercise of common stock options for cash			38	18			
Unrealized loss on securities					(341)		
Deferred compensation related to stock option grants				682		(682)	
Amortization of deferred compensation						430	
Net loss							(14,864)
Balances, December 31, 1994	--	--	11,724	68,698	(339)	(1,236)	(26,816)
Sale of common stock at $14.50 per share for cash (net of issuance costs of $1,732,000)			1,670	22,483			
Sale of common stock through employee stock purchase plan			16	172			
Exercise of common stock options for cash			66	132			

Unrealized gain on securities					453		
Amortization of deferred compensation						445	
Net loss							(22,811)
Balances, December 31, 1995	--	--	13,476	91,485	114	(791)	(49,627)
Issuance of common stock at $29.11 for patent rights			200	5,821			
Sale of common stock at $26.75 per share for cash (net of issuance costs of $4,057,000)			2,300	57,468			
Sale of common stock through employee stock purchase plan			10	226			
Exercise of common stock options for cash			241	1,205			
Unrealized loss on securities					(37)		
Amortization of deferred compensation						443	
Net loss							(16,527)
Balances, December 31, 1996	--	$ --	16,227	$ 156,205	$ 77	$ (348)	$(66,154)

See notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Years Ended December 31,		
	1996	1995	1994
Cash flows from operating activities:			
Net loss	$ (16,527)	$ (22,811)	$ (14,864)
Adjustments to reconcile net loss to net cash used for operating activities:			
Depreciation and amortization	1,238	708	265
Amortization of deferred compensation	443	445	430
Issuance of common stock for patent rights	5,821	--	--
Changes in assets and liabilities:			
Interest and other receivables	(299)	(41)	118
Inventories	(4,540)	--	--
Prepaid expenses and other	(399)	6	(10)
Accounts payable	2,971	(298)	(302)
Accrued and other liabilities	913	452	1,720
Net cash used for operating activities	(10,379)	(21,539)	(12,643)
Cash flows from investing activities:			
Property purchases	(3,682)	(3,148)	(787)
Investment purchases	(177,074)	(146,338)	(116,811)
Proceeds from sale/maturity of securities	131,818	147,202	99,498
Other	--	(28)	4
Net cash used for investing activities	(48,938)	(2,312)	(18,096)
Cash flows from financing activities:			
Sale of common stock	57,468	22,483	31,578
Exercise of common stock options	1,205	132	18
Sale of common stock through employee stock purchase plan	226	172	50
Net cash provided by financing activities	58,899	22,787	31,646
Net increase (decrease) in cash and cash equivalents	(418)	(1,064)	907
Cash and cash equivalents:			
Beginning of period	973	2,037	1,130
End of period	$ 555	$ 973	$ 2,037
Non-cash investing and financing activities:			
Deferred compensation recorded relating to stock option grants	$ --	$ --	$ 682
Unrealized gain (loss) on securities	(37)	453	(341)

See notes to consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 1996, 1995 AND 1994

NOTE 1. BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

Business

VIVUS, Inc. was incorporated in California in 1991 to develop products for the treatment of erectile dysfunction. The Company was reincorporated in Delaware in 1996. The classification of the capital accounts reflects the effect of the reincorporation for all periods presented.

The Company has devoted substantial effort towards product research and development, clinical trials, securing adequate product supply and manufacturing capabilities, and raising capital. As of December 31, 1996, the Company is no longer considered a development stage company. The Company obtained clearance from the U.S. Food and Drug Administration ("FDA") to manufacture and market MUSE (alprostadil) in November 1996 and is currently seeking marketing clearance in other countries. The Company commenced product shipments to wholesalers in December 1996 and commercially introduced MUSE (alprostadil) in the United States through its direct sales force beginning January 1997.

The Company is subject to a number of risks including its ability to scale-up its manufacturing capabilities and secure an adequate supply of raw materials, its ability to successfully market, distribute and sell its product, its reliance on a single therapeutic approach for the treatment of erectile dysfunction, and intense competition. Accordingly, there can be no assurance of the Company's future success.

Revenue Recognition

The Company recognized revenue of $20 million in the year ended December 31, 1996 as a result of achieving certain milestones under its marketing agreement with Astra AB. The amount recognized is not refundable and does not involve any significant future performance obligations.

