

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM



CRDID 8087

In re
ALLEGIANCE TELECOM COMPANY WORLDWIDE

Case Number
03-13064

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A 'request' for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK
ALLEGIANCE TELECOM, INC
03-13057 (RRD)

FILED

833

Name of Creditor and Address



Prospect West C LP
Trainor Robertson
Nancy Hotchkiss Esq
701 University Ave Ste 200
Sacramento CA 95825

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if this address differs from the address on the envelope sent to you by the court.

If you have already properly filed a proof of claim with the Bankruptcy Court, you do not need to file again.

Creditor Telephone Number () (916) 929-7000

CREDITOR TAX ID #

ACCOUNT OR OTHER NUMBER BY WHICH
CREDITOR IDENTIFIES DEBTOR
3173.040

Check here ☐ replaces a previously filed claim dated _____
if this claim ☐ or ☐ amends

1 BASIS FOR CLAIM

- ☐ Goods sold ☐ Personal injury/wrongful death ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Services performed ☐ Taxes ☐ Wages, salaries, and compensation (Fill out below)
☐ Money loaned ☒ Other (describe briefly below) Your social security number _____

Unexpired lease of commercial real property located at 10995 Gold Ctr. Dr. Ste. 100, Rancho Cordova, CA Unpaid compensation for services performed from _____ to _____
(date) (date)

2 DATE DEBT WAS INCURRED Lease dated 10/31/00 3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED \$ See Exh. A \$ 145,030* \$ 145,030.00*
(unsecured) (secured) (unsecured priority) (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. *Subject to amendment.
☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. See Exhibit "A"

5 SECURED CLAIM

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief description of collateral

- ☐ Real Estate
☐ Motor Vehicle

☒ Other Set off rights against security deposit, prepaid rent, and annual reconciliation credits

Value of collateral \$ 411,816.63

as of date of Claim
Amount of arrearage and other charges at time case filed included in secured claim above if any \$

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim

Specify the priority of the claim

- ☐ Wages, salaries, or commissions (up to \$4,650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3)
☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)
☐ Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)
☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)
☐ Other Specify applicable paragraph of 11 U.S.C. § 507(a) _____

*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8 SUPPORTING DOCUMENTS Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 5:00 p.m., November 26, 2003, Prevailing Eastern Time.

BY MAIL TO United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
Bowling Green Station, P.O. Box 95
New York, NY 10274-0095

BY HAND OR OVERNIGHT DELIVERY TO United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
One Bowling Green, Room 534
New York, NY 10004-1408

DATE SIGNED

10/15/03

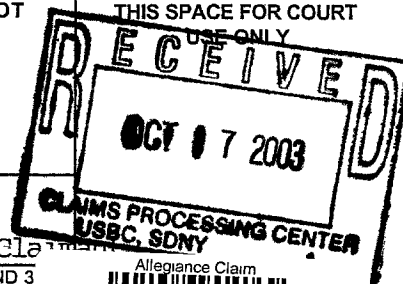
SIGN and print the name and title of any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any) Trainor Robertson

By: Nancy Hotchkiss, Atty for Claimant

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both - 18 U.S.C. §§ 152 AND 3

See Other Side For Instructions

THIS SPACE FOR COURT USE ONLY



00871

EXHIBIT "A"

EXHIBIT "A"

Debtor Leased from Claimant those commercial premises located at 10995 Gold Center Drive, Suite 100, Rancho Cordova, California pursuant to a written lease dated October 31, 2000, a true and correct copy of which is attached hereto as Exhibit "B" and included herein by reference. At the time of the filing of Debtor's petition, it occupied the subject premises, continues to do so to date, and has not yet elected whether to assume or reject the lease.

Debtor was current on its pre-petition rent at the time of the filing of the petition on May 14, 2003, save and except for \$130.00 in after hours energy costs billed to Debtor, copies of invoices for which are attached hereto collectively as Exhibit "C" and incorporated herein by reference. Additional pre-petition claims may arise for the pre-petition portion of the annual reconciliation of triple net charges due under the lease once that reconciliation has been completed in 2004, and Claimant reserves the right to amend this Proof of Claim to so specify.

In addition to these pre-petition arrearages, Debtor has failed to commence and complete the construction of its tenant improvements on approximately 7000 square feet of its leased space as required by the terms of its lease. Landlord/Claimant has already paid Debtor for those tenant improvements, the amount attributable to said portion of Debtor's space totaling the sum of \$144,900.00 (\$23.00 square feet x 6300 usable square feet) per paragraph 3.01 of Addendum D of the lease. Thus, Landlord is owed the value of those improvements in that amount.

Claimant also reserves the right to amend this Proof of Claim to add rejection damages pursuant to §502(b)(6) in the event this lease is rejected.

As of the date of the filing of this claim, the Base Rent for the premises was the sum of \$29,531.33 per month and Additional Rent was the sum of \$9,824.71 per month. The lease term commenced February 1, 2001 and will expire January 31, 2011, subject to two (2) conditional five (5) year options to renew.

EXHIBIT "B"

EXECUTIVE COPY

LEASE AGREEMENT

THIS LEASE made this 31 day of October 2000 between Prospect West C.L.P. a California limited partnership herein called Landlord and Allegiance Telecom Company Worldwide, a Delaware corporation, hereinafter called Tenant
WITNESSETH

Landlord hereby leases to Tenant and Tenant hereby hires and takes from Landlord those certain premises (the "Premises") outlined in red on Exhibit A attached hereto and incorporated herein by this reference thereto more particularly described as a portion of that certain 64,800 rentable square foot building (the "Building") located at 10995 Gold Center Drive, Rancho Cordova, CA 95670. The suite number is 100. The Premises is agreed to be approximately twenty five thousand (25,000) rentable square feet, subject to final measurement after possession as set forth in Paragraph 3B below. Landlord and Tenant acknowledge that the Premises will consist of space improved and utilized for a telecommunications switch ("Switch Area") and space improved and utilized for sales, marketing and other administrative functions ("Office Area"). The Premises is estimated to be 38.58 percent of the total rentable area of the Complex, subject to adjustment referenced in Paragraph 3B below.

The total rentable square feet shall include the Premises and a pro rata share of the Common Area. The rentable area of the Premises shall be measured in accordance with ANSI/BOMA Z65.1-1996 guidelines including a load factor relating to the Common Areas (as defined in Paragraph 6 below) of the Building (the "Load Factor") equal to 12%. The Rentable area shall be determined by multiplying the usable area of the Premises by 112%.

As used herein the Complex (the "Complex") shall mean and include all of the land outlined in red and described in Exhibit "B", attached hereto and all of the buildings, improvements, fixtures and equipment now or hereafter situated on said land.

This Lease is based upon and subject to the terms, covenants and conditions hereinafter set forth and Tenant covenants as a material part of the consideration for this Lease to perform and observe each and all of said terms, covenants and conditions. This Lease is made upon the conditions of such performance and observance.

1. **USE.** Tenant shall use the Premises only in conformance with applicable governmental laws, regulations, rules and ordinances for the purpose of installing, operating and maintaining telecommunications equipment including collocation customers equipment providing telecommunications services, maintaining general office and storage within the switch area related to telecommunications and to accommodate the sales team with associated general office functions and for no other purpose. Tenant shall not do or permit to be done in or about the Premises or the Complex nor bring or keep or permit to be brought or kept in or about the Premises or the Complex anything which is prohibited by law or unless Tenant pays any resulting incremental increase in insurance costs, will in any way increase the existing rate of (or otherwise affect) fire or any insurance covering the Premises or the Complex or any part thereof or any of its contents or will cause cancellation of any insurance covering the Premises or the Complex or any part thereof or any of its contents. Tenant shall not do or permit to be done anything in, on or about the Premises or the Complex which will in any way obstruct or interfere in any material manner with the rights of other tenants or occupants of the Complex or injure or annoy them or use or allow the Premises to be used for any improper, immoral or unlawful purpose nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or the Complex. No sale by auction shall be permitted on the Complex. Tenant shall not place any loads upon the floors, walls or ceiling which endanger the structure or except for diesel fuel, glycol and batteries stored and used in compliance with all applicable laws and the terms of this Lease, use or store any harmful, hazardous or toxic fluids or materials or other materials in or about the Complex to include the drainage system of the Building. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or outside of the Building in which the Premises are a part except in trash containers placed inside exterior enclosures designated by Landlord for that purpose or inside of the building proper where designated by Landlord. Other than where specifically designated by Landlord, there shall be no smoking anywhere in or adjacent to the building including the area outside the building entrances. Except as expressly contemplated hereunder, no materials, supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature shall be stored upon or permitted to remain outside the Premises or any portion of the common area of the Complex. Tenant shall not place anything or allow anything to be placed near the glass of any window, door partition or wall which may appear unsightly from outside the Premises. No loudspeaker or other device, system or apparatus which can be heard outside the Premises shall be used in or at the Premises without the prior written consent of Landlord. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Tenant shall indemnify, defend and hold Landlord harmless against any loss, expense, damage, reasonable attorney's fees, or liability arising out of the failure of Tenant to comply with the provisions of this paragraph and any applicable law. Tenant shall comply with any covenant, condition or restriction ("CC&R's") currently affecting the Premises or the Complex. The provisions of this paragraph are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Complex. To Landlord's knowledge, the contemplated use of the Premises will not (i) cause an increase in or cancellation of any insurance policies currently maintained by Landlord or (ii) violate any of the CC&R's.

2. TERM

A. The term of this Lease ("Term") shall be for a period of one hundred twenty (120) months, subject to extension as provided herein and shall commence pursuant to Paragraph 2B below.

B. The term of the Lease shall commence upon the earlier to occur of (the "Commencement Date")

- (a) One hundred twenty days from the date of execution and delivery of this Lease or
- (b) February 1, 2001 or
- (c) The date Tenant commences switch operations in the Premises

3. POSSESSION

A. **Delay in Delivery.** Landlord shall deliver the Premises to Tenant for commencement of Tenant's build-out of the Premises on the first business day following the execution and delivery of this Lease under a license whereby Tenant shall have the right to continuously occupy the Premises to ready the Premises for occupancy. Such license shall be subject to all of the terms and conditions of this Lease except that Tenant shall have no obligation to pay Basic Rent or Additional Rent until the Term shall have commenced as provided above. If Landlord for any reason whatsoever cannot deliver possession of said premises to Tenant as hereinbefore specified, this Lease shall not be void or voidable, no obligation of Tenant shall be affected thereby nor shall Landlord or

Landlord's agents be liable to Tenant for any loss or damage resulting therefrom. The above is however subject to the provision that the period of delay of delivery of the Premises shall not exceed thirty (30) days from the commencement date herein (except those delays caused by Tenant, Acts of God, strikes, war, utilities, governmental bodies, weather, unavailable materials, and delays beyond Landlord's control shall be excluded in calculating such period) in which instance Tenant at its option may by written notice to Landlord terminate this Lease.

B Commencement and Confirmation Promptly following the Commencement Date, Landlord shall prepare and deliver to Tenant a Commencement and Confirmation Letter which will specify the date upon which the Term commenced, the date upon which the obligation to pay Basic Rent and expense adjustments, if any, commenced, the date upon which the Term shall expire, the Landlord's calculation of the final measurement of the Premises, and the Monthly Basic Rent and Lease payment as adjusted after the final measurement, along with an amendment to the Lease modifying the Lease accordingly.

Provided Tenant agrees with the information contained in the Commencement and Confirmation Letter and Amendment to Lease, Tenant shall promptly execute and return the Commencement and Confirmation Letter and Amendment to Landlord. When fully executed and delivered, the Amendment shall supersede any inconsistent terms contained in the Lease. If Tenant objects to anything contained in the Commencement and Confirmation Letter or the Amendment within ten (10) days of receipt of the Commencement and Confirmation Letter and Amendment, Tenant shall provide Landlord with a written statement setting forth the specific basis for the objection(s). In the event that an informal resolution of the issues in dispute is not reached within twenty (20) days thereafter, the dispute shall be resolved by Judicial Reference as provided herein. The parties agree that until a binding determination is rendered on the issue(s) in dispute, Landlord and Tenant shall proceed including the payment of Basic Rent and expenses as if Landlord's Commencement and Confirmation Letter and Amendment were accurate and acceptable. The parties shall thereafter make any adjustments required based upon the resolution of the dispute.

4 RENT

A Basic Rent During the Term, Tenant agrees to pay to Landlord at such place as Landlord may designate without except as otherwise provided herein, deduction, offset, prior notice or demand, and Landlord agrees to accept as Basic Rent for the leased Premises the amount set forth below in lawful money of the United States of America payable as follows:

| | |
|--|--|
| From month 1 to 12 \$1.25 per sq. ft. | From month 61 to 72 \$1.40 per sq. ft. |
| From month 13 to 24 \$1.28 per sq. ft. | From month 73 to 84 \$1.43 per sq. ft. |
| From month 25 to 36 \$1.31 per sq. ft. | From month 85 to 96 \$1.46 per sq. ft. |
| From month 37 to 48 \$1.34 per sq. ft. | From month 97 to 108 \$1.49 per sq. ft. |
| From month 49 to 60 \$1.37 per sq. ft. | From month 109 to 120 \$1.52 per sq. ft. |

After a final measurement of the Premises, as provided for herein, the Tenant's square footage shall be adjusted according to the actual rentable square feet leased to Tenant.

It is agreed that, as the Basic Rent provided for herein is adjusted according to Paragraphs 3B and 5, the total Basic Rent and schedule of payments described above shall be adjusted accordingly.

B Time for Payment Rent for the term of the Lease is due in advance on the first day of each calendar month. In the event that the term of this Lease commences on a date other than the first day of a calendar month, on the date of commencement of the term hereof, Tenant shall pay to Landlord as rent for the period from such date of commencement to the first day of the next succeeding calendar month, that proportion of the monthly rent hereunder which the number of days between such date of commencement and the first day of the next succeeding calendar month bears to thirty (30). In the event that the term of this Lease for any reason ends on a date other than the last day of a calendar month, on the first day of the last calendar month of the term hereof, Tenant shall pay to Landlord as rent for the period from said first day of said last calendar month to and including the last day of the term hereof, that proportion of the monthly rent hereunder which the number of days between said first day of said last calendar month and the last day of the term hereof bears to thirty (30).

C Late Charge Notwithstanding any other provision of this Lease, if Tenant is in default for ten (10) days in the payment of rent as set forth in this Paragraph 4, or any part thereof, Tenant agrees to pay to Landlord, in addition to the delinquent rent due, a late charge for each such late rental payment. Said late charge shall equal five percent (5%) of the amount of rental payment in default.

D Additional Rent Beginning with the commencement date of the Term of this Lease, Tenant shall pay to Landlord or to Landlord's designated agent, in addition to the Basic Rent and as Additional Rent, the following, without duplication and without mark up by Landlord:

(a) Tenant's proportionate share of all charges, costs, and expenses incurred by Landlord relating to the operation and maintenance of the Common Areas of the Complex as set forth in Paragraph 7, reasonable and customary management expenses relating to the management of the Complex, whether managed by Landlord or by a property manager or company, including employee salaries and benefits, clerical charges, transportation, vehicle repairs, small tools and supply charges, postage, telephone, office supplies, overtime pay, office overhead and utilities, space charges for on-site manager's office (if any), and miscellaneous charges, which management expenses shall be billed at the rate of Six cents (\$06) per rentable square foot for months 1 to 60 of the Term. Landlord may increase the management fee one time at the beginning of the 61st month and at each sixty (60) month anniversary thereafter so long as any such increase is to a level which does not exceed the median charge being charged by other managers operating similar first class office buildings in the Greater Sacramento Area. Landlord and Tenant agree that the above charge is a reasonable amount for said management expenses and Landlord shall not be required to keep separate records of said management expenses.

- (b) All utilities relating to the Premises as set forth in Paragraph 12.
- (c) All taxes relating to the Premises as set forth in Paragraph 13.
- (d) All insurance premiums relating to the Premises as set forth in Paragraph 16.

- (e) All expenses of compliance set forth in Paragraph 18
- (f) Tenant's proportionate share of all accounting and legal fees incurred in the Complex's ownership and operation, and
- (g) All charges, costs and expenses which Tenant is required to pay hereunder together with all interest and penalties costs and expenses including reasonable attorneys' fees and legal expenses that may accrue thereto in the event of Tenant's failure to pay such amounts and all damages, reasonable costs and expenses which Landlord may incur by reason of default of Tenant or failure on Tenant's part to comply with the terms of this Lease. In the event of nonpayment by Tenant of Additional Rent, Landlord shall have all the rights and remedies with respect thereto as Landlord has for nonpayment of rent.

Notwithstanding anything herein to the contrary, the following shall not be chargeable to Tenant as Additional Rent (collectively the 'Operating Expense Exclusions'): (a) interest or payments on any financing for the Complex including ground lease payments, (b) any expenses resulting from the negligence or willful misconduct of Landlord, its agents, contractors or employees, (c) any items for which Landlord is reimbursed by insurance, condemnation proceedings, warranty or any similar agreement, (d) the cost of providing improvements within or services to or allowances for the benefit of the premises and for the individual use of any other tenants in the Building at any time (as distinguished from tenants generally), (e) any other cost or expense otherwise paid by Tenant under the Lease, (f) leasing commissions, marketing expenses and the cost of advertising space in the Building, (g) fines and penalties incurred other than as a result of a default by Tenant, (h) legal expenses incident to the enforcement by Landlord of any terms of any lease or defense of Landlord's title to the Complex or any part thereof, (i) compensation paid to any employee of Landlord other than compensation paid to employees of Landlord in connection with the Building provided that such employees are not executives above the grade of building manager or equivalent, (j) costs of travel, entertainment and promotion, (k) depreciation or amortization of capital costs and capital improvements other than capital improvements expressly permitted pursuant to Section 7 below, (l) costs directly and solely related to the maintenance and operation of the entity that constitutes the Landlord such as accounting fees incurred solely for the purpose of reporting Landlord's financial condition, (m) the cost of moving or relocating other Building tenants, (n) the initial construction cost of the Building or any defects in design or construction of the Building, (o) costs incurred due to a violation by Landlord or any other tenant of the Building under any lease, license or other agreement, (p) any bad debt loss, rent loss or reserves for bad debts or rent loss or reserves for equipment or capital replacement, (q) any political or charitable contributions, (r) costs incurred in connection with any sale or change of ownership of the Building including, without limitation, brokerage commissions, attorneys' and accountants' fees, closing costs, title insurance premiums, transfer taxes and debt losses, rent losses and reserves for such losses, (s) amounts paid to any person, firm or other entity related to or otherwise affiliated with Landlord which are in excess of arms length competitive prices in the Sacramento area for such services or goods provided, (t) costs arising from the removal or abatement of hazardous materials except those introduced to the Building by the Tenant or any of its contractors, agents, employees or invitees, (u) costs arising from conditions which on the Commencement Date violate any laws or other legal requirement, (v) amounts payable by Landlord to any tenant, mortgagee or other person or entity in connection with any indemnity obligation or for damages, (w) the cost of any artwork, (x) any lobbying expenses, (y) the cost of operating any retail space in the Building and (z) amounts specifically excluded from the definition of Real Property Taxes.