While there were product shipments in December 1996, the Company has not recognized revenue, nor the associated cost of sales on these shipments because of extended rights-of-return privileges granted to customers during this initial selling period. Assuming return privileges are not exercised, revenue will be recognized during the first quarter of 1997 when the return period has elapsed. For shipments after January 1, 1997, extended rights-of-return will not be offered and revenue will be recognized as shipments are made.

Principles of Consolidation

The consolidated financial statements include VIVUS, Inc., VIVUS International Limited, a wholly-owned subsidiary, and VIVUS UK Limited and VIVUS BV Limited, wholly-owned subsidiaries of VIVUS International Limited. All significant intercompany transactions and balances have been eliminated.

Cash and Cash Equivalents

The Company considers all highly liquid debt instruments purchased with an original maturity of 90 days or less to be cash equivalents.

Inventories

Inventories are stated at the lower of cost (first-in, first-out basis) or market. Cost includes material and conversion costs. Pending FDA marketing clearance, which was obtained in November 1996, the Company expensed to research and development in 1996 and prior years all raw material purchases prior to October 1, 1996. Certain of these expensed raw material costs (approximately $10 million) will have the benefit of reducing future cost of sales.

Available-for-Sale Securities

The Company accounts for available-for-sale securities in accordance with Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities." Available-for-sale securities represent debt securities that are stated at fair value. The difference between amortized cost (cost adjusted for amortization of premiums and accretion of discounts which are recognized as adjustments to interest income) and fair value, representing unrealized holding gains or losses, are recorded as a separate component of stockholders' equity until realized. The Company's policy is to record debt securities as available-for-sale because the sale of such securities may be required prior to maturity. Any gains and losses on the sale of debt securities are determined on a specific identification basis.

Property

Property is stated at cost. Depreciation and amortization are computed using the straight-line method over estimated useful lives of three to seven years.

Income Taxes

The Company accounts for income taxes in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," which requires an asset and liability approach for financial reporting of income taxes.

License Agreements

The Company has obtained rights to patented technologies related to its initial product under several licensing agreements. These agreements generally require payments during the development period and royalties on product sales. Payments prior to commercial availability of the product have been reported as research and development expense.

Research and Development

Research and development costs are expensed as incurred.

Net Loss Per Common and Equivalent Share

Net loss per common and equivalent share is based on the weighted average number of common and common equivalent shares outstanding during the periods. Common equivalent shares, which represent shares issuable upon the exercise of outstanding stock options, were excluded from the calculation of loss per share because the effect of including such shares in the calculation would be anti-dilutive.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

NOTE 2. AVAILABLE-FOR-SALE SECURITIES

The fair value and the amortized cost of available-for-sale securities at December 31, 1996 and 1995 are presented in the table that follows. Fair values are based on quoted market prices obtained from an independent broker. For each category of investment securities the table presents gross unrealized holding gains and losses.

As of December 31, 1996:

(In thousands)	Amortized Cost	Fair Market Value	Unrealized Holding Gains	Unrealized Holding Losses
U.S. government securities	$ 55,441	$ 55,488	$ 84	$ (37)
Corporate debt	28,252	28,282	32	(2)
Total	$ 83,693	$ 83,770	$ 116	$ (39)

As of December 31, 1995:

(In thousands)	Amortized Cost	Fair Market Value	Unrealized Holding Gains	Unrealized Holding Losses
U.S. government securities	$ 35,937	$ 36,050	$ 113	$ --
Corporate debt	2,500	2,501	1	--
Total	$ 38,437	$ 38,551	$ 114	$ --

The contractual maturities of these securities as of December 31, 1996 are as follows:

(In thousands)	Amortized Cost	Fair Market Value
Less than 1 year	$ 60,650	$ 60,710
From 1 to 2 years	13,684	13,673
From 2 to 3 years	9,359	9,387
Total	$ 83,693	$ 83,770

NOTE 3. INVENTORIES

Inventories as of December 31 consist of:

(In thousands)	1996	1995
Raw materials	$ 1,893	$ --
Work in process	344	--
Finished goods	2,303	--
Inventories, net	$ 4,540	$ --

NOTE 4. PROPERTY

Property as of December 31 consists of:

(In thousands)	1996	1995
Machinery and equipment	$ 4,763	$ 3,578
Computers and software	1,859	872
Furniture and fixtures	535	404
Construction in progress	1,554	175
	8,711	5,029
Accumulated depreciation and amortization	(2,379)	(1,141)
Property, net	$ 6,332	$ 3,888

NOTE 5. ACCRUED AND OTHER LIABILITIES

Accrued and other liabilities as of December 31 consist of:

(In thousands)	1996	1995
Clinical trial expenses	$ 347	$ 906
Manufacturing expenses	1,086	496
Marketing expenses	711	76
Employee benefits	392	182
Other	892	855
Accrued and other liabilities	$ 3,428	$ 2,515

NOTE 6. STOCKHOLDERS' EQUITY

In April 1994, the Company completed an initial public offering of 2,473,000 shares of common stock. Net proceeds to the Company were $31,578,000. The Company effected a one-for-three common stock split and a corresponding change in the preferred stock conversion ratios in connection with the initial public offering. Additionally, all preferred stock was converted to common stock. All common stock data in the accompanying consolidated financial statements for all years presented have been retroactively adjusted to reflect the stock split.

The Company completed a secondary stock offering of 1,800,000 shares of common stock in April 1995. Of the total number of shares sold, 1,670,000 shares were sold by the Company and 130,000 shares were sold by a current stockholder. Net proceeds to the Company were $22,483,000.

The Company completed a third stock offering of 2,000,000 shares of common stock in June 1996. In July 1996, the underwriters for this offering exercised their option to purchase an additional 300,000 shares to cover over-allotments. Net proceeds to the Company were $57,468,000.

Preferred Stock

The Company is authorized to issue 5,000,000 shares of undesignated preferred stock. Such shares of preferred stock may be issued by the Company in the future, without stockholder approval, upon such terms as the Company's Board of Directors may determine.

Stock Warrants

In connection with the issuance of convertible preferred stock in 1993, the Company issued warrants currently exercisable for up to 264,000 shares of common stock at an exercise price of $8.63 per share. The warrants expire in 1999.

Stock Purchase and Option Plans

Under the 1991 Incentive Stock Plan (the Plan), the Company may grant incentive or nonstatutory stock options or stock purchase rights (SPRs). Up to 3,100,000 shares of common stock have been authorized for issuance under the Plan. The Plan allows the Company to grant incentive stock options (ISOs) and nonstatutory stock options (NSOs) to key employees, directors and consultants at not less than the fair market value (for an ISO) of the stock at the date of grant (110% of fair market value for individuals who control more than 10% of the Company stock; otherwise, not less than 85% of fair market value for an NSO), as determined by the Board of Directors. Under the Plan, 25% of the options generally become exercisable after one year and 2.0833% per month thereafter. The term of the option is determined by the Board of Directors on the date of grant but shall not be longer than ten years. The Plan allows the Company to grant SPRs to key employees and consultants at not less than 85% of the fair market value of the stock at the date of grant, as determined by the Board of Directors. Sales of stock under SPRs are made pursuant to restricted stock purchase agreements containing provisions established

by the Board of Directors. The Company has a right to repurchase the shares at the original sale price, which expires at a rate to be determined by the Board of Directors. As of December 31, 1996, no SPRs have been granted under the Plan.

In February 1994, the Board of Directors authorized the adoption of the 1994 Director Stock Option Plan (the Director Option Plan). Under the Director Option Plan, the Company reserved 100,000 shares of common stock for issuance to nonemployee directors of the Company pursuant to nonstatutory stock options issued at the fair market value of the Company's common stock at the date of grant. Under the Director Option Plan, nonemployee directors will receive an option to purchase 12,500 shares of common stock when they join the Board of Directors. These options vest 25% after one year and 25% annually thereafter. Thereafter, each director shall receive an option to purchase 2,500 shares of the Company's common stock annually upon their reelection. These options are fully exercisable ratably over eight months.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions used for grants: risk-free rates ranging from 5-7% and corresponding to government securities with original maturities similar to the vesting periods; expected dividend yield of 0%; expected lives of .64 years beyond vest dates; and expected volatility of 55%.