The Additional Rent due hereunder shall be paid to Landlord or Landlord's agent in the sum of thirty seven cents (\$0.37) per rentable square foot per month for the Switch Area and forty seven cents (\$0.47) per rentable square foot per month for the Office Area. Such amount shall be deposited in an impound account. Landlord shall provide Tenant with an annual accounting of expenses paid with the funds in the impound account. At any time upon notice to Tenant, Landlord may, based upon actual costs, adjust the amount paid by Tenant into the impound account.

After Landlord performs its annual accounting, Landlord shall promptly provide to Tenant a reasonably detailed summary thereof and any surplus remaining in the impound account shall be paid pro rata to Tenant. However, in the event that the amount remaining in the impound account is insufficient to pay the expenses identified above, Tenant agrees to pay Tenant's pro rata share of such additional sums due as Additional Rent within ten (10) days of receipt of an invoice. Also, the Additional Rent provided above shall be increased in the following year so as to reasonably provide an amount sufficient to pay the expected expenses for said year and eliminate any deficiencies existing in said account. It is hereby agreed that Landlord shall not have any duty to advance any funds in the event that the funds paid by tenants are insufficient to cover the payment of the hereinabove set forth expenses. Landlord shall maintain complete and accurate books and records with respect to Additional Rent. Such books and records shall be made available to Tenant and its representatives for audit either at the Complex or at the Landlord's office on an annual basis upon reasonable prior notice to Landlord. Such audit shall be conducted by a CPA or real estate professional and payment therefor shall not be contingency based. In the event that such audit discloses that Landlord's calculation of Additional Rent exceeded actual Additional Rent by five percent (5%) or more, Landlord shall bear the cost of such audit. In such event, Landlord's expense shall be limited to the direct hourly charges and expenses incurred for such audit and shall specifically exclude any contingency fees or other similar charges.

The respective obligations of Landlord and Tenant under this paragraph shall survive the expiration or other termination of the term of this Lease, and if the Term hereof shall commence on a day other than the first day of a calendar year or shall otherwise expire or terminate on a day other than the last day of a calendar year, the actual Additional Rent incurred for the calendar year in which the term hereof commences or expires or otherwise terminates shall be determined and settled on the basis of the statement of actual Additional Rent for such calendar year and shall be prorated in the proportion which the number of days in such calendar year falling within the Term bears to 365.

E Place of Payment of Rent and Additional Rent. All Basic Rent, Additional Rent and all other payments required hereunder shall be paid to Landlord at the office of Landlord at 2882 Prospect Park Drive, Suite 250, Rancho Cordova, CA 95670 or to such other person or to such other place as Landlord may from time to time designate in writing.

F Prepaid Rent. Upon the execution of this Lease Agreement, Tenant shall pay to Landlord Prepaid Rent in the sum of Nineteen and 65/100 dollars (\$19.65) per usable square foot and if Tenant is not in default of any provisions of this Lease, the Prepaid Rent shall be applied toward the Basic Rent and Additional Rent due in accordance with the schedule attached hereto as Exhibit E. Tenant hereby authorizes and Landlord agrees to utilize a portion of Landlord's improvement allowance payable pursuant to Exhibit D to fund such prepaid rent obligation. In the event Landlord does not accept this Lease, Landlord shall return said Prepaid Rent as well as the Security Deposit. If any excess rent shall remain after the above amount is applied in accordance with the schedule, such excess shall be applied to subsequent monthly installments of annual Basic Rent and Additional Rent until such Prepaid Rent is exhausted or refunded to Tenant.

G Security Deposit Concurrently with Tenant's execution of this Lease Tenant shall deposit with Landlord the sum of Fifty five Thousand and no/100 Dollars (\$55,000.00). Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease including but not limited to the provisions relating to the payment of rent and any of the monetary sums due herewith Landlord may (but shall not be required to) use, apply or retain all or any part of this Security Deposit for the payment of any amount which Landlord may spend by reason of Tenant's default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Deposit is so used or applied Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in the amount sufficient to restore the Security Deposit to its original amount. Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds and Tenant shall not be entitled to interest on such Deposit. The Security Deposit or any balance thereof shall be returned to Tenant (or at Landlord's option to the last assignee of Tenant's interest hereunder) at the expiration of the Lease term and after Tenant has vacated the Premises subject to Landlord's right to offset any amounts then due and owing by Tenant hereunder. In the event of termination of Landlord's interest in this Lease Landlord shall transfer said Deposit to Landlord's successor in interest whereupon Tenant agrees to release Landlord from liability for the return of such Deposit or the accounting therefor.

5 INTENTIONALLY OMITTED

6 RULES AND REGULATIONS AND COMMON AREA Subject to the terms and conditions of this Lease and such reasonable non discriminatory Rules and Regulations as Landlord may from time to time prescribe Tenant and Tenant's employees, contractors, invitees and customers shall in common with other occupants of the Complex in which the Premises are located and their respective employees, invitees and customers and others entitled to the use thereof have the nonexclusive right to use the access roads, parking areas, lobby, hallways, restrooms, stairways and such other facilities provided and designated by Landlord for the general use and convenience of the occupants of the Complex in which the Premises are located. Tenant shall have access to the Premises and all of its equipment on a 24/7 basis. All areas in the Complex other than the Premises, the premises leased or available to be leased to other tenants and locations outside of the Premises in which Tenant's equipment is located shall be referred to herein as Common Area. Tenant's right to use the Common Area shall terminate upon the termination of the Lease. Landlord shall operate, manage and maintain the Common Area and therefore reserves the right to promulgate such reasonable non discriminatory rules and regulations relating to the use of the Common Area, and any part or parts thereof as Landlord may deem appropriate for the best interests of the occupants of the Complex. The Rules and Regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant and Tenant shall abide by them and cooperate in their observance. Such Rules and Regulations may be amended by Landlord from time to time in a reasonable non discriminatory manner and all amendments shall be effective only upon delivery of a copy to Tenant. Landlord shall not be responsible to Tenant for the non performance by any other tenant or occupant of the Complex of any of said Rules and Regulations. Tenant shall notify Landlord of any items in the Common Area which require repair or replacement.

So long as any such change does not materially affect Tenant's use and occupancy of the Premises and other rights hereunder Landlord reserves the right at any time to change the shape, size, location and extent of the Common Area, including but not limited to arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, restrooms or other public parts of the Complex and to change the name, number or designation by which the Complex is commonly known and none of the foregoing shall be deemed an actual or constructive eviction of Tenant or shall entitle Tenant to any reduction of rent hereunder.

7 EXPENSES OF OPERATION, MANAGEMENT AND MAINTENANCE OF THE COMMON AREAS OF THE COMPLEX As Additional Rent and in accordance with Paragraph 4D Tenant shall pay to Landlord Tenant's proportionate share (allocated to the leased Premises by rentable square footage of the Premises in proportion to the Building) of the expenses of operation, management, maintenance and repair of the Common Areas of the Complex as determined by standard accounting practices, calculated and billed on the assumption that the Complex is at least ninety five percent (95%) occupied (excepting electrical expenses which shall be based on usage or other equitable basis). At any time including any portion of a year when the Complex is under ninety five percent (95%) occupied Landlord shall pay one hundred percent (100%) of the expenses relating to the vacant space up to ninety five percent (95%) occupancy. If the Complex occupancy is at or above ninety five percent (95%) Landlord shall bill Tenants for one hundred percent (100%) of expenses using each Tenant's occupancy percentage to calculate each Tenant's share of expenses.

The following costs are some but not all of the Common Area expenses which are to be allocated to Tenant and the other tenants in the Building: (1) license, permit and inspection fees; (2) security (if provided); (3) utility charges (including but not limited to, water, gas, electricity, sewer service and waste pickup); (4) all charges incurred in the maintenance of landscaped areas, ponds, fountains, waterways, parking lots, sidewalks and driveways; (5) the cost of operation, maintenance and repair of the interior of the Common Area (including lobbies, restrooms, janitor's closets, hallways, elevators (if any), mechanical and telephone rooms, stairwells, entrances, spaces above the ceilings, ceilings, building exterior doors, skylights (if any) and fire extinguishing systems) including janitorial service for the Common Area; (6) the maintenance, repair and replacement of all exterior building maintenance items herein referred to include but are not limited to main plumbing systems of the building (such as main water and drain lines, main sewage drains), main electrical systems (such as main service panels), outside or rooftop heating and air conditioning systems (such as compressors, fans and boilers), roofs, downspouts; (7) the maintenance, repair and replacement of all Common Area wall coverings, window coverings, flooring materials, carpeting and partitioning; (8) repairing and replacing non structural roofs; (9) supplies; (10) materials; (11) equipment and tools; (12) sales, use and excise taxes on goods and services purchased by Landlord; (13) the cost of repairing or replacing Common Area interiors and other furnishings in the Common Area which as a result of normal use require periodic replacement; (14) the cost of capital expenditures which have the effect of reducing operating expenses provided however that in the event Landlord makes such capital improvements and if the capital improvement is less than One Dollar (\$1.00) per rentable square foot of the Complex, the cost will be allocated per paragraph 4D and that in the event the cost is in excess of One Dollar (\$1.00) per rentable square foot of the Complex Landlord shall amortize its investment in said improvements (together with interest at the Prime Rate on the date the costs are incurred plus two percent (2%)) as an operating expense in accordance with standard accounting practices provided that such amortization is not at a rate greater than the anticipated savings in the operating expenses; and (15) any other Common Area expense or charge whether or not hereinbefore described which in accordance with generally accepted accounting and management practices would be considered an expense of managing, operating, maintaining and repairing the Complex provided however that in no event shall any Operating Expense Exclusions be chargeable to Tenant.

In the event any of the above maintenance responsibilities apply to any other tenant(s) of Landlord where there is common usage with other tenant(s) such maintenance responsibilities and charges shall be allocated to the leased Premises by square footage or other equitable basis as calculated and determined by Landlord

The Common Area shall be maintained in a first class manner by Landlord comparable to similar buildings in the Sacramento area. Landlord shall have the right to contract with or hire a third party to perform Common Area maintenance provided that the amount paid to the third party is a proper and reasonable amount to be charged for that item or service

8 **PARKING** Tenant shall have the right to use with other tenants or occupants of the Complex 45 parking spaces per one thousand (1,000) useable square feet leased to Tenant in the common parking areas of the Complex. Landlord acknowledges and agrees that Tenant will utilize a portion of the parking so allocated for the location of an emergency generator and fuel storage, and for the location of Tenant's dedicated mechanical system ("Tenant's Special Facilities"). The location of Tenant's Special Facilities shall be as set forth on Exhibit C attached hereto or as otherwise approved by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned. Except for maintenance of the parking lot as provided herein, parking shall be free unless charges are imposed by any governmental agency having jurisdiction over the property. Tenant agrees that Tenant, Tenant's employees, agents, representatives and/or invitees shall not use parking spaces in excess of the number of spaces allocated to Tenant hereunder. Landlord shall have the right at Landlord's reasonable sole discretion to specifically designate the location of Tenant's parking spaces within the common parking areas of the Complex in the event of a dispute among the tenants occupying the building and/or Complex referred to herein in which event Tenant agrees that Tenant, Tenant's employees, agents, representatives and/or invitees shall not use any parking spaces other than those parking spaces specifically designated by Landlord to Tenant's use. Said parking spaces (other than those in which Tenant's Special Facilities are located) if specifically designated by Landlord to Tenant may be relocated by Landlord at any time and from time to time. Landlord reserves the right at Landlord's reasonable sole discretion to rescind any specific designation of parking spaces (other than those in which Tenant's Special Facilities are located) thereby returning Tenant's parking spaces to the common parking area. Landlord shall give Tenant written notice of any change in Tenant's parking spaces. Tenant shall not at any time, park or permit to be parked any trucks or vehicles adjacent to the loading areas so as to interfere in any way with the use of such areas nor shall Tenant at any time park or permit the parking of Tenant's trucks or other vehicles or the trucks and vehicles of Tenant's suppliers or others in any portion of the Common Area not designated by Landlord for such use by Tenant. Tenant shall not park nor permit to be parked any inoperative vehicles or equipment on any portion of the common parking area or other common areas of the Complex. Tenant agrees to assume responsibility for compliance by its employees and invitees with the parking provisions contained herein. Except for Tenant's Special Facilities, Tenant shall use the parking areas for vehicle parking only and shall not use the parking areas for storage.

9 **ACCEPTANCE AND SURRENDER OF PREMISES** By entry hereunder, Tenant accepts the Premises as being in good and sanitary order, condition and repair, latent defects excepted and accepts the building and improvements included in the Premises in their condition on the date of signing Lease and without representation or warranty by Landlord as to the condition of such building or as to the use or occupancy which may be made thereof except as otherwise expressly provided herein. In the event Landlord constructs improvements for Tenant prior to occupancy as part of this Lease, Landlord and Tenant shall prepare a punch list within fifteen (15) days of occupancy which items shall be corrected by Landlord within thirty (30) days of submission of the punch list to Landlord. In the event that any item(s) on the punch list cannot be corrected within thirty (30) days, it shall be sufficient that Landlord has commenced correction of such item within the thirty (30) day period. Any exceptions to the foregoing must be by written agreement executed by Landlord and Tenant. Tenant agrees on the last day of the Lease term or on the sooner termination of this Lease, to surrender the Premises promptly and peaceably to Landlord in substantially the same condition and repair as when Tenant commenced occupancy of the Premises and in accordance with the standards set forth in this Paragraph 9 and in Paragraph 11 below, reasonable wear and tear and casualty damage excepted. Upon termination of the Lease and Tenant's surrendering the Premises, Landlord may at Tenant's expense cause the Premises to meet the standards set forth in Paragraph 11.

Any alterations, additions and improvements which may have been made in, to or on the Premises (except moveable trade fixtures installed at the expense of Tenant and equipment which Tenant may remove at any time and from time to time) and which are designated for removal at the time Landlord approves the plans therefor shall be removed at Tenant's sole expense prior to the termination of the Term except that Tenant shall ascertain from Landlord not less than thirty (30) days before the end of the Term whether Landlord desires to have such designated alterations and improvements remain in the Premises in which case such alterations and improvements shall not be so removed. Tenant, on or before the end of the Term or sooner termination of this Lease, shall remove all of Tenant's personal property and trade fixtures from the Premises and all property not so removed within ten (10) business days following the end of the Term or sooner termination of this Lease shall be deemed abandoned by Tenant and title to same shall thereupon pass to Landlord without compensation to Tenant. Landlord may upon termination of this Lease remove all moveable furniture and equipment so abandoned by Tenant at Tenant's sole cost and repair any damage caused by such removal at Tenant's sole cost. If the Premises are not surrendered at the end of the term or sooner termination of this Lease, Tenant shall be treated as a holdover pursuant to Paragraph 30 below and Tenant agrees to defend, indemnify and hold Landlord harmless against loss or liability resulting from the delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding tenant founded on such delay. Nothing contained herein shall be construed as an extension of the Term hereof or as a consent of Landlord to any holding over by Tenant. The voluntary or other surrender of this Lease or the Premises by Tenant or a mutual cancellation of this Lease shall not work as a merger and, at the option of Landlord, shall either terminate all or any existing subleases or subtenancies or operate as an assignment to Landlord of all or any such subleases or subtenancies.

10 **ALTERATIONS AND ADDITIONS** Except for the installation of Customer's equipment and/or non structural alterations to the interior of the Premises not exceeding a total of \$50,000 annually during the Term (of which Tenant shall provide Landlord with prompt notice) Tenant shall not make or suffer to be made any alteration or addition to the Premises or any part thereof without the written consent of Landlord first had and obtained by Tenant. Landlord agrees that such consent shall not be unreasonably withheld, delayed or conditioned. With respect to any proposed alterations and improvements not included in the initial build out (which initial build out is governed by Exhibit D attached hereto) Landlord shall be deemed to have approved any proposed Working Drawings or Space Plans in the event Landlord fails to respond to a request for approval in accordance with the applicable timeframe set forth in Exhibit D hereto for the review of Working Drawings and Space Plans. However, Landlord may withhold its consent in its sole discretion if any proposed alteration will materially affect the structural integrity or safety of the Building or its electrical, plumbing, heating/ventilation/airconditioning, mechanical or life safety systems. Tenant shall furnish complete plans and specifications for the desired alterations. Tenant shall pay Landlord upon demand a review fee in an amount equal to the lesser of (i) five percent (5%) of the construction cost of alterations or (ii) \$50,000 to compensate Landlord for the cost of review and approval of the plans and specifications for subsequent alterations of the Premises and for additional administrative costs incurred in monitoring the construction.

of any alterations made following the initial build out of the Premises provided however that notwithstanding the foregoing or anything else in this Lease to the contrary no fees or charges shall be payable by Tenant on account of construction management or supervision or plan review or approval by Landlord or any of its employees agents or contractors in connection with the initial build out of the Premises Landlord reserves the right to approve all contractors laborers materialmen and suppliers proposed by Tenant to make such alterations and additions which approval shall not be unreasonably withheld delayed or conditioned Tenant shall retain title to all moveable furniture equipment and trade fixtures placed in the Premises or elsewhere in the Complex All heating lighting electrical air conditioning partitioning draperies carpeting and floor installations made by Tenant together with all property that has become an integral part of the Premises (but excluding Tenant's and its Customers telecommunications equipment) shall not be deemed trade fixtures but shall become the property of Landlord upon expiration or termination of this Lease and may not be removed by Tenant Tenant agrees that it will not proceed to make such alterations or additions without having obtained written consent from Landlord to do so and until five (5) days from the receipt of such consent in order that Landlord may post appropriate notices to avoid any liability to contractors materialmen or suppliers for payment for Tenant's improvements Subsequent to obtaining Landlord's written consent and prior to commencement of construction of the alterations Tenant shall deliver to Landlord a copy of the building permit Tenant will at all times permit such notices to be posted and to remain posted until the completion of work Tenant further covenants and agrees that any mechanic's lien stop notice or other lien filed against the Premises or against the Complex for work claimed to have been done for or materials claimed to have been furnished to Tenant will be discharged by Tenant by bond or otherwise, within ten (10) business days after the filing thereof at the sole cost and expense of Tenant Any exceptions to the foregoing must be made in writing and executed by both Landlord and Tenant

11 TENANT MAINTENANCE OF PREMISES As set forth in Paragraph 7 above Landlord shall maintain the Common Area whereas Tenant shall at its sole cost and expense keep and maintain the Premises (including appurtenances) and every part thereof in a high standard of maintenance and repair or replacement and in good and sanitary condition Tenant's maintenance and repair responsibilities herein referred to include but are not limited to janitorial service windows window frames plate glass and glazing truck doors plumbing systems serving the Premises exclusively (such as water and drain lines sinks toilets faucets drains showers and water fountains) electrical systems serving the Premises exclusively (such as panels conduits outlets lighting fixtures lamps bulbs tubes and ballasts) interior heating and air conditioning systems serving the Premises exclusively (such as air handlers ducts mixing boxes thermostats time clocks interior heaters supply and return grills) store fronts and other interior improvements within the Premises including but not limited to wall coverings window coverings carpet floor coverings partitioning ceilings doors (both interior and exterior including closing mechanisms latches locks) fire extinguishing systems and all other interior improvements of any nature whatsoever During the Lease Term Tenant shall maintain all interior walls painted or cleaned so that they appear freshly painted and repaired and replaced if damaged all floors cleaned and waxed all carpets cleaned and shampooed all broken marred or nonconforming acoustical ceiling tiles replaced all windows washed the interior air conditioning and heating systems serviced by a reputable and licensed service firm and in good operating condition and repair the Premises plumbing and electrical systems and lighting in good order and repair including replacement of any burned out or broken light bulbs or ballasts Tenant agrees to provide and use carpet mats (of a type which allow air circulation under the mat) under all rolling chairs or to otherwise be responsible for wear and tear of the carpet caused by such rolling chairs if such wear and tear exceeds that caused by normal foot traffic in surrounding areas Areas of excessive wear shall be replaced at Tenant's sole expense upon Lease termination

Tenant hereby waives all rights to terminate the Lease to require Landlord to put Premises in a condition suitable for Tenant and/or to make repairs and deduct the amount of the repairs from rent due under this Lease, which rights are more specifically set forth in Subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code and under any similar law statute or ordinance now or hereafter in effect

12 UTILITIES Landlord shall provide dedicated power to the Switch Area in accordance with Exhibit D hereto as well as power to the Office Area and Common Areas Landlord shall also furnish adequate supplies of cold water to the Premises and hot and cold water to the Common Areas and adequate HVAC to the Office Area and Common Areas Notwithstanding the foregoing the HVAC ducting thermostat controls and VAV boxes required to serve the Office Area shall be constructed by Tenant as a part of its improvements pursuant to Exhibit D Tenant shall pay promptly as the same become due all charges for water gas electricity telephone telex and other electronic communication service sewer service waste pick up and any other utilities materials or services furnished directly to or used by Tenant on or about the Premises during the term of this Lease including without limitation any temporary or permanent utility surcharge or other exactions whether or not hereinafter imposed In the event the above charges apply to the Common Area or any other tenant(s) of Landlord where there is common usage with other Tenant(s) such charges shall be equitably allocated to the leased Premises by square footage metered usage or other equitable basis

Landlord shall not be liable for any failure to provide access to the Premises to assure the beneficial use of the Premises or to furnish any services or utilities when such failure is caused by natural occurrences riots civil disturbances insurrection war court order public enemy accidents breakage strikes lockouts or other labor disputes the making of or delays in repairs, alterations or improvements to the Premises or the Complex not caused by Landlord's gross negligence or willful misconduct the inability to obtain an adequate supply of fuel gas steam water electricity labor or other supplies not caused by Landlord's gross negligence or willful misconduct or by any other condition beyond Landlord's reasonable control and Tenant shall not be entitled to any damages resulting from such failure nor shall such failure relieve Tenant of the obligation to pay all sums due hereunder or be construed as a constructive or other eviction of Tenant, if any governmental entity promulgates or revises any statute ordinance or building code fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the building or any part thereof relating to the use or conservation of energy water gas steam light or electricity or the provision of any other utility or service provided with respect to this Lease, or if Landlord is required or elects to make alterations to the Building in order to comply with such mandatory or voluntary controls or guidelines Landlord may in its sole discretion comply with such mandatory or voluntary controls or guidelines or make such alterations to the Building provided however that any compliance with any voluntary guideline shall not materially affect Tenant's rights hereunder

13 TAXES

A Real Property Taxes As Additional Rent and in accordance with Paragraph 4D of this Lease Tenant shall pay to Landlord or if Landlord so directs directly to the Tax Collector all Real Property Taxes relating to the Premises In the event the leased Premises consists of only a portion of the entire tax parcel Tenant shall pay to Landlord Tenant's proportionate share of such real estate taxes allocated to the leased Premises by square footage as reasonably calculated and determined by Landlord If the tax billing pertains one hundred percent (100%) to the leased Premises and Landlord chooses to have Tenant pay said Real Property Taxes directly to the Tax Collector then in such event it shall be the responsibility of Tenant to obtain the tax and assessment bills and pay prior to delinquency the applicable Real Property Taxes and assessments pertaining to the leased Premises and failure to receive a bill

for taxes and/or assessments shall not provide a basis for cancellation of or non responsibility for payment of penalties for nonpayment or late payment by Tenant. Nothing herein shall preclude Tenant from contesting in good faith and in accordance with all applicable requirements any tax or assessment made against the Premises. In the event Landlord receives a refund of Real Property Taxes with respect to any year falling within the Term, Landlord shall promptly refund to Tenant its proportionate share thereof, which obligation shall survive the expiration or termination of this Lease.

The term 'Real Property Taxes' as used herein shall mean (i) all taxes, assessments, levies and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all installments of principal and interest required to pay any general or special assessments for public improvements and any increases resulting from reassessments caused by any change in ownership of the Premises) now or hereafter imposed by any governmental or quasi governmental authority or special district having the direct or indirect power to tax or levy assessments which are levied or assessed against or with respect to the value, occupancy or use of all or any portion of the Premises (as now constructed or as may at any time hereafter be constructed, altered or otherwise changed) or Landlord's interest therein, any improvements located within the Premises (regardless of ownership), the fixtures, equipment and other property of Landlord, real or personal that are an integral part of and located in the Premises or parking areas, public utilities or energy within the Premises, (ii) all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the Premises, and (iii) all costs and fees (including reasonable attorneys' fees) incurred by Landlord in reasonably contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax. If at any time during the term of this Lease the taxation or assessment of the Premises prevailing as of the commencement date of this Lease shall be altered so that in lieu of any Real Property Tax described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge or any other cause) an alternate or additional tax charge (i) on the value, use or occupancy of the Premises or Landlord's interest therein or (ii) on or measured by the gross receipts, income or rentals from the Premises on Landlord's business of leasing the Premises or computed in any manner with respect to the operation of the Premises (as opposed to income derived therefrom), then any such tax or charge, however designated, shall be included within the meaning of the term 'Real Property Taxes' for purposes of this Lease. If any Real Property Tax is based upon property or rents unrelated to the Premises, then only that part of such Real Property Tax that is fairly allocable to the Premises shall be included within the meaning of the term 'Real Property Taxes'. Notwithstanding the foregoing, the term 'Real Property Taxes' shall not include (a) estate, inheritance, gift, transfer, recordation, gains, intangible net profits, capital stock or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord's income from all sources, (b) any personal property tax assessed against property owned, used or leased by Landlord or any other tenant or occupant of the Complex, (c) interest or penalties on any late payment of Real Property Taxes unless proximately caused by Tenant's default in its obligation to pay Additional Rent hereunder or (d) any portion of any assessment payable over time other than the minimum installment actually paid by Landlord during such year.

B. Taxes on Tenant's Property. (a) Tenant shall be liable for and shall prior to delinquency, all taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord pays the taxes based on such increased assessment, which Landlord shall have the right to do regardless of the validity thereof, Tenant shall within ten (10) days of demand, repay to Landlord the taxes so levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment, provided that in any such event Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of such taxes so paid under protest and any amount so recovered shall belong to Tenant.

(b) If the interior improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for Real Property Tax purposes at a valuation higher than the valuation at which standard office improvements in other space in the Complex are assessed, then the Real Property Taxes and assessments levied against Landlord or the Complex by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of 13B(a) above. If the records of the County Assessor are available and sufficiently detailed to serve as a basis for determining whether said interior improvements are assessed at a higher valuation than standard office improvements in other space in the Complex, such records shall be binding on both the Landlord and the Tenant. If the records of the County Assessor are not available or sufficiently detailed to serve as a basis for making said determination, the actual cost of construction shall be used.

14. LIABILITY INSURANCE. Tenant at Tenant's expense agrees to keep in force during the term of this Lease a policy of comprehensive general liability insurance for bodily injury, personal injury and property damage (including loss of use of property) occurring in or arising out of the use or occupancy of the Premises or the Complex, including parking and landscaped areas, in the amount of Two Million Dollars (\$2,000,000) per occurrence and shall be subject to periodic reasonable increase based upon inflation, increased liability awards, recommendation of Landlord's professional insurance advisers and other relevant factors. Such insurance shall be primary and non contributing as respects any insurance carried by Landlord. The policy or policies effecting such insurance shall name Landlord as an additional insured and shall insure any liability of Landlord, contingent or otherwise, as respects acts or omissions of Tenant, its agents, employees or invitees or otherwise by any conduct or transactions of any of said persons in or about or concerning the Premises or the Complex, including any failure of Tenant to observe or perform any of its obligations hereunder, shall be issued by an insurance company admitted to transact business in the State of California and shall provide that the insurance effected thereby shall not be canceled except upon thirty (30) days prior written notice to Landlord. A certificate of insurance shall be delivered to Landlord within ten (10) days after Tenant takes possession of the Premises. Tenant shall provide Landlord with evidence of renewal of insurance as appropriate within ten (10) days of the expiration of the underlying policy. If Tenant fails to deliver any policy certificate or renewal to Landlord required under this Lease within the prescribed time frame or if any policy is canceled or modified during the Lease term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord the cost of such insurance within fifteen (15) days after receipt of a statement which indicates the cost of such insurance.

15. TENANT'S PERSONAL PROPERTY INSURANCE AND WORKERS' COMPENSATION INSURANCE. Tenant shall maintain a personal property policy, Covered Causes of Loss Special Form, insuring the business personal property, inventory, trade fixtures and leasehold improvements within the leased Premises for the full replacement cost thereof. If a covered cause of loss occurs, the funds received for payment of the loss shall be used for the repair or replacement of such items so insured, to the extent that such items are a part of the real property which is owned by Landlord or will become the property of Landlord upon the expiration hereof. Tenant shall provide Landlord with a copy of said policies and/or a certificate of insurance evidencing such policies and all appropriate renewals within ten (10) days of Landlord's request.

Tenant shall also maintain a policy or policies of workers compensation insurance including employers liability sufficient to comply with all laws. Tenant shall provide Landlord with a copy of said policies and/or a certificate of insurance evidencing said policies and all appropriate renewals within ten (10) days of Landlord's request. The policies of commercial general liability insurance and property insurance may be provided under a blanket insurance policy maintained by Tenant.

16 PROPERTY INSURANCE Landlord shall purchase and keep in force and as Additional Rent and in accordance with Paragraph 4D of this Lease Tenant shall pay to Landlord Tenant's proportionate share (allocated to the leased Premises by square footage) of the cost of the policy or policies of insurance covering loss or damage to the Premises or the Complex (excluding routine maintenance and repairs and incidental damage or destruction caused by accidents or vandalism for which Tenant is responsible under Paragraph 11) in the amount of the full replacement value thereof providing protection against those perils included within the classification of "Covered Causes of Loss Special Form" insurance and flood and/or earthquake insurance if available plus a policy of loss of rents insurance in the amount of one hundred percent (100%) of twelve (12) months Basic Rent plus sums paid as Additional Rent. If such insurance cost is increased due to Tenant's use of the Premises or the Complex 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 Complex.

Landlord and Tenant do each hereby respectively release the other to the extent of insurance coverage of the releasing party from any liability for loss or damage caused by fire or any of the extended coverage casualties included in the releasing party's insurance policies irrespective of the cause of such fire or casualty provided however that if the insurance policy of either releasing party prohibits such waiver then this waiver shall not take effect until consent to such waiver is obtained. If such waiver is so prohibited the insured party affected shall promptly notify the other party thereof.

17 INDEMNIFICATION Excepting events caused by the negligence or willful misconduct of Landlord or any of its agents, employees or contractors or arising from conditions existing at the Complex as of the Commencement Date Tenant shall indemnify Landlord against and hold Landlord harmless from any and all costs, claims or liability arising from: (a) Tenant's use of the Premises or Complex; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Premises or the Complex including any contamination of the Premises or the Complex or any other property resulting from the presence or use of Hazardous Material caused or permitted by Tenant; (c) injury to or death of any person or damage to or destruction of property in or about the Premises by or from any cause whatsoever; (d) any breach or default in the performance of Tenant's obligations under this Lease; or (e) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord. As used in this Section 17 the term "Tenant" shall include Tenant, any partner, officer, director, employee, agent, invitee or representative of Tenant.

Landlord hereby agrees to indemnify, defend and hold Tenant, its agents and employees harmless from claims for personal injury, death or property damage arising from incidents occurring in the Premises, Complex or Common Areas caused by any grossly negligent or willful action or omission of the Landlord. If Tenant is made a party to any action commenced by or against Landlord and any such action arises out of matters for which Landlord has provided indemnification for Tenant as hereinbefore provided Landlord agrees to indemnify, defend and hold Tenant harmless therefrom and to pay all judgments, settlements, losses, expenses and costs (including attorneys' fees and expert witness and consultant fees) which may be incurred by Tenant in connection therewith. As used in this Section 17 the term "Landlord" shall include Landlord, any partner, officer, director, employee, agent or representative of Landlord.

Excepting events caused by the gross negligence or willful misconduct of Landlord or any breach or default in the performance of Landlord's obligations under this Lease Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord or its Affiliates for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises, the Building or the Property from any cause. Without limiting the foregoing excepting events caused by the gross negligence or willful misconduct of Landlord or any breach or default in the performance of Landlord's obligations under this Lease Landlord shall not be liable for and there shall be no abatement of rent for: (i) any damage to Tenant's property stored with or entrusted to Landlord; (ii) loss of or damage to any property by theft or any other wrongful or illegal act; or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub surface or from any other place or resulting from dampness or any other cause whatsoever; or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project or from any other cause whatsoever; (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building whether within or outside of the Property; or (v) any latent or other defect in the Premises, the Building or the Project. Notwithstanding any other provision of this Lease to the contrary Tenant agrees that in no case shall Landlord ever be responsible or liable on any theory for any injury to Tenant's business, loss of profits, loss of income or any other form of consequential damage. Tenant shall give prompt notice to Landlord in the event of: (a) the occurrence of a fire or accident in the Premises or in the Building; or (b) the discovery of any defect therein or in the fixtures or equipment thereof. Notwithstanding any other provision of this Lease to the contrary Tenant waives any claims based on damage or injury resulting from Landlord's failure to police or provide security for the Property.

18 COMPLIANCE

A Tenant at its sole cost and expense shall promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now or hereafter in effect with respect to the use and occupancy of the Premises with the requirements of any board of fire underwriters or other similar body now or hereafter constituted and with any direction or occupancy certificate issued pursuant to law by any public officer provided however that no such failure shall be deemed a breach of the provisions if Tenant immediately upon notification commences to remedy or rectify said failure. Nothing contained herein shall preclude Tenant from contesting the applicability of any of the foregoing so long as Tenant conducts such contest in a diligent manner and such contest does not subject Landlord to any potential civil liability or criminal sanctions. The final non appealable judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant whether Landlord be a party thereto or not that Tenant has violated any such law, statute, ordinance or governmental rule, regulation, requirement, direction or provision shall be conclusive of that fact as between Landlord and Tenant. Tenant shall at its sole cost and expense comply with any and all requirements pertaining to its use and occupancy of the Premises and the Complex of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the Premises or the Complex.

B Compliance with ADA Notwithstanding anything to the contrary contained in this Lease Landlord and

Tenant agree that responsibility for compliance with the Americans With Disabilities Act of 1990 (the "ADA") shall be allocated as follows: (i) Landlord shall be responsible for compliance with the provisions of Title III of the ADA for all Common Areas including exterior and interior areas of the Building not included within the Premises or the premises of other tenants; (ii) Landlord shall be responsible for compliance with the provisions of Title III of the ADA for any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations or repairs are made by Landlord for the purpose of improving the Building generally; (iii) Tenant shall be responsible for compliance with the provisions of Title III of the ADA for any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations and repairs are made by Tenant, its employees, agents or contractors, at the direction of Tenant or done pursuant to plans and specifications prepared or provided by Tenant or Tenant's architect or space planner.

19 **LIENS** Tenant shall keep the Premises and the Complex free from any liens or stop notices arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not, within ten (10) business days following the imposition of such lien or stop notice, cause the same to be released of record, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien or stop notice. All sums paid by Landlord for such purpose, and all expenses incurred by it in connection therewith, shall be payable to Landlord by Tenant within ten (10) days of demand, with interest at the Prime Rate, as quoted by the Bank of America.

20 **ASSIGNMENT AND SUBLETTING** Except as provided below, Tenant shall not assign, transfer or hypothecate the leasehold estate under this Lease, or any interest therein, and shall not sublet the Premises or any part thereof or any right or privilege appurtenant thereto or suffer any other person or entity to occupy or use the Premises or any portion thereof without, in each case, the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. As a condition for granting its consent to any subletting which requires Landlord's consent hereunder, Landlord may require that Tenant agree to pay Landlord, as Additional Rent, one half of all rents received by Tenant from its subtenants in excess of the rent payable by Tenant to Landlord hereunder after deducting all costs incurred by Tenant in connection with such sublease. In the case of any assignment or subletting requiring Landlord's consent hereunder, Tenant shall, by not less than sixty (60) days written notice, advise Landlord of its intent to assign or sublet the Premises or any portion thereof for any part of the term hereof. Within thirty (30) days after receipt of Tenant's notice, Landlord shall give approval or disapproval to Tenant to assign this Lease or sublease the portion of the Premises described in Tenant's notice on the date specified in Tenant's notice. In the event Tenant is allowed to assign, transfer or sublet the whole or any part of the Premises with the prior written consent of Landlord, no assignee, transferee or subtenant shall assign or transfer this Lease, either in whole or in part, or sublet the whole or any part of the Premises, without also having obtained the prior written consent of Landlord except as provided below. Except for any subsequent assignment, subletting or other transfer which does not require Landlord's consent as provided below, a consent of Landlord to one assignment, transfer, hypothecation, subletting, occupation or use by any other person shall not release Tenant from any of Tenant's obligations hereunder or be deemed to be a consent to any subsequent similar or dissimilar assignment, transfer, hypothecation, subletting, occupation or use by any other person. Except as provided below, any such assignment, transfer, hypothecation, subletting, occupation or use without such consent shall be void and shall constitute a breach of this Lease by Tenant and shall, at the option of Landlord exercised by written notice to Tenant, terminate this Lease. Except as provided below, the leasehold estate under this Lease shall not, nor shall any interest therein, be assignable for any purpose by operation of law without the written consent of Landlord. As a condition to its consent, Landlord may require Tenant to pay all reasonable, out of pocket expenses not to exceed \$1,000 in connection with the assignment, and Landlord may require Tenant's assignee or transferee (or other assignees or transferees) to assume in writing all of the obligations under this Lease.

Notwithstanding anything to the contrary contained in this Lease, Tenant may from time to time, without Landlord's consent, assign its interest in this Lease and/or any sublease all or any portion of the Premises to (a) any affiliate of Tenant or Tenant's parent; (b) any entity into which Tenant or Tenant's parent is merged, consolidated or reorganized; or (c) any entity to which all or substantially all of Tenant's or Tenant's parent assets are transferred or sold (including a stock acquisition). For purposes of this Lease, an affiliate of Tenant is a corporation, partnership, limited liability company or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Tenant. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Tenant, whether through the ownership of voting securities, by contract or otherwise. Tenant shall give Landlord written notice of any such assignment or sublease to Tenant's affiliates. The sale or transfer of stock by Tenant or by any shareholder shall not constitute an assignment of the Lease.

Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right at any time and from time to time to install and connect the telecommunications equipment of its customers ("Customers") in the Premises and to allow access to the Premises from time to time to such Customers (i.e., Collocation, as such term is used in the telecommunications industry) and such Collocation shall not be deemed an assignment, sublease, alteration, modification or improvement requiring the consent of Landlord, whether or not a written agreement exists between the parties. Any equipment that is the subject of a collocation agreement shall, for all purposes under this Lease, be deemed to be moveable personal property of Tenant, and Tenant shall be fully and primarily liable for any and all obligations pertaining to or arising out of such Collocation agreement, including any and all costs, damages and liabilities related to or arising out of the installation, operation, maintenance, repair or replacement of such equipment. In no event shall Landlord be entitled to any share of any fees, revenues or profits derived from any such agreement for Collocation.

21 PROTECTION OF LENDERS AND PURCHASERS

A **Subordination** Subject to Section 21F below, Landlord shall have the right to subordinate this Lease to any deed of trust or mortgage encumbering the Premises or the Complex, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall reasonably cooperate with Landlord and any lender or purchaser which is acquiring a security interest in the Premises, the Complex or the Lease by executing such further documents and assurances as such lender or purchaser may reasonably require, provided that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material). Landlord's obligations hereunder are not materially diminished. Tenant's rights under this Lease are not affected and such document provides Tenant with customary non-disturbance protection. Tenant's right to quiet possession of the Premises or the Complex during the Lease term shall not be disturbed if Tenant pays the rent and performs all of Tenant's obligations under this Lease and is not otherwise in default beyond any applicable cure period. If any beneficiary or mortgagee elects to have this Lease prior to the lien of its deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such deed of trust or mortgage, whether this

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

B Attornment If Landlord's interest in the Premises or the Complex is acquired by any beneficiary under a deed of trust mortgagee or purchaser Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises or the Complex and recognize such transferee or successor as Landlord under this Lease Tenant waives the protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises or the Complex upon the transfer of Landlord's interest

C Signing of Documents Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so so long as such document contains customary non disturbance protection

D Estoppel Certificates

1 Upon Landlord's written request Tenant shall execute acknowledge and deliver to Landlord a written statement certifying (i) that Tenant has accepted the Premises (or, if Tenant has not done so that Tenant has not accepted the Premises and specifying the reasons therefor) (ii) the commencement and expiration dates of this Lease (iii) that none of the terms or provisions of this Lease have been changed (or if they have been changed stating how they have been changed) (iv) that this Lease has not been canceled or terminated (v) the last date of payment of the Basic Rent and other charges and the time period covered by such payment (vi) that Landlord is not in default under this Lease (or if Landlord is claimed to be in default stating the specific facts supporting Tenant's claim of default) (vii) the capacity of the person executing the certificate and that such person is duly authorized to execute the same on behalf of Tenant (viii) that no notice has been received by Tenant of any default which has not been cured except as to defaults specified in the certificate (ix) the amount of any security deposit and prepaid rent (x) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Premises or the Complex may require Tenant shall deliver such statement to Landlord within ten (10) days after receipt of Landlord's request Landlord may give any such statement by Tenant to any prospective purchaser or encumbrances of the Premises or the Complex Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct

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

E Tenant's Financial Condition Within ten (10) business days after written request from Landlord which request Landlord may make from time to time or at any time during the Lease Term Tenant (and/or Guarantor) shall deliver to Landlord (a) the most recent financial statement of Tenant and any Guarantor of this Lease and (b) to the extent not already delivered financial statements of Tenant and such Guarantor for the two (2) years prior to the current financial statements delivered to Landlord Such statements shall be prepared in accordance with generally accepted accounting principles and certified as true in all material respects by Tenant and Guarantor (if Tenant and/or Guarantor are individuals) or by an authorized officer or general partner of Tenant and Guarantor (if Tenant and/or Guarantor are a corporation or partnership respectively) In addition Tenant shall deliver to any lender designated by Landlord any financial statements reasonably required by such lender to facilitate the financing or refinancing of the Complex All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease

F Non Disturbance Notwithstanding anything to the contrary in this Article 21 the subordination of this Lease to any current or future mortgage deed of trust ground or underlying lease (any of the foregoing a "Mortgage") shall be conditioned upon the holder of such Mortgage executing a commercially reasonable non disturbance agreement and Tenant agrees to promptly acknowledge and if necessary enter into, such an agreement when same is presented Landlord represents and warrants that the only Mortgage currently encumbering the Complex is that certain Deed of Trust held by Guaranty Federal Bank F S B Landlord shall obtain an executed subordination non disturbance and attornment agreement from such mortgagee in form and content reasonably satisfactory to Tenant and Mortgagee simultaneously with the execution and delivery of this Lease

22 ENTRY BY LANDLORD Landlord (including agents, contractors, employees or anyone else acting on behalf of Landlord) reserves and shall at all reasonable times upon reasonable prior notice except in the event of an emergency have the right to enter the Premises to inspect them to perform any services to be provided by Landlord hereunder to make repairs if Tenant has failed to do so to submit the Premises to prospective purchasers mortgagors or, in the final twelve months of the Term only prospective tenants to post notices of non responsibility and to repair the Premises if Tenant has failed to do so or any portion of the Complex all without abatement of rent and may erect scaffolding and other necessary structures in or through the Premises where reasonably required by the character of the work to be performed provided however that the business of Tenant shall be interfered with to the least extent that is reasonably practical For each of the foregoing purposes Landlord shall at all times have and retain a key with which to unlock all of the doors in an emergency in order to obtain entry to the Premises and any entry to the Premises by Landlord by any means or otherwise shall not under any 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 portion thereof Notwithstanding the foregoing or anything to the contrary contained in this Lease in the event Landlord desires to enter the Premises to make any permitted repairs or for any other reason permitted by the terms of this Lease Landlord shall at all times except in the event of an emergency be accompanied by an employee of Tenant In the event of an emergency Landlord shall use reasonable efforts under the circumstances to locate an employee of Tenant before entering the Premises Landlord acknowledges that the equipment to be installed by Tenant in the Premises is sophisticated electronic equipment which is integral to Tenant's business Landlord agrees to take all reasonable precautions to protect Tenant's equipment in the event Landlord enters the Premises for any reason

23 BANKRUPTCY The commencement of a voluntary bankruptcy action or liquidation action or reorganization action or insolvency action or an assignment of or by Tenant for the benefit of creditors or any similar action undertaken by Tenant, or the insolvency of Tenant, shall at Landlord's option constitute a material breach of this Lease by Tenant If the trustee or receiver appointed to serve during a bankruptcy, liquidation reorganization insolvency or similar action elects to reject Tenant's unexpired

Lease the trustee or receiver shall notify Landlord in writing within the shortest time period afforded by the Bankruptcy rules and/or regulations. Subject to applicable law, Landlord shall have all rights available to terminate Tenant's right to possession on an expedited basis and proceed against Tenant for all damages.

Within thirty (30) days after court approval of the assumption of this Lease, the trustee or receiver shall cure (or provide adequate assurance to the reasonable satisfaction of Landlord that the trustee or receiver shall cure) any and all previous defaults under the unexpired Lease and shall compensate Landlord for all actual pecuniary loss and shall provide adequate assurance of future performance under said Lease to the reasonable satisfaction of Landlord. Adequate assurance of future performance as used herein includes but shall not be limited to: (i) assurance of source and payment of rent and other consideration due under this Lease; (ii) assurance that the assumption or assignment of this Lease will not breach substantially any provision such as radius, location, use, or exclusivity provision in any agreement relating to the above described Premises.

Nothing contained in this paragraph shall affect the existing right of Landlord to refuse to accept an assignment upon commencement of or in connection with a bankruptcy liquidation, reorganization or insolvency action or an assignment of Tenant for the benefit of creditors or other similar act. Nothing contained in this Lease shall be construed as giving or granting or creating an equity in the demised Premises to Tenant. In no event shall the leasehold estate under this Lease or any interest therein be assigned by voluntary or involuntary bankruptcy proceeding without the prior written consent of Landlord. In no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings.

24 DEFAULT AND REMEDIES The failure to perform or honor any covenant, condition or representation made under this Lease shall constitute a default hereunder by Tenant upon the giving of any required notice and the expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of five (5) business days from the date of written notice from Landlord within which to cure any default in the payment of rental or adjustment thereto. Tenant shall have a period of thirty (30) days from the date of written notice from Landlord within which to cure any other default under this Lease provided, however, that if such default is not reasonably susceptible of cure within such thirty day period, no default shall exist hereunder so long as Tenant commences the cure within such initial 30 day period and thereafter diligently prosecutes such cure to completion. 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:

(a) The rights and remedies provided for 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 rent for the balance of the term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of said Section 1951.2. Any proof by Tenant under subparagraphs (2) and (3) of Section 1951.2 of the California Civil Code of the amount of rental loss that could be reasonably avoided shall be made in the following manner: Landlord and Tenant shall each select a licensed real estate broker in the business of renting property of the same type and use as the Premises and in the same geographic vicinity. Such two (2) real estate brokers shall select a third licensed real estate broker, and the three (3) licensed real estate brokers so selected shall determine the amount of the rental loss that could be reasonably avoided from the balance of the term of this Lease after the time of award. In the event the three (3) real estate brokers cannot agree upon the amount of rental loss, the parties agree to accept the middle value as final and binding.

(b) The rights and remedies provided by the California Civil Code which allows Landlord to continue the Lease in effect and to enforce all of its rights and remedies thereunder, including the right to recover rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession. For the purposes of this Lease, 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 right to possession.

(c) The right to terminate this Lease by giving notice to Tenant in accordance with the applicable law.

(d) The right and power, as attorney in fact for Tenant, to enter the Premises and remove therefrom all persons and property 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. Landlord, as attorney in fact for Tenant, may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the term of this Lease) and at such rent and such other terms as Landlord in its reasonable sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each subletting: (i) Tenant shall be immediately liable to pay Landlord, in addition to indebtedness other than rent due hereunder, the reasonable cost of such subletting, including but not limited to reasonable attorneys' fees and any real estate commissions actually paid, and the cost of such reasonable alterations and repairs incurred by Landlord; and the amount, if any, by which the rent hereunder for the period of such subletting (to the extent such period does not exceed the term hereof) exceeds the amount to be paid as rent for the Premises for such period; or (ii) at the option of Landlord, rents received from such subletting shall be applied first to payment of indebtedness other than rent due hereunder from Tenant to Landlord, second to the payment of any costs of such subletting and of such alterations and repairs, third to payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same becomes due hereunder. If Tenant has been credited with any rent to be received by such subletting under option (i) and such rent shall not be promptly paid to Landlord by the subtenant(s), or if such rentals received from such subletting under option (ii) during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. For all purposes set forth in this subparagraph (d), Landlord is hereby irrevocably appointed attorney in fact for Tenant, with power of substitution. No taking possession of the Premises by Landlord, as attorney in fact for Tenant, shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time hereafter elect to terminate this Lease for such previous breach.

(e) The right to have a receiver appointed for Tenant upon application by Landlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord as attorney in fact for Tenant pursuant to subparagraph (d) above.

25 LANDLORD'S WAIVER Tenant shall have the absolute right from time to time during the Term hereof and without Landlord's further approval, written or otherwise, to grant and assign all of Tenant's personal property (including without limitation, Tenant's equipment) to Tenant's lenders in connection with Tenant's financing arrangements. Landlord hereby waives and relinquishes any and all rights to any lien, whether statutory, contractual or otherwise, in any furniture, fixtures, supplies, equipment and inventory now or hereafter placed upon or installed by Tenant or any of its Customers in the Premises or elsewhere.

in the Building as contemplated hereunder

26 RESERVED

27 DESTRUCTION In the event the Premises are destroyed in whole or in part from any cause, except for routine maintenance and repairs and incidental damage and destruction caused from vandalism and accidents for which Tenant is responsible under Paragraph 11 Landlord may at its option

(a) Rebuild or restore the Premises to their condition prior to the damage or destruction or

(b) Terminate this Lease provided however that Landlord shall not have the option to terminate this Lease unless the restoration would take in excess of 180 days to complete and Landlord elects not to restore the Complex

In addition in the event the restoration would take in excess of one hundred eighty (180) days to complete as determined by an independent architect or engineer retained by Landlord who shall deliver a determination of such estimated time to restore within twenty (20) days following any such casualty Tenant shall have the option to terminate this lease by delivery of written notice to Landlord within thirty (30) days following receipt of such architect's or engineer's determination. In the event Landlord does not give Tenant notice in writing within thirty (30) days from the destruction of the Premises of its election to either rebuild and restore the Premises and the Building or to terminate this Lease and provided Tenant has not terminated this Lease as provided above Landlord shall be deemed to have elected to rebuild or restore them, in which event Landlord agrees at its expense promptly to rebuild or restore the Premises and the balance of the Building to their condition prior to the damage or destruction and rent hereunder shall abate on a proportionate basis to the extent that the Premises are untenantable for Tenant's intended purpose from the date of such casualty to date the Premises are restored by Landlord and delivered to Tenant. If Landlord does not complete the rebuilding or restoration within one hundred eighty (180) days following the date of destruction (such period of time to be extended for delays caused by the fault or neglect of Tenant or because of Acts of God acts of public agencies labor disputes, strikes fires freight embargoes rainy or stormy weather inability to obtain materials supplies or fuels acts of contractors or subcontractors or delay of the contractors or subcontractors due to such causes or other contingencies beyond the control of Landlord) then Tenant shall have the right to terminate this Lease by giving fifteen (15) days prior written notice to Landlord. Notwithstanding anything herein to the contrary Landlord's obligation to rebuild or restore shall be limited to the Building and interior improvements as they existed as of the commencement date of the Lease and shall not include restoration of Tenant's trade fixtures equipment merchandise or any improvements alterations or additions made by Tenant to the Premises including Tenant's initial improvements to the Premises, which Tenant shall forthwith replace or fully repair at Tenant's sole cost and expense provided this Lease is not canceled according to the provisions above.

The proceeds from any insurance maintained by Landlord as required by this Lease or such other insurance proceeds paid by reason of damage to or destruction of the Complex or Premises or any part thereof under any policy maintained by Landlord shall belong to and be paid to Landlord subject to the rights of any beneficiary of any deed of trust which constitutes an encumbrance.

Unless this Lease is terminated pursuant to the foregoing provisions this Lease shall remain in full force and effect. Tenant hereby expressly waives the provisions of Section 1932(2) and Section 1933 (4) of the California Civil Code.

In the event that more than thirty three and one third percent (33 1/3%) of the building in which the Premises are situated is damaged or destroyed (percentage of damages or destruction based on replacement cost) and this Lease is in the final Lease Year Landlord may elect to terminate this Lease whether the Premises be injured or not provided that Landlord simultaneously terminates all other leases of the Complex. In the event the destruction of the Premises is caused by Tenant Tenant shall pay the deductible portion of Landlord's insurance proceeds.

28 EMINENT DOMAIN If all or any part of the Premises shall be taken by any public or quasi public authority under the power of eminent domain or conveyance in lieu thereof this Lease shall terminate as to any portion of the Premises so taken or conveyed on the date when title vests in the condemnor and Landlord shall be entitled to any and all payment income rent award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired term of this Lease. Notwithstanding the foregoing paragraph any compensation specifically awarded Tenant for loss of business Tenant's personal property moving cost or loss of goodwill shall be and remain the property of Tenant.

If (i) any action or proceeding is commenced for such taking of the Premises or any part thereof or if Landlord is advised in writing by any entity or body having the right or power of condemnation of its intention to condemn the Premises or any portion thereof or (ii) any of the foregoing events occur with respect to the taking of any space in the Complex not leased hereby or if any such spaces so taken are conveyed in lieu of such taking and Landlord shall decide to discontinue the use and operation of the Complex or decide to demolish alter or rebuild the Complex then in any of such events Landlord shall have the right to terminate this Lease by giving Tenant written notice thereof within sixty (60) days of the date of receipt of said written notice or commencement of said action or proceeding or taking conveyance which termination shall take place as of the first to occur of the last day of the calendar month next following the month in which said notice is given or the date on which title to the Premises shall vest in the condemnor.

In the event of such a partial taking or conveyance of the Premises or any other area of the Building (including without limitation the parking area) if the portion of the Premises and/or the Building taken or conveyed is so substantial that the Tenant can no longer reasonably conduct its business as contemplated hereunder Tenant shall have the privilege of terminating this Lease within sixty (60) days from the date of such taking or conveyance upon written notice to Landlord of its intention to do so and upon giving of such notice this Lease shall terminate on the last day of the calendar month next following the month in which such notice is given upon payment by Tenant of the rent from the date of such taking or conveyance to the date of termination.

If a portion of the Premises be taken by condemnation or conveyance in lieu thereof and neither Landlord nor Tenant shall terminate this Lease as provided herein this Lease shall continue in full force and effect as to the part of the Premises not so taken or conveyed and the rent herein shall be apportioned as of the date of such taking or conveyance so that thereafter the rent to be paid by Tenant shall be in the ratio that the area of the portion of the Premises not so taken or conveyed bears to the total area of the Premises prior to such taking.

29 **SALE OR CONVEYANCE BY LANDLORD** In the event of a sale or conveyance of the Complex or any interest therein by any owner then constituting all or part of Landlord the transferor shall thereby be released from any further liability for acts or events occurring after said transfer upon any of the terms, covenants or conditions (express or implied) herein contained in favor of Tenant. In such event insofar as such transfer is concerned Tenant agrees to look solely to the successor in interest of such transferor in and to the Complex and this Lease for any obligations arising during the period such successor is the Landlord hereunder. This Lease shall not be affected by any such sale or conveyance and Tenant agrees to attorn to the successor in interest of such transferor.

30 **HOLDING OVER** Any holding over by Tenant after expiration or other termination of the term of this Lease with the written consent of Landlord delivered to Tenant shall not constitute a renewal or extension of the Lease or give Tenant any rights in or to the leased Premises except as expressly provided in this Lease. Any holding over after the expiration or other termination of the term of this Lease with the consent of Landlord shall be construed to be a tenancy from month to month on the same terms and conditions herein specified insofar as applicable except that the monthly Basic Rent shall be increased to an amount equal to one hundred fifty percent (150%) of the monthly Basic Rent required during the last month of the Lease Term.

31 **CONSTRUCTION CHANGES** It is understood that the description of the Premises and the location of duct work, plumbing and other facilities therein are subject to such changes as Landlord or Landlord's architect determines to be desirable in the course of construction of the Premises provided however that Landlord shall not make any change which would materially affect Tenant's ability to use the Premises for its intended purpose. Landlord shall provide reasonable prior notice together with a reasonably detailed description of any proposed changes to Tenant in order to allow Tenant to evaluate whether such change would affect Tenant's rights hereunder. Provided that any such change does not materially affect Tenant's ability to use the Premises for its intended purpose, no change in plans for any other portions of the Complex shall affect the enforceability of this Lease or entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant. Landlord does not guarantee the accuracy of any drawings supplied to Tenant and verification of the accuracy of such drawings rests with Tenant.

32 **RIGHT OF LANDLORD TO PERFORM** All terms, covenants and conditions of this Lease to be performed or observed by Tenant shall be performed or observed by Tenant at Tenant's sole cost and expense and without any reduction of rent. If Tenant shall fail to pay any sum of money or other rent required to be paid by it hereunder or shall fail to perform any other term or covenant hereunder on its part to be performed and such failure shall continue for five (5) days after written notice thereof by Landlord or such longer cure period as is provided for in this Lease, Landlord without waiving or releasing Tenant from any obligation of Tenant hereunder may but shall not be obliged to make any such payment or perform any such other term or covenant on Tenant's part to be performed. All sums so paid by Landlord and all necessary costs of such performance by Landlord together with interest thereon at the rate of the Prime Rate of interest plus two percent (2%) per annum as quoted by the Bank of America from the date of such payment on performance by Landlord shall be paid (and Tenant covenants to make such payment) to Landlord on written demand by Landlord and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of nonpayment by Tenant as in the case of failure by Tenant in the payment of rent hereunder.

33 ATTORNEYS' FEES

A. In the event of a dispute regarding possession of the Premises, recovery of any sum due under this Lease, breach of any provision of this Lease or to enforce any right or obligation set forth herein, then all costs and expenses, including reasonable attorneys' fees incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

B. In the event of a dispute between Landlord and Tenant which is resolved by a Court or Judicial Reference as set forth herein, Landlord and Tenant agree notwithstanding Paragraph 33A above that for purposes of determining the amount of attorneys' fees to be awarded to the prevailing party, the Judge or Reference shall consider in addition to such evidence as is submitted any written settlement offers and the timing of such offers. In such event if the Court or Reference determines that the prevailing party rejected a settlement offer which is equal to or greater than the net recovery obtained, the prevailing party shall only be entitled to recover in attorneys' fees an amount which is not more than twenty five percent (25%) of the net recovery. The Court or Reference shall also consider the amount originally demanded by the prevailing party and depending on the ultimate net recovery award the non-prevailing party as an offset an amount up to twenty five percent (25%) of the prevailing party's total net recovery for successfully defending claims asserted by the prevailing party.

C. Should Landlord be named as a defendant in any suit brought against Tenant by any third party in connection with or arising out of Tenant's occupancy hereunder, Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses incurred (including reasonable attorneys' fees) as well as any judgment rendered against Landlord, provided however that in no event shall Tenant be obligated to indemnify Landlord with respect to any costs, damages, claims or expenses proximately caused by the negligence or willful misconduct of Landlord or any of its agents, employees or contractors.

34 **JUDICIAL REFERENCE** The parties agree that other than an action by Landlord to obtain possession of the Premises or any action which seeks relief which can only be obtained by Court proceeding, any dispute arising out of this Lease shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Section 638 et seq. for a determination to be made which shall be as binding upon Landlord and Tenant as if tried by a court or jury. In the event of such reference, the following provisions shall apply:

(a) Within five (5) business days after service of a demand for reference, Landlord and Tenant shall agree upon a single referee who shall then try all issues in dispute, whether of fact or law, and then report his/her findings and judgment thereon. If Landlord and Tenant are unable to agree upon a referee, either Landlord or Tenant may seek to have one appointed pursuant to Section 640 of the California Code of Civil Procedure by the presiding judge of the Sacramento County Superior Court.

(b) The compensation of the referee shall be such as is customarily charged by referees for like services. The cost of such proceedings shall initially be borne equally by Landlord and Tenant, however the prevailing party in such proceedings shall be entitled, in addition to all other costs, to recover its contribution for the cost of the referee as an item of costs.

(c) If a court reporter is required by any party, then a court reporter shall be present at all proceedings and the fees of such court reporter shall initially be borne by the party requesting the court reporter or equally if both parties request a court reporter. Such fees shall be an item of recoverable costs to the prevailing party.

(d) The referee shall apply all California Rules of Procedure and Evidence and shall apply the substantive law of California in deciding the issues to be heard. Notice of any motion before the referee shall be given in the manner prescribed by the California Code of Civil Procedure, all hearings shall be set at the convenience of the referee and venue for all hearings shall be selected by the referee at a place in Sacramento County, California.

(e) The referee's decision under California Code of Civil Procedure Section 644 shall stand as the judgment of the court subject to appellate review as provided by the laws of the State.

(f) Landlord and Tenant agree that any such dispute shall be decided as soon as practicable following the selection or appointment of a referee. The date of hearing for any proceedings shall be determined by agreement of the parties and the referee or if the parties cannot agree then by the referee.

(g) Without limiting the jurisdiction of the referee, Landlord and Tenant specifically acknowledge that the referee shall have jurisdiction to issue all legal and equitable relief including an award of damages, the issuance of injunctions and requiring the specific performance of any provisions of this Lease.

(h) In addition to any other relief awarded by the referee, the referee shall award attorneys' fees to the prevailing party pursuant to Paragraph 33(B) above.

35 WAIVER. The waiver by either party of the other party's failure to perform or observe any term, covenant or condition herein contained to be performed or observed by such waiving party shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of the party failing to perform or observe the same or any other such term, covenant or condition therein contained, and no custom or practice which may develop between the parties hereto during the term hereof shall be deemed a waiver of or in any way affect, the right of either party to insist upon performance and observance by the other party in strict accordance with the terms hereof.

36 NOTICES. All notices, demands, requests, advice or designations which may be or are required to be given by either party to the other hereunder shall be in writing. All notices, demands, requests, advice or designations by Landlord to Tenant shall be sufficiently given, made or delivered if sent by United States certified or registered mail, postage prepaid or by reputable overnight delivery service addressed to Tenant at 4 Westbrook Corporate Center, Suite 400, Westchester, Illinois 60154 Attention: Patricia E. Koide with a copy to Partners National Real Estate Group, Inc., 3838 Oak Lawn Avenue, Dallas, Texas 75219 Attention: Kane Dossett. All notices, demands, requests, advice or designations by Tenant to Landlord shall be sent by United States certified or registered mail, postage prepaid addressed to Landlord at its offices at 2882 Prospect Park Drive, Suite 250, Rancho Cordova, CA 95670. Each notice, request, demand, advice or designation referred to in this paragraph shall be deemed received on the second business day after the date of the mailing thereof in the manner herein provided or the first business day after delivery to an overnight courier service, as the case may be. Each party shall have the right to change its address for notices from time to time pursuant to a notice delivered in accordance with this section.

37 EXECUTION OF LEASE. This Lease may be executed in counterparts and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed binding until executed and delivered by both Landlord and Tenant.

38 DEFAULT BY LANDLORD. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have heretofore been furnished to Tenant in writing specifying wherein Landlord has failed to perform such obligations provided, however, that if the nature of Landlord's obligations are such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

39 LIMITATION OF LIABILITY. In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord:

(a) the sole and exclusive remedy shall be against Landlord and Landlord's assets (including the proceeds of any sale of the Complex);

(b) no partner of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

(c) no service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction of the partnership);

(d) no partner of Landlord shall be required to answer or otherwise respond to a formal complaint or proceeding;

(e) no judgment will be taken against any partner of Landlord;

(f) any judgment taken against any partner of Landlord may be vacated and set aside at any time without hearing;

(g) no writ of execution will ever be levied against the assets of any partner of Landlord;

(h) these covenants and agreements are enforceable both by Landlord and also by any partner of Landlord.

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

40 CORPORATE AUTHORITY. If Tenant is a corporation (or a partnership), Tenant represents and warrants that the person executing this Lease is duly authorized to execute and deliver this Lease on behalf of said corporation (or partnership) in accordance

with the by laws of said corporation (or partnership in accordance with the partnership agreement) and that this Lease is binding upon said corporation (or partnership) in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of the resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

41 SIGNS No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside of the Premises or any exterior windows of the Premises without the written consent of Landlord first had and obtained. Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant. If Tenant is allowed to print or affix or in any way place a sign in, on or about the Premises upon expiration or other sooner termination of this Lease, Tenant at Tenant's sole cost and expense shall both remove such sign and repair all damage in such a manner as to restore all aspects of the appearance of the Premises to the condition prior to the placement of said sign.

All approved signs or lettering on outside doors shall be printed, printed, affixed, inscribed and removed at the expense of Tenant by a person approved of by Landlord.

Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.

Notwithstanding the foregoing, Tenant shall be entitled to the following signage rights: (i) Building standard suite signage at the entry to the Premises; (ii) Tenant's proportionate share of identification strips on the lobby directory; and (iii) Tenant's proportionate share of any monument signage.

42 HAZARDOUS AND TOXIC MATERIALS

A Hazardous Materials Tenant covenants to comply with all laws relating to Hazardous Materials with respect to the Premises and the Complex. Except for general office supplies typically used in an office area in the ordinary course of business (such as copier, toner, liquid paper, glue, ink, and cleaning solvents) for use in the manner for which they were designed and only in accordance with all Hazardous Materials laws and the highest standards prevailing in the industry for such use, and then only in such amounts as may be normal for the business operations conducted by Tenant on the Premises, Tenant (including its employees, agents, invitees or anyone acting by or on behalf of Tenant) shall not use, handle, generate, manufacture, store or dispose of, on or about the Premises or the Complex, or transport to or from the Premises or the Complex, any flammable, explosives, radioactive materials, hazardous wastes, toxic substances or any related materials or substances, including, without limitation, any substance defined as or included in the definition of hazardous substances under any applicable federal, state or local law, regulation or ordinance (collectively, Hazardous Materials).

B Permitted Materials Notwithstanding the above provisions, Tenant shall have the right to use, generate and store on the Premises or the Complex, and transport to and from the Premises or the Complex, batteries, diesel fuel and glycol, which are used in the ordinary course of Tenant's business (collectively, "Permitted Materials"), provided, however, that Tenant's use, generation, storage and transport thereof is in strict compliance with all applicable federal, state and local laws, regulations and ordinances.

C Permitted Materials Claims Promptly upon Tenant obtaining actual knowledge thereof, Tenant shall immediately notify Landlord in writing of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened with respect to the Permitted Materials pursuant to any applicable federal, state or local law, ordinance or regulation, and (ii) all claims made or threatened by any third party against Tenant or the Premises or the Complex related to any damage, loss or injury, whether to person or property, resulting from the Permitted Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to collectively as "Permitted Materials Claims").

D Clean Up and Tenant's Indemnity In the event of any breach by Tenant of any Hazardous Materials laws, Tenant shall promptly take all actions necessary at its sole cost and expense to comply therewith. Upon the expiration or termination of this Lease, Tenant shall remove any Hazardous Materials introduced to the Premises or the Complex by Tenant or anyone else acting by or on behalf of Tenant, provided Landlord's approval of such actions shall first be obtained.

Tenant shall be solely responsible for and shall indemnify, defend (with counsel reasonably approved by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, penalties, fines, liabilities, losses and expenses (including without limitation, investigation and clean up costs, attorneys' fees, consultant fees and court costs) which arise during or after the term of this Lease as a result of the breach of any of the obligations and covenants set forth in this Paragraph 42 and/or any contamination of the Premises or the Complex directly or indirectly arising from the activities of Tenant. Notwithstanding anything contained herein to the contrary, Tenant shall have no obligation hereunder with respect to (i) any Hazardous Materials on, in, under or otherwise affecting the Premises or any other portion of the Complex as of the Commencement Date or (ii) any Hazardous Materials introduced to the Premises or any other portion of the Complex by Landlord or any other tenant or any employee, invitee, subtenant, agent or contractor of Landlord or any such other tenant. Landlord hereby represents and warrants to Tenant that to the best of Landlord's knowledge, except for ordinary cleaning and office supplies, there are no Hazardous Materials on, in, under or affecting the Premises or any other portion of the Complex.

E Environmental Inspection In the event Landlord reasonably believes that Tenant has failed to comply with the requirements of this Section 42, Landlord shall have the right, from time to time, and upon not less than thirty (30) days written notice to Tenant, although not more than annually except in the case of an emergency in which case no notice shall be required, to conduct an inspection of the Premises or the Complex to determine the existence or presence of Hazardous Materials within the Premises or the Complex. Landlord shall be accompanied during said inspection by an available representative of Tenant. Landlord shall have the right to enter and inspect materials brought into the Premises or the Complex and the manufacturing processes utilized by the Tenant. Landlord may in its discretion retain such experts to conduct the inspection, perform the tests referred to herein, and to prepare a written report in connection therewith. All costs and expenses reasonably incurred by Landlord under this subsection shall be paid as Additional Rent by Tenant to Landlord.

F Survival The foregoing covenants and indemnities of Tenant shall survive the expiration or earlier termination of the Lease.

43 MISCELLANEOUS AND GENERAL PROVISIONS

A Use of Building Name Tenant shall not, without the written consent of Landlord, use the name of the building or

the Complex for any purpose other than as the address of the business conducted by Tenant in the Premises

B Choice of Law, Severability This Lease shall in all respects be governed by and construed in accordance with the laws of the State of California. If any provision of this Lease shall be invalid, unenforceable or ineffective for any reason whatsoever, all other provisions hereof shall be and remain in full force and effect.

C Definition of Terms The term 'Premises' includes the space leased hereby and any improvements now or hereafter installed therein or attached thereto. The term 'Landlord' or any pronoun used in place thereof includes the plural as well as the singular and the successors and assigns of Landlord. The term 'Tenant' or any pronoun used in place thereof includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations and their and each of their respective heirs, executors, administrators, successors and permitted assigns according to the context hereof and the provisions of this Lease shall inure to the benefit of and bind such heirs, executors, administrators, successors and permitted assigns.

The term 'person' includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations. Words used in any gender include other genders. If there be more than one Tenant, the obligations of Tenant hereunder are joint and several. The paragraph headings of this Lease are for convenience of reference only and shall have no effect upon the construction or interpretation of any provision hereof.

D Time of Essence Time is of the essence of this Lease and of each and all of its provisions.

E Quitclaim At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company, licensed to operate in the State of California, to remove the cloud or encumbrance created by this Lease from the real property of which Tenant's Premises are a part.

F Incorporation of Prior Agreements, Amendments This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant hereby agree that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this agreement.

G Recording Neither Landlord nor Tenant shall record this Lease or a short form memorandum hereof without the consent of the other.

H Amendments for Financing Tenant further agrees to execute any amendments reasonably required by a lender to enable Landlord to obtain financing, so long as such modifications (i) are reasonable in the reasonable judgment of the Tenant, (ii) do not adversely affect Tenant's use of the Premises as herein permitted or other rights hereunder, and (iii) do not increase the rent and other sums to be paid by Tenant hereunder or otherwise materially affect the respective rights and obligations of Landlord and Tenant hereunder.

I Additional Paragraphs Paragraphs 44 through 45 are added hereto and are included as a part of this Lease.

J Exhibits, Clauses, Plats and Riders Exhibits, clauses, plats and riders, if any, signed by Landlord and Tenant and endorsed on or affixed to this Lease are a part hereof.

K Diminution of Light, Air or View Tenant covenants and agrees that no diminution or shutting off of light, air or view by any structure which may be hereafter erected (whether or not by Landlord) shall in any way affect this Lease, entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant.

L Quiet Enjoyment Landlord covenants that it has the right to enter into this Lease and that if Tenant shall perform timely all of its obligations hereunder, then subject to the provisions of this Lease, Tenant shall during the Term peaceably and quietly occupy and enjoy the full possession of the Premises and other rights hereunder without hindrance by Landlord or any party claiming through or under Landlord.

M Brokers Landlord and Tenant each warrant to the other that in connection with this Lease neither has employed or dealt with any broker, agent or finder other than CB Richard Ellis on behalf of the Landlord and Partners National Real Estate Group, Inc. on behalf of Tenant (the 'Brokers'). Landlord acknowledges that it shall pay any commission or fee due to the Broker(s) pursuant to the terms of a separate written agreement. Each party shall indemnify the other from and against any claim for brokerage or other commissions asserted by any broker, agent or finder employed by the indemnifying party or with whom the indemnifying party has dealt other than the Broker(s).

N Force Majeure If Landlord or Tenant is in any way delayed or prevented from performing any of its obligations under this Lease due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond such party's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention and extended for a period equal to the period of such delay or prevention.

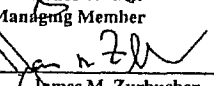
IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease as of the date and year first above written

LANDLORD

PROSPECT WEST C, L.P.,
a California limited partnership
By B&Z Investments LLC, a
California limited liability company
Its General Partner

By 

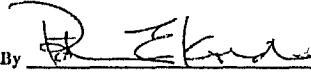
Bruce W. Holt
Its Managing Member

By 

James M. Zurbuchen
Its Managing Member

TENANT

ALLEGIANCE TELECOM COMPANY WORLDWIDE,
a Delaware corporation

By 

Its SA VP

By 

Its SA VP

Additional Paragraphs

44 OPTION TO RENEW OR EXTEND Provided that Tenant is not in default at the time of giving notice of extension thereof or at the time the applicable renewal term is scheduled to commence Tenant is hereby granted and shall have the right and option to extend the term of this Lease for two (2) consecutive five (5) year periods

In order to exercise its option Tenant shall give Landlord written notice of Tenant's intent to exercise the initial option not less than two hundred seventy (270) days prior to the expiration of the term hereof (as the same may be extended by exercise of the first option) Failure to give the first notice of exercise of the first option within the time herein provided shall cause Tenant to automatically and irrevocably lose the right to exercise any future options Conditioned upon the timely exercise of the first option and provided Tenant is not in default at the time of the exercise of the second option or at the time the applicable renewal term is scheduled to commence Tenant may exercise the second option by giving written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the first renewal term Upon giving the appropriate notice as herein provided the term of this Lease shall be extended on all terms and provisions hereof including any additional space included hereunder except that the Basic Rent for the extended terms shall be at ninety five percent (95%) of the Market Rate being charged in the area at the time each option to renew (or extend) is exercised Market Rate* being defined as the rent being charged for comparable (i.e. quality location size amenities and aesthetics) properties in an area in condition with similar improvements and assuming no concessions

Upon Landlord's receipt of Tenant's notice electing to exercise an extension option Landlord shall provide Landlord's determination of Market Rate to Tenant within ten (10) days thereafter In the event the parties hereto are unable to agree upon the Market Rate within twenty (20) days of Tenant's receipt of Landlord's determination then Tenant may within fifteen (15) days elect to either rescind its notice to exercise or have the Basic Rent to be paid during such option period fixed by appraisal within thirty (30) days as specified below In the event Tenant fails to notify Landlord of its election, Tenant shall be deemed to have elected the appraisal option

(a) Within fifteen (15) days following Tenant's election to have Basic Rental determined by appraisal each of the parties to this Lease, Tenant and Landlord, shall appoint an independent M A I real estate appraiser ("Appraiser") and give written notice of the name and address of such Appraiser to the other party to this Lease The two Appraisers thus appointed shall, within fifteen (15) days after appointment of the first of the two Appraisers to be appointed appoint a third Appraiser and serve written notice of the name and address of such Appraiser on Landlord and Tenant in the manner prescribed by this Lease for service of notice on Landlord by Tenant and on Tenant by Landlord

(b) All Appraisers appointed under this section shall be at the time of their appointment Appraisers certified with a minimum of five (5) years recent commercial real estate appraisal experience in the area in which the property is located

(c) Within fifteen (15) days after the appointment of the third Appraiser the three Appraisers shall confer and each shall submit in writing to Landlord and Tenant his/her honest appraisal of the Market Rate on a square footage basis of the leased Premises based on the Market Rate as defined above

(d) The appraised Market Rate of the leased Premises agreed on in writing by any two of the three appointed Appraisers shall be conclusive and binding on the parties to this Lease Landlord and Tenant and shall establish the Basic Rent for said Premises for purposes of this section Should no two (2) of the three (3) Appraisers be able to agree on the Market Rate of said Premises the Basic Rent shall be determined by averaging the two (2) closest appraisals which amount shall be binding and conclusive on Landlord and Tenant

(e) Should either party Landlord or Tenant fail to appoint an Appraiser as required by this section within fifteen (15) days after service on him/her/it of written demand to do so the Appraiser appointed by the other party shall act for both Landlord and Tenant The decision in writing of such Appraiser shall in such event, be binding on both Landlord and Tenant and establish the Basic Rent for said Premises for purposes of this section

(f) Should the two (2) Appraisers appointed respectively by Landlord and Tenant fail for any reason to appoint a third Appraiser within the time required by subparagraph (a) of this section either party Landlord or Tenant, may petition the Superior Court for the county in which said Premises are located to appoint the Appraiser

(g) Landlord and Tenant shall each pay the fee and all expenses incurred by the Appraiser appointed by such party and one half of all expenses and the fee incurred by the third Appraiser appointed pursuant to subparagraph (a) of this section

(h) In no event shall the monthly Basic Rent to be paid by Tenant to Landlord during the option period be less than the monthly Basic Rent paid for the last month of the then current term

(i) The monthly rental shall be payable monthly in advance and in lawful money of the United States and Tenant shall be bound to the same terms and conditions as set forth in this Lease

45 FIBER OPTIC CABLES Subject to the review and approval of plans and specifications by Landlord which approval shall not be unreasonably withheld delayed or conditioned and subject to other applicable provisions of this Lease Tenant at Tenant's expense, shall have right to bring fiber optic cables to the Premises from any existing or future telecommunications provider which has or will have fiber in the Building whether located in the Main Point of Entry(s) (MPOE(s)) main building telecommunications room(s) or other authorized locations within the Building Subject to other applicable provisions of this Lease and upon the approval of plans and specifications by Landlord which approval shall not be unreasonably withheld delayed or conditioned, Tenant may at its sole cost and expense or at the sole cost and expense of the fiber provider bring additional fiber from telecommunications fiber providers whether currently serving the Building or not into the Building to provide fiber into the Premises No access fees shall be charged by Landlord in connection with the introduction of any fiber to the Building by any provider with whom Tenant desires to interconnect The construction of such additional fiber may include the removal and replacement of curbing pavement and sidewalks at Tenant's or fiber provider's expense provided that (i) Tenant and its contractors comply with all applicable laws and regulations and obtain all permits at Tenant's expense and (ii) the work to be performed is coordinated with Landlord and the identity of any contractor or subcontractor performing work and any security by such contractor(s) is approved in advance in writing by Landlord



EXHIBIT A
THE PREMISES

FIRST FLOOR

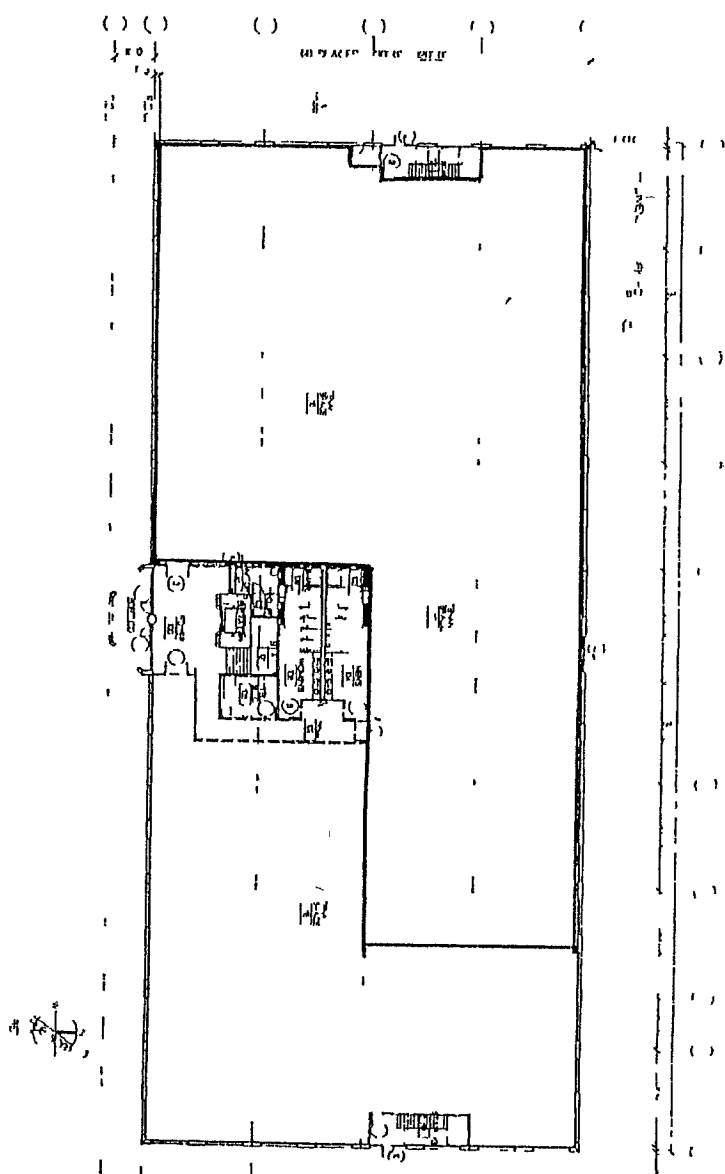
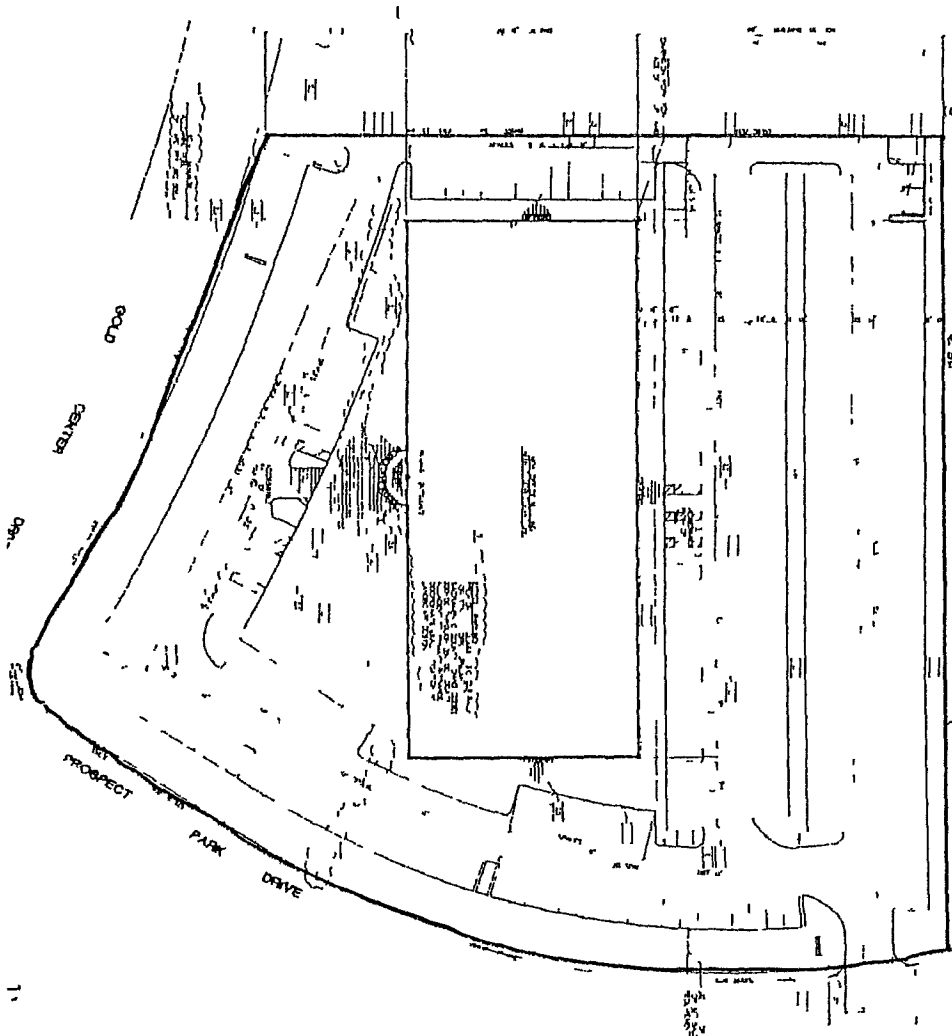
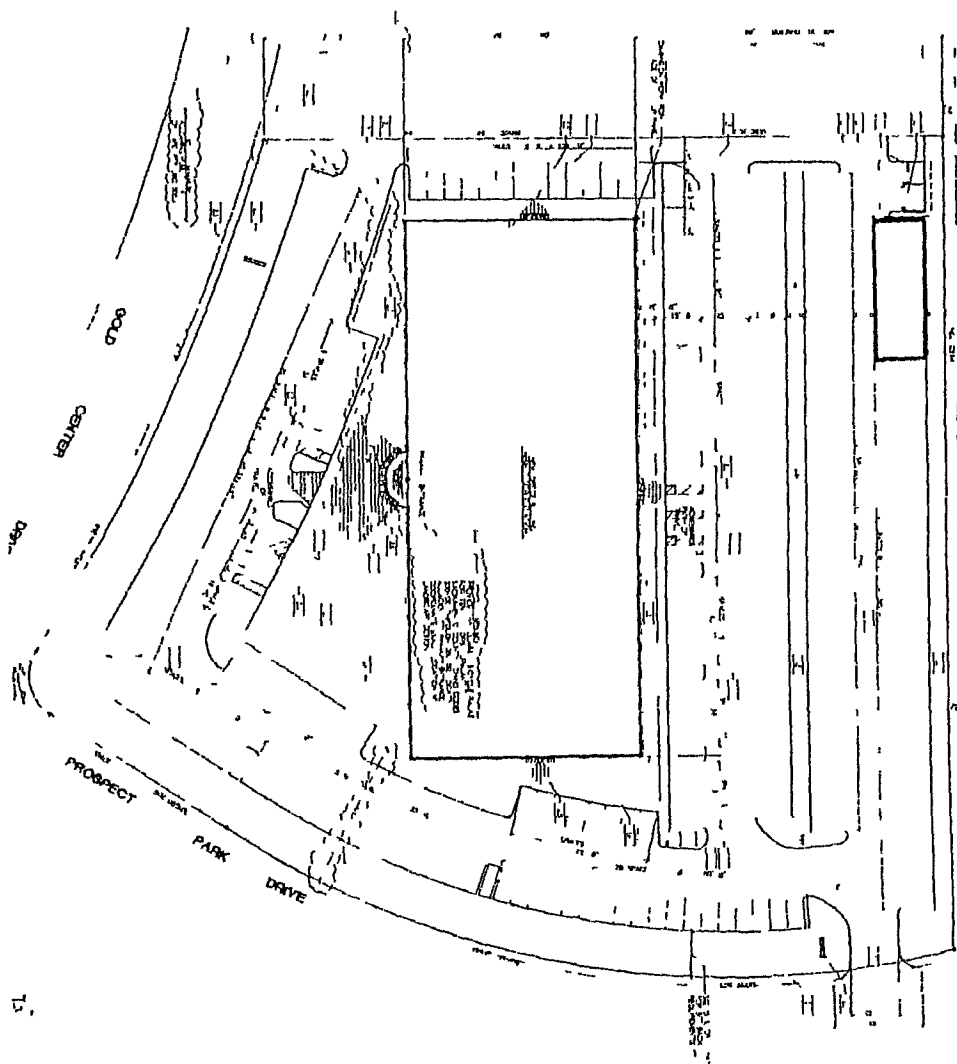


EXHIBIT B
THE COMPLEX



2/12/80

EXHIBIT C
HANNI'S SPECIAL FACILITIES



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2/2 after

Alles anse ten e final

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EXHIBIT D

CONSTRUCTION ADDENDUM FOR 10995 GOLD CENTER DRIVE, RANCHO CORDOVA, CA ALLEGIANCE TELECOM COMPANY WORLDWIDE TENANT IMPROVEMENTS

GENERAL RECITALS

- A The purpose of this Addendum is to set forth how the Tenant Improvements (as defined below) in the Premises are to be constructed, who will undertake the construction of the Tenant Improvements, who will pay for the construction of the Tenant Improvements, and the time schedule for completion of the construction of the Tenant Improvements
- B Except as defined in this Addendum to the contrary, all terms used in this Addendum shall have the same meaning given them in the Lease
- C The provisions of the Lease, except where clearly inconsistent or inapplicable to this Addendum, are incorporated into this Addendum. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control

CONSTRUCTION ADDENDUM

1 LANDLORD'S WORK

1 01 LANDLORD'S WORK

Landlord shall provide dedicated electrical power to the Switch Area at a capacity of up to 900 AMPS, 480 volts, Three Phase, Four-wire. Landlord shall use all diligent efforts to cause such power to be supplied to Tenant as expeditiously as possible. In the event, however, that such electrical power is not available to the Premises through no fault of the Tenant or any of its agents, employees or contractors by the one hundred twentieth (120) day following the execution and delivery of this Lease (unless the unavailability is attributable to the utility company), Basic Rent shall abate on a day-for-day basis for each day that such power is unavailable and continuing until such time as such power is made available.

1 02 COST

All of Landlord's Work shall be done by Landlord at Landlord's sole cost and expense.

2 TENANT IMPROVEMENTS

The term "Tenant Improvements" shall mean all improvements shown in the Working Drawings, including, but not limited to Tenant's Equipment (as defined below) as well as all electrical and mechanical services, systems and distribution, all telecommunications related improvements, whether or not they are in the Premises, all signage, and all other improvements necessary for Tenant's occupancy of the Premises for its intended use.

In connection with Tenant's build out of its initial improvements within the Premises and Tenant's intended use of its Premises, Landlord hereby grants Tenant the following rights with respect to the following technical requirements and installations of equipment (collectively "Tenant's Equipment") pursuant and subject to the terms of this Lease including but not limited to the conditions set forth in this Addendum, provided however, that in each case (i) Tenant shall be responsible for installing, maintaining and repairing Tenant's Equipment and for restoring the Premises and the Building as applicable upon installation or removal as applicable, at Tenant's sole cost and expense (ii) the Tenant's Equipment shall be located in the designated areas of the Complex mutually acceptable to Landlord and Tenant (the "Tenant's Equipment Area"), (iii) the Tenant's Equipment shall be installed, maintained and repaired by qualified engineers, contractors and technicians and shall at all times comply with all

applicable laws, and (iv) there shall be no additional rent or charge imposed on Tenant as a result of any Tenant's Equipment. Tenant shall have non-exclusive access to and the use and benefit of any easement or riser space that is required for all connections and installations contemplated hereunder. Landlord shall not grant any rights to any tenant or other third party which would encroach upon the rights granted hereunder. Landlord shall incorporate a provision into each lease of the Building hereafter entered into providing that the tenant thereunder shall promptly abate any interference with Tenant's Equipment attributable to the installation and/or operation of such other tenant's equipment. All of the Tenant's Equipment shall be and remain the property of Tenant and shall be for Tenant's exclusive use. Landlord acknowledges that all of Tenant's Equipment is integral to Tenant's business operations and that Tenant would not be entering into this Lease in the absence of these provisions. Tenant shall have access to those portions of the Complex containing the Tenant's Equipment including, all conduits, ducts, chases and utility closets, 24 hours per day/7 days a week.

A HVAC/Mechanical Landlord hereby grants to Tenant the right to install, operate, maintain, repair and replace Tenant's HVAC system with related chillers, wiring, piping, conduits, vents and equipment. Such equipment (collectively the "Cooling Equipment") will be located on the roof of the Building or beside the Building in an area reasonably approved by Landlord of a size reasonably determined by Tenant to be adequate for the installation and operation of such Cooling Equipment installed to the reasonable design standard of Landlord. Upon approval by Landlord of the plans and specifications therefor, Landlord and Tenant shall execute a letter confirming the size and location of the area in which the Cooling Equipment is located.

B Generator Tenant shall be permitted to install, operate, maintain, repair and replace, with like kind equipment one 750 kw/480 volt diesel generator to be located in Tenant's Equipment Area outside of the Building in a location reasonably approved by Landlord together with related wiring, piping, conduits, vents and equipment, including three 4 inch conduits and two 2-inch conduits, the location of which is also to be reasonably approved by Landlord. In connection with such generator, Tenant shall also have the right to place up to a 3,600 gallon diesel fuel storage tank in the Tenant Equipment Area, in accordance with all local rules, laws and regulations. Tenant shall have the right to test the generator once per week at a time agreed to by Landlord in its reasonable discretion. In addition, Tenant shall have the right from time-to time to operate a temporary back up generator to protect Tenant's business from the risk of power outages.

C Grounding Installation Subject to Landlord's review and approval of the plans and specifications thereof to ensure, among other things, the integration of same into the Building grounding system, Tenant shall have the right to install, operate, maintain, repair and replace a system within the Premises for the proper grounding of the telecommunications equipments which shall connect same to the Building grounding system.

D Conduit/Access/Riser Space Subject to review and approval of Tenant's plans, which approval shall not be unreasonably withheld, delayed or conditioned

- (i) For back-up power, Tenant, at its sole cost and expense, may install four inch (4") conduits from its generator to the Premises.
- (ii) For generator fuel, if a separate tank is required, Tenant, at its sole cost and expense, may install piping from the fuel tank to its generator if fuel storage is not accommodated with generator.
- (iii) For Tenant's HVAC system, Tenant, at its sole cost and expense, may install supply and return piping for cooling fluids of up to six inches (6") each for the required HVAC system from the HVAC chillers to the Premises. Tenant, at its sole cost and expense, may install the required conduits to connect the HVAC system to its emergency generator and building power feeds for the Premises.
- (iv) For telecommunications fiber, Tenant, at its sole cost and expenses, may install two diverse sets each comprised of two four inch (4") conduits in total from MPOE's and/or the main telecommunications rooms where existing and/or future fiber enters the Building to the Premises.
- (v) For the roof antennas, Tenant, at its sole cost and expense, may install four inch (4"), conduits and two (2) two inch (2") conduits from the Premises to the roof.
- (vi) Tenant, at its sole cost and expense, shall have the right to core drill from the

Premises to the lowest and/or highest level of the Building as necessary or saw cut the slab to install the required new power and data conduits for data and power. All such work shall be subject to Landlord's prior approval, and the scheduling of all core drilling and cutting shall be coordinated with Landlord and Landlord's base building contractor, shall be in full conformity with the general plan for the Building and shall be in full compliance with all applicable laws, codes and regulations.

E Screening Tenant's Equipment shall be screened from view. Tenant shall construct an enclosure of similar height and utilizing the same materials as the existing trash and bicycle enclosure located in the Common Area of the Complex.

F Life Safety Tenant shall have the right to install a fire suppression system (or similar system that may be appropriate) independent of the Building's systems. Tenant shall also have the right to modify any sprinkler systems to a dry pipe double pre-action system. Any modification shall be in strict compliance with all codes and after approval by Landlord. Landlord shall cooperate with such reasonable modification and the cost of any such modification shall be borne by Tenant. Tenant shall have the right to relocate all wetlines within the Premises with Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed and in a manner consistent with the requirements and regulations of all governmental agencies having jurisdiction thereof, at Tenant's sole cost. The installation of any life safety system or equipment within the Premises shall be performed in a manner that enables it to be appropriately integrated into the life safety system for the Building, and such integration shall be subject to Landlord's approval. Tenant shall provide audio and visual fire safety within the Premises at its expense that is compatible with Landlord's fire safety system for the Building, and Landlord shall have the on-going right to monitor Tenant's systems.

G Antenna Tenant may install, at its sole cost and expense, a GPS antenna, as well as related base site cabinets in connection with such antenna, on the rooftop of the Building in an area containing approximately 12 square feet and approved by Landlord. Any installation shall be subject to Landlord's approval of the size, design, location, height, installation and appearance, such approval to not be unreasonably withheld, conditioned or delayed.

H Replacement Tenant shall have the right to replace any or all of its equipment, including generators, batteries, GPS systems, HVAC, etc., with like kind equipment, at any time during the term of the Lease. To the extent that there are changes to the existing equipment which materially affect the Building structure or systems, Landlord's approval shall be required. Tenant shall promptly restore any damage to the Building or the Building caused by such replacement at Tenant's expense.

I Security Tenant shall have the right to install a specialized "card key" security system, palm readers, and video telephone to govern access to the Premises or certain portions thereof as designated by Tenant. Landlord agrees that Tenant shall have the right to install such a system at Tenant's sole cost and expense provided that Tenant provides to Landlord a "card-key" to enable Landlord to access the relevant portions of the demised premises subject to the limitations on access set forth in this Lease.

J Landlord's Approval of Plans In the event that Landlord fails to respond to Tenant's request or approval of any plans and specifications contemplated hereunder with respect to Tenant's Equipment within five (5) business days following Landlord's receipt of all required information with respect to such submission, such plans and specifications shall be deemed approved by Landlord.

3 PAYMENT FOR TENANT IMPROVEMENTS

3.01 LANDLORD'S ALLOWANCE

Landlord shall provide Tenant an allowance of twenty three and no/100 dollars (\$23.00) per useable square foot of space within the Premises. Pursuant to Article 4(F) of the Lease, Landlord shall retain nineteen and 65/100 dollars (\$19.65) per useable square foot of Landlord's Allowance and apply it toward installments of Basic and Additional Rent in accordance with the schedule contained in Exhibit E of the Lease.

3.02 TENANT'S COSTS

Tenant shall be responsible for all costs associated with the design, permitting and construction of the Tenant Improvements which are in excess of Landlord's Allowance.

4 PROVISION OF SERVICES BY LANDLORD

4 01 SERVICES

Landlord will provide continuous 200 amps 480 volt, three phase power together with adequate water and sewer service to the Premises during Tenant's construction of the Tenant Improvements

5 PREPARATION OF PLANS & CONSTRUCTION SCHEDULE & PROCEDURES

Tenant shall arrange for the construction of the Tenant Improvements in accordance with the following schedule

5 01 SELECTION OF TENANT'S ARCHITECT AND ENGINEER

Tenant will select an architect ("Tenant's Architect") and shall select engineers ("Tenant's Engineers"), subject to Landlord's consent, which consent shall not be unreasonably withheld, delayed or conditioned and which consent (or refusal to consent for reasonable reasons) shall be granted within two (2) business days after Tenant has submitted the names of the Tenant's Architect and Engineers to Landlord. This procedure shall be repeated until the Tenant's Architect and Engineers is finally approved by Landlord and written consent has been delivered to and received by Tenant. In the event Landlord fails to respond within such two business day period, Landlord shall be deemed to have approved the applicable architect and/or engineer.

5 02 PREPARATION AND APPROVAL OF SPACE PLAN

- a Tenant shall submit to the Tenant's Architect all additional information including occupancy requirements for the Premises ("Information") necessary to enable Tenant's Architect to prepare a space plan showing all demising walls, corridors, entrances, exits, doors, interior partitions, and the locations of all offices, conference rooms, the reception area, and other rooms ("Space Plan")
- b Tenant shall cause the Tenant's Architect to submit to Landlord the Space Plan for Landlord's review and approval. Within five (5) business days after Landlord receives the Space Plan, Landlord shall either approve or disapprove the Space Plan, provided that Landlord may only disapprove such Space Plans for reasonable and material reasons [which shall be limited to the following: a) adverse affect on the structural integrity of the Building, b) possible damage to the HVAC, plumbing, life-safety, and utility systems in the Building ("Building Systems"), c) non compliance with applicable codes or d) adverse affect on the exterior appearance of the Building (each, a "Design Problem")]. and return the Space Plan to Tenant. In such event Landlord shall require, and Tenant shall make the minimum changes necessary in order to correct the Design Problems and shall return the Space Plan to Landlord which Landlord shall approve or disapprove within two (2) business days after Landlord has received the revised Space Plan. This procedure shall be repeated until the Space Plan is finally approved or deemed approved by Landlord and written approval has been delivered to and received by Tenant or such applicable time period has lapsed without a response by Landlord. In the event Landlord fails to respond within such five (5) business day or two (2) business-day period, as applicable Landlord shall be deemed to have approved such Space Plan.

5 03 PREPARATION AND APPROVAL OF WORKING DRAWINGS

- a After the Space Plan is approved by Landlord, Tenant shall submit to Landlord drawings prepared by the Tenant's Architect ("Working Drawings") which shall be compatible with the design, construction and equipment of the Building, comply with all Laws, be capable of logical measurement and construction, and contain all such information as may be required for the construction of the Tenant Improvements. The Working Drawings shall contain all partition locations, electrical and plumbing locations, air conditioning system and duct

work, reflected ceiling plans and office equipment locations. The Working Drawings may be submitted in one or more stages and at one or more times.

- b. Landlord shall approve the Working Drawings or such portion as has from time to time been submitted, within ten (10) business days after receipt of same or designated by notice given within such time period to Tenant the specific changes reasonably required to be made to the Working Drawings in order to correct any Design Problem and shall return the Working Drawings to Tenant. Tenant shall make the minimum changes necessary in order to correct such Design Problem and shall return the Working Drawings to Landlord which Landlord shall approve or disapprove within two (2) business days after Landlord received the revised Working Drawings. This procedure shall be repeated until all of the Working Drawings are finally approved by Landlord, and written approval has been delivered to and received by Tenant or such applicable time period has lapsed without a response by Landlord. In the event Landlord fails to respond within such ten business day period or two business day period, as applicable, Landlord shall be deemed to have approved such Working Drawings.

6 PERMITS

Tenant, at its expense, but subject to Landlord's Allowance, shall be responsible for obtaining all governmental approvals of the Working Drawings to the extent necessary for the issuance of a building permit for the construction of the Tenant Improvements and occupancy of the Premises for Tenant's intended use. Landlord shall cooperate with Tenant at Tenant's expense to the extent necessary to obtain any permits or similar approvals.

7 TENANT'S CONTRACTOR

Tenant shall select a contractor ("Contractor") familiar with all applicable laws, subject to the approval of Landlord, which approval will not be unreasonably withheld, delayed or conditioned and shall be granted (or refused for reasonable reasons) within five (5) business days after Tenant's request for such approval. Tenant may have Landlord approve three (3) or more Contractors prior to competitive bidding.

8 CHANGE ORDERS

In the event that Tenant requests any changes to the Working Drawings, Landlord shall not unreasonably withhold its consent to any such changes, and shall grant its consent to such changes within two (2) business days after Landlord's receipt of same provided the changes do not create a Design Problem. Landlord's failure to respond to any proposed change order requiring Landlord's consent hereunder within such two business day period shall be deemed Landlord's approval of such change order. Moreover, with respect to any change orders of less than \$20,000 individually and aggregating up to \$100,000 and which do not impact the Building structure or any Building systems and would not be visible from the exterior of the Premises, Landlord's consent shall not be required.

9 NON-INTERFERENCE

Tenant shall cause its contractor(s) and other agents, employees and representatives to not cause any unnecessary or unreasonable interference with the use and enjoyment of the Complex by any other tenant. If any item of the Tenant Improvements will cause, in Landlord's reasonable judgment, an unnecessary or unreasonable interference, then such item of work must be scheduled outside of normal business hours or on the weekend. It is the intent of this paragraph that no existing Tenant shall have an interruption of its normal building services or interruption of its access to the Complex during normal business hours. Landlord shall cause its agents, employees and contractors to cooperate with

Tenant and its agents, employees and contractors in order to prevent any delay or interference with Tenant's completion of the Tenant Improvements

10 INSURANCE AND INDEMNIFICATION


10 01 INDEMNIFICATION

Tenant agrees to indemnify, defend and hold harmless Landlord for any claims for damages or injury to any person or property arising out of the construction of the Tenant Improvements except to the extent such damages or injury are proximately caused by the negligence or willful misconduct of the party seeking indemnification

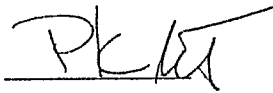
10 02 LIABILITY INSURANCE

Prior to commencement of construction, Tenant shall deliver to Landlord a certificate evidencing the required liability insurance pursuant to the Lease naming Landlord as an additional insured

Landlord Initials



Tenant Initials



#7071984 v3 -

EXHIBIT E
SCHEDULE OF PRE PAID RENT

Pursuant to Article 4(F) of the Lease Landlord shall retain \$19.65 per usable square foot of Landlord's Allowance as pre-paid installments of Basic and Additional rent to be applied in accordance with the following schedule:

Month 12
Month 24
Month 36
Month 48
Month 60
Month 72
Month 84
Month 96
Month 108
Month 120

In the event that monies remain after such application Landlord shall, at Tenant's direction, (i) apply such amounts to the next rents due, or (ii) refund such amounts to Tenant.



EXHIBIT "C"

B&Z | **PROPERTIES, INC**
Development Investment Management

Invoice No 3092

Date 04/30/03

TO: ATTN. PATRICIA E KOIDE
ALLEGIANCE TELECOM COMPANY
4 WESTBROOK CORP CENTER, #400
WESTCHESTER, IL 60154

Re PROSPECT C, LP

| PERIOD | AMOUNT |
|--|--------|
| 2003 | |
| AFTER HOURS USAGE - H V A C OVERTIME A/C FOR THE FOLLOWING DATE | |
| DECEMBER 2002 | 12.00 |
| JANUARY 2003 | 62.00 |
| Administrative Fes | 3.70 |

Please make your check payable to

PROSPECT C, LP

Total Due. 77.70

BELI & ZURBUCHEN PROPERTIES

2882 Prospect Park Drive, Suite 250 Rancho Cordova, CA 95670 TEL 916 635 0146 FAX 916 635 7928 www.bzprop.com

Allegiance Telecom
10995 Gold Center Drive Suite 100
Rancho Cordova, California 95670

Date: 1/8/03

Return remittance copy with check. Make check payable to

B & Z Properties
2882 Prospect Park Drive Suite 250
Rancho Cordova, California 95670

INVOICE FOR AFTER HOURS ENERGY CONSUMPTION

| Location | Event Type | Start of Event | End of Event | Duration(min.) | Billed(min) | Amount(\$) |
|--------------------|------------------|---------------------|---------------------|----------------|--------------|------------|
| Allegiance Telecom | Afterhours Usage | 12/19/02 6 00 00 PM | 12/19/02 6 29 00 PM | 29 | 30 | 12 00 |

Amount Due* \$12 00

Please contact the following for questions regarding this invoice

Steve Hussey

(916) 635-0146

FEB-19-03 09:49 AM JMMIT AI CO.

9167292060

P. 03

Allegiance Telecom
10995 Gold Center Drive Suite 100
Rancho Cordova, California 95670

Date: 2/12/03

Return remittance copy with check Make check payable to

B & L Properties
2882 Prospect Park Drive Suite 250
Rancho Cordova, California 95670

INVOICE FOR AFTER HOURS ENERGY CONSUMPTION

| Location | Event Type | Start of Event | End of Event | Duration(min) | Billed(min) | Amount(\$) |
|--------------------|------------------|--------------------|--------------------|---------------|-------------|------------|
| Allegiance Telecom | Afterhours Usage | 1/22/03 6:00:00 PM | 1/22/03 8:32:00 PM | 152 | 155 | 62.00 |

Amount Due: \$62.00

Please contact the following for questions regarding this invoice

Steve Hussey

(916) 633-0146

B&Z | **PROPERTIES, INC**
Development Investment Management

Invoice No. 3166

Date. 06/24/03

To ATTN: ANNABELLE JO FRYCKI
ALLEGIANCE TELECOM COMPANY
3480 BUSKIRK AVENUE, SUITE 301
PLEASANT HILL, CA 94523

Re PROSPECT C, LP

PERIOD

AMOUNT

2003 AFTER HOURS USAGE - H V.A C
OVERTIME A/C FOR THE FOLLOWING DATE

MAY 2003

50 00

Administrative Fee

2.50



Please make your check payable to.

PROSPECT C, LP

Total Due 52 50

BELL & ZURBUCHEN PROPERTIES

2882 Prospect Park Drive Suite 250 Rancho Cordova CA 95670 TEL 916 635 0146 FAX 916 635 7926 WEB www.bzprop.com

HVA3

JUN-12-03 11:51 AM SUMMIT AIR CO.

9167292868

P.02

Allegiance Telecom
10995 Gold Center Drive Suite 100
Rancho Cordova California 95670

Date: 6/12/03

Return remittance copy with check. Make check payable to

B & Z Properties
2882 Prospect Park Drive Suite 250
Rancho Cordova, California 95670

INVOICE FOR AFTER HOURS ENERGY CONSUMPTION

| Location | Event Type | Start of Event | | End of Event | | Duration(min.) | Billed(min) | Amount(\$) |
|--------------------|------------------|----------------|------------|--------------|------------|----------------|-------------|------------|
| Allegiance Telecom | Afterhours Usage | 5/6/03 | 6:00:00 PM | 5/6/03 | 7:14:00 PM | 74 | 75 | 30.00 |
| Allegiance Telecom | Afterhours Usage | 5/6/03 | 7:24:00 PM | 5/6/03 | 8:13:00 PM | 49 | 50 | 20.00 |

Amount Due: \$50.00

Please contact the following for questions regarding this invoice

Steve Huxley

(916) 633-0146

TRAINOR • ROBERTSON

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

701 UNIVERSITY AVENUE SUITE 200
SACRAMENTO CALIFORNIA 95825 6700

TELEPHONE
(916) 929 7000

FACSIMILE
(916) 929 7111

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CHARLES W. TRAINOR
THOMAS F. STEWART
WILLIAM H. DAVIS
JOHN D. FAIRBROOK
ANTHONY A. AROSTEGUI
COLBY A. CAMPBELL
CANDICE B. HARPER
GARY M. FUNAMURA
NANCY HOTCHKISS
JEFFREY L. ANDERSON
MICHAEL W. THOMAS
THOMAS D. MORELL
DONNA L. LANGLEY
MARIA GRAESSER
SHERRIE R. DUNCAN
EMIL G. TUNG
SYLVIA K. HAMERSLEY
TODD A. SCHAFER

October 15, 2003

FIRST-CLASS MAIL

United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
Bowling Green Station
P O Box 95
New York, New York 10274-0095

Re Allegiance Telecom, Inc , et al
Case No 03-13057 (RDD)

Dear Sir/Madam Clerk

Enclosed please find an original Proof of Claim and 2 copies which we ask be filed with the court on behalf of our client, Prospect West C, L P in the above-referenced matter. Also enclosed please find a self-addressed, stamped envelope for the return of a file-endorsed copy to our office.

Should you have any questions regarding the enclosed, please contact me

Very truly yours,



Gabrielle Pulka

Legal Assistant to Nancy Hotchkiss

GAP bhs
Enclosures

3173040 288629

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**In re Allegiance Telecom, Inc , et al
Case No 03-13057-(RDD)-11**

DOCUMENTS APPENDED TO CLAIM

On March 6, 2006, document(s) were appended to Claim Number **871, 1200, 2903 and 2925** for the following reason(s)

- ☐ Stipulation/Order
- ☐ New Supporting Documents
- ☐ Change of Address
- ☒ Stipulation and Agreed Order
- ☒ Other Docket Number 2341 EOD 3/3/06

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re X

Allegiance Telecom, Inc , et al.,

Debtors

Chapter 11 Case No
03-13057 (RDD)

Jointly Administered

X

**STIPULATION AND AGREED ORDER RESOLVING CLAIM NUMBER 2903 OF
PROSPECT WEST C, L P**

THIS STIPULATION AND AGREED ORDER is by and between the Allegiance Telecom Liquidating Trust (the "ATLT"), as successor to the Debtors (as defined below), and Prospect West C, L P ("Claimant") The parties hereby stipulate and agree as follows

WHEREAS, on or about October 31, 2000, Debtor Allegiance Telecom Company Worldwide ("ATCW") entered into a lease (the "Lease") with the Claimant for office space at 10995 Gold Center Drive, Suite 100, Rancho Cordova, California (the "Premises"), and

WHEREAS, the Lease required ATCW to pay a security deposit to Claimant in the amount of \$55,000 00 (the "Security Deposit"), and

WHEREAS, pursuant to the Lease, ATCW paid \$279,475 95 to Claimant as prepaid rent (the "Prepaid Rent"), and

WHEREAS, pursuant to the Lease, ATCW is entitled to \$42,015 95 of reconciliation credits from Claimant (the "Reconciliation Credits"), and

WHEREAS, on May 14, 2003, Allegiance Telecom, Inc and its direct and indirect subsidiaries (collectively, the "Debtors") commenced voluntary cases (the "Chapter 11 Cases") under

Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court for the Southern District of New York, Case No 03-13057 (RDD) (the “Bankruptcy Court”), and

WHEREAS, the Chapter 11 Cases were consolidated for procedural purposes only and were jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, and

WHEREAS, on or about October 17, 2003, Claimant filed a proof of claim numbered 871 (the “First Proof of Claim”) for Claims (as such term is defined in the Plan) against ATCW in the amount of \$145,030, subject to amendment, plus a secured claim for setoff rights against security deposit, prepaid rent, and annual reconciliation credits of \$411,816 63, and

WHEREAS, on or about October 28, 2003, said First Proof of Claim was assigned a duplicative claim number 1200 (the “Second Proof of Claim”), and

WHEREAS, on or about April 6, 2004, the Debtors filed their First Omnibus Objections to Certain Proofs of Claims (the “First Omnibus Objection”), which included an objection to the First Proof of Claim, and the Second Proof of Claim, and

WHEREAS, the Debtors filed their Third Amended Joint Plan of Reorganization dated June 8, 2004 (the “Plan”) with the Bankruptcy Court and the Court entered its Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Third Amended Joint Plan of Reorganization on June 10, 2004 (the “Confirmation Order”), and

WHEREAS, in accordance with the terms of the Plan, on the Initial Effective Date, the ATLT was created, and

WHEREAS, pursuant to the Plan, Eugene I Davis was appointed as the plan

administrator (the “Plan Administrator”) for the ATLT, and

WHEREAS, among other things, the purpose of the ATLT is to (i) wind-down the Debtors’ affairs, including making distributions as contemplated in the Plan, (ii) investigate, enforce and prosecute avoidance and other causes of action, (iii) object to, settle, compromise, dispute and/or prosecute disputed claims, and (iv) administer the Plan and take such actions as are necessary to effectuate the terms of the Plan, and

WHEREAS, the ATLT, as the successor to the rights of the Debtors, and the Plan Administrator has the authority to, *inter alia*, perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704 and 1106 of the Bankruptcy Code, and

WHEREAS, section 6 1(a) of the Plan provides in relevant part that “[p]ursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, and subject to the terms and conditions of the Purchase Agreement, all executory contracts and unexpired leases between the Debtors and any Person or Entity that are not listed on Schedules 2, 3 and 4 shall be deemed rejected by the Debtors on the Initial Effective Date”, and

WHEREAS, pursuant to section 6 1(a) of the Plan, the Debtors rejected the Lease with a deferred effective date, and

WHEREAS, on or about June 23, 2004, the Bankruptcy Court entered its Order Granting the Debtors’ First Omnibus Objection With Respect to Proof of Claim No 1200 of Prospect West C LP, which provided in relevant part “ORDERED, that Claim 1200 is hereby disallowed and expunged in its entirety, and it is further ORDERED, that the objection to Claim 871 as set forth in the Application is

deemed withdrawn, without prejudice to the Debtors' right to object to Claim 871 in the future, or object to any amended claim that may be filed by Prospect ", and

WHEREAS, on or about July 9, 2004, Claimant filed a proof of claim numbered 2903 (the "Third Proof of Claim"), amending the First Proof of Claim, for Claims against ATCW in the amount of \$635,562.43, including \$259,070.53 as non-priority, unsecured and \$376,491.90 as secured, and

WHEREAS, on or about July 20, 2004, said Third Proof of Claim was assigned a duplicative claim number 2925 (the "Fourth Proof of Claim"), and

WHEREAS, Claimant has not filed any proofs of claim in the Chapter 11 Cases other than those referenced above, and

WHEREAS, the ATLT disputes the amounts sought by Claimant in the Third and Fourth Proofs of Claim, and

WHEREAS, on or about September 2, 2004, the ATLT filed its Tenth Omnibus Objection to Certain Proofs of Claims (the "Tenth Omnibus Objection"), which included an objection to the Fourth Proof of Claim, and

WHEREAS, on or about September 2, 2004, the ATLT filed its Eleventh Omnibus Objection to Certain Lease Rejection Damages Claims (the "Eleventh Omnibus Objection"), which included an objection to the Third Proof of Claim, and

WHEREAS, on or about October 13, 2004, the Court entered an order, pursuant to the Tenth Omnibus Objection, that, *inter alia*, disallowed and expunged the Fourth Proof of Claim, and

WHEREAS, on or about October 13, 2004, the Court entered an order, pursuant to the Eleventh Omnibus Objection, that, *inter alia*, disallowed and expunged the Third Proof of Claim

(the “Order”), and

WHEREAS, on or about August 24, 2005, the Court entered an order granting Prospect West’s Motion for Relief from Default Re Order on Eleventh Omnibus Objection to Certain Proofs of Claim, which reinstated the Third Proof of Claim, and

WHEREAS, on July 5, 2005, the ATLT filed a complaint against Prospect West (Adv No 05-02250) primarily seeking the return of certain prepaid rent as well as attorneys’ fees from Prospect West (the “Complaint”)

WHEREAS, on September 23, 2005, Prospect West filed a motion for summary judgment, seeking an order resolving the causes of action set forth in the Complaint in Prospect West’s favor, and an award of attorney’s fees and costs in defending the Complaint

WHEREAS, on September 26, 2005, the ATLT filed a motion for summary judgment in respect of the Complaint, seeking an order resolving the causes of action set forth in the Complaint in the ATLT’s favor, and an award of the ATLT’s attorneys’ fees in prosecuting the Complaint against Prospect West

WHEREAS, at a hearing on December 7, 2005, the Court denied the ATLT’s motion for summary judgment, granted Prospect West’s motion for summary judgment, and ordered that Prospect West’s attorneys’ fees and costs in connection with its defense of the causes of action set forth in the Complaint could be included in Prospect West’s Claims against the Debtors, subject to the cap on lease rejection damages established by section 502(b)(6) of the Bankruptcy Code (the “Prospect West Summary Judgment Order”)

WHEREAS, the ATLT and Claimant have negotiated in good faith at arm’s length and

have reached a consensual resolution, as set forth below, with respect to the

Third Proof of Claim to avoid incurring significant additional litigation expenses that would necessarily be incurred in litigating this matter to an uncertain conclusion

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS

1 Upon the entry of a Final Order (as defined below) approving this Stipulation, and as authorized by the Prospect West Summary Judgment Order, (a) the ATLT is hereby authorized and directed to grant Claimant an allowed Secured Claim (as such term is defined in the Plan) of \$376,491.90 (the "Paid Secured Claim") in full and complete satisfaction of the secured portion of the Third Proof of Claim (Claim number 2903) held by Claimant with respect to the Debtors, the Debtors' estates, and/or the ATLT and (b) the offset and retention by Claimant of the Security Deposit, the Prepaid Rent, and the Reconciliation Credits referenced above shall constitute full and final satisfaction of the Secured Claim. As no further amounts are due with respect to the Paid Secured Claim and upon entry of the Final Order, said Paid Secured Claim shall be deemed to be paid and satisfied in full.

2 Upon the entry of a Final Order approving this Stipulation, the ATLT is hereby authorized and directed to grant Claimant an allowed ATCW Unsecured Claim (as defined in the Plan) of \$259,070.53 in full and complete satisfaction of the unsecured portion of the Third Proof of Claim (Claim number 2903) and all other Claims held by Claimant with respect to the Debtors, the Debtors' estates, and/or the ATLT.

3 Upon the entry of a Final Order approving this Stipulation, the ATLT is hereby authorized and directed to expunge from the ATLT's claims register all proofs of claim heretofore filed by

Claimant or as to which a separate claim number was assigned on a duplicative claim, save and except the allowance and deemed satisfaction of the Paid Secured Claim referenced above

4 Upon entry of a Final Order approving this Stipulation and except for the Paid Secured Claim, each party hereto hereby irrevocably, unconditionally and without reservation of any kind waives, releases and forever discharges the other, and their respective parent firms and affiliates, and their officers, directors, employees, attorneys, professionals, and agents, acting in such capacity, from and against any and all past, present and future actions, causes of action, Claims, liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether matured or unmatured, whether at law or in equity, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, discoverable or undiscoverable, contingent or non-contingent, which each has, had, or may have in the future against the other

5 This Stipulation shall be governed by the law of the State of New York, excluding its conflicts of laws principles and this Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation

6 The undersigned on behalf of the ATLT and Claimant each warrants and represents that he or she has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such party

7 Claimant represents and warrants to the ATLT that, as of the date hereof, it is the sole holder of the Proofs of Claim referenced above against the Debtors, the Debtors' estates, and the ATLT, and that Claimant has not assigned, sold, hypothecated or otherwise transferred any interest therein
Claimant agrees not to file any proofs of claim or requests for the payment of administrative expenses

against the ATLT, the Debtors, or the Debtors' estates, whether in the Debtors' Chapter 11 cases or otherwise

8 This Stipulation is subject to approval by the Court and the entry of a Final Order by the Court approving this Stipulation, provided, however, that the parties shall support such Court approval and comply with this Stipulation pending the Court's entry of a Final Order approving or disapproving this Stipulation. For the purposes of this Stipulation, the term "Final Order" shall mean an order approving this Stipulation that has not been stayed, reversed or amended and the time, as computed under the Bankruptcy Rules, to appeal or seek review or rehearing of such order (or any revision, modification or amendment thereof) has expired and no appeal or petition for review or rehearing of such order was filed, or if filed, remains pending

9 Nothing contained in this Stipulation nor any negotiations or proceedings in connection herewith shall constitute or be deemed to be evidence of an admission by any party hereto of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party. Neither this Stipulation nor any negotiations or proceedings in connection herewith may be used in any proceeding against any party for any purpose whatsoever except with respect to effectuation and enforcement of this Stipulation

10 This Stipulation contains the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous oral or written agreements. The parties acknowledge that no promise, inducement, or agreement not stated herein has been made to them in connection with this Stipulation. The parties understand and agree that this Stipulation may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by

both parties and the Court. The parties agree and acknowledge that they will make no claim at any time or place that this Stipulation has been orally altered or modified or otherwise changed by oral communication of any kind or character. Each party hereto agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Stipulation.

11 This Stipulation may be executed simultaneously or in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. A facsimile copy of a signature shall be deemed to be the equivalent of an original signature.

12 This Stipulation shall be binding upon the ATL T, as successor to the Debtors, and Claimant, and their predecessors, successors, heirs, subsidiaries, affiliates, assignees, agents, directors, officers, employees, the Plan Administrator, and any trustee appointed under Chapter 7 of the Bankruptcy Code.

Dated New York, New York
February 3, 2006

**ALLEGIANCE TELECOM LIQUIDATING
TRUST**

By /s/ Lois A Mannon
Lois A Mannon
Allegiance Telecom Liquidating Trust
1405 S Belthine Road, Suite 100
Coppell, Texas 75019

and

**AKIN GUMP STRAUSS HAUER & FELD
LLP**

By /s/ Kenneth A Davis
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Liquidating Trust

**PROSPECT WEST C, L.P , a California
limited partnership**

By **B&Z Investments, LLC, a
California limited liability company
Its General Partner**

By /s/Bruce W Bell
Bruce W Bell
Its Managing Member

By /s/ James M Zurbuchen
James M Zurbuchen
Its Managing Member

and

TRAINOR ROBERTSON

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Counsel to Prospect West C, L P

SO ORDERED, this 3rd day of March 2006

/s/Robert D Drain
UNITED STATES BANKRUPTCY JUDGE