Details of option activity under these plans are as follows:

		Exercise Prices	
	Number of Shares	Range	Weighted Average
Outstanding, December 31, 1994	1,092,384	$ .18 - $ 15.75	$ 5.79
Granted	627,025	11.25 - 27.00	16.24
Exercised	(66,385)	.18 - 7.50	2.00
Canceled	(20,708)	.48 - 14.50	13.45
Outstanding, December 31, 1995	1,632,316	.18 - 27.00	9.86
Granted	722,373	28.25 - 39.94	32.80
Exercised	(242,898)	.18 - 19.75	4.95
Canceled	(12,866)	.48 - 23.75	20.49
Outstanding, December 31, 1996	2,098,925	$ .18 - $ 39.94	$ 18.26

Options Outstanding				Options Exercisable	
Range of Exercise Prices	Number Outstanding at December 31, 1996	Weighted-Average Remaining Contractual life	Weighted-Average Exercise Price	Number Exercisable December 31, 1996	Weighted-Average Exercise Price
$ 0.18 to $ 7.50	523,117	6.60 years	$ 2.85	402,349	$ 2.51
$11.25 to $13.50	525,535	8.15 years	13.12	241,987	13.16
$14.00 to $30.00	574,275	8.80 years	23.67	136,870	18.30
$30.25 to $36.50	422,999	4.85 years	33.87	0	0
$38.00 to $39.94	52,999	9.41 years	38.09	0	0
$ 0.18 to $39.94	2,098,925	7.31 years	$ 18.26	781,206	$ 8.58

At December 31, 1996, 737,109 shares remain authorized and unissued and options to purchase 781,206 shares were exercisable under these plans. The weighted average of fair values of options granted during the year under these plans was $13.49.

During 1993, options to purchase 589,875 shares of common stock were granted at exercise prices ranging from $.48 to $3.00. Deferred compensation of $1,093,000 was recorded in 1993. In January and February 1994, options to purchase 189,166 shares of common stock were granted at exercise prices ranging from $6.00 to $7.50. Deferred compensation of $682,000 was recorded in the first quarter of 1994.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The Company accounts for these plans under APB Opinion No. 25. Except for deferred compensation discussed in the preceding paragraph, no compensation cost has been recognized because the exercise price equals the market value of stock on the date of grant. Options under these plans vest over four years, and all options expire after ten years.

Had compensation cost for these plans been determined consistent with FASB Statement No. 123 (FASB 123), "Accounting for Stock-based Compensation", the Company's net loss and net loss per common and equivalent share would have reflected the following pro forma amounts:

	1996	1995
Net loss (in thousands)		
As reported	$ (16,527)	$ (22,811)
Pro forma	$ (20,039)	$ (23,941)
Net loss per common and equivalent share		
As reported	$ (1.11)	$ (1.70)
Pro forma	$ (1.34)	$ (1.78)

Because the FASB 123 method of accounting has not been applied to options granted prior to January 1, 1995, the resulting pro forma compensation cost may not be representative of that to be expected in future years.

In June 1994, the Company implemented an employee stock purchase plan under which eligible employees may authorize payroll deductions of up to 10% of their base compensation (as defined) to purchase common stock at a price equal to 85% of the lower of the fair market value as of the beginning or the end of the offering period. A total of 200,000 shares were reserved for issuance under the employee stock purchase plan. As of December 31, 1996, 30,525 shares have been issued to employees. During 1996, the weighted average fair market value of shares issued under the employee stock purchase plan was $31.69 per share.

NOTE 7. LICENSE AGREEMENTS

The Company has entered into several agreements to license patented technologies that are essential to the development and production of the Company's product. In connection with these agreements, upon meeting certain milestones (as defined) and contingent on the issuance of patents in certain countries, the Company is obligated to (1) pay license fees of $2,575,000 (of which $1,750,000 has been paid); (2) issue 448,246 shares of the Company's common stock (all of which has been issued); and (3) pay royalties on product sales covered by the license agreements (4% of U.S. and Canadian product sales and 3% of sales elsewhere in the world). In 1996, the Company issued an additional 200,000 shares of common stock to maintain exclusive rights to certain patents and patent applications beyond 1998. In connection with this issuance, the Company recorded a charge of $5,821,000 to the consolidated statements of operations.

NOTE 8. LEASE COMMITMENTS

The Company leases its principal administrative facility under a noncancelable operating lease expiring December 1997. The Company also leases additional office space and a development facility under noncancelable operating leases expiring September 1999.

Subsequent to year end, the Company executed a five year lease for two buildings totalling 90,000 square feet that will be built out to support expansion of the Company's manufacturing capabilities. Additionally, the Company signed a fifteen year noncancelable lease (expected to commence in December 1997) for its new principal administrative and research and development laboratory facility. Under the terms of this lease, the Company is required to post a $2 million letter of credit to secure tenant improvements and a $1.75 million letter of credit to secure ongoing performance under the lease.

Future minimum lease payments under operating leases for the years ended December 31, 1997, 1998 and 1999, including the leases entered into subsequent to year end described above, are $1,067,000, $1,675,000 and $1,671,000, respectively.

Rent expense under operating leases totaled $560,000, $342,000, and $206,000 for years ended December 31, 1996, 1995, and 1994, respectively.

NOTE 9. INCOME TAXES

Deferred income taxes result from differences in the recognition of expenses for tax and financial reporting purposes, as well as operating loss and tax credit carryforwards. Significant components of the Company's deferred income tax assets as of December 31 are as follows:

(In thousands)	1996	1995
Deferred tax assets:		
Net operating loss carryforwards	$ 7,870	$ 4,834
Research and development credit carryforwards	2,715	2,292
Capitalized research and development expenses	3,695	2,642
Inventory reserve	4,237	--
Amortization	--	329
Accruals and other	709	247
Notes receivable from subsidiaries	--	(1,700)
Deferred gain	(1,760)	--
Depreciation	487	91
	17,953	8,735
Valuation allowance	(17,953)	(8,735)
Total	$ --	$ --

For federal and state income tax reporting purposes, net operating loss carryforwards of approximately $22,231,000 and $956,000 are available to reduce future taxable income, if any. These carryforwards begin to expire in 2007. Additionally, at December 31, 1996, the Company has research and development credit carryforwards available to reduce future federal and state income taxes through 2011 of approximately $1,537,000 and $1,178,000, respectively. In 1995, the Company implemented an international product distribution strategy for its products. Implementation included the transfer of international product manufacturing and marketing rights to VIVUS International Limited in a taxable transaction. The transfer of rights and related allocation of research and development costs resulted in the current utilization of $29,467,000 of the net operating loss carryforward. Should significant changes in the Company's ownership occur, the annual amount of tax loss and credit carryforwards available for future use would be limited.

NOTE 10. SUBSEQUENT EVENT

In January 1997, the Company signed an international marketing agreement with Janssen Pharmaceutica International (Janssen), a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. The Company received a $5,000,000 payment as a result of the execution of the agreement and additional payments will be made in the event that certain milestones are achieved.

TO THE STOCKHOLDERS AND BOARD OF DIRECTORS OF VIVUS, INC.:

We have audited the accompanying consolidated balance sheets of VIVUS, Inc. (a Delaware corporation) and subsidiaries as of December 31, 1996 and 1995, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 1996. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of VIVUS, Inc. and subsidiaries at December 31, 1996 and 1995, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 1996, in conformity with generally accepted accounting principles.

Arthur Andersen LLP

San Jose, California

January 27, 1997

EXHIBIT 21.2

LIST OF SUBSIDIARIES

The following is a list of subsidiaries of VIVUS, Inc.

1. VIVUS International Limited, a wholly owned subsidiary of VIVUS, Inc.
2. VIVUS UK Limited, a wholly owned subsidiary of VIVUS International Limited
3. VIVUS BV Limited, a wholly owned subsidiary of VIVUS International Limited
4. VIVUS Ireland Limited, a wholly owned subsidiary of VIVUS International Limited

EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report dated January 27, 1997 on the consolidated financial statements of the Company for the year ended December 31, 1996, by reference in this Form 10-K, into the Company's previously filed Registration Statement on Form S-8 (File No. 33-80362).

/s/ ARTHUR ANDERSEN LLP
Arthur Andersen LLP

San Jose, California
March 19, 1997

